

ISSUE

The issue is whether appellant has met her burden of proof to establish that an injury occurred in the performance of duty, as alleged.

FACTUAL HISTORY

On June 7, 2021 appellant, then a 30-year-old mail processing clerk, filed an occupational disease claim (Form CA-2) alleging that she sustained an injury to her rotator cuff due to factors of her federal employment. She noted that she experienced pain and limited use of her shoulder and that she believed the condition was likely due to overuse. Appellant indicated that she first became aware of her condition on May 27, 2021, and of its relation to her federal employment on May 31, 2021. She stopped work on May 28, 2021 and returned to limited-duty work on May 31, 2021 with lifting restrictions and no repetitive work involving her right shoulder.

In a June 7, 2021 development letter, OWCP advised appellant of the factual and medical deficiencies of her claim. It asked her to complete a questionnaire to provide further details regarding the circumstances of her claimed injury and requested a narrative medical report from her treating physician, containing a detailed description of findings and diagnoses, explaining how her work activities caused, contributed to, or aggravated her medical condition. In a separate development letter of even date, OWCP requested that the employing establishment provide comments from a knowledgeable supervisor regarding the accuracy of appellant's allegations. It afforded both parties 30 days to respond.

A May 28, 2021 medical form by Vanessa Smist, a physician assistant, related appellant's history of lifting a tray and hurting her right shoulder. Ms. Smist diagnosed a rotator cuff injury and provided work restrictions. In a report of even date, she noted that appellant experienced occasional numbness in her right hand, limited range of motion in the shoulders and neck, pain with lateral lifting motions, inability to turn her head to the left, and difficulty sleeping through the pain. Appellant experienced shoulder pain with abduction greater than 90 degrees and with the empty can test.

Tiffany A. McAvoy, a registered nurse, diagnosed acute right shoulder pain and opined that appellant had likely sustained an overuse injury through irritation of the supraspinatus of the rotator cuff.

On June 14, 2021 OWCP received a letter from P.N., an employing establishment supervisor, recounting that on May 27, 2021 appellant reported visiting a doctor for her right shoulder. P.N. noted that appellant initially reported that her shoulder condition arose before May 27, 2021, however, claimed on her accident report that it arose on May 27, 2021.

In a June 22, 2021 duty status report (Form CA-17), appellant's supervisor indicated that appellant injured her right shoulder as a result of "sweeping machine, reaching, [and] pushing." Dr. Andrew John Milbridge, an internist, diagnosed a right rotator cuff injury. He advised that appellant was able to work full-time modified-duty work. In an attending physician's report (Form CA-20) of even date, Dr. Milbridge affirmed that the diagnosed condition was caused or

aggravated by the reported employment activity, noting that reaching and grasping aggravated the condition.

By decision dated July 8, 2021, OWCP denied appellant's occupational disease claim, finding that the factors of her federal employment had not been established. It noted that she had not completed and returned its developmental questionnaire. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim, including the fact 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 establish that an injury was sustained in the performance of duty in an occupational disease claim, an employee must submit the following: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (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 employment factors identified by the employee.⁷

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish that an injury occurred in the performance of duty, as alleged.

Appellant has not established the factual component of her claim as she failed to sufficiently describe the circumstances surrounding the employment factors, which she believed caused or contributed to her alleged right shoulder condition. To establish a claim for

⁴ *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁷ *See A.S.*, Docket No. 19-1766 (issued March 26, 2020); *R.G.*, Docket No. 19-0233 (issued July 16, 2019). *See also Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

compensation in an occupational disease claim, an employee must submit a statement, which identifies the factors of employment believed to have caused his or her condition.⁸

Appellant provided no description of the specific factors of her federal employment she believed had caused or contributed to her right shoulder condition, indicating only that she experienced pain and limited use of her shoulder and that she believed the condition was due to overuse.⁹

In its June 7, 2021 development letter, OWCP informed appellant that the evidence submitted was insufficient to establish that she suffered from an occupational disease in the performance of duty, as alleged. It asked her to complete an attached questionnaire describing what employment factors she believed caused or contributed to her condition and requested medical evidence establishing that her medical condition was causally related to employment factors. However, appellant failed to provide a narrative statement describing the employment factors, which she believed contributed to her condition.¹⁰ As noted, she bears the burden of submitting a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of a disease or condition.¹¹

As appellant has not described the employment factors alleged to have caused her injury, the Board finds that she has not met her burden of proof to establish an occupational disease in the performance of duty, as alleged. As such, the medical evidence need not be addressed.¹²

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.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that an injury occurred in the performance of duty, as alleged.

⁸ See *S.W.*, Docket No. 19-1609 (issued February 12, 2020); *A.M.*, Docket No. 19-1269 (issued December 4, 2019); *C.L.*, Docket No. 19-0042 (issued April 17, 2019); *D.M.*, Docket No. 18-0335 (issued June 18, 2018); *S.J.*, Docket No. 17-1798 (issued February 23, 2018).

⁹ *Id.*

¹⁰ See *supra* note 8.

¹¹ *Id.*; *Victor J. Woodhams*, *supra* note 7.

¹² See *S.W.*, *supra* note 8; *A.M.*, *supra* note 8; *S.J.*, *supra* note 8; *E.V.*, Docket No. 19-0447 (issued June 25, 2019); see also *Bonnie A. Contreras*, 57 ECAB 364, 368 n.10 (2006).

ORDER

IT IS HEREBY ORDERED THAT the July 8, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 17, 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