

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

K.A., Appellant)	
)	
and)	Docket No. 23-0613
)	Issued: April 22, 2024
U.S. POSTAL SERVICE, MINNEAPOLIS POST)	
OFFICE, Minneapolis, MN, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge

JURISDICTION

On February 9, 2023 appellant filed a timely appeal from a September 16, 2022 merit decision and an October 12, 2022 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant has met her burden of proof to establish a diagnosed medical condition in connection with the accepted employment factors; and (2) whether OWCP properly denied appellant's request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On July 20, 2022 appellant, then a 58-year-old rural carrier, filed an occupational disease claim (Form CA-2) alleging that she developed continuous right shoulder, upper back, and neck pain due to factors of her federal employment, including repetitively loading her vehicle with parcels, reaching for mailboxes, and casing mail six days per week. She noted that she first became aware of her condition on December 3, 2021, and first realized its relation to her federal employment on June 29, 2022. Appellant did not immediately stop work.

In support of her claim, appellant submitted a June 29, 2022 form report from Dr. Colin Fennell, a Board-certified orthopedist, who treated her for right shoulder pain. Dr. Fennell returned appellant to work with restrictions.

In a development letter dated July 29, 2022, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence necessary to establish her claim and afforded her 30 days to respond.

OWCP subsequently received a June 29, 2022 report, wherein Dr. Fennell described his treatment of appellant for discomfort in her right shoulder and arm. He related that appellant reported working as a rural mail carrier and being required to repetitively use her right arm to reach into mailboxes, sort mail, case mail, and lift and deliver packages weighing up to 80 pounds. Dr. Fennell indicated that based on the activity appellant had been doing that she “most likely” had a pathology of the right rotator cuff. An x-ray of the right shoulder dated June 29, 2022 revealed degenerative changes. In a duty status report (Form CA-17) dated August 22, 2022, Dr. Fennell diagnosed right rotator cuff injury, and returned appellant to work on a full-time basis with restrictions.

By decision dated September 16, 2022, OWCP denied appellant’s claim, finding that the medical evidence of record did not contain a valid medical diagnosis in connection with the accepted employment incident. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On October 4, 2022 appellant requested reconsideration.

In support thereof, appellant submitted a September 16, 2022 magnetic resonance imaging (MRI) scan of the right shoulder, which demonstrated a full-thickness near complete tear of the supraspinatus, full-thickness tearing of cranial fibers of the subscapularis with a background of chronic high-grade partial-thickness tearing/thinning of the tendon, moderate infraspinatus tendinosis, supraspinatus, infraspinatus and teres muscle fatty streaking, moderate acromioclavicular (AC) and mild-to-moderate glenohumeral joint degenerative arthrosis, medial subluxation, tendinosis and tenosynovitis of the long head of the biceps tendon, and superior labral tearing.

Appellant also submitted a September 16, 2022 report from Dr. Fennell who detailed his continued treatment of appellant for her right shoulder injury. He noted that appellant worked on a full-time basis as a letter carrier and delivered mail and packages daily. Dr. Fennell noted that he reviewed an MRI scan of the right shoulder, which demonstrated a moderately large full-

thickness tear of the supraspinatus anteriorly with retraction, degenerative changes of the articular surface with an osteophyte formation, and loss of articular cartilage. He found that appellant continued to function at a moderately-high level, but experienced pain in the right shoulder on a daily basis. Dr. Fennell recommended intra-articular injections, a subscapular saline pillow, and possible reverse total shoulder surgery. In a Form CA-17 dated September 16, 2022, he diagnosed right rotator cuff tear and arthritis, and returned appellant to work on a part-time basis with restrictions.

By decision dated October 12, 2022, OWCP denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a). It noted that appellant had not submitted any additional medical evidence.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA² 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 limitation of FECA, 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.³ 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.⁴

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 by the claimant.⁵

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁶ 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

² *Id.*

³ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁴ *B.H.*, Docket No. 20-0777 (issued October 21, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁵ *S.H.*, Docket No. 22-0391 (issued June 29, 2022); *T.W.*, Docket No. 20-0767 (issued January 13, 2021); *L.D.*, Docket No. 19-1301 (issued January 29, 2020); *S.C.*, Docket No. 18-1242 (issued March 13, 2019).

⁶ *D.S.*, Docket No. 21-1388 (issued May 12, 2022); *I.J.*, Docket No. 19-1343 (issued February 26, 2020); *T.H.*, 59 ECAB 388 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

the specific employment factors.⁷ 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 or incidents is sufficient to establish causal relationship.⁸

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish a diagnosed medical condition in connection with the accepted employment factors.

In support of her claim, appellant submitted a June 29, 2022 report wherein Dr. Fennell described his treatment of appellant for discomfort in her right shoulder and arm. He related that appellant worked as a rural mail carrier and was required to repetitively use her right arm to reach into mailboxes, sort mail, case mail, and lift and deliver packages weighing up to 80 pounds. Dr. Fennell indicated that based on the activity appellant had been doing that she “most likely” had a pathology of the right rotator cuff. The Board has held that medical opinions that are speculative and equivocal are of limited probative value.⁹ Therefore, this evidence is insufficient to establish the claim.

In a June 29, 2022 form report, Dr. Fennell noted his treatment of appellant for right shoulder pain. However, the Board has held that pain is a symptom and not a compensable medical diagnosis.¹⁰ Thus, this report is insufficient to establish the claim.

In a Form CA-17 dated August 22, 2022, Dr. Fennell diagnosed right rotator cuff injury and returned appellant to work on a full-time basis with restrictions. The Board has held that a medical report lacking a firm diagnosis is of no probative value.¹¹ Moreover, the Board has previously explained that a purported diagnosis of “injury” is not a firm diagnosis.¹² Thus, this report is insufficient to establish the claim.

