

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

	)	
<b>L.S., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 22-1214</b>
	)	<b>Issued: December 30, 2022</b>
<b>DEPARTMENT OF JUSTICE, FEDERAL</b>	)	
<b>BUREAU OF PRISONS, Herlong, CA, Employer</b>	)	
	)	

*Appearances:*  
Alan J. Shapiro, Esq., for the appellant<sup>1</sup>  
Office of Solicitor, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
JANICE B. ASKIN, Judge  
JAMES D. McGINLEY, Alternate Judge

**JURISDICTION**

On August 22, 2022 appellant, through counsel, filed a timely appeal from a July 25, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

---

<sup>1</sup> In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## ISSUE

The issue is whether appellant has met her burden of proof to establish a right shoulder condition causally related to the accepted May 14, 2020 employment incident.

## FACTUAL HISTORY

On May 19, 2020 appellant, then a 47-year-old information technician specialist, filed a traumatic injury claim (Form CA-1) alleging that she injured her right shoulder when she bent down to lift a computer while in the performance of duty. She noted that she was switching out inmate computers in a housing unit and felt sharp pain, a pulling sensation, and an electric feeling in her right shoulder while placing a computer onto a workstation. Appellant did not stop work.

In a medical report dated June 3, 2020, Dr. Christopher M. Dolan, a Board-certified orthopedic surgeon, noted that appellant related complaints of right shoulder pain, which she attributed to lifting a computer onto a desk at work on May 14, 2020. On physical examination of the shoulders, he documented pain and reduced range of motion on the right compared to the left, as well as clinical signs of rotator cuff pathology on the right. Dr. Dolan obtained x-rays of the right shoulder and clavicle and diagnosed right rotator cuff syndrome and an injury to the right superior glenoid labrum. He recommended physical therapy and released appellant to return to work-restricted duty with no reaching above shoulder height and no lifting greater than 10 pounds.

On June 4, 2020 appellant accepted a limited light-duty job offer consistent with the restrictions of Dr. Dolan.

In an initial examination report dated June 11, 2020, Ross Waltz, a physical therapist, noted that appellant related complaints of right shoulder pain and stiffness after she lifted a computer at work. He recommended various therapeutic exercises and modalities.

In a July 14, 2021 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed to establish her claim and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond.

In a July 22, 2020 response to the development questionnaire, appellant indicated that on May 14, 2020 she was in an inmate housing unit repairing a computer. She related that when she lifted the computer to place it onto a workstation, she felt a sharp pain in her right shoulder and neck. Appellant denied any prior injuries or conditions involving her right shoulder.

Appellant underwent additional physical therapy June 17 through July 30, 2020.

In a report dated August 12, 2020, Dr. Dolan indicated that appellant had responded well to physical therapy. He performed a physical examination of her right shoulder, which revealed full range of motion, good rotator cuff strength, and mild discomfort with impingement and O'Brien's testing. Dr. Dolan diagnosed a work-related right shoulder strain and possible rotator cuff strain and recommended that appellant continue home exercises. In a separate note of even date, he released appellant to return to full-duty work without restrictions, effective August 13, 2020. Dr. Dolan diagnosed right shoulder strain.

By decision dated August 25, 2020, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish that her diagnosed medical conditions were causally related to the accepted May 14, 2020 employment incident.

On September 4, 2020 appellant requested review of the written record by a representative of OWCP's Branch of Hearings and Review.

In a note dated September 23, 2020, Dr. Dolan continued to release appellant to full-duty work without restrictions. He diagnosed right shoulder strain, possible superior labral tear from anterior to posterior (SLAP), and possible rotator cuff tear.

By decision dated January 12, 2021, a hearing representative affirmed OWCP's August 25, 2020 decision.

In a letter dated February 23, 2021, the employing establishment requested that OWCP grant appellant's claim for a traumatic right shoulder injury. It enclosed a position description and an undated report by Dr. Dolan, who diagnosed right shoulder strain, possible partial rotator cuff tear or SLAP tear, and rotator cuff syndrome and opined that the conditions were caused by the May 14, 2020 employment incident. Dr. Dolan explained that "the rationale for the causal relationship is that the shoulder hurt after this work injury," and appellant's examination findings were consistent with her described mechanism of injury.

In a report dated April 14, 2021, Dr. Dolan indicated that appellant was not having pain in her shoulder and that her physical examination was normal. He diagnosed tendinitis of the right rotator cuff and potential SLAP tear and found her to be fully recovered from the injuries. Dr. Dolan opined that the conditions were causally related to the May 14, 2020 employment incident.

In a letter dated April 23, 2021, the employing establishment further requested that OWCP grant appellant's claim.

On May 28, 2021 appellant requested reconsideration of OWCP's January 12, 2021 decision.

In a letter dated May 18, 2021, the employing establishment further requested that OWCP grant appellant's claim and enclosed duplicate copies of medical reports previously of record.

By decision dated August 12, 2021, OWCP denied modification of its January 12, 2021 decision.

On April 8, 2022 appellant, through counsel, requested reconsideration of OWCP's August 12, 2021 decision. In support of the request, counsel submitted an April 6, 2022 narrative report by Dr. Dolan, who opined that lifting a computer at work caused rotator cuff tendinosis. He explained that lifting put a strain on the rotator cuff and the biceps labral anchor and noted that this was a very common mechanism of injury for rotator cuff, biceps anchor, and SLAP pathology. Dr. Dolan also noted that he had previously recommended that appellant undergo magnetic resonance imaging (MRI) of the right shoulder to better assess the injury.

