



of her condition and its relationship to her employment on October 15, 2010. She did not incur any lost time from work.

In a January 26, 2011 report, a physician's assistant diagnosed right shoulder pain and instability.<sup>2</sup>

OWCP informed appellant in a February 15, 2011 letter that additional evidence was needed to establish her claim. It gave her 30 days to submit a medical report from a physician explaining how her federal employment was causally related to her condition. OWCP did not receive a response.

By decision dated March 23, 2011, OWCP denied appellant's claim, finding that she did not submit qualified medical evidence from a physician demonstrating that employment factors caused or contributed to a diagnosed condition.

Appellant requested reconsideration on April 5, 2011. She submitted a March 1, 2011 report signed by Dr. Dennis S. Devinney, an osteopath specializing in orthopedic surgery. On examination of the right shoulder, the physician observed limited range of motion (ROM), bicipital tenderness and positive drop arm, Hawkins and Neer signs. An x-ray was unremarkable. Dr. Devinney diagnosed right shoulder pain and cervical stenosis. He noted that appellant was "a mail carrier which requires a repetitive nature of work" and used her right upper extremity extensively.

In a May 20, 2011 decision, OWCP denied modification of the March 23, 2011 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA has the burden of establishing 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 timely filed within the applicable time limitation period, that an injury was sustained in the performance of duty as alleged and that any disabilities and/or specific conditions for which compensation is claimed are causally related to the employment injury.<sup>3</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>4</sup>

Whether an employee actually sustained an injury in the performance of duty begins with an analysis of whether fact of injury has been established.<sup>5</sup> To establish fact of injury in an occupational disease claim, an employee 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

---

<sup>2</sup> A large portion of this report was illegible.

<sup>3</sup> *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>4</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>5</sup> *See S.P.*, 59 ECAB 184, 188 (2007).

condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.<sup>6</sup>

Causal relationship is a medical issue and the evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is evidence which includes a physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. 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 the specific employment factors identified by the claimant.<sup>7</sup>

### ANALYSIS

The case record supports that appellant routinely used her right arm to deliver, balance, case and lift mail at work. The Board finds that she did not establish her occupational disease claim because the medical evidence did not sufficiently establish that these accepted employment factors caused her right shoulder pain and cervical stenosis.

In a March 1, 2011 report, Dr. Devinney conducted a physical examination, obtained an x-ray and rendered diagnoses based on his findings. He also mentioned that appellant performed job duties of a repetitive nature involving extensive use of her right upper extremity. However, Dr. Devinney did not offer an opinion on the cause of her right shoulder and neck injuries.<sup>8</sup> Although he acknowledged that appellant worked for the employing establishment, he merely related her belief regarding causal relationship.<sup>9</sup> Dr. Devinney did not explain the reasons why particular repetitive job duties involving the right arm would cause or aggravate a diagnosed medical condition. The January 26, 2011 report from the physician's assistant lacked probative value because a physician's assistant is not a "physician" as defined by FECA.<sup>10</sup> In the absence of rationalized medical opinion evidence, appellant failed to meet her burden.

Appellant contends on appeal that she sustained a work-related injury and continued to experience symptoms. As noted, the medical evidence did not sufficiently establish that delivering, balancing, casing and lifting mail caused or contributed to her right shoulder pain and cervical stenosis.

---

<sup>6</sup> See *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *R.R.*, Docket No. 08-2010 (issued April 3, 2009).

<sup>7</sup> *I.J.*, 59 ECAB 408 (2008); *Woodhams*, *supra* note 4.

<sup>8</sup> *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

<sup>9</sup> See *P.K.*, Docket No. 08-2551 (issued June 2, 2009) (an award of compensation may not be based on a claimant's belief of causal relationship). In addition, Dr. Devinney did not obtain a complete history of injury nor address the specific contributing work factors described by appellant in her Form CA-2. See *M.W.*, 57 ECAB 710 (2006); *John W. Montoya*, 54 ECAB 306, 309 (2003).

<sup>10</sup> 5 U.S.C. § 8101(2); *Allen C. Hundley*, 53 ECAB 551, 554 (2002). See also *Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (medical opinion, in general, can only be given by a qualified physician).

The Board notes that appellant submitted new evidence after issuance of the May 20, 2011 decision. The Board lacks jurisdiction to review evidence for the first time on appeal.<sup>11</sup> However, appellant may submit new evidence or argument as part of a formal 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 did not establish that she sustained an occupational disease in the performance of duty.

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 20 and March 23, 2011 decisions of the Office of Workers' Compensation Programs be affirmed.

Issued: February 2, 2012  
Washington, DC

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board

---

<sup>11</sup> 20 C.F.R. § 501.2(c).