

ISSUES

The issues are: (1) whether appellant met her burden of proof to establish a right shoulder condition causally related to the accepted July 17, 2020 employment incident; and (2) whether OWCP properly determined that appellant had abandoned her request for an oral hearing.

FACTUAL HISTORY

On July 29, 2020 appellant, then a 44-year-old mail processing clerk, filed a traumatic claim injury (Form CA-1) alleging that on July 17, 2020 she felt pain in her right shoulder when she lifted a tray while in the performance of duty. She did not initially stop work. On the reverse side of the claim form, appellant's supervisor acknowledged that she was injured in the performance of duty.

Appellant submitted a supplemental statement dated July 21, 2020 in which she explained that the pain in her right shoulder began in April/May 2019, when she worked as an automation feeder and swifter. She further explained that on July 17, 2020 as she was transferring mail trays, she accidentally missed a mail tray due to pain in her right shoulder.

Appellant submitted a form report dated July 22, 2020 from Dr. Thomas Obermeyer, a Board-certified orthopedic surgeon, which indicated that she was seen for an injury of her right shoulder rotator cuff tendon. Dr. Obermeyer diagnosed right rotator cuff strain. In a note dated August 14, 2020, he related that appellant had a right shoulder injury which would require surgery.

In an August 17, 2020 report, Dr. Sandra V. Doyle, an osteopath Board-certified in family medicine, noted that appellant suffered from right shoulder pain since April 2019 and that her pain had worsened. On July 22, 2020 appellant's right shoulder pain was diagnosed as a full-thickness anterior supraspinatus tear, on a magnetic resonance imaging (MRI) scan. Dr. Doyle related that appellant's pain was consistent with the repetitive motion of lifting trays and twisting that she performed at work and there was no evidence that her rotator cuff tear was sustained outside of work. She concluded that appellant would remain disabled from work if she did not undergo surgery.

In a development letter dated August 20, 2020, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed and a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence.

OWCP received appellant's completed development questionnaire. Appellant explained that her right shoulder began to hurt in April 2019. She initially thought it was muscular pain, but after a month she sought medical treatment and her physician believed it was a rotator cuff tear. Appellant again sought medical treatment on July 16, 2020 regarding her reoccurring right shoulder pain.

OWCP received x-rays dated July 22, 2020. It also received an MRI scan report dated July 31, 2020 from Dr. Stephen Zivin, a diagnostic radiologist. Dr. Zivin diagnosed a right shoulder full-thickness tear of the anterior leading edge of the supraspinatus tendon.

In a letter dated July 27, 2020, Dr. Obermeyer indicated that appellant could return to light-duty work with no use of her right arm.

OWCP received progress notes dated July 23 and August 5, 2020 from Dr. Obermeyer which indicated that appellant was seen for follow-up appointments. In a letter dated August 14, 2020, Dr. Obermeyer stated that appellant was under his care and would require right shoulder surgery.

By decision dated September 30, 2020, OWCP accepted that the employment incident occurred, as alleged, but denied appellant's claim as causal relationship between a diagnosed medical condition and the accepted employment incident had not been established. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On October 8, 2020 appellant timely requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

OWCP subsequently received a report dated September 16, 2020, wherein Dr. Ankur Chhadia, a Board-certified orthopedic surgeon, diagnosed a full-thickness rotator cuff tear with shoulder bursitis, tendinitis, and biceps tendinitis. Dr. Chhadia opined, to a reasonable degree of medical and surgical certainty, that "the occupational functions and description of mechanism is the definitive cause of [appellant's] rotator cuff and shoulder condition."

OWCP also received a September 28, 2020 report from Dr. Chhadia wherein she related that appellant's right shoulder pain first started in April or May in 2019, but appellant had not reported the injury because she thought it would improve. Dr. Chhadia further related that, on July 2, 2020, appellant pulled out a mail tray and felt a sharp pain in her shoulder causing her to drop the mail. This happened again on July 17, 2020. Dr. Chhadia diagnosed right shoulder rotator cuff tear and shoulder bursitis/tendinitis.

In progress notes dated August 31, and November 9 and 30, 2020, Dr. Chhadia noted that appellant's pain was worsening.

By notice dated November 24, 2020, an OWCP hearing representative advised appellant and her then-representative that an oral hearing would be held telephonically on January 14, 2021 at 9:45 a.m., Eastern Standard Time (EST). She advised appellant of the toll-free telephone number and associated pass code to access the telephonic hearing.

By decision dated January 29, 2021, OWCP found that appellant failed to appear for the oral hearing and had abandoned her request. It indicated that appellant received 30-days' advance notice of the hearing scheduled for January 14, 2021 and found that there was no evidence that she had contacted OWCP either prior to or subsequent to the scheduled hearing to request a postponement or explain her failure to appear.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA³ 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 period of FECA,⁴ 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.⁵ 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.⁶

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a fact of injury has been established. There are two components involved in establishing fact of injury. The first component to be established 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.⁷

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.⁸ 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 identified by the employee.⁹

³ *Supra* note 1.

⁴ *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).

⁵ *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).

