United States Department of Labor
Employees' Compensation Appeals Board

S.P., Appellant **and** **U.S. POSTAL SERVICE, SOUTH JERSEY PROCESSING & DISTRIBUTION CENTER, Bellmawr, NJ, Employer**	)	**Docket No. 22-0711** **Issued: March 13, 2023**

Appearances:
Russell T. Uliase, Esq., for the appellant[1]
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 April 7, 2022 appellant, through counsel, filed a timely appeal from a November 30, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

[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*.

ISSUE

The issue is whether appellant has met her burden of proof to establish a shoulder condition causally related to the accepted December 11, 2019 employment incident.

FACTUAL HISTORY

On December 16, 2019 appellant, then a 59-year-old clerk, filed a traumatic injury claim (Form CA-1) alleging that on December 11, 2019 she experienced pain in both shoulders when sitting while in the performance of duty. She did not stop work. OWCP assigned OWCP File No. xxxxxx276.

In a letter dated December 17, 2019, the employing establishment controverted the claim. It advised that appellant did not report the incident for 5 days and that she worked four hours per day in a modified position performing no lifting her arm above her shoulder and handling only one letter at a time.

In a development letter dated December 19, 2019, OWCP requested that appellant submit factual and medical information, including a comprehensive report from her physician regarding how a specific work incident caused or contributed to a diagnosed condition. It provided her with a questionnaire for completion and afforded her 30 days to submit the necessary evidence.

In duty status reports (Form CA-17) dated January 3 and 17, 2020, Dr. Laura E. Ross, an osteopath Board-certified in orthopedic surgery, diagnosed questionable bursitis and provided work restrictions.

In an attending physician's report (Form CA-20) dated January 16, 2020, Dr. Ross diagnosed bilateral osteoarthritis of the shoulder and bilateral shoulder impingement. She indicated by checking a box marked "Yes" that the diagnosed condition resulted from the employment activity of appellant taping and stamping mail at work.

On January 17, 2020 Dr. Ross indicated that appellant had sought treatment on January 3, 2019 for a new problem with her shoulders. Appellant provided a history of experiencing severe shoulder pain bilaterally on December 11, 2019 while stamping and taping at work. Dr. Ross asserted that x-rays showed bilateral arthrosis of the acromioclavicular (AC) joint and a type II acromion. She diagnosed an exacerbation of AC joint arthrosis and impingement tendinopathy of the shoulders bilaterally.

By decision dated January 21, 2020, OWCP denied appellant's traumatic injury claim. It found that the medical evidence was insufficient to support that she sustained a medical condition causally related to the accepted employment incident.

Thereafter, OWCP received a January 10, 2020 statement from appellant, who noted that she had two other approved claims with OWCP.

In a January 17, 2020 progress report, Dr. Ross evaluated appellant for pain in both shoulders after a work injury on December 11, 2019. On examination she found crepitus of the

shoulders with motion and positive impingement signs. Dr. Ross diagnosed bilateral impingement syndrome and bilateral AC joint arthrosis.

On March 9, 2020 Dr. Ross discussed her treatment of appellant for employment-related bilateral carpal tunnel syndrome and found that she could perform sedentary employment for four hours per day.

Appellant requested a review of the written record before a representative of OWCP's Branch of Hearings and Review.

In a progress report dated June 9, 2020, Dr. Ross evaluated appellant for pain in her shoulders after a December 11, 2019 work injury.[3] She diagnosed bilateral impingement syndrome and an exacerbation of AC joint arthrosis. Dr. Ross recommended that appellant remain off work. She noted that she had retired.

Following a preliminary review, by decision dated October 20, 2020, OWCP's hearing representative vacated the January 21, 2020 decision. The hearing representative found that the reports from Dr. Ross were sufficient to require further development of the medical evidence and instructed OWCP to refer appellant for a second opinion examination. The hearing representative further indicated that OWCP had previously accepted that she sustained bilateral carpal tunnel syndrome under OWCP File No. xxxxxx142 and cervical disc degeneration and cervical disc displacement under OWCP File No. xxxxxxx052. The hearing representative noted that appellant had received wage-loss compensation for partial disability under OWCP File No. xxxxxx052 until her retirement on May 30, 2020. The hearing representative instructed OWCP to administratively combine the case files.

OWCP administratively combined the current case file with OWCP File Nos. xxxxxx142 and xxxxxx052, with the latter serving as the master file.

