

**United States Department of Labor  
Employees' Compensation Appeals Board**

C.J., Appellant	)	
	)	
and	)	<b>Docket No. 22-0478</b>
	)	<b>Issued: August 30, 2022</b>
<b>U.S. POSTAL SERVICE, RIDGEWAY POST OFFICE, Ridgeway, VA, Employer</b>	)	
	)	

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On February 7, 2022 appellant filed a timely appeal from a September 20, 2021 merit decision and an October 18, 2021 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUES**

The issues are: (1) whether appellant has met her burden of proof to establish a medical condition causally related to the accepted November 13, 2019 employment incident; and (2) whether OWCP properly denied appellant's request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On January 10, 2020 appellant, then a 61-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on November 13, 2019 she sustained a right shoulder injury when she stepped on a bag of mulch and fell while in the performance of duty.

In notes dated November 13 and December 2, 2019, and January 10, 2020, Dr. Jonathan Krome, a Board-certified orthopedic surgeon, recommended light duty.

An unsigned report from a medical provider dated January 10, 2020 noted diagnoses of a tear of the right supraspinatus tendon, acute pain of the right shoulder, and numbness and tingling in the right hand.

In a development letter dated February 26, 2020, OWCP informed appellant that she had submitted insufficient factual and medical evidence to establish her claim. It advised her of the type of evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond.

In a report dated November 13, 2019, Dr. Krome noted that appellant had related that she had fallen and hurt her right shoulder on that date. He related an assessment of right shoulder injury and acute pain of the right shoulder. Dr. Krome also noted that appellant had left knee derangement, with pain for the last three weeks.

In a report dated December 2, 2019, Dr. Krome diagnosed acute pain of the right shoulder, a tear of the right supraspinatus tendon, and left knee internal derangement. He noted his review of a magnetic resonance imaging (MRI) scan of appellant's left knee, which demonstrated a possible small meniscus tear with fluid and a small cuff tear with no retraction. Dr. Krome stated that the age of these changes was unknown. He recommended physical therapy. In progress notes dated from January 10 through February 27, 2020, Dr. Krome diagnosed a tear of the right supraspinatus tendon and recommended continuation of physical therapy.

In a duty status report (Form CA-17) dated February 27, 2020, Dr. Krome noted appellant's history that on November 13, 2019 she stepped on a bag of mulch while delivering a parcel and fell, injuring her right shoulder. He diagnosed a tear of the right supraspinatus tendon and recommended work restrictions of no lifting with the right shoulder and sedentary work.

By decision dated March 30, 2020, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish causal relationship between her diagnosed conditions and the accepted employment incident of November 13, 2019.

In a note dated March 20, 2020, Dr. Krome recommended light duty with sitting work only and no lifting with the right arm.

On April 24, 2020 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. With her request she submitted a letter dated April 23, 2020 from Dr. Krome, in which he stated that appellant's right shoulder and left knee surgery had yet to be scheduled.

In a Form CA-17 dated May 20, 2020, Dr. Krome diagnosed a tear of the right supraspinatus tendon and advised that appellant could return to full-time regular work as of that date.

In a report dated June 23, 2020, Dr. Robert Wainer, a Board-certified orthopedic surgeon, diagnosed a left knee chronic traumatic possible lateral meniscus tear with a Baker's cyst and right knee chronic traumatic synovitis *versus* chondromalacia. He noted that appellant had sustained a fall and twisting injury at work in November 2019. Dr. Wainer administered a series of injections.

In a progress note dated July 14, 2020, Dr. Wainer followed up with appellant for her complaints of bilateral knee pain, left worse than right. He noted that an MRI scan of her left knee obtained on November 22, 2019 revealed no definite meniscal tearing with mild anterior cruciate ligament (ACL) strain and mild-to-moderate chondromalacia. Appellant stated that her right knee hurt and she had been favoring the left knee, which was hurt getting in and out of a mail truck many times over many years. Dr. Wainer diagnosed bilateral knee moderate primary localized osteoarthritis.

In a progress note dated July 28, 2020, Dr. Wainer stated that he had administered a second injection to both knees on that date. He diagnosed bilateral knee moderate primary localized osteoarthritis.

An MRI scan of appellant's left knee obtained on November 22, 2019 demonstrated suggestion of a mild strain of the ACL, osteoarthritis, a small knee joint effusion, and a small Baker's cyst. An MRI scan of appellant's right shoulder obtained on the same date demonstrated supraspinatus and infraspinatus tendinosis/strain and a 1.5 centimeter full-thickness tear of the supraspinatus tendon.

The oral hearing before a representative of OWCP's Branch of Hearings and Review was held on August 6, 2020.

Following the oral hearing, OWCP received additional evidence. An MRI scan of the left knee obtained on November 22, 2019 demonstrated suggestion of a mild strain of the ACL, osteoarthritis, small knee joint effusion, and a small Baker's cyst. An MRI scan of the right shoulder obtained on the same date demonstrated supraspinatus an infraspinatus tendinosis/strain and a full-thickness tear of the supraspinatus tendon.

