



## ISSUE

The issue is whether appellant has met her burden of proof to expand the acceptance of her claim to include additional right shoulder conditions as causally related to her accepted employment injury.

## FACTUAL HISTORY

On February 19, 2014 appellant, then a 49-year-old transportation security officer, filed a traumatic injury claim (Form CA-1) alleging that on February 18, 2014 she sustained a right shoulder/clavicle injury when trying to remove a tool case that had triggered an alarm from a roller bag while in the performance of duty.<sup>4</sup> She began working modified duty on February 19, 2014.

In February 19, 2014 reports, Julie Lesko, a nurse practitioner, diagnosed an acromioclavicular joint/ligament sprain.

February 19, 2014 x-rays of the right shoulder demonstrated hypertrophic acromioclavicular changes without separation, fracture, or lesions.

In a March 4, 2014 report, Dr. Richard W. Blakey, a Board-certified orthopedic surgeon, noted appellant's symptoms of numbness, tingling, popping, and pain in the right shoulder following a February 18, 2014 employment incident when she pulled a tool case from a roller bag. On examination of the right shoulder he found slight weakness in external rotation, tenderness to palpation lateral to the acromion and over the biceps tendon, a positive biceps sign, and positive superior labrum from anterior to posterior tear sign. Dr. Blakey found that right shoulder x-rays did not demonstrate acromioclavicular asymmetry or glenohumeral arthritis. He assessed a possible bicipital injury rather than an acromioclavicular joint injury. In a separate report of even date, Dr. Blakey outlined work restrictions.

A March 15, 2014 magnetic resonance imaging (MRI) scan of the right shoulder interpreted by Dr. Eric Kraemer, a Board-certified diagnostic radiologist, demonstrated calcific tendinitis of the rotator cuff insertion with moderate surrounding tendinopathy, a possible small partial-thickness insertional supraspinatus tear, labral degeneration and fraying without tear of the biceps labral anchor, and significant lateral down-sloping and encroachment of the acromion.

In an April 1, 2014 report, Dr. Blakey opined that the March 15, 2014 MRI scan demonstrated calcific changes at the insertion of the rotator cuff with possible damage at the base of the biceps tendon competent to cause her pain symptoms. He administered a subacromial injection and renewed work restrictions.

OWCP received additional reports from Dr. Blakey dated from April 15 through June 3, 2014, noting significant improvement of appellant's symptoms following the subacromial

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<sup>4</sup> Under OWCP File No. xxxxxx035, OWCP paid limited medical expenses without formal adjudication for an October 8, 2008 right shoulder injury sustained when appellant caught her ankle in a strap and fell backward to the floor onto the right side of her body.

injection, indicating an intra-articular pathology. Dr. Blakey referred her for physical therapy and a functional capacity evaluation.<sup>5</sup>

On June 13, 2014 OWCP accepted the claim for right shoulder and upper arm sprain.

A July 7, 2014 OWCP-authorized functional capacity evaluation by Pam Fisher-Cohen, a registered/licensed occupational therapist, demonstrated that appellant could lift up to 40 pounds occasionally and up to 20 pounds repetitively, with crawling up to three hours, and reaching, handling, and fingering up to six hours a day.

In reports dated September 30, 2014 through March 4, 2015, Dr. Blakey noted significant improvement of right shoulder motion without tenderness. He returned appellant to full, unrestricted duty, effective January 6, 2015. Dr. Blakey released her from care regarding the right shoulder, effective March 4, 2015, as she was able to perform full-duty work without difficulty.

In reports from October 16, 2014 through April 8, 2015, Dr. Bruce E. Witmer, a Board-certified physiatrist, noted appellant's history of a February 18, 2014 occupational right shoulder injury, with new complaints of right scapular, shoulder and neck pain, and trigger points at the right cervical paraspinal base, right cervical paraspinal upper region, right levator scapulae, and right trapezius regions. He opined that her symptoms were "related to the nerve and inflammatory process from the disc and spine." Appellant's right shoulder pain was "more posterior in the musculature" than intra-articular. Dr. Witmer diagnosed cervical disc abnormalities, cervical radiculitis, and myalgia/myositis with trigger points. He explained that the occupational component "can be definitively stated as an acute inflammatory flare of a condition that has led to a myalgia with trigger points and radiculitis related to that inflammation." Dr. Witmer administered a series of trigger point injections. Beginning on February 24, 2015, appellant reported numbness and paresthesias in the right hand and forearm, with mild sensory loss to pinprick sensation on examination. Dr. Witmer then diagnosed cervical disc disease, cervical radiculopathy, and myalgia with no active trigger points. He referred appellant for physical therapy and electrodiagnostic studies. Dr. Witmer opined that she had attained maximum medical improvement without ratable findings as of May 8, 2015.

An October 11, 2019 MRI scan of the right shoulder interpreted by Dr. Shin Kim, a Board-certified radiologist, demonstrated a complete supraspinatus tendon tear with 1.3 cm retraction and mild muscle atrophy, subscapularis tendinosis without tear, a normal labrum, normal biceps tendon, labral complex, and pulley, moderate arthritic changes of the acromioclavicular joint with a small inferior spur, and a Type II acromion.

