

³ The Board notes that following the October 26, 2023 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 establish a right upper extremity condition causally related to the accepted factors of her federal employment.

FACTUAL HISTORY

This case has previously been before the Board.⁴ The facts and circumstances as set forth in the Board's prior order are incorporated herein by reference. The relevant facts are as follows.

On February 14, 2022 appellant, then a 57-year-old rural route carrier, filed an occupational disease claim (Form CA-2) alleging that she developed pain in her shoulder and arm and was unable to lift her arm due to factors of her federal employment, including repetitive motion, delivering mail, reaching, and lifting. Appellant did not stop work.⁵

In a February 10, 2022 statement, appellant outlined problems with her right shoulder, which she indicated were due to repetitive motion during 26 years of work activities. She also indicated that she had previously underwent right shoulder rotator cuff repair on November 8, 2016.

In a February 16, 2022 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence necessary, and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond.

OWCP received a January 31, 2022 report from a physician assistant which noted appellant's current right shoulder complaints.

In a February 9, 2022 report, Dr. Gregory Lervick, a Board-certified orthopedic surgeon, reported that appellant had prior bilateral shoulder surgical procedures, the right shoulder on November 8, 2016 and the left shoulder on January 8, 2018, for rotator cuff repair, distal clavicle resection and long head biceps tenotomy with good outcome. He indicated that appellant's right shoulder problems began during her work as a mail carrier and, despite physical therapy, she had significant discomfort with movement. Dr. Lervick provided examination findings of both shoulders, noting that bilaterally there was no atrophy of the shoulders, active range of motion elicited pain on right side, and there was decreased rotator cuff strength compared to left side with no limits on passive range of motion. He diagnosed status post right surgery, and evidence of progressive right rotator cuff tear arthropathy with pseudoparalysis. Dr. Lervick opined that this was a continuum of her previous workers' compensation claim.

Dr. Lervick also provided a February 21, 2022 duty status report (Form CA-17), in which he diagnosed probable right shoulder rotator cuff tear with right shoulder weakness/pain/limited range of motion. OWCP also received work excuse notes dated February 2, March 3, 11 and 30, 2022 from Dr. Lervick and Andrew Anderson, a physician assistant.

⁴ *Order Remanding Case*, Docket No. 23-0164 (issued July 11, 2023).

⁵ Appellant previously filed an occupational disease claim for a June 1, 2013 left shoulder condition under OWCP File No. xxxxxx751. OWCP has not administratively combined appellant's claims.

OWCP also received appellant's March 15, 2022 response to its questionnaire.

In March 30 and April 19, 2022 reports, Dr. Lervick indicated that the March 19, 2022 right shoulder magnetic resonance imaging (MRI) scan demonstrated a massive, recurrent, full-thickness tear involving the entirety of the supraspinatus and infraspinatus with associated atrophy and proximal humeral migration, along with other findings indicative of progressive right rotator cuff tear arthropathy with pseudoparalysis. He diagnosed right recurrent rotator cuff tear status post repair in remote past with progressive chondromalacia and continued to hold appellant off work. In the April 19, 2022 report, Dr. Lervick also opined that appellant's condition was a continuum of her previous workers' compensation claim, which he indicated had covered right rotator cuff repair surgery, and that she should continue to be covered under workers' compensation given the relationship of her current situation to the underlying previously accepted workers' compensation claim.

By decision dated April 20, 2022, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish that the diagnosed right shoulder condition was causally related to the claimed work factors by cause or aggravation.

In a May 2, 2022 report, Dr. Lervick indicated that he had provided a cortisone injection to appellant's right shoulder. He opined that the initial onset of her bilateral shoulder complaints related to the repetitiveness of her job over time, which he thought was a Gillette-type mechanism (repetitive movement injury). Dr. Lervick also opined that appellant's current right shoulder condition with the recurrent massive rotator cuff tear and the early chondromalacia represented a continuum of the treatment of her prior right shoulder in 2016. He also noted that her workers' compensation claim had been denied previously when she underwent her rotator cuff repair surgery in 2016. Dr. Lervick continued to hold appellant off work.

