

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

L.D., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Cleveland, OH, Employer**

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**Docket No. 13-856
Issued: September 10, 2013**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On February 26, 2013 appellant, through her attorney, filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs (OWCP) dated January 29, 2013. 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.

ISSUE

The issue is whether appellant developed a consequential left shoulder condition in the performance of duty due to factors of her federal employment.

FACTUAL HISTORY

Appellant, a 52-year-old mail processor, filed a Form CA-2 claim for benefits on May 22, 2012, alleging that she developed a left shoulder sprain causally related to factors of her

¹5 U.S.C. § 8101 *et seq.*

employment. She indicated on the form that she sustained a left shoulder condition because a prior injury to her right shoulder caused increased use of her left arm and left shoulder.

On May 30, 2012 OWCP advised appellant that it required additional factual and medical evidence to determine whether she was eligible for compensation benefits. It asked that she submit a comprehensive medical report from her treating physician describing her symptoms and the medical reasons for her condition and an opinion as to whether her claimed condition was causally related to her federal employment and a diagnosis of her claimed condition. OWCP requested that appellant submit the additional evidence within 30 days.

In a report dated March 29, 2012, received by OWCP on June 5, 2012, Dr. Thomas Rench, Board-certified in emergency medicine, stated that appellant had sustained a left shoulder injury on that date, caused by closing a cardoor; she related that she was experiencing sharp, severe pain in her left shoulder and that she was unable to use her arm after being injured. Dr. Rench noted a history of shoulder strains. On examination he stated that appellant had effusion in her left shoulder in the acromion area and was unable to elevate her arm. Dr. Rench indicated that she otherwise had a normal shoulder examination except for soft tissue tenderness at the supraspinatus of the left shoulder. He stated that x-rays were not warranted and diagnosed a sprained left shoulder and left upper arm sprain.

In a July 2, 2012 report, Dr. Joaquin Tinio, Board-certified in internal medicine, stated that he had treated appellant for left shoulder pain on April 27, May 15 and June 30, 2012. He advised that she experienced left arm and shoulder pain with elevation and rotation of the left shoulder and left arm. Dr. Tinio diagnosed left shoulder arthralgia with a possible rotator cuff injury. He stated that nonemployment activities may have contributed to the injury. Dr. Tinio advised that appellant was required to frequently lift both arms while sorting mail and stated that repetitive movement of shoulders had increased inflammation, resulting in pain and limited range of motion.

In a June 29, 2012 statement, received by OWCP on July 10, 2012, appellant stated that she used her left arm to perform her daily work duties. While sweeping mail, she would use her left arm to pull and sweep mail trays and engage in constant, repetitive lifting and carrying.

By decision dated July 11, 2012, OWCP denied appellant's claim, finding that she failed to establish fact of injury. It noted that she had filed another claim for a right shoulder injury, case number xxxxxx387, which had been accepted and for which she had been off work from January 18 to March 10, 2012, when she returned to work. OWCP stated that appellant failed to present any evidence regarding her work duties as of March 10, 2012 and continuing which showed how, in performing these duties, she developed a left shoulder condition due to overuse caused by the right shoulder injury. It also noted that she sustained a nonwork-related left shoulder injury on March 28 or 29, 2012 while closing her car door on her way home. OWCP found that appellant failed to submit sufficient medical evidence in support of her claim that she sustained a left shoulder condition in the performance of duty.

In a statement dated July 24, 2012, received by OWCP on September 7, 2012, appellant reiterated her previous description of her work duties and stated that she was using her left arm and left shoulder exclusively when she returned to work on March 10, 2012 because she was trying to avoid using her right arm and right shoulder.

By letter dated July 16, 2012, appellant's attorney requested an oral hearing, which was held on November 9, 2012. At the hearing appellant testified that, after returning to work on March 10, 2012, following her disability due to her right shoulder injury, she was assigned to light duty. She stated that she was restricted from lifting more than five pounds and from overhead reaching with her right arm. As a result appellant was required to lift, carry and toss parcels weighing 20 to 40 pounds with her left arm, which resulted in her left shoulder condition. She also testified that she injured her left shoulder on March 28, 2012 while closing a cardoor.

