

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

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<b>B.B., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 21-0284</b>
	)	<b>Issued: October 5, 2022</b>
<b>U.S. POSTAL SERVICE, PROCESSING &amp; DISTRIBUTION CENTER, Chicago, IL,</b>	)	
<b>Employer</b>	)	
_____	)	

*Appearances:*  
Wandra E. Evans, 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 December 21, 2020 appellant, through counsel, filed a timely appeal from a November 17, 2020 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.

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<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 rotator cuff tear causally related to the accepted factors of her federal employment.

## FACTUAL HISTORY

On November 21, 2019 appellant, then a 61-year-old mail handler, filed an occupational disease claim (Form CA-2) alleging that her federal employment required extensive pushing, pulling, and lifting on a daily basis which caused an occupational illness. She stated that she first became aware that her condition was related to her federal employment on November 18, 2019.

In a development letter dated December 3, 2019, OWCP advised appellant that it had not received any documentation with her claim form. It requested that she submit a narrative medical report from her attending physician, which included the physician's opinion supported by a medical explanation as to how the work activities in appellant's federal employment caused, contributed to, or aggravated a diagnosed medical condition. OWCP also attached a questionnaire for appellant's completion. It afforded her 30 days to submit the necessary evidence.

By decision dated January 3, 2019, OWCP denied appellant's claim as she did not respond to the questionnaire, therefore, she had not established that the events occurred as alleged. It concluded, therefore, that the requirements had not been met to establish fact of injury as defined by FECA.

Appellant submitted a medical report dated September 27, 2019 from Dr. William Heller, a Board-certified orthopedic surgeon, specializing in hand surgery. Dr. Heller related that she injured her right shoulder lifting boxes and had pain, weakness, and inability to perform overhead lifting. He stated that appellant likely had a right shoulder rotator cuff tear due to lifting at work.

Appellant submitted a magnetic resonance imaging (MRI) scan report dated October 21, 2019 from Dr. Catherine Kim-Gavino, a Board-certified neuroradiology specialist. Dr. Kim-Gavino diagnosed appellant with a completely torn supraspinatus tendon and moderate tendinosis of the right shoulder.

In a report dated November 18, 2019, Dr. Heller diagnosed appellant's right shoulder rotator cuff tear and he recommended that she undergo surgical repair. On December 23, 2019 he noted that she had a right shoulder rotator cuff tear in her right shoulder and was awaiting approval for surgery. Dr. Heller noted that appellant injured her right shoulder while performing lifting activities at work.

On January 20, 2020 appellant timely requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review, which was held on April 22, 2020. During the hearing, appellant stated that her job required her to push and pull her right hand to grab the bar on the all-purpose containers while loading and unloading mail trucks. She also attested that she had no other accidents, injuries, or traumatic event involving her right shoulder.

By decision dated June 23, 2020, OWCP's hearing representative determined that OWCP's January 3, 2020 decision should be affirmed and modified. Specifically, the hearing representative

found that the medical evidence did not provide the necessary medical rationale explaining the process by which the work factors the claimant described would result in the diagnosed condition. OWCP concluded, therefore, that the requirements had not been met to establish causal relationship as defined by FECA.

On September 23, 2020 appellant, through counsel, requested reconsideration and submitted additional evidence.

Appellant submitted a letter dated August 14, 2020 from Dr. Heller which related that he had reviewed her job description. Dr. Heller noted that she performed work duties consistent with that of a laborer, loading trucks and all-purpose containers, pulling mail and all-purpose containers. He stated that the degree of lifting, carrying, pushing, and pulling with appellant's right arm at chest level or above away from her head would be a competent mechanism to cause or aggravate the diagnosis of a right shoulder rotator cuff tear. Dr. Heller also opined that this would be a "very likely" common mechanism of injury for causing and aggravating a rotator cuff tear.

Appellant also submitted photographs of wire cages loaded with parcels which she is required to push and place on to the trucks.

By decision dated November 17, 2020, OWCP affirmed its decision dated June 23, 2020, finding that appellant failed to provide a well-rationalized medical opinion to establish causal relationship.

### **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 FECA, that the claim was timely filed within the applicable time limitation period 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 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

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<sup>3</sup> *Id.*

<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).

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 on a complete factual and medical background of the claimant, 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 factors identified by the claimant.<sup>9</sup> Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors, is sufficient to establish causal relationship.<sup>10</sup>

### ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a right rotator cuff tear causally related to the accepted factors of her federal employment.

In a medical record dated September 27, 2019, Dr. Heller stated that appellant may have a rotator cuff tear from work-related lifting. However, he did not provide a firm diagnosis and a rationalizing opinion regarding the cause of her condition.<sup>11</sup> As such, this report is insufficient to establish the claim.<sup>12</sup>

Appellant submitted a report dated November 18, 2019 from Dr. Heller which diagnosed a right rotator cuff tear. However, Dr. Heller did not provide an opinion explaining the cause of her 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.<sup>13</sup> As such, this report is insufficient to establish appellant's claim.

In a December 23, 2019 report, Dr. Heller noted that appellant had a large rotator cuff tear of the right shoulder and he concluded that she injured her right shoulder while performing lifting

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<sup>7</sup> See *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>8</sup> *J.F.*, Docket No. 18-0492 (issued January 16, 2020); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

<sup>9</sup> *A.M.*, Docket No. 18-0562 (issued January 23, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

<sup>10</sup> *E.W.*, Docket No. 19-1393 (issued January 29, 2020); *Gary L. Fowler*, 45 ECAB 365 (1994).

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

<sup>12</sup> *R.G.*, Docket No. 19-0233 (issued July 16, 2019); *S.W.*, Docket No. 18-1489 (issued June 25, 2019).

<sup>13</sup> *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).

at work. The Board has held that a medical opinion is of limited probative value if it is conclusory in nature.<sup>14</sup> This report is, therefore, insufficient to establish causal relationship.<sup>15</sup>

Appellant submitted a letter dated August 14, 2020 from Dr. Heller which stated that the degree of lifting, carrying, pushing, and pulling with her right arm at chest level or above, away from her head, would be a competent mechanism to cause or aggravate the diagnosis of a right shoulder rotator cuff tear. Dr. Heller also stated that this would be a “very likely” common mechanism of injury for causing and aggravating a rotator cuff tear. The Board has held that medical opinions that suggest that a condition was likely or possibly caused by work activities are speculative or equivocal and have limited probative value.<sup>16</sup> Thus, this letter is of limited probative value.

OWCP received an MRI scan report dated October 21, 2019 from Dr. Kim-Gavino. The Board has held that diagnostic tests, standing alone, and 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.<sup>17</sup> For this reason, Dr. Kim-Gavino’s report is insufficient to meet appellant’s burden of proof.

As the medical evidence of record is insufficient to establish causal relationship between appellant’s right rotator cuff tear and the accepted factors of her federal employment, the Board finds that she 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.

### **CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish a right rotator cuff tear causally related to the accepted factors of her federal employment.

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<sup>14</sup> *C.M.*, Docket No. 19-0360 (issued February 25, 2020).

<sup>15</sup> *C.D.*, Docket No. 20-0762 (issued January 13, 2021).

<sup>16</sup> *J.W.*, Docket No. 18-0678 (issued March 3, 2020).

<sup>17</sup> *See W.M.*, Docket No. 19-1853 (issued May 13, 2020); *L.F.*, Docket No. 19-1905 (issued April 10, 2020).

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 17, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 5, 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