OWCP, in separate development letters dated March 11, 2020, noted that it had received medical evidence regarding possible consequential conditions of right supraspinatus and infraspinatus tendon tears, right subscapularis tendinosis, and moderate right acromioclavicular arthritic changes. It advised appellant that the most recent medical evidence submitted prior to the expansion request was dated May 8, 2015 and addressed a neck condition not accepted in the claim. Additionally, OWCP noted that on March 4, 2015 Dr. Blakey had released her from care for the accepted right shoulder condition. It requested that appellant provide a detailed description of the development of the newly-diagnosed right shoulder conditions, and a history of any relevant

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<sup>5</sup> Appellant participated in physical therapy treatments from April 24 through May 20, 2014.

injury. OWCP also provided a questionnaire for her and for her physician. It afforded appellant 30 days to respond.

In response, appellant, through counsel, provided an April 1, 2020 report by Dr. Jeffrey Webster, a Board-certified orthopedic surgeon, who began treating appellant on July 23, 2019. Dr. Webster noted the 2014 employment injury and Dr. Blakey's history of treatment. Appellant described the recurrence of right shoulder pain in April or May 2019 with radiation into the upper arm and restricted shoulder motion. Dr. Webster obtained x-rays, which demonstrated no significant arthritic or degenerative changes. He administered a right glenohumeral joint steroid injection on August 29, 2019 and prescribed home exercises. On September 26, 2019 appellant reported reduced pain symptoms after the injection, but that she continued to experience pain and discomfort with activities of daily living, such as when driving her car. Dr. Webster opined that, based on her continuing symptoms, she had sustained a rotator cuff tear. He obtained an October 15, 2019 MRI scan of the right shoulder, which demonstrated a medium-sized 1.3 cm full thickness supraspinatus and rotator cuff tendon tear. Dr. Webster administered a second glenohumeral injection on December 17, 2019 and recommended a right shoulder arthroscopy with debridement and rotator cuff repair. Appellant had not presented since the December 17, 2019 appointment. Dr. Webster diagnosed chronic degenerative right rotator cuff tendon tear. He opined that, while he was "unable to state with 100 [percent] accuracy that [appellant's] current diagnosis" was related to the 2014 employment injury, appellant's chronic pain since the 2014 injury suggested that it "certainly has something to do with the current diagnosis, but certainly [Dr. Webster could] not completely rule out the fact this may just be a truly degenerative rotator cuff tendon tear."

By decision dated July 20, 2020, OWCP denied expansion of the claim to include consequential right shoulder conditions as the medical evidence of record did not demonstrate that the weakness or impairment caused by the accepted injury had led to an aggravation of the original injury or a new injury.

On July 31, 2020 appellant, through counsel, requested a telephonic hearing with a representative of OWCP's Branch of Hearings and Review, which was held on October 16, 2020. Appellant testified that she had been terminated from the employing establishment in September 2015, and that she had not sustained any subsequent right upper extremity injuries.

By decision dated December 14, 2020, the hearing representative affirmed the July 20, 2020 decision, finding that the medical evidence of record was insufficiently rationalized to establish causal relationship between additional right shoulder conditions and the accepted employment injury.

On February 23, 2021 appellant, through counsel, requested reconsideration and submitted a December 16, 2020 report by Dr. Webster, who noted that appellant sustained a February 18, 2014 employment injury when she lifted a toolbox from luggage. Dr. Webster opined that her right shoulder pain was "the result of a mechanical overload" of the right rotator cuff tendon and muscle complex. He explained that the supraspinatus tendon tear demonstrated by March 15, 2014 MRI scan was "likely due to" the February 18, 2014 employment injury. Dr. Webster opined that the increased supraspinatus tear with retraction and atrophy observed when comparing the March 15, 2014 MRI scan with the October 11, 2019 MRI scan occurred because of "benign neglect" of the employment injury.

By decision dated April 20, 2021, OWCP denied modification of the December 14, 2020 decision, finding that Dr. Webster's December 16, 2020 report did not provide a clear, well-rationalized opinion regarding any causal relationship between the February 18, 2014 employment injury and the diagnosed supraspinatus tendon tear.

### **LEGAL PRECEDENT**

When an employee claims that, a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.<sup>6</sup>

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.<sup>7</sup> A physician's opinion on whether there is a causal relationship between the diagnosed condition and the accepted employment injury must be based on a complete factual and medical background.<sup>8</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 employment injury.<sup>9</sup>

### **ANALYSIS**

The Board finds that appellant has not met her burden of proof to expand the acceptance of her claim to include additional right shoulder conditions as causally related to the accepted employment injury.