In a July 7, 2011 report, received by OWCP on December 13, 2012, Dr. Patricia S. Grayson, Board-certified in internal medicine, advised that appellant had been experiencing left shoulder discomfort for several weeks. She noted that she worked at a job casing mail and had sustained no known injury. Dr. Grayson scheduled her for x-ray testing.

Appellant underwent x-ray testing of her left shoulder on April 3 and 27, 2012. The results of these tests, which were compared to the July 7, 2011 x-ray tests, showed left shoulder sprain and left shoulder impingement syndrome. The April 27, 2012 x-ray report showed mild arthritic changes in the acromioclavicular joint, with slight downsloping of the acromial process which could contribute to impingement.

In a report dated July 26, 2012, received by OWCP on December 13, 2012, Dr. Jaime Sabogal, Board-certified in orthopedic surgery, related that appellant asserted that she had been experiencing left shoulder pain for several months; the pain increased with activity, especially overhead reaching. He diagnosed cervical radiculopathy, spondylo-arthropathy and sprain of the left shoulder and left upper arm. Dr. Sabogal stated that the results of x-ray testing indicated that appellant had impingement syndrome in her left shoulder.

In a November 29, 2012 report, received by OWCP on January 4, 2013, Dr. Sabogal reiterated that his initial examination on July 24, 2012 was consistent with left shoulder impingement syndrome. He administered a cortisone injection which provided temporary pain relief. Dr. Sabogal noted that appellant was seen in the emergencyroom on March 28, 2012, at which time she stated that she had sustained a left shoulder injury one hour earlier. Appellant had advised she went home from work on March 28, 2012. Dr. Sabogal opined that, due to the demands of her job, which entailed repetitive, constant physical work, appellant's inability to perform adequately with her right shoulder caused her to overuse her left shoulder while performing her work duties; this overuse caused the left shoulder to be more prone to injury and therefore simple tasks such as closing a cardoor resulted in severe pain. She concluded based on reasonable medical certainty that appellant had left shoulder impingement syndrome produced and aggravated by the demands of her job as a postal worker and that she required further treatment including cortisone injections, physical therapy and possibly surgery.

By decision dated January 29, 2013, an OWCP hearing representative found that appellant had established fact of injury. He found, however, that she failed to present medical evidence sufficient to establish that she sustained a left shoulder condition in the performance of duty.

LEGAL PRECEDENT

An occupational disease or illness means a condition produced by the work environment over a period longer than a single workday or shift.² To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of a disease or condition for which compensation is claimed; (2) a factual statement identifying the employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical opinion 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.³

The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.⁴

An award of compensation may not be based on surmise, conjecture or speculation. Neither, the fact that appellant's condition became apparent during a period of employment nor the belief that her condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.⁵ Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence.

ANALYSIS

In the instant case, appellant has failed to submit any medical opinion containing a rationalized, probative report which relates her claimed left shoulder condition to factors of her employment. For this reason, she has not discharged her burden of proof to establish her claim that this condition was sustained in the performance of duty.

Appellant submitted reports from Drs. Rench, Tinio, Grayson and Sabogal, who related appellant's complaints of left shoulder pain, stated findings on examination and provided diagnoses for her left shoulder condition. None of these physicians, however, provided a probative, rationalized medical opinion that the claimed conditions or disability were causally related to employment factors. Dr. Rench asserted in his March 29, 2012 report that appellant had a history of shoulder strains, including a nonwork-related left shoulder injury caused by closing a car door. He advised that she was experiencing sharp, severe pain in her left shoulder and that on examination she had effusion in her left shoulder in the acromion area and was unable to elevate her arm. Dr. Rench stated that appellant's left shoulder examination was normal except for soft tissue tenderness at the supraspinatus of the left shoulder. He diagnosed a

²20 C.F.R. § 10.5(q).

