

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

S.C., Appellant	)	
	)	
and	)	Docket No. 22-0242
	)	Issued: June 22, 2022
U.S. POSTAL SERVICE, VEHICLE	)	
MAINTENANCE FACILITY, New York, NY,	)	
Employer	)	
	)	

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On December 6, 2021 appellant filed a timely appeal from a July 8, 2021 merit 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.

**ISSUE**

The issue is whether appellant has met his burden of proof to establish a bilateral shoulder condition in the performance of duty, as alleged.

**FACTUAL HISTORY**

On December 31, 2020 appellant, then a 51-year-old motor vehicle operator, filed an occupational disease claim (Form CA-2) alleging that he sustained bilateral shoulder strains as a

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

result of factors of his federal employment, including the daily transporting of heavy and bulky postal containers and pallets. He first became aware of the condition and its relationship to his federal employment on October 7, 2019.

In a development letter dated January 13, 2021, OWCP advised appellant that additional factual and medical evidence was necessary to establish his claim. It informed him of the medical and factual evidence necessary to establish his claim and afforded 30 days for him to respond. OWCP received no response.

By decision dated February 23, 2021, OWCP denied appellant's claim, finding that he had not submitted sufficient factual evidence to establish that the work factors occurred as he described. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On March 23, 2021 appellant requested a review of the written record before a representative of OWCP's Branch of Hearings and Review.

Appellant submitted progress notes from Vladimir Fedosseev, a physical therapist, dated November 11, 2019 through March 9, 2020. In the November 11, 2019 note, Mr. Fedosseev recorded a history of appellant having "an insidious onset of pain around the beginning of the summer" resulting from loading and unloading mail at the employing establishment, involving repetitive movements of his shoulders. He further noted that appellant related experiencing increased pain and symptoms when performing overhead tasks, such as pulling and pushing.

Appellant also submitted notes from Susan Ann Colford-Castano, a nurse practitioner, dated October 2, 2018 through April 5, 2021 and an attending physician's report (Form CA-20) dated April 19, 2021 and signed by Ms. Colford-Castano. In an October 7, 2019 progress note, she reported that appellant presented with bilateral shoulder pain that "began 'a couple of months ago.'" Ms. Colford-Castano noted that appellant explained that his duties at the employing establishment consisted of unloading mailbags and that "he 'believes [the pain] is due to the repetitive motions I make when lifting heavy bags.'"

In a diagnostic report dated October 7, 2019, Dr. Maria Larkin, a Board-certified diagnostic radiologist, examined x-rays of the shoulders, and indicated that they were unremarkable. In a diagnostic report dated March 30, 2020, Dr. Michael Greene, a Board-certified diagnostic radiologist, reviewed the results of a magnetic resonance imaging (MRI) scan of appellant's right shoulder. He noted impressions of a fluid-filled full-thickness tear within the distal supraspinatus tendon; tendinosis in the distal infraspinatus and subscapularis; a superior labral tear extending from anterior to posterior with extension into the biceps labral complex and intra-articular biceps tendon with extra articular tenosynovitis; a prominent subacromial/subdeltoid or situs; and mild degenerative osteoarthritis in the acromioclavicular and glenohumeral joints.

By decision dated July 8, 2021, OWCP's hearing representative affirmed the February 23, 2021 decision.

## 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 filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged; and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.<sup>2</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.<sup>3</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; (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>4</sup>

Rationalized medical opinion evidence is required to establish causal relationship. The opinion of the physician must be based on 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>5</sup>

An employee has the burden of establishing the occurrence of an injury at the time and place, and in the manner alleged, by a preponderance of the reliable, probative, and substantial evidence.<sup>6</sup> An injury does not have to be confirmed by eyewitnesses to establish that an employee sustained an injury in the performance of duty, but the employee's statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action.<sup>7</sup> It is well established that a claimant cannot establish fact of injury if there are inconsistencies in the evidence that cast serious doubt as to whether the specific event or incident occurred at the time and place, and in the manner alleged.<sup>8</sup> Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury, and failure to obtain medical treatment may, if otherwise unexplained, cast serious doubt on an

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<sup>2</sup> *A.F.*, Docket No. 18-1154 (issued January 17, 2019); *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>3</sup> *A.F.*, *id.*; *S.P.*, 59 ECAB 184 (2007); *Victor J. Woodhams*, 41 ECAB 345 (1989); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>4</sup> *L.D.*, Docket No. 19-1301 (issued January 29, 2020); *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>5</sup> *M.O.*, Docket No. 19-1398 (issued August 13, 2020); *J.L.*, Docket No. 18-1804 (issued April 12, 2019).

<sup>6</sup> *J.R.*, Docket No. 18-1079 (issued January 15, 2019); *William Sircovitch*, 38 ECAB 756, 761 (1987); *John G. Schaberg*, 30 ECAB 389, 393 (1979).

<sup>7</sup> *Charles B. Ward*, 38 ECAB 667, 67-71 (1987).

<sup>8</sup> *Gene A. McCracken*, 46 ECAB 593 (1995); *Mary Joan Coppolino*, 43 ECAB 988 (1992).

employee's statements in determining whether a *prima facie* case has been established.<sup>9</sup> However, an employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.<sup>10</sup>

### ANALYSIS

The Board finds that appellant has met his burden of proof to establish that the factors of his federal employment, including transporting heavy and bulky postal containers and pallets, occurred in the performance of duty, as alleged.

A statement describing the particular employment activities that caused or contributed to the claimed condition is crucial to appellant's claim. Appellant described the implicated factors of his federal employment on his claim form, including repeatedly transporting heavy and bulky postal containers and pallets. On October 7, 2019 the date that appellant indicated that he initially became aware of his condition and related it to his federal employment factors, he was treated by a nurse practitioner, Ms. Colford-Castano. Ms. Colford-Castano reported a history that appellant attributed his bilateral shoulder pain to the repetitive lifting and moving of heavy mailbags at work. Moreover, when appellant underwent physical therapy with Mr. Fedosseev on November 11, 2019, he reported appellant's history as experiencing "an insidious onset of pain around the beginning of the summer" resulting from the repetitive duties of loading and unloading mail and performing overhead tasks involving the repetitive use of both shoulders.

As noted, appellant's burden of proof includes the submission of a factual statement including the time and place, and manner of his alleged injury.<sup>11</sup> The Board finds that the description of appellant's employment factors, as conveyed by appellant, Ms. Colford-Castano, and Mr. Fedosseev, is specific and sufficient to meet his burden of proof to establish that these employment factors occurred in the performance of duty, as alleged.<sup>12</sup>

Appellant has established employment factors in the performance of duty as alleged. As such, further consideration of the medical evidence is necessary. The case will, therefore, be remanded to OWCP to evaluate the medical evidence and determine whether he sustained a medical condition or disability causally related to the accepted employment injury. After any further development as it deems necessary, OWCP shall issue a *de novo* decision.

### CONCLUSION

The Board finds that appellant has met his burden of proof to establish that the factors of his federal employment occurred in the performance of duty, as alleged. The Board further finds

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<sup>9</sup> *Robert A. Gregory*, 40 ECAB 478, 483 (1989).

<sup>10</sup> *D.B.*, 58 ECAB 464, 466-67 (2007).

<sup>11</sup> *Id.*

<sup>12</sup> *Cf. L.B.*, Docket No. 17-2023 (issued August 21, 2018).

that the case is not in posture for decision with regard to causal relationship between appellant's bilateral shoulder condition and the accepted employment factors.

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 9, 2021 decision of the Office of Workers' Compensation Programs is modified in part and set aside in part. The case is remanded for further proceedings consistent with this decision of the Board.

Issued: June 22, 2022  
Washington, DC

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

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

A handwritten signature in black ink, appearing to read "J. D. McGinley". The signature is written in a cursive style with a large, sweeping initial "J".

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