

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

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**F.M., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Fort Knox, KY, Employer**

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**Docket No. 17-1547  
Issued: November 2, 2018**

*Appearances:*

*Alan J. Shapiro, Esq., for the appellant<sup>1</sup>  
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  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On July 7, 2017 appellant, through counsel, filed a timely appeal from a June 14, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>3</sup>

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<sup>1</sup> In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

<sup>3</sup> Appellant submitted additional evidence to OWCP after the June 14, 2017 decision was issued. The Board's jurisdiction is limited to reviewing 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).

## ISSUE

The issue is whether appellant has met her burden of proof to establish right shoulder conditions causally related to the accepted December 9, 2015 employment incident.

## FACTUAL HISTORY

On December 21, 2015 appellant, then a 58-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that she injured her right shoulder while in the performance of duty on December 9, 2015. She attributed her right shoulder pain to “repetitive motion.” In a separate December 19, 2015 narrative statement, appellant indicated that, on December 9, 2015, when she extended her right arm to put two letters inside a mailbox, she felt pain in her upper arm as if she had been stung by a wasp or given a needle injection. She continued to work following the claimed December 9, 2015 employment incident.

In a December 16, 2015 report, Dr. Nison I. Abayev, a Board-certified family practitioner, noted complaints of right shoulder pain since a December 9, 2015 work-related injury. He noted that appellant had been doing repetitive motions for a long time and when she tried to lift her arm to put mail into the mailbox, she suddenly felt severe pain in her right shoulder. Since then, appellant had been having a difficult time utilizing her right shoulder. Her pain was mostly over the supraspinatus muscle. Dr. Abayev diagnosed right rotator cuff tendinitis and referred appellant for a right upper extremity magnetic resonance imaging (MRI) scan.

In a December 23, 2015 note, Dr. Abayev advised that appellant had been seen for an appointment that day and she should be excused from work for the period December 23, 2015 through January 3, 2016. He further advised that she could return to work on January 4, 2016.

In a December 29, 2015 claim development letter, OWCP sought clarification of the type of injury appellant was claiming. It explained the difference between a traumatic injury claim and an occupational disease claim and asked her to specify which she was claiming. OWCP also advised appellant of the need for additional medical evidence to support her claim for compensation benefits. It afforded her 30 days to submit the requested information.

In response to OWCP’s factual questionnaire, appellant clarified that she was claiming a traumatic injury, which occurred at approximately 1:00 p.m. on Wednesday, December 9, 2015. She reiterated that as she extended her right arm to place two letters in a customer’s mailbox, she felt like a wasp had stung her or as if she had received a shot in her upper arm. Appellant stated that she reported the incident when she returned to the employing establishment later that same day. She also indicated that she had no prior problems with her right shoulder or arm.

On December 23, 2015 Dr. Abayev diagnosed right rotator cuff syndrome and advised that appellant should have the rest of the year off.

In a December 23, 2015 duty status report (Form CA-17), Dr. Abayev advised that appellant needed to be taken off work until a right shoulder MRI scan was obtained.

In a January 5, 2016 report, Dr. Abayev continued to diagnose right rotator cuff syndrome and tendinitis. He advised that appellant was totally disabled from work for the period January 4

to 11, 2016, due to rotator cuff tendinitis and her return date was pending MRI scan results and referral to a surgeon.

In a January 5, 2016 duty status report (Form CA-17), Dr. Abayev reiterated that appellant needed a right shoulder MRI scan and was totally disabled for work until it was performed.

On January 14, 2016 the employing establishment issued an authorization for examination and/or treatment (Form CA-16), in which appellant was authorized to visit Dr. Abayev.

A January 19, 2016 right shoulder x-ray was negative as there was no acute fracture, no dislocation, and no significant degenerative change.

In a January 19, 2016 report, Dr. Abayev indicated that appellant continued to have difficulties using her right arm and asserted that since her x-rays were normal, an MRI scan would be scheduled to see if she had findings that could be treated conservatively either with injections and physical therapy or, if the injury were more complex, be referred to an orthopedic surgeon.