Appellant also submitted a June 29, 2022 x-ray of the right shoulder. The Board has held that diagnostic studies, standing alone, lack probative value, and are insufficient to establish the claim.¹³ Therefore, this report is also insufficient to establish the claim.

⁷ *D.S. id.; D.J.*, Docket No. 19-1301 (issued January 29, 2020).

⁸ *T.M.*, Docket No. 22-0220 (issued July 29, 2022); *S.S.*, Docket No. 18-1488 (issued March 11, 2019); *see also J.L.*, Docket No. 18-1804 (issued April 12, 2019).

⁹ *B.B.*, Docket No. 21-0284 (issued October 5, 2022); *J.W.*, Docket No. 18-0678 (issued March 3, 2020).

¹⁰ *G.L.*, Docket No. 18-1057 (issued April 14, 2020); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

¹¹ *L.P.*, Docket No. 19-1812 (issued April 16, 2020); *P.C.*, Docket No. 18-0167 (issued May 7, 2019).

¹² *See J.L.*, Docket No. 18-1804 (issued April 12, 2019).

¹³ *J.K.*, Docket No. 20-0591 (issued August 12, 2020); *A.B.*, Docket No. 17-0301 (issued May 19, 2017).

As the medical evidence of record is insufficient to establish a diagnosed medical condition in connection with the accepted employment factors, the Board finds that appellant 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.

LEGAL PRECEDENT -- ISSUE 2

Section 8128(a) of FECA does not entitle a claimant to review of an OWCP decision as a matter of right.¹⁴ OWCP has discretionary authority in this regard and has imposed certain limitations in exercising its authority.¹⁵ One such limitation is that the request for reconsideration must be received by OWCP within one year of the date of the decision for which review is sought.¹⁶ A timely application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (i) shows that OWCP erroneously applied or interpreted a specific point of law; (ii) advances a relevant legal argument not previously considered by OWCP; or (iii) constitutes relevant and pertinent new evidence not previously considered by OWCP.¹⁷ When a timely request for reconsideration does not meet at least one of the above-noted requirements, OWCP will deny the request for reconsideration without reopening the case for a review on the merits.¹⁸

ANALYSIS -- ISSUE 2

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

In the case of *William A. Couch*,¹⁹ the Board held that when adjudicating a claim, OWCP is obligated to consider all evidence properly submitted by a claimant and received by OWCP before the final decision is issued. As noted above, on reconsideration appellant submitted evidence from Dr. Fennell dated September 16, 2022 and an MRI scan of the right shoulder. On September 16, 2022 Dr. Fennell treated appellant for her right shoulder injury. He noted that she worked as a letter carrier delivering mail daily and diagnosed right shoulder moderately large full-

¹⁴ This section provides in pertinent part: “[t]he Secretary of Labor may review an award for or against payment of compensation at any time on [his/her] own motion or on application.” 5 U.S.C. § 8128(a).

¹⁵ 20 C.F.R. § 10.607.

¹⁶ *Id.* § 10.607(a). For merit decisions issued on or after August 29, 2011, a request for reconsideration must be received by OWCP within one year of OWCP’s decision for which review is sought. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsideration*, Chapter 2.1602.4 (September 2020). Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the received date in the Integrated Federal Employees Compensation System (iFECS). *Id.* at Chapter 2.1602.4b.

¹⁷ 20 C.F.R. § 10.606(b)(3).

¹⁸ *Id.* at § 10.608(a), (b).

¹⁹ 41 ECAB 548 (1990); see *Order Remanding Case, K.B.*, Docket No. 20-1320 (issued February 8, 2021); see also *R.D.*, Docket No. 17-1818 (issued April 3, 2018).

thickness tearing of the supraspinatus anteriorly with retraction and degenerative changes seen on an MRI scan. In a Form CA-17 dated September 16, 2022, Dr. Fennell diagnosed right rotator cuff tear and arthritis, and returned appellant to work. However, the record does not indicate that OWCP reviewed this additional evidence in its October 12, 2022 decision. It, thus, failed to follow its procedures by not considering all of the relevant evidence of record.²⁰

As Board decisions are final with regard to the subject matter appealed, it is crucial that OWCP address all relevant evidence received prior to the issuance of its final decision.²¹ For this reason, the case will be remanded to OWCP to address the above-noted evidence submitted at the time of the October 12, 2022 decision.²² Following this, and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a diagnosed medical condition in connection with the accepted employment factors. The Board further finds that the case is not in posture for decision with regard to whether OWCP properly denied appellant's request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

²⁰ OWCP's procedures provide that all evidence submitted should be reviewed and discussed in the decision. Evidence received following development that lacks probative value also should be acknowledged. Whenever possible, the evidence should be referenced by author and date. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Denials*, Chapter 2.1401.5b(2) (November 2012).

²¹ *E.D.*, Docket No. 20-0620 (issued November 18, 2020); *see C.S.*, Docket No. 18-1760 (issued November 25, 2019); *Yvette N. Davis*, 55 ECAB 475 (2004); *see also William A. Couch*, *supra* note 19.

²² *D.S.*, Docket No. 20-0589 (issued November 10, 2020); *see V.C.*, Docket No. 16-0694 (issued August 19, 2016).

ORDER

IT IS HEREBY ORDERED THAT the September 16, 2022 decision of the Office of Workers' Compensation Programs is affirmed. The October 12, 2022 decision is set aside, and the case is remanded for further proceedings consistent with this order of the Board.

Issued: April 22, 2024
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board