

ISSUE

The issue is whether appellant has met her burden of proof to establish a left shoulder condition causally related to the accepted February 8, 2019 employment incident.

FACTUAL HISTORY

This case has been previously before the Board. The facts and circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference.³ The relevant facts are as follows.

On February 11, 2019 appellant, then a 39-year-old mail carrier, filed an occupational disease claim (Form CA-2) alleging that she had aggravated her preexisting left shoulder condition, which initially occurred from a slip and fall at work in 2015, and developed bursitis of the left shoulder due to factors of her federal employment, including driving long periods on February 8, 2019.⁴ She stopped work on February 9, 2019.

In a March 5, 2019 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed to establish her claim and provided a questionnaire for her completion. By separate letter of even date, OWCP also requested additional information from the employing establishment. It afforded both appellant and the employing establishment 30 days to respond.

On February 27, 2019 appellant underwent a left shoulder magnetic resonance imaging (MRI) scan, which demonstrated tendinosis of the supraspinatus and infraspinatus tendons and reactive subacromial/subdeltoid bursitis.

Dr. Ilias Almakaev, a Board-certified internist, completed a duty status report (Form CA-17) on March 19, 2019, finding appellant was partially disabled due to a left shoulder injury.

By decision dated May 16, 2019, OWCP denied appellant's claim, finding that she had not established that the implicated factors of her federal employment. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On May 29, 2019 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. The oral hearing took place on September 4, 2019.

³ *Order Remanding Case*, Docket No. 20-0354 (issued August 4, 2020).

⁴ OWCP assigned the present claim OWCP File No. xxxxxx948. The record reflects that a appellant has prior denied claims under OWCP File No. xxxxxx550 for a left shoulder injury on May 7, 2013 due to closing the door of her postal vehicle; OWCP File No. xxxxxx521 for back spasms and left shoulder sprain caused by carrying her mailbag (filed as a traumatic injury, developed as an occupational disease); and OWCP File No. xxxxxx299 for a traumatic right shoulder injury due to loading boxes on May 19, 2016. OWCP has administratively combined OWCP File Nos. xxxxxx521, xxxxxx299, xxxxxx948, and xxxxxx550, with the latter serving as the master file.

OWCP continued to receive medical evidence. On July 17, 2019 Dr. Nabil Farakh, an osteopath and a Board-certified orthopedic surgeon, recounted appellant's symptoms of chronic left shoulder pain. He noted that on February 8, 2019 after driving for two or three hours at work she developed left shoulder pain. Dr. Farakh diagnosed impingement syndrome of the left shoulder with rotator cuff tendonitis and muscle strain. He found that appellant was disabled from work. On August 28, 2019 Dr. Farakh provided physical findings including severe tenderness of the left shoulder with limited range of motion and weakness. He diagnosed chronic severe left shoulder pain with impingement syndrome and tendonitis.

In August 22 and October 3, 2019 reports, Dr. Demetrios Mikelis, a physiatrist, recounted appellant's symptom of neck pain and a history of slipping downstairs while making a delivery on February 8, 2019. He diagnosed cervical sprain and cervical nerve root impingement.

By decision dated October 23, 2019, OWCP's hearing representative affirmed, as modified, the May 16, 2019 decision, noting that while appellant filed an occupational disease claim, she clarified that the claim was for a traumatic injury occurring on February 8, 2019. She further directed OWCP to administratively combine appellant's left shoulder claims. Appellant, through counsel, appealed this decision to the Board on December 3, 2019.

OWCP continued to receive medical evidence. Dr. Farakh examined appellant on October 30, 2019 and diagnosed chronic severe left shoulder pain with impingement syndrome and tendonitis. He found that she had failed conservative treatment and requested authorization for manipulation under anesthesia of the left shoulder with possible arthroscopic rotator cuff repair. On January 8, 2020 Dr. Farakh again diagnosed chronic severe left shoulder pain with impingement syndrome and tendonitis and recommended surgery.

In a March 19, 2020 report, Dr. Mikelis recounted appellant's symptoms of neck pain radiating into the left upper extremity. He indicated that she sustained a work injury on February 8, 2019 when she slipped downstairs while making a delivery. Dr. Mikelis diagnosed cervical spine pain and radiculopathy.

In its August 4, 2020 *Order Remanding Case*, the Board directed OWCP to administratively combine appellant's left shoulder claims and to issue a *de novo* decision.⁵ OWCP administratively combined appellant's claims on October 6, 2020.

By decision dated October 6, 2020, OWCP denied appellant's claim, finding that she had not established that the employment incident occurred as alleged. It concluded, therefore, that the requirements had not been met to establish an injury as defined under FECA.

On October 16, 2020 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. The oral hearing took place on January 15, 2021.

⁵ *Supra* note 3.

OWCP continued to receive medical evidence. In a January 27, 2021 report, Dr. Farakh repeated his previous left shoulder diagnoses and recommendation for surgery.