By decision dated April 12, 2022, OWCP denied modification of its August 12, 2021 decision.

OWCP continued to receive evidence, including a medical report dated April 18, 2022 by Dr. Dolan, who noted that appellant reported a burning pain in the right shoulder for the past three weeks, which she attributed the May 14, 2020 employment incident. He performed a physical examination of the right shoulder, which revealed good range of motion and strength, slightly limited forward elevation, and pain with O'Brien's testing. Dr. Dolan diagnosed rotator cuff tendinitis and possible SLAP tear and recommended a right shoulder MRI. He noted that lifting a computer strained her rotator cuff and biceps tendon anchor and opined that the diagnosed conditions were causally related to the May 14, 2020 employment incident.

A report of MRI of the right shoulder dated May 14, 2022 revealed a partial thickness interstitial tear at the mid-insertion of the supraspinatus tendon, a cystic lesion between the supraspinatus and infraspinatus muscle bellies, and mild degenerative changes of the glenohumeral joint.

In a medical report dated May 24, 2022, Dr. Dolan reviewed the May 14, 2022 MRI and diagnosed tendinitis of the right rotator cuff, an injury to the superior glenoid labrum of the right shoulder joint, and partial thickness tear of the right rotator cuff. He opined that these conditions were caused by the May 14, 2020 employment incident and recommended injections and possible rotator cuff debridement or repair and decompression of the cyst.

By decision dated July 25, 2022, OWCP denied modification of its April 12, 2022 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</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>4</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>5</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>6</sup>

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;

---

<sup>3</sup> *Supra* note 1.

<sup>4</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>5</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>6</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).

(2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the identified employment factors.<sup>7</sup>

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.<sup>8</sup> The opinion of the physician must be based upon a complete factual and medical background, 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 the specific employment incident.<sup>9</sup>

### ANALYSIS

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

Appellant alleged that she injured her right shoulder while lifting and placing a computer onto a desk while in the performance of duty on May 14, 2020. Dr. Dolan, in his reports dated June 3, 2020 through May 24, 2022, consistently documented this mechanism of injury and diagnosed right shoulder strain, rotator cuff tendinosis, and partial rotator cuff tear due to the accepted employment incident. In his reports dated April 6 and 18 and May 24, 2022, he explained that lifting put strain on the rotator cuff and the biceps labral anchor and that this was a very common mechanism of injury for rotator cuff pathology.

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 for the development of the evidence and to see that justice is done.<sup>10</sup>

While the Board finds that the reports from Dr. Dolan are not fully rationalized, they are consistent in explaining that the accepted May 14, 2020 employment incident caused, precipitated and/or aggravated her right shoulder condition and are not contradicted by any substantial medical or factual evidence of record.<sup>11</sup> While his reports do not provide sufficient medical rationale to establish an injury by which her accepted May 14, 2020 employment incident caused or aggravated her diagnosed conditions, they raise an uncontroverted inference of causal relationship, and thus,

---

<sup>7</sup> *T.W.*, Docket No. 20-0767 (issued January 13, 2021); *L.D.*, Docket No. 19-1301 (issued January 29, 2020); *S.C.*, Docket No. 18-1242 (issued March 13, 2019).

<sup>8</sup> *I.J.*, Docket No. 19-1343 (issued February 26, 2020); *T.H.*, 59 ECAB 388 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>9</sup> *D.C.*, Docket No. 19-1093 (issued June 25, 2020); *see L.B.*, Docket No. 18-0533 (issued August 27, 2018).

<sup>10</sup> *See A.K.*, Docket No. 20-1426 (issued March 8, 2021); *B.C.*, Docket No. 15-1853 (issued January 19, 2016); *E.J.*, Docket No. 09-1481 (issued February 19, 2010); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>11</sup> *See D.G.*, Docket No. 18-0043 (issued May 7, 2019). *J.M.*, Docket No. 20-1230 (issued February 16, 2021).

they are sufficient to require OWCP to further develop the medical evidence.<sup>12</sup> Further development of appellant's claim is therefore required.<sup>13</sup>

The case shall be remanded for OWCP to refer appellant to a specialist in the appropriate field of medicine, along with the case record and a statement of accepted facts.<sup>14</sup> If the physician opines that the diagnosed conditions are not causally related to the employment incident, he or she must provide a rationalized explanation as to why their opinion differs from those articulated by Dr. Dolan. After this and other such further development deemed necessary, OWCP shall issue a *de novo* decision.

### CONCLUSION

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

---

<sup>12</sup> See *E.J.*, *supra* note 10; *Richard E. Simpson*, 55 ECAB 490, 500 (2004); *John J. Carlone*, *supra* note 10.

<sup>13</sup> See *A.G.*, Docket No. 20-0454 (issued October 29, 2020); see *A.K.*, *supra* note 10; *C.G.*, Docket No. 20-1121 (issued February 11, 2021); *J.D.*, Docket No. 18-0279 (issued January 6, 2020); *K.P.*, Docket No. 18-0041 (issued May 24, 2019); *M.K.*, Docket No. 17-1140 (issued October 18, 2017); *G.C.*, Docket No. 16-0666 (issued March 17, 2017); *John J. Carlone*, *supra* note 10; *Horace Langhorne*, 29 ECAB 280 (1978).

<sup>14</sup> See *A.K.*, *supra* note 10.

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 25, 2022 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: December 30, 2022  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge  
Employees' Compensation Appeals Board