By decision dated February 2, 2016, OWCP accepted that the December 9, 2015 employment incident occurred as alleged and that a medical condition had been diagnosed. However, it denied appellant's traumatic injury claim because the medical evidence of record was insufficient to establish causal relationship. OWCP informed appellant that her treating physician had not explained how lifting her arm to place mail in a mailbox would have caused or aggravated her medical condition.

On March 2, 2016 appellant requested an oral hearing by a representative of OWCP's Branch of Hearings and Review.

A January 25, 2016 right shoulder MRI scan demonstrated a small, approximately 4x5 millimeter, full-thickness tear involving the anterior distal insertion of the supraspinatus tendon, mild acromioclavicular (AC) joint arthropathy, mild subacromial-subdeltoid bursal inflammation, and mild biceps tendinopathy.

On January 25, 2016 Dr. Abayev diagnosed right shoulder rotator cuff tear, other specific arthropathies of the right shoulder, right shoulder bursitis, and right shoulder bicipital tendinitis.

In a February 10, 2016 report, Dr. Abayev opined that appellant's lifting of her arm to insert mail into a mailbox and constant repetitive motions caused sequential injury to the supraspinatus tendon to the point that small partial ruptures continued to progress to the point of complete rupture. He further opined that this caused a sudden onset of worsening of the pain with loss of range of motion and traumatic pain.<sup>4</sup>

A telephonic hearing was held before an OWCP hearing representative on October 4, 2016. Appellant provided testimony and the hearing representative held the case record open for 30 days for the submission of additional evidence. OWCP did not receive any additional evidence.

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<sup>4</sup> Appellant retired from federal employment effective June 30, 2016.

By decision dated November 30, 2016, OWCP's hearing representative affirmed the prior decision.

On May 23, 2017 appellant, through counsel, requested reconsideration and submitted additional medical evidence.

In an October 6, 2016 report, Dr. Abayev noted that when he first examined appellant he felt she had rotator cuff tendinitis, but when she returned to him on December 23, 2015, her right shoulder MRI scan showed a supraspinatus tendon tear, so he took her off work. He referred appellant to an orthopedic surgeon who performed surgery on March 24, 2016. Dr. Abayev noted that, since her injury, appellant was having panic attacks and trouble sleeping.

On October 7, 2016 Dr. Kevin Harreld, an orthopedic surgeon, indicated that appellant was under his care regarding her previous right rotator cuff repair. He indicated that appellant's federal duties included casing mail, which required lifting her arm above shoulder level or to an overhead position, repeatedly pulling down mail, lifting and handling parcels, and extending her arm to open and close mailboxes. Dr. Harreld opined that appellant's federal duties "would contribute to her shoulder condition in a medically probable manner."

By decision dated June 14, 2017, OWCP denied modification of its prior decision.

### **LEGAL PRECEDENT**

A claimant seeking benefits under FECA<sup>5</sup> has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence, including that an injury was sustained in the performance of duty as alleged, and that any specific condition or disability claimed is causally related to the employment injury.<sup>6</sup>

To determine whether an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.<sup>7</sup> The second component is whether the employment incident caused a personal injury.<sup>8</sup> An employee may establish that an injury occurred in the performance of duty, as alleged, but fail to establish that the disability or specific condition for which compensation is being claimed is causally related to the injury.<sup>9</sup>

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<sup>5</sup> *Supra* note 2.

<sup>6</sup> 20 C.F.R. § 10.115(e), (f); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

<sup>7</sup> *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>8</sup> *John J. Carlone*, 41 ECAB 354 (1989).

