



## **FACTUAL HISTORY**

On September 21, 2021 appellant, then a 61-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that on September 11, 2021 at 2:00 a.m. he sustained a left upper arm injury when repetitively lifting parcels while in the performance of duty.<sup>3</sup> He stopped work on the date of injury. On the reverse side of the Form CA-1, appellant's supervisor, J.G., contended that appellant was not in the performance of duty at the time of the alleged injury because he was not scheduled to work on the designated date or at the designated time of injury.

In a statement dated September 11, 2021, appellant indicated that on September 10, 2021 he was given a truck assignment. The next day, his left arm was sore and painful, and he was unable to extend it fully. Appellant reported this injury to his supervisor on September 11, 2021.

On September 13, 2021 Dr. Michael Plokamakis, a Board-certified internist, diagnosed acute tendinitis and a pulled muscle in the arm. He excused appellant from work while he was undergoing treatment and recovering from the injury.

In a September 22, 2021 letter, K.F., an employing establishment workers' compensation specialist, challenged appellant's claim, asserting that on September 11, 2021 at 2:00 a.m., when the injury allegedly occurred, appellant was not working at the employing establishment and was not authorized to work at any employing establishment property. K.F. noted that payroll records did not support that appellant worked on September 11, 2021 at 2:00 a.m.

In a development letter dated October 1, 2021, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of evidence necessary to establish his claim and provided a questionnaire for his completion. OWCP afforded appellant 30 days to respond.

OWCP subsequently received a September 24, 2021 report, wherein Dr. Joseph N. Charles, a Board-certified pediatrician, noted treating appellant for left shoulder pain. Appellant reported lifting and delivering parcels weighing up to 70 pounds when he injured his left shoulder. Dr. Charles diagnosed strain of the muscle of the left shoulder and sprain of the left shoulder. He opined that, based on appellant's history and physical examination, to a reasonable degree of medical certainty, appellant's injuries were causally related to the above-noted incident. Dr. Charles also found that appellant was totally disabled from work.

In an October 1, 2021 note, Dr. Charles opined that appellant remained totally disabled from work. He indicated that appellant reported pain when sitting more than 30 minutes that he was limited in pushing, pulling, and lifting heavy objects; and that he had difficulty reaching in all directions due to limited range of motion of his shoulder.

In an undated statement, appellant indicated that on September 11, 2021 he reported to work for a tour of duty from 11:00 a.m. to 3:00 p.m. He explained that on September 10, 2021 he delivered parcels by truck, and, after his tour, his arm and shoulder were very painful and sore to the extent that he could not fully extend his left arm. Appellant reported informing his supervisor, J.G., of the incident who instructed him not to clock in and indicated that she would file a workers'

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<sup>3</sup> K.F., an occupational health processing specialist, signed the Form CA-1 on behalf of appellant.

compensation claim on his behalf using a Form CA-1. He asserted that he was claiming an occupational disease and a Form CA-2 should have been filed instead.

On October 7, 2021 Dr. William King, a Board-certified orthopedist, treated appellant for left shoulder and left elbow pain. Appellant reported working as a delivery man and on September 11, 2021, while lifting parcels, he injured his left shoulder and elbow. He noted physical therapy provided only temporary relief of symptoms and opined that he remained totally disabled from work. Appellant reported experiencing chronic pain that affected his activities of daily life. On examination of the left shoulder Dr. King noted tenderness upon palpation over the acromioclavicular (AC) joint and supraspinatus and limited range of motion. With regard to the left elbow, he noted tenderness on palpation over the medial epicondyle and limited range of motion. Dr. King diagnosed left shoulder and left elbow derangement. Dr. King opined that appellant's current pain symptoms were a direct result of the accident that occurred on September 11, 2021.

In a form report dated October 19, 2021, Dr. King diagnosed left shoulder derangement and left elbow derangement. Appellant reported lifting parcels at work when he injured his left shoulder and elbow. Dr. King recommended physical therapy and advised that appellant was totally disabled. On November 2, 2021 he recommended a left shoulder arthroscopy and noted that appellant remained totally disabled.

A magnetic resonance imaging (MRI) scan of the left shoulder dated October 12, 2021 demonstrated impingement morphology, mild-to-moderate degree superior labrum anterior posterior (SLAP) tear without involvement of the biceps anchor, and subchondral cyst involving the humeral head.

By decision dated November