On December 30, 2020 OWCP referred appellant to Dr. Stephen M. Horowitz, a Board-certified orthopedic surgeon, for a second opinion examination.

In a report dated January 20, 2021, Dr. Horowitz obtained a history of appellant experiencing pain in her shoulders bilaterally stamping a letter on December 11, 2019. He noted that she worked limited duty at the time of the incident due to previous injuries. On examination, Dr. Horowitz found equivocal impingement signs and "fairly full range of motion." He provided his review of the medical evidence. Dr. Horowitz indicated that appellant's history appeared inconsistent and related, "It is unclear how putting a stamp on a letter or using a stamping device on a letter could lead to an injury involving both shoulders." He noted that she had a prior history of carpal tunnel surgery and cervical disc herniations. Dr. Horowitz asserted that there were no objective findings supporting an injury due to the December 11, 2019 employment incident. He found that appellant could "continue to work in her prior duty status."

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[3] On August 13, 2020 A.J., a manager, related that appellant performed no repetitive motion, handled one letter at a time, worked under four hours per day including breaks, and did not lift over one pound. The employing establishment submitted a copy of her modified assignment.

By *de novo* decision dated February 9, 2021, OWCP denied appellant's traumatic injury claim, finding that the medical evidence of record did not establish that she sustained an injury or condition causally related to the accepted employment incident.

On February 22, 2021 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

Following a preliminary review, by decision dated April 30, 2021, OWCP's hearing representative vacated the February 9, 2021 decision. The hearing representative found that Dr. Horowitz had provided a rationalized report supporting his causation finding but had failed to reference the statement of accepted facts (SOAF) in finding inconsistencies in appellant's description of injury. The hearing representative instructed OWCP to update the SOAF to include an accurate description of appellant's part-time work duties and request a supplemental report from Dr. Horowitz.

On May 14, 2021 OWCP provided Dr. Horowitz with an amended SOAF of even date setting forth appellant's modified work duties, and describing her other work injuries. It requested that he provide a supplemental opinion utilizing the SOAF as his reference.

In a supplemental report dated July 1, 2021, Dr. Horowitz reviewed the SOAF and advised the fact that appellant was performing a modified assignment on December 11, 2019 did not change his prior opinion.

By *de novo* decision dated July 7, 2021, OWCP denied appellant's traumatic injury claim, finding that the medical evidence of record did not establish that she sustained an injury or condition causally related to the accepted employment incident.

On July 14, 2021 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review, which counsel subsequently changed to a request for review of the written record.

By decision dated November 30, 2021, OWCP's hearing representative affirmed the July 7, 2021 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[4] 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 of FECA,[5] 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

[4] *Supra* note 2.

[5] *C.B.*, Docket No. 21-1291 (issued April 28, 2022); *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

the employment injury.[6] 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.[7]

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.[8] Fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred at the time and place, and in the manner alleged.[9] The second component is whether the employment incident caused a personal injury.[10]

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.[11] A physician's opinion on whether there is a causal relationship between the diagnosed condition and the accepted employment incident must be based on a complete factual and medical background.[12] Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and the specific employment incident.[13]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a shoulder condition causally related to the accepted December 11, 2019 employment incident.

On January 20, 2021 Dr. Horowitz, an OWCP referral physician, noted that appellant had experienced pain in both shoulders on December 11, 2019 after stamping a letter. He found equivocal signs of impingement on examination and noted that she was performing limited-duty work at the time of the December 11, 2019 incident. Dr. Horowitz indicated that it was unclear how either putting a stamp on a letter, or using a stamp machine on a letter could cause a bilateral shoulder injury. He concluded that there were no objective findings supporting that appellant

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[6] *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *T.H.*, Docket No. 18-1736 (issued March 13, 2019); *R.C.*, 59 ECAB 427 (2008).

[7] *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *T.E.*, Docket No. 18-1595 (issued March 13, 2019); *Delores C. Ellyett*, 41 ECAB 992 (1990).

[8] *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *S.S.*, Docket No. 18-1488 (issued March 11, 2019); *T.H.*, 59 ECAB 388 (2008).

[9] *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

[10] *Id*.

[11] *S.K.*, Docket No. 22-0432 (issued June 27, 2022); *E.G.*, Docket No. 20-1184 (issued March 1, 2021); *T.H.*, 59 ECAB 388 (2008).