³*Solomon Polen*, 51 ECAB 341, 343-44 (2000).

⁴*See Joe T. Williams*, 44 ECAB 518, 521 (1993).

⁵*Id.*

sprained left shoulder and left upper arm sprain. In his July 2, 2012 report, Dr. Tinio stated that appellant experienced left arm and shoulder pain with elevation and rotation of the left shoulder and left arm; he diagnosed left shoulder arthralgia with a possible rotator cuff injury. He stated that she was required to frequently lift both arms while sorting mail and that repetitive movement of shoulders had increased inflammation, resulting in pain and limited range of motion. Dr. Tinio also opined, however, that nonemployment activities might have contributed to the injury. In her July 7, 2011 report, Dr. Grayson stated that appellant had been experiencing left shoulder discomfort for several weeks. She asserted that appellant worked at a job casing mail and had sustained no known injury and scheduled her for x-ray testing.

The opinions of these physicians are of limited probative value as they do not contain any medical rationale how or why appellant's claimed conditions were currently affected by or related to factors of employment.⁶ The weight of medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of physician's knowledge of the facts of the case, the medical history provided, the care of analysis manifested and the medical rationale expressed in support of stated conclusions.⁷ Drs. Rench, Tinio and Grayson did not sufficiently describe appellant's job duties or explain the medical process through which such duties would have been competent to cause the claimed conditions.

Appellant also submitted reports dated July 26 and November 29, 2012 from Dr. Sabogal, who advised that she had been experiencing left shoulder pain for several months, which increased with activity, especially overhead reaching. Dr. Sabogal diagnosed cervical radiculopathy, spondylo-arthropathy, sprain of the left shoulder and left upper arm and left shoulder impingement syndrome based on x-ray tests. In his November 29, 2012 report, he opined that, due to the repetitive nature of her job work, her limitations stemming from her right shoulder injury caused her to overuse her left shoulder while performing her work duties; this overuse caused the left shoulder to be more prone to injury and therefore a simple maneuver, such as closing a car door, resulted in severe pain. Dr. Sabogal concluded that her left shoulder impingement syndrome was caused and aggravated by the demands of her job as a postal worker.

Dr. Sabogal's opinion, however, is of limited probative value as it does not contain sufficient medical rationale explaining how appellant's job duties physiologically caused her claimed left shoulder conditions. In addition, he did not explain why her left shoulder symptoms were not due to long-term employment factors as opposed to the March 28, 2012 incident in which she injured her left shoulder while closing a car door, which was not work related. Dr. Sabogal's report thus did not constitute adequate medical evidence to establish that appellant's claimed left shoulder conditions were causally related to her employment.

Appellant also submitted several reports from nurses and physician's assistants. These reports, however, do not constitute medical evidence under section 8101(2). Because healthcare providers such as nurses, acupuncturists, physicians assistants and physical therapists are not

⁶*William C. Thomas*, 45 ECAB 591 (1994).

⁷*See Anna C. Leanza*, 48 ECAB 115 (1996).

considered “physicians” under FECA, their reports and opinions do not constitute competent medical evidence to establish a medical condition, disability or causal relationship.⁸

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant’s condition became apparent during a period of employment nor the belief that her condition was caused, precipitated or aggravated by her employment is sufficient to establish causal relationship.⁹ Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence.

OWCP advised appellant of the evidence required to establish her claim; however, she failed to submit such evidence. Consequently, appellant has not met her burden of proof in establishing that her claimed left shoulder condition was causally related to her employment.

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 failed to meet her burden of proof in establish that her claimed left shoulder condition was sustained in the performance of duty.

⁸ 5 U.S.C. § 8101(2); *see also* *G.G.*, 58 ECAB 389 (2007); *Jerre R. Rinehart*, 45 ECAB 518 (1994); *Barbara J. Williams*, 40 ECAB 649 (1989); *Jan A. White*, 34 ECAB 515 (1983).

⁹*Id.*

ORDER

IT IS HEREBY ORDERED THAT the January 29, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 10, 2013
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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