By decision dated October 20, 2020, a hearing representative affirmed OWCP's March 30, 2020 decision. The hearing representative found that appellant had not established that her diagnosed shoulder or knee conditions were causally related to the November 13, 2019 employment incident.

On June 17, 2021 appellant requested reconsideration of the decision of October 20, 2020.

In a letter dated January 15, 2021, Dr. Wainer stated that appellant tripped and fell at work on November 13, 2019. He explained that she had a traumatic injury to her right shoulder that occurred from the impact of the fall, with her full body weight on her right shoulder. Dr. Wainer opined that this injury was caused by the fall and caused a tear of appellant's right shoulder rotator cuff, requiring surgery on September 9, 2020. He noted that an MRI scan obtained prior to surgery

was consistent with the rotator cuff tear, which was secondary to her fall on November 13, 2019. Dr. Wainer further noted that due to her injury, appellant underwent arthroscopic surgery and rotator cuff repair on September 9, 2020.

By decision dated September 20, 2021, OWCP denied modification of its decision of October 20, 2020.

On September 21, 2021 appellant requested reconsideration of OWCP's September 20, 2021 decision. In support of her request, she resubmitted the January 15, 2021 letter from Dr. Wainer. Appellant also submitted a surgical report dated September 9, 2020. This report related that Dr. Wainer performed right shoulder partial labrum and partial rotator cuff tear debridement and subacromial decompression of appellant's right shoulder.

By decision dated October 18, 2021, OWCP denied appellant's request for reconsideration of the merits of her claim.

### **LEGAL PRECEDENT -- ISSUE 1**

An employee seeking benefits under FECA<sup>2</sup> has the burden of proof to establish the essential elements of his or her claim, including that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation of FECA,<sup>3</sup> that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.<sup>4</sup> These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>5</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. The first component is that the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time and place, and in the manner alleged. The second component is whether the employment incident caused a personal injury and can be established only by medical evidence.<sup>6</sup>

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<sup>2</sup> *Id.*

<sup>3</sup> *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>4</sup> *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>5</sup> *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>6</sup> *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

The medical evidence required to establish a causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.<sup>7</sup> The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and specific employment incident.<sup>8</sup>

### ANALYSIS -- ISSUE 1

The Board finds that this case is not in posture for decision.

In a letter dated January 15, 2021, Dr. Wainer stated that appellant tripped and fell at work on November 13, 2019. He explained that she had a traumatic injury to her right shoulder that occurred from the impact of the fall, with her full body weight on her right shoulder. Dr. Wainer opined that this injury was caused by the fall and caused a tear of her right shoulder rotator cuff, requiring surgery on September 9, 2020. He noted that an MRI scan obtained prior to surgery was consistent with the rotator cuff tear, which was secondary to her fall on November 13, 2019. Dr. Wainer further noted that due to her injury, she underwent arthroscopic surgery and rotator cuff repair on September 9, 2020.

The Board finds that the January 15, 2021 letter from Dr. Wainer is sufficient to require further development of the medical evidence. His report provided a pathophysiological explanation as to how appellant's fall on November 13, 2019 caused her diagnosed rotator cuff tear. There is no evidence of record contradicting Dr. Wainer's opinion on causation. The medical evidence of record from him provided a rational and logical opinion and is, therefore, sufficient to require further development of appellant's claim.<sup>9</sup>

It is well established that proceedings under FECA are not adversarial in nature and, while appellant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.<sup>10</sup> It has an obligation to see that justice is done.<sup>11</sup>

On remand OWCP shall refer appellant to a specialist in the appropriate field of medicine, along with the case record and a statement of accepted facts. Its referral physician shall provide a well-rationalized opinion as to whether appellant has a diagnosed condition causally related to or aggravated by the accepted factors of her federal employment. If the physician opines that the diagnosed condition is not causally related, he or she must explain with rationale how or why the

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<sup>7</sup> *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>8</sup> *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>9</sup> *D.S.*, Docket No. 17-1359 (issued May 3, 2019); *William J. Cantrell*, 34 ECAB 1223 (1983).

<sup>10</sup> *Id.* See also *A.P.*, Docket No. 17-0813 (issued January 3, 2018); *Jimmy A. Hammons*, 51 ECAB 219, 223 (1999).

<sup>11</sup> *S.M.*, Docket No. 19-1634 (issued August 25, 2020); see *B.C.*, Docket No. 15-1853 (issued January 19, 2016); *John J. Carlone*, *supra* note 6.

opinion differs from that of Dr. Wainer. After such further development of the case record as OWCP deems necessary, it shall issue a *de novo* decision.<sup>12</sup>

**CONCLUSION**

The Board finds that this case is not in posture for decision.

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 20 and October 18, 2021 decisions of the Office of Workers' Compensation Programs are set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: August 30, 2022  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>12</sup> In light of the Board's disposition of Issue 1, Issue 2 is rendered moot.