[12] *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

[13] *B.C.*, Docket No. 20-0221 (issued July 10, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

sustained an injury as a result of the December 11, 2019 employment incident. In a supplemental report dated July 1, 2021, Dr. Horowitz reviewed an updated SOAF and advised that his opinion had not changed. He based his opinion on a prior factual and medical history and provided findings on physical examination. The Board finds that Dr. Horowitz' opinion is detailed, well-reasoned, and based on an accurate history, and thus represents the weight of the evidence.[14]

The remaining evidence is insufficient to meet appellant's burden of proof to establish her claim. On January 17, 2020 Dr. Ross related that she had evaluated appellant on January 3, 2019 for shoulder pain that had occurred after she performed stamping and taping at work. She diagnosed an exacerbation of bilateral AC joint arthrosis and bilateral shoulder impingement syndrome. Dr. Ross did not, however, offer any rationale to explain how the accepted employment incident caused appellant's diagnosed condition. The Board has held that a medical opinion should offer a medically sound explanation of how the specific employment incident physiologically caused the injury.[15] Consequently, Dr. Ross's opinion is of diminished probative value.[16]

In a Form CA-20 dated January 16, 2020, Dr. Ross diagnosed bilateral osteoarthritis of the shoulder and bilateral shoulder impingement. She indicated by checking a box marked "Yes" that the diagnosed condition resulted from the employment activity of appellant taping and stamping mail at work. However, the Board has held that when a physician's opinion on causal relationship consists only of checking a box marked "Yes" to a form question, without additional medical rationale, that opinion is of limited probative value and is insufficient to establish causal relationship.[17] Consequently, this report is insufficient to establish appellant's claim.

In progress reports dated January 17 and June 9, 2020, Dr. Ross advised that appellant had experienced pain in both shoulders after a work injury on December 11, 2019. She diagnosed bilateral impingement syndrome, and an exacerbation of AC joint arthrosis. While Dr. Ross noted the history of injury, she did not specifically relate the diagnosed conditions to the accepted employment incident. 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.[18]

In a report dated March 9, 2020, Dr. Ross diagnosed bilateral carpal tunnel syndrome and found that appellant could perform sedentary employment for four hours per day. She did not provide an opinion that the diagnosed condition was causally related to the accepted employment

[14] *See W.W.*, Docket No. 16-0651 (issued June 20, 2016).

[15] *E.T.*, Docket No. 21-0014 (issued May 20, 2021); *C.D.*, Docket No. 20-0762 (issued January 13, 2021).

[16] *Id*.

[17] *See P.C.*, Docket No. 20-0855 (issued November 23, 2020); *M.S.*, Docket No. 20-0437 (issued July 14, 2020); *Barbara J. Williams,* 40 ECAB 649 (1989).

[18] *R.O.*, Docket No. 20-1243 (issued May 28, 2021); *D.C.*, Docket No. 19-1093 (issued June 25, 2020).

incident, and thus her report is of no probative value on the issue of causal relationship and insufficient to meet appellant's burden of proof to establish her claim.[19]

In CA-17 forms dated January 3 and 17, 2020, Dr. Ross diagnosed questionable bursitis. She did not, however, offer an opinion regarding whether the diagnosed condition was causally related to the accepted employment incident. As noted, 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.[20] Accordingly, this report is insufficient to establish appellant's claim.

On appeal counsel contends that Dr. Horowitz noted that appellant had preexisting conditions, but failed to address whether she had sustained an aggravation of these conditions. As noted, however, he found that she had not sustained any injury resulting from the accepted December 11, 2019 employment incident.

Counsel further asserts that a conflict in medical opinion exists between Dr. Horowitz and Dr. Ross. As discussed, Dr. Ross failed to provide a reasoned opinion that appellant sustained a condition arising from the accepted December 11, 2019 employment incident, and thus her reports are insufficient to create a conflict in medical opinion.

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 10.606.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a shoulder condition causally related to the accepted December 11, 2019 employment incident.

[19] *See G.W.*, Docket No. 20-0507 (issued March 4, 2021); *L.B.*, Docket No. 19-1907 (issued August 14, 2020); *L.B.,* Docket No. 18-0533 (issued August 27, 2018); *D.K.,* Docket No. 17-1549 (issued July 6, 2018).

[20] *See J.G.*, Docket No. 21-1334 (issued May 18, 2022); *S.B.*, Docket No. 21-1022 (issued May 5, 2022); *C.V.*, Docket No. 18-1106 (issued March 20, 2019); *A.D.*, 58 ECAB 149 (2006).

ORDER

IT IS HEREBY ORDERED THAT the November 30, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 13, 2023
Washington, DC

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

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

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