In a May 19, 2022 narrative report, Dr. Lervick indicated that he first evaluated appellant for ongoing and progressive right shoulder pain on August 15, 2016, and that she was diagnosed with a right large full-thickness rotator cuff tear, acromioclavicular degenerative joint disease and long head of biceps tendinosis, for which she underwent a right shoulder arthroscopy, rotator cuff repair, distal clavicle resection, and long head of biceps tenotomy on November 8, 2016. He noted that intra-operatively, there was some early cartilage degeneration within the glenohumeral joint. Dr. Lervick noted that appellant eventually underwent a very similar procedure to her left shoulder on January 18, 2018, and that she recovered from both shoulder surgeries well. He indicated that when she presented on February 9, 2022, she had more atraumatic pain in the right shoulder, more so than the left. Dr. Lervick opined that appellant's work activities contributed to and exacerbated the ongoing development and progression of her secondary symptoms. He indicated that plain radiographies and a magnetic resonance imaging (MRI) scan of March 19, 2022 demonstrated evidence of progressive right rotator cuff tear arthropathy, and that she remained somewhat pseudoparalytic with limited function and mobility of the shoulder, and was unable to work due to the limited function of her right shoulder. Dr. Lervick opined that the repetitive usage, rotation, movement, lifting that were necessary during the course of appellant's employment as a mail carrier had contributed to, and exacerbated, her underlying condition.

In a report dated June 27, 2022, Dr. Lervick again noted diagnoses of status post right long head biceps tenotomy in the remote past, with evidence of progressive right rotator cuff tear arthropathy with pseudoparalysis. He noted that he was not convinced that further soft tissue

operations would be of much benefit. In the long term, appellant was likely to need to consider reverse total shoulder arthroplasty.

On August 4, 2022 appellant, through counsel, requested reconsideration.

OWCP received continued work excuse reports from Dr. Lervick dated August 15 and October 17, 2022. In a progress report dated October 17, 2022, Dr Lervick reiterated appellant's diagnoses and his opinion that she may require reverse total shoulder arthroplasty in the future.

By decision dated November 2, 2022, OWCP denied modification of its April 20, 2022 decision, finding that the medical evidence of record was insufficient to establish causal relationship between appellant's right shoulder condition and the accepted factors of her federal employment.

Appellant appealed to the Board. By order dated July 11, 2023, the Board set aside OWCP's November 2, 2022 decision, and remanded the case for OWCP to consider and address all evidence properly submitted by appellant and received by OWCP before it rendered its November 2, 2022 decision, which included Dr. Lervick's May 19, 2022 narrative report.

OWCP received work excuse reports from Dr. Lervick dated February 15, May 17, July 27, August 29, and October 10, 2023. As of July 27, 2023, the notes indicated that appellant had undergone a right reverse total shoulder arthroplasty (TSA) on July 18, 2023.

By decision dated October 26, 2023, OWCP denied modification of its April 20, 2022 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁶ 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,⁷ 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.⁸ 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.⁹

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

⁶ *Supra* note 2.

⁷ *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁸ *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁹ *P.A.*, Docket No. 18-0559 (issued January 29, 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).

compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is casually related to the identified employment factors.¹⁰

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.¹¹ The opinion of the physician must be based upon 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 the specific employment factors.¹²

ANALYSIS

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

In his February 9, 2022 report, Dr. Lervick indicated that appellant's right shoulder problems began while she was working as a mail carrier. He diagnosed status post right surgery and evidence of progressive right rotator cuff tear arthropathy with pseudoparalysis, which he opined was a continuum of her previous worker's compensation claim. In March 30 and April 19, 2022 reports, Dr. Lervick noted findings of a March 19, 2022 right shoulder (MRI) scan and diagnosed right recurrent rotator cuff tear status post repair in remote past with progressive chondromalacia. He opined, in his April 19, 2022 report, that appellant's condition was a continuum of her prior workers' compensation claim, given the relationship of her current situation to the underlying previously accepted workers' compensation claim. In his May 2, 2022 report, Dr. Lervick opined that the initial onset of appellant's bilateral shoulder complaints related to the repetitiveness of her job over time, which he thought was a Gillette-type mechanism (repetitive movement injury). He also opined that appellant's current right shoulder condition with the recurrent massive rotator cuff tear, and the early chondromalacia represented a continuum of her 2016 right shoulder treatment. However, in this report Dr. Lervick noted that appellant's prior right shoulder injury claim had been denied.