<sup>9</sup> *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

Causal relationship is a medical question that generally requires rationalized medical opinion evidence to resolve the issue.<sup>10</sup> A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.<sup>11</sup> Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s).<sup>12</sup>

### ANALYSIS

The Board finds that appellant has not met her burden of proof to establish that her right shoulder conditions are causally related to the accepted December 9, 2015 employment incident. The January 25, 2016 MRI scan demonstrated a small full-thickness tear involving the anterior distal insertion of the supraspinatus tendon, mild AC joint arthropathy, mild subacromial-subdeltoid bursal inflammation, and mild biceps tendinopathy. The MRI scan report, however, fails to address the etiology of appellant's right shoulder conditions. Diagnostic studies are of limited probative value as they do not address whether the employment incident caused any of the diagnosed conditions.<sup>13</sup>

In an October 7, 2016 report, Dr. Harreld opined that appellant's federal duties "would contribute to her shoulder condition in a medically probable manner." The Board finds that Dr. Harreld's opinion regarding the cause of appellant's right shoulder condition is speculative and equivocal in nature.<sup>14</sup> Dr. Harreld did not otherwise sufficiently explain the reasons why diagnostic testing and examination findings led him to conclude that the December 9, 2015 incident at work caused or contributed to a diagnosed condition. For these reasons, the above-noted evidence is insufficient to satisfy appellant's burden of proof with respect to causal relationship.<sup>15</sup>

In his reports, Dr. Abayev diagnosed right shoulder rotator cuff syndrome, rotator cuff tear, other specific arthropathies, bursitis, and bicipital tendinitis. He noted that appellant had been performing repetitive motions with the right arm for a considerable period of time and when she tried to lift her arm to put mail into a mailbox, she suddenly felt severe pain in her right upper shoulder. Dr. Abayev opined that appellant's lifting of her arm to insert mail into a mailbox and constant repetitive motions caused sequential injury to the supraspinatus tendon to the point that small partial ruptures continued to progress to complete rupture. He further opined that this caused a sudden onset of worsening pain with loss of range of motion and traumatic pain. The Board

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<sup>10</sup> *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>11</sup> *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>12</sup> *Id.*

<sup>13</sup> *See J.S.*, Docket No. 17-1039 (issued October 6, 2017).

<sup>14</sup> Medical opinions that are speculative or equivocal in character are of little probative value. *See Kathy A. Kelley*, 55 ECAB 206 (2004).

<sup>15</sup> *See supra* notes 5-8.

finds that Dr. Abayev failed to provide sufficient medical rationale explaining how extending her right arm at work on December 9, 2015, either caused or contributed to appellant's conditions. Dr. Abayev opined that appellant's right shoulder conditions were causally related to the December 9, 2015 extending incident at work. However, the fact that a condition manifests itself during a period of employment is not sufficient to establish causal relationship.<sup>16</sup> Temporal relationship alone will not suffice.<sup>17</sup> A physician's opinion must be supported by medical rationale, explaining the nature of the relationship between the diagnosed conditions and appellant's specific employment incident.<sup>18</sup> Dr. Abayev's reports did not include sufficient medical rationale explaining how the December 9, 2015 extending incident either caused or contributed to appellant's conditions. For these reasons, the Board finds that the evidence from Dr. Abayev is insufficient to establish that appellant's diagnosed right shoulder conditions are causally related to the accepted December 9, 2015 work incident.

As appellant has not submitted any rationalized medical evidence to support her claim that she sustained a right shoulder injury causally related to the accepted December 9, 2015 employment incident, she has failed to meet her burden of proof to establish entitlement to compensation benefits.<sup>19</sup>

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 right shoulder conditions causally related to the accepted December 9, 2015 employment incident.

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<sup>16</sup> 20 C.F.R. § 10.115(e).

<sup>17</sup> *See D.I.*, 59 ECAB 158, 162 (2007).

<sup>18</sup> *Supra* note 11.

<sup>19</sup> The Board notes that the employing establishment issued appellant a Form CA-16 on January 14, 2016, authorizing medical treatment. The Board has held that where an employing establishment properly executes a Form CA-16, which authorizes medical treatment as a result of an employee's claim for an employment-related injury, it creates a contractual obligation, which does not involve the employee directly, to pay the cost of the examination or treatment regardless of the action taken on the claim. Although OWCP denied appellant's claim for an injury, it did not address whether she is entitled to reimbursement of medical expenses pursuant to the Form CA-16. *See* 20 C.F.R. §§ 10.300, 10.304; *D.M.*, Docket No. 13-535 (issued June 6, 2013).

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 14, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 2, 2018  
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board