

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

_____)	
Y.F., Appellant)	
)	
and)	Docket No. 17-1187
)	Issued: June 5, 2018
DEPARTMENT OF VETERANS AFFAIRS,)	
VETERANS HEALTH ADMINISTRATION,)	
Columbia, SC, Employer)	
_____)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On May 9, 2017 appellant filed a timely appeal from an April 12, 2017 merit 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 the claim.²

ISSUE

The issue is whether appellant has met her burden of proof to establish a consequential left shoulder condition causally related to her accepted April 22, 2016 right shoulder condition.

¹ 5 U.S.C. § 8101 *et seq.*

² The record provided to the Board includes evidence received after OWCP issued its April 12, 2017 decision. The Board's jurisdiction is limited to the evidence that was before OWCP at the time of its final decision. Therefore, the Board is precluded from reviewing this additional evidence for the first time on appeal. 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

On April 25, 2016 appellant, then a 47-year-old nursing assistant, filed a traumatic injury claim (Form CA-1) alleging that, on April 22, 2016, a patient grabbed her right arm and yanked and pulled it with both hands. She experienced shooting pain in her right shoulder and arm. Appellant did not stop work. On July 13, 2016 OWCP accepted the claim for sprain of unspecified parts of the right shoulder girdle.

Dr. Guillaume Dumont, a Board-certified orthopedic surgeon, continued to submit progress reports regarding appellant's right shoulder condition. Appellant was treated conservatively and with cortisone injections. An August 16, 2016 magnetic resonance imaging (MRI) scan was reported as positive for a full thickness tear of the rotator cuff. In an October 27, 2016 report, Dr. Dumont diagnosed a right shoulder rotator cuff tear and biceps tendinitis.

In a Form CA-110 telephone memorandum of January 19, 2017, appellant indicated that she had problems with her left shoulder as a result of overuse due to favoring her right shoulder and sleeping on the left shoulder.

In a January 19, 2017 development letter, OWCP indicated that appellant had telephoned in on January 18, 2017 regarding a possible consequential injury. In order to substantiate her left shoulder claim, it requested that she submit additional factual and medical documentation, including a physician's well-rationalized opinion on the relationship between the accepted work injury and her left shoulder condition. Appellant was afforded 30 days to provide the requested information.

In response, appellant submitted an undated statement received February 23, 2017 describing her left shoulder condition and how she used it since her April 22, 2016 employment injury.

In a February 17, 2017 progress note, Dr. Dumont indicated that appellant was evaluated on February 3, 2017 for left shoulder pain. He noted that she was previously evaluated for rotator cuff tear of her right shoulder. Dr. Dumont opined that it "was possible that appellant's left shoulder pain was caused by overuse, but it was impossible to say with any degree of certainty." A diagnosis of impingement syndrome of left shoulder was provided.

Medical reports and diagnostic testing of the right shoulder were also provided.

By decision dated April 12, 2017, OWCP denied appellant's claim for a consequential left shoulder condition. It found that the medical evidence of record failed to provide an unequivocal, rationalized medical opinion that her left shoulder condition was caused by or consequentially related to her accepted right shoulder condition.

LEGAL PRECEDENT

The Board has held that if a member of the body weakened by an employment injury contributes to a later injury, the subsequent injury will be compensable as a consequential injury,

if the further medical complication flows from the compensable injury, so long as it is clear that the real operative factor is the progression of the compensable injury.³

A claimant bears the burden of proof to establish a claim for a consequential injury.⁴ As part of this burden, he or she must present rationalized medical opinion evidence establishing causal relationship.⁵ The opinion of the physician must be based on a complete factual and medical background of the employee, 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 or employment injury.⁶ 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.⁷

ANALYSIS

OWCP accepted that, on April 22, 2016, appellant sustained an employment-related right shoulder sprain. In a January 19, 2017 telephone call, appellant requested that the claim be expanded to include a consequential left shoulder condition.

The Board finds that appellant has not met her burden of proof to establish a left shoulder condition as a consequence of her accepted April 22, 2016 employment injury.

The only evidence pertaining to appellant's claimed left shoulder condition was Dr. Dumont's February 17, 2017 note, in which he diagnosed left shoulder impingement syndrome. Dr. Dumont noted appellant's right shoulder condition and opined that it "was possible that appellant's left shoulder pain was caused by overuse, but it was impossible to say with any degree of certainty." However, as this statement is equivocal, it is of diminished probative value.⁸ Additionally, Dr. Dumont did not provide a rationalized medical opinion as to how the diagnosed left shoulder condition was caused or a consequence of her accepted injury.⁹ Therefore, this report is insufficient to meet appellant's burden of proof.

Appellant has the burden of proof to establish a claim for consequential injury through the submission of rationalized medical opinion evidence. She has not submitted evidence from a

³ *R.M.*, Docket No. 16-0147 (issued June 17, 2016); *S.M.*, 58 ECAB 166 (2006); *Raymond A. Nester*, 50 ECAB 173, 175 (1998).

⁴ *J.A.*, Docket No. 12-0603 (issued October 10, 2012).

⁵ *L.B.*, Docket No. 16-0092 (issued March 24, 2016).

⁶ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

⁷ *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

⁸ Medical opinions that are speculative or equivocal in character are of diminished probative value. *D.D.*, 57 ECAB 734 (2006).

⁹ *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

physician who, based on an accurate factual history, found that she had a left shoulder condition as a consequence of her accepted right shoulder condition. Consequently, appellant has not met her burden of proof.

On appeal appellant asserts that she did not have any problems with her left shoulder prior to the April 22, 2016 work injury. She indicated that her left shoulder condition started after months of overusing it to compensate for her right shoulder. As previously discussed, appellant did not submit sufficiently rationalized medical evidence to establish that she sustained a left shoulder condition that was caused, aggravated, or a consequence of the accepted injury.

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 consequential left shoulder condition causally related to her accepted right shoulder condition.

ORDER

IT IS HEREBY ORDERED THAT the April 12, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 5, 2018
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

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

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