Dr. Witmer provided reports dated October 16, 2014 through April 8, 2015 diagnosing an inflammatory condition of the right shoulder and cervical disc pathology affecting the right hand and forearm. These medical reports do not offer an opinion as to whether these diagnosed conditions were causally related to the accepted employment injury. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.<sup>10</sup> Thus, the Board finds that Dr. Witmer's reports are of no probative value on the issue of causal relationship and are insufficient to meet appellant's burden of proof.

In a March 4, 2014 report, Dr. Blakey noted appellant's symptoms of numbness, tingling, popping, and pain in the right shoulder following a February 18, 2014 employment incident when she pulled a tool case from a roller bag. On examination of the right shoulder he found slight weakness in external rotation, tenderness to palpation lateral to the acromion and over the biceps

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<sup>6</sup> *R.J.*, Docket No. 17-1365 (issued May 8, 2019); *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

<sup>7</sup> *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>8</sup> *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>9</sup> *Id.* See also *M.K.*, Docket No. 21-0520 (issued August 23, 2021).

<sup>10</sup> See *J.M.*, Docket No. 19-1926 (issued March 19, 2021); *L.D.*, Docket No. 20-0894 (issued January 26, 2021); *T.F.*, Docket No. 18-0447 (issued February 5, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

tendon, a positive biceps sign, and positive superior labrum from anterior to posterior tear sign. Dr. Blakely found that right shoulder x-rays did not demonstrate acromioclavicular asymmetry or glenohumeral arthritis. He assessed a possible bicipital injury rather than an acromioclavicular joint injury. In a separate report of even date, Dr. Blakey noted outlined work restrictions. On March 10, 2014 he referred appellant for an MRI scan of the right shoulder to rule out a rotator cuff tear. In an April 1, 2014 report, he opined that the March 15, 2014 MRI scan demonstrated calcific changes at the insertion of the rotator cuff with possible damage at the base of the biceps tendon competent to cause her pain symptoms. Dr. Blakey administered a subacromial injection and renewed work restrictions. OWCP received additional reports from Dr. Blakey dated from April 15 through June 3, 2014, noting significant improvement of appellant's symptoms following the subacromial injection, indicating an intra-articular pathology. Dr. Blakey referred her for physical therapy and a functional capacity evaluation. In reports dated September 30, 2014 through March 4, 2015, he noted significant improvement of right shoulder motion without tenderness. Dr. Blakey returned appellant to full, unrestricted duty. In none of these reports, however, did he provide an opinion on causal relationship between additional right shoulder conditions and the accepted employment injury. This evidence is, therefore, of no probative value and insufficient to establish expansion of the claim.<sup>11</sup>

In April 1 and December 16, 2020 reports, Dr. Webster noted the February 18, 2014 employment injury and subsequent treatment. He opined that appellant's right rotator cuff tear could be chronic and degenerative in nature, or "benign neglect" of the effects of the accepted February 18, 2014 right shoulder and upper arm sprain. As Dr. Webster's opinion is equivocal in nature, it is of diminished probative value and insufficient to establish expansion of the claim.<sup>12</sup>

OWCP received February 19, 2014 reports by Ms. Lesko, a nurse practitioner and a July 7, 2014 OWCP-authorized functional capacity evaluation by Ms. Fisher-Cohen, a registered/licensed occupational therapist. Certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered "physician[s]" as defined under FECA.<sup>13</sup> Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.<sup>14</sup>

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<sup>11</sup> *Id.*

<sup>12</sup> See *E.B.*, Docket No. 18-1060 (issued November 1 2018); *Leonard J. O Keefe*, 14 ECAB 42 (1962).

<sup>13</sup> Section 8101(2) provides that under FECA the term physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by the applicable state law. 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). See Federal (FECA) Procedure Manual, Part 2 - Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *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); see also *R.L.*, Docket No. 19-0440 (issued July 8, 2019) (nurse practitioners and physical therapists are not considered physicians under FECA); *T.D.*, Docket No. 21-0321 (issued July 13, 2021) (an occupational therapist is not considered a physician under FECA).

<sup>14</sup> *J.B.*, Docket No. 20-1566 (issued August 31, 2021); *D.P.*, Docket No. 19-1295 (issued March 16, 2020); *G.S.*, Docket No. 18-1696 (issued March 26, 2019); see *M.M.*, Docket No. 17-1641 (issued February 15, 2018); *K.J.*, Docket No. 16-1805 (issued February 23, 2018); *David P. Sawchuk, id.*

Appellant also submitted x-ray and MRI scan reports that addressed her right shoulder conditions. However, the Board has held that diagnostic studies and standing alone, lack probative value on the issue of causal relationship.<sup>15</sup>

As the medical evidence of record is insufficient to establish causal relationship between additional right shoulder conditions and the accepted employment injury, the Board finds that appellant 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 expand the acceptance of her claim to include additional right shoulder conditions as causally related to the accepted employment injury.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the April 20, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 23, 2021  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>15</sup> *C.H.*, Docket No. 20-0228 (issued October 7, 2020); *R.J.*, *supra* note 6; *E.G.*, Docket No. 17-1955 (issued September 10, 2018).