

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

C.T., Appellant)	
)	
and)	Docket No. 22-0013
)	Issued: November 22, 2022
U.S. POSTAL SERVICE, POST OFFICE, St. Louis, MO, Employer)	
)	

Appearances:
Shannon Bravo, Esq., for the appellant¹
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 October 4, 2021 appellant, through counsel, filed a timely appeal from an April 8, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.³

¹ 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.

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that following the April 8, 2021 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether appellant has met her burden of proof to expand acceptance of her claim to include a consequential right shoulder condition causally related to the accepted June 14, 2016 employment injuries.

FACTUAL HISTORY

On June 14, 2016 appellant, then a 38-year-old parcel post distribution machine clerk, filed a traumatic injury claim (Form CA-1) alleging that on that date she injured her left shoulder when tossing heavy bundles of standard mail while in the performance of duty. She returned to full-time limited-duty work on June 15, 2016. OWCP accepted the claim for left supraspinatus tendon tear, left shoulder sprain, left shoulder impingement syndrome, and left shoulder adhesive capsulitis. On January 20, 2017 appellant underwent authorized left shoulder arthroscopy. She returned to light-duty work on February 3, 2017 and full-duty work on June 12, 2017.

On September 27, 2018 appellant filed a schedule award claim (Form CA-7). By decision dated July 30, 2019, OWCP granted appellant a schedule award for 12 percent permanent impairment of the left upper extremity.

In an undated letter received by OWCP on April 10, 2020, appellant asserted that she was experiencing right shoulder pain and attributed her pain to overuse of the right arm as her left arm was weak as a result of her accepted employment injuries.

In an April 13, 2020 development letter, OWCP requested that appellant submit additional factual and medical information in support of her claim for a consequential right shoulder condition, including a reasoned opinion from her physician explaining how a new condition resulted from, or was a consequence of, her accepted June 14, 2016 employment injury. It afforded her 30 days to submit the requested information.

On April 22, 2020 the employing establishment contended that, beginning October 28, 2017, appellant worked as a supervisor and that there were no duty requirements of this position which could cause a secondary right shoulder condition.

Appellant responded to OWCP's development letter on June 6, 2020 and asserted that her left shoulder had not healed, that she had always relied more on her right arm, and that she reported her right arm condition on April 10, 2020. She alleged that her right arm symptoms began on April 7, 2020 and listed her duties at that time as restarting computers, looking for packages, and replacing ink cartridges. Appellant noted that her current supervisory duties required her to input data, use a long extended metal pole, ladders, hampers, rolling equipment, and platforms and to move printers and tables. In her previous supervisory position, she delivered mail to carriers, moved parcels, and loaded vehicles with packages which she then distributed to carriers. Appellant also provided photographs.

By decision dated July 8, 2020, OWCP modified its prior decision to include an increased payrate for schedule award purposes. By separate decision of even date, OWCP corrected appellant's pay rate for schedule award purposes and found she had 12 percent permanent impairment of the left upper extremity.

On July 2, 2020 Dr. Braden L. Dunbar, an osteopath, diagnosed right rotator cuff tear and opined that this condition “could be potentially caused from overuse at work.”

By decision dated July 15, 2020, OWCP denied expansion of appellant’s claim to include a consequential injury of the right shoulder.

In a May 28, 2020 note, Dr. Robert F. Greiner II, an osteopath, reported that appellant had developed right shoulder pain at work with no specific injury. He recounted that she attributed her right shoulder condition to lifting and overhead work. Dr. Greiner reviewed a right shoulder magnetic resonance imaging (MRI) scan and diagnosed traumatic incomplete tear of the supraspinatus tendon of the right rotator cuff and impingement syndrome of the right shoulder. He evaluated appellant’s left shoulder in notes dated April 8 and June 3, 2020.

On November 16, 2020 appellant, through counsel, requested reconsideration of the July 15, 2020 decision. She submitted a September 2, 2020 report from Dr. Kimberly M. Davies, an internist, detailing treatment of her left shoulder. Dr. Davies noted on May 11, 2020 that appellant sought care due to bilateral shoulder pain and that her right shoulder MRI scan demonstrated tearing of the supraspinatus tendon. She noted that she “was unable to do a full examination of the R shoulder due to the extensive tearing demonstrated on the MRI.” Dr. Davies went on to opine that “[i]t is my clinical estimation that the injury of the R shoulder is related to overcompensation of the R side due to tearing and injury on the L side, thus work related.”

Appellant also submitted a May 15, 2020 right shoulder MRI scan and a November 5, 2020 cervical spine MRI scan. She resubmitted Dr. Greiner’s notes dated April 8 through June 3, 2020.

In a note dated October 20, 2020, Dr. Daniel C. Farrell, a Board-certified orthopedic surgeon, examined appellant due to left shoulder pain and diagnosed tendinopathy of the left biceps, impingement syndrome left shoulder, and left cervical radiculopathy.

By decision dated January 26, 2021, OWCP denied modification of its prior decision. It did not mention or discuss Dr. Davies’ September 2, 2020 report.

On March 1, 2021 appellant, through counsel, requested reconsideration. She contended that OWCP failed to consider Dr. Davies’ September 2, 2020 report.