⁶ *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).

⁷ *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).

⁸ *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).

⁹ *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).

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish a right shoulder condition causally related to the accepted July 17, 2020 employment incident.

OWCP received reports dated from July 22 through August 17, 2020 from Dr. Obermeyer. While Dr. Obermeyer noted a diagnosis of right rotator cuff tear, he did not provide a medical opinion explaining the cause of appellant's diagnosed condition. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.¹⁰ As such, these reports are insufficient to establish appellant's claim.

Appellant also submitted a report dated August 17, 2020 from Dr. Doyle, who related a diagnosis of right shoulder rotator cuff tear. Dr. Doyle concluded that appellant's pain was consistent with the repetitive motion of lifting trays and twisting that she performed at work. While Dr. Doyle provided an opinion on the causal relationship, she did not offer any rationale to explain how the accepted July 17, 2019 employment incident would have caused appellant's diagnosed condition.¹¹ The Board has previously held that conclusory statements lacking medical rationale are insufficient to establish causal relationship between employment factors and diagnosed conditions.¹² This report from Dr. Doyle is therefore insufficient to establish causal relationship.

Appellant submitted x-ray reports dated July 22, 2020 and an MRI scan report dated July 31, 2020 from Dr. Zivin. The Board has held that diagnostic tests, standing alone, lack probative value on the issue of causal relationship as they do not address the relationship between the accepted employment factors and a diagnosed condition.¹³ As such, this evidence is insufficient to meet appellant's burden of proof.

As there is no rationalized medical evidence of record establishing a right shoulder condition causally related to the July 17, 2020 accepted employment incident, the Board finds that appellant has not met her burden of proof.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

¹⁰ *D.C.*, Docket No. 19-1093 (issued June 25, 2020); *see L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹¹ *T.W.*, Docket No. 20-0767 (issued January 13, 2021); *see H.A.*, Docket No. 18-1466 (issued August 23, 2019); *L.R.*, Docket No. 16-0736 (issued September 2, 2016).

¹² *K.O.*, Docket No. 18-1422 (issued March 19, 2019); *see E.P.*, Docket No. 18-0194 (issued September 14, 2018).

¹³ *See W.M.*, Docket No. 19-1853 (issued May 13, 2020); *L.F.*, Docket No. 19-1905 (issued April 10, 2020).

LEGAL PRECEDENT -- ISSUE 2

Under FECA and its implementing regulations, a claimant who has received a final adverse decision by OWCP is entitled to receive a hearing upon writing to the address specified in the decision within 30 days of the date of the decision for which a hearing is sought. Unless otherwise directed in writing by the claims examiner, an OWCP hearing representative will mail a notice of the time and place of the hearing to the claimant and any representative at least 30 days before the scheduled date.¹⁴ OWCP has the burden of proving that it mailed notice of the scheduled hearing to a claimant.¹⁵ Section 10.622(f) of OWCP's regulations provides that a claimant who fails to appear at a scheduled hearing may request in writing within 10 days after the date set for the hearing that another hearing be scheduled.¹⁶ Where good cause for failure to appear is shown, another hearing will be scheduled and conducted by teleconference. The failure of the claimant to request another hearing within 10 days, or the failure of the claimant to appear at the second scheduled hearing without good cause shown, shall constitute abandonment of the request for a hearing. Where good cause is shown for failure to appear at the second scheduled hearing, review of the matter will proceed as a review of the written record.¹⁷ Where it has been determined that a claimant has abandoned his or her right to a hearing, OWCP will issue a formal decision finding that the claimant abandoned the request for a hearing.¹⁸

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly determined that appellant abandoned her request for an oral hearing.

The record establishes that on November 24, 2020, in response to appellant's timely request for an oral hearing, a representative of OWCP's Branch of Hearings and Review properly mailed a notice of the scheduled telephonic hearing scheduled for January 14, 2020 at 9:45 a.m. EST. The hearing notice was mailed to appellant's last known address of record and provided instructions on how to participate. Appellant's then-representative was also advised of the scheduled hearing. Appellant failed to call in for the scheduled telephonic hearing. She did not request a postponement or provide an explanation to OWCP for her failure to attend the hearing within 10 days of the scheduled hearing. The Board, thus, finds that OWCP properly determined that appellant abandoned her request for a telephonic hearing.¹⁹

¹⁴ *Id.* at § 10.617(b).

¹⁵ *T.R.*, Docket No. 19-1952 (issued April 24, 2020); *A.R.*, Docket No. 19-1691 (issued February 24, 2020).

¹⁶ 20 C.F.R. § 10.622(f).

¹⁷ *Id.*

¹⁸ *T.R.*, *supra* note 15; *A.J.*, Docket No. 18-0830 (issued January 10, 2019); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.6(g) (October 2011).

¹⁹ *Id.*

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a right shoulder condition causally related to the accepted July 17, 2020 employment incident. The Board further finds that OWCP properly determined that appellant abandoned her request for an oral hearing.

ORDER

IT IS HEREBY ORDERED THAT the September 30, 2020 and January 29, 2021 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: February 3, 2022
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

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