By decision dated April 1, 2021, OWCP's hearing representative affirmed as modified the October 6, 2020 decision, accepting that the February 8, 2019 incident occurred as alleged, and finding that the claim should be considered a traumatic injury claim. However, she found that the claim remained denied because the evidence of record was insufficient to establish causal relationship between the accepted February 8, 2019 employment incident and the diagnosed conditions.

On April 27, 2021 appellant, through counsel, requested reconsideration. He requested that OWCP consider the Board's March 17, 2021 *Order Remanding Case*⁶ in OWCP File No. xxxxxx521.

By decision dated May 17, 2021, OWCP denied appellant's request for reconsideration of the merits of her claim under 5 U.S.C. § 8128(a).

On July 7, 2021 appellant, through counsel, requested reconsideration and asked that OWCP consider the June 17, 2021 decision of the hearing representative in OWCP File No. xxxxxx521.⁷

OWCP continued to receive medical evidence. In a January 12, 2022 note, Dr. Farakh recounted appellant's left shoulder symptoms. He further recounted her history of injury driving for several hours at work as a mail carrier. Dr. Farakh noted that appellant's position also required to her lift heavy boxes of mail on a regular basis. He reported that repeatedly lifting objects on a regular basis exacerbated the pain in her left shoulder. Dr. Farakh also noted that in 2015 appellant slipped and fell at work. He opined that the chronic pain in the left shoulder and exacerbation of the left shoulder in 2019 was related to the work activities of driving and lifting boxes repetitively. Dr. Farakh found that the incidents that appellant described were the competent medical cause of her injury, that her complaints were consistent with her history of injury, and that she was totally disabled. Appellant underwent an additional left shoulder MRI scan on January 27, 2022.

By decision dated May 4, 2022, OWCP denied modification.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁸ 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

⁶ *Id.*

⁷ OWCP's hearing representative remanded OWCP's April 26, 2021 decision to determine whether the medical evidence in her combined claims established appellant had developed a back or left shoulder condition as a result of repetitively carrying a 70-pound mailbag in the course of her employment.

⁸ *Supra* note 2.

limitation of FECA,⁹ 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.¹⁰ 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.¹¹

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. The first component is whether the employee 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.¹²

The evidence required to establish causal relationship is rationalized medical opinion evidence.¹³ 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.¹⁴

ANALYSIS

The Board finds that this case is not in posture for decision.

In his January 12, 2022 note, Dr. Farakh reviewed appellant's left shoulder injuries including the March 2, 2015 occupational disease claim attributing her left shoulder condition to lifting and carrying mail and her claimed February 8, 2019 traumatic injury attributing her left shoulder condition to driving while in the performance of duty. He opined that the chronic pain in the left shoulder and exacerbation of the left shoulder in 2019 was related to her work activities of driving and lifting. Dr. Farakh found that the incidents that appellant described were the competent medical cause of her injury and that her complaints were consistent with her history of injury.

⁹ *A.K.*, Docket No. 22-0317 (issued July 22, 2022); *D.M.*, Docket No. 21-1244 (issued March 25, 2022); *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued December 13, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

¹⁰ *D.M.*, *id.*; *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).

¹¹ *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).

¹² *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).

¹³ *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).

¹⁴ *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).

It is well established that proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence and to see that justice is done.¹⁵

The Board finds that, while Dr. Farakh's January 12, 2022 note is not fully rationalized, it raises an uncontroverted inference that appellant's left shoulder conditions were causally related to the accepted February 8, 2019 employment incident.¹⁶ Although the report is insufficient to meet appellant's burden of proof to establish her claim, it is sufficient to require OWCP to further develop the medical evidence.¹⁷

The case shall, therefore, be remanded for further development of the medical evidence. On remand OWCP shall prepare a statement of accepted facts and obtain a rationalized opinion from a physician in the appropriate field of medicine as to whether the accepted employment incident caused, contributed to, or aggravated the diagnosed left shoulder conditions. If the physician opines that the diagnosed conditions are not causally related to the accepted February 8, 2019 employment incident, he or she must explain with rationale how or why their opinion differs from that of Dr. Farakh. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that this case is not in posture for decision.

¹⁵ See *P.C.*, Docket No. 22-0428 (issued July 22, 2022); *M.S.*, Docket No. 20-1095 (issued March 29, 2022); *A.D.*, Docket No. 20-0758 (issued January 11, 2021); *C.R.*, Docket No. 20-0366 (issued December 11, 2020); *John J. Carlone, supra* note 12; *Horace Langhorne*, 29 ECAB 820 (1978).

¹⁶ *C.B.*, Docket No. 21-1291 (issued April 28, 2022); *C.G.*, Docket No. 20-1121 (issued February 11, 2021); *A.G.*, Docket No. 20-0454 (issued October 29, 2020).

¹⁷ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the May 4, 2022 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: September 20, 2022
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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