The Board notes in this regard that the record does not substantiate that appellant had filed a previous claim for a right shoulder injury. While Dr. Lervick provided an affirmative opinion suggestive of causal relationship in these reports, he did not offer medical rationale sufficient to explain his conclusionary opinion.¹³ The Board has held that conclusory statements lacking medical rationale are insufficient to establish causal relationship between employment factors and diagnosed conditions.¹⁴ Rather, the Board has held that a medical opinion must offer a rationalized explanation by the physician of how the specific employment incident physiologically caused or

¹⁰ *K.R.*, Docket No. 23-0696 (issued October 31, 2023).

¹¹ *I.J.*, Docket No. 19-1343 (issued February 26, 2020); *T.H.*, 59 ECAB 388 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

¹² *D.C.*, Docket No. 19-1093 (issued June 25, 2020); *see L.B.*, Docket No. 18-0533 (issued August 27, 2018).

¹³ *S.A.*, Docket No. 21-0593 (issued February 3, 2022); *T.W.*, Docket No. 20-0767 (issued January 13, 2021); *see H.A.*, Docket No. 18-1466 (issued August 23, 2019); *L.R.*, Docket No. 16-0736 (issued September 2, 2016).

¹⁴ *S.A.*, *id.*; *K.O.*, Docket No. 18-1422 (issued March 19, 2019); *see E.P.*, Docket No. 18-0194 (issued September 14, 2018).

aggravated the diagnosed conditions.¹⁵ Additionally, the Board has held that a well-rationalized opinion is particularly warranted when there is a history of preexisting conditions, as in this case.¹⁶ Consequently, these reports from Dr. Lervick are insufficient to establish the claim.

In his May 19 and June 27, 2022 narrative reports, Dr. Lervick again noted the medical history of appellant's bilateral shoulder conditions, including her 2016 surgical procedure. With regards to the right shoulder, he opined that her work activities contributed to, and exacerbated, the ongoing development and progression of her secondary symptoms. Dr. Lervick noted objective evidence of progressive right rotator cuff tear arthropathy and that she remained somewhat pseudoparalytic with limited function and mobility of the shoulder, and opined that she was unable to work due to the limited function of her right shoulder. He opined that the repetitive usage, rotation, movement, lifting that were necessary during the course of appellant's employment as a mail carrier had contributed to, and exacerbated, her underlying condition. However, Dr. Lervick again did not provide any medical rationale which explained with specificity how the accepted employment factors physiologically caused or aggravated the diagnosed conditions, including the preexisting conditions.¹⁷ As previously noted, conclusory statements lacking medical rationale are insufficient to establish causal relationship between employment factors and diagnosed conditions.¹⁸

OWCP also received a number of work release notes from Dr. Lervick. These notes offered no opinion regarding the cause of appellant's diagnosed conditions. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value on the issue of causal relationship.¹⁹ Therefore, these reports are also insufficient to establish appellant's claim.

The record also contains records from a physician assistant. Certain healthcare providers such as physician assistants are not considered qualified physicians as defined under FECA.²⁰ Their medical findings, reports and/or opinions, unless cosigned by a qualified physician, will not suffice for purposes of establishing entitlement to FECA benefits.²¹

¹⁵ S.A., *id.*; V.D., Docket No. 20-0884 (issued February 12, 2021); Y.D., Docket No. 16-1896 (issued February 10, 2017).

¹⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); R.D., Docket No. 18-1551 (issued March 1, 2019).

¹⁷ See *supra* note 17.

¹⁸ See *supra* note 15.

¹⁹ S.C., Docket No. 21-0929 (issued April 28, 2023); see L.B., Docket No. 18-0533 (issued August 27, 2018); D.K., Docket No. 17-1549 (issued July 6, 2018).

²⁰ Section 8101(2) of FECA provides that physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). See also Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); C.G., Docket No. 20-0957 (issued January 27, 2021); David P. Sawchuk, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA).

²¹ K.A., Docket No. 18-0999 (issued October 4, 2019); K.W., 59 ECAB 271, 279 (2007); David P. Sawchuk, *id.*

As the medical evidence of record is insufficient to establish causal relationship between appellant's diagnosed medical conditions and the accepted employment factors, 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 shoulder condition causally related to the accepted factors of her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the October 26, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 18, 2024
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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