By decision dated April 8, 2021, OWCP denied modification of its prior decisions. It found that Dr. Davies’ report was insufficient to meet appellant’s burden of proof as she failed to provide sufficient medical history and rationale explaining how overuse resulted in the diagnosed right shoulder conditions.

LEGAL PRECEDENT

Where an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.⁴

The claimant bears the burden of proof to establish a claim for a consequential injury.⁵ As part of this burden, he or she must present rationalized medical opinion evidence, based on a complete factual and medical background, establishing causal relationship.⁶ The opinion of the physician must be expressed in terms of reasonable certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and the accepted employment injury.⁷

When an injury arises in the course of employment, every natural consequence that flows from that injury likewise arises out of the employment, unless it is the result of an independent intervening cause attributable to a claimant's own intentional misconduct.⁸ Thus, a subsequent injury, be it an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural consequence of a compensable primary injury.⁹

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish an expansion of her claim to include a right shoulder condition as a consequence of, or causally related to, the accepted June 14, 2016 employment injuries.

In a September 2, 2020 report, Dr. Davies recounted appellant's medical history and noted her right shoulder injury was due to overcompensation of the right side as a result of her accepted left shoulder conditions. She did not, however, explain physiologically how the accepted employment injuries resulted in the diagnosed right shoulder condition. The Board has held that medical evidence that states a conclusion, but does not offer a rationalized medical explanation

⁴ See *C.M.*, Docket No. 20-1384 (issued October 6, 2021); *R.R.*, Docket No. 19-0086 (issued February 10, 2021); *K.T.*, Docket No. 19-1718 (issued April 7, 2020); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

⁵ *S.S.*, Docket No. 21-1140 (issued June 29, 2022); *V.K.*, Docket No. 19-0422 (issued June 10, 2020); *A.H.*, Docket No. 18-1632 (issued June 1, 2020); *I.S.*, Docket No. 19-1461 (issued April 30, 2020).

⁶ *F.A.*, Docket No. 20-1652 (issued May 21, 2021); *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁷ *M.M.*, Docket No. 20-1557 (issued November 3, 2021); *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

⁸ See *S.M.*, Docket No. 19-0397 (issued August 7, 2019); *Mary Poller*, 55 ECAB 483, 487 (2004).

⁹ *A.T.*, Docket No. 18-1717 (issued May 10, 2019); *Susanne W. Underwood (Randall L. Underwood)*, 53 ECAB 139 (2001).

regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹⁰ Thus, Dr. Davies' opinion is insufficient to meet appellant's burden of proof.

On July 2, 2020 Dr. Dunbar diagnosed right rotator cuff tear and opined that this condition was potentially caused by overuse at work. The Board finds that his opinion that appellant's right shoulder condition "could be potentially caused from overuse at work" is speculative in nature.¹¹ Medical opinions that are speculative or equivocal in character are of diminished probative value.¹² Accordingly, Dr. Dunbar's opinion is insufficient to establish appellant's claim.¹³

Dr. Greiner completed notes on May 28, 2020 and recounted that appellant attributed her right shoulder condition to lifting and overhead work. 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.¹⁴ As such, the medical evidence from Dr. Greiner is insufficient to establish that appellant's claim should be expanded to include the requested additional conditions.

Appellant also submitted a May 15, 2020 right shoulder MRI scan and a November 5, 2020 cervical spine MRI scan. The Board has held, however, that diagnostic studies, standing alone, lack probative value as they do not provide an opinion on causal relationship between an employment injury, and a diagnosed condition.¹⁵

Appellant has not submitted rationalized medical evidence establishing that she sustained additional conditions causally related to, or as a consequence of, her accepted June 14, 2016 employment injury and, therefore, has not met her burden of proof.¹⁶

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 See *R.B.*, Docket No. 22-0173 (issued July 26, 2022); *A.P.*, Docket No. 20-1668 (issued March 2, 2022); *D.S.*, Docket No. 21-0673 (issued October 10, 2021) *P.J.*, Docket No. 18-1738 (issued May 17, 2019); *D.H.*, Docket No. 17-1913 (issued December 13, 2018).

¹¹ See *P.D.*, Docket No. 18-1461 (issued July 2, 2019); *E.B.*, Docket No. 18-1060 (issued November 1, 2018); *Leonard J. O'Keefe*, 14 ECAB 42 (1962).

¹² *S.S.*, *supra* note 5; *D.B.*, Docket No. 18-1359 (issued May 14, 2019); *Ricky S. Storms*, 52 ECAB 349 (2001) (while the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty).

¹³ See *S.S.*, Docket No. 21-0837 (issued November 23, 2021).

¹⁴ See *T.L.*, Docket No. 21-0224 (issued February 22, 2022); *J.H.*, Docket No. 19-0838 (issued October 1, 2019); *S.G.*, Docket No. 19-0041 (issued May 2, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁵ *S.S.*, *supra* note 5; *M.E.*, Docket No. 18-0940 (issued June 11, 2019); *V.J.*, Docket No. 17-0358 (issued July 24, 2018); *John W. Montoya*, 54 ECAB 306 (2003).

¹⁶ *A.P.*, *supra* note 10; *G.M.*, Docket No. 19-0933 (issued October 1, 2019).

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that OWCP should expand her claim to include a consequential right shoulder condition as causally related to the accepted June 14, 2016 employment injuries.

ORDER

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

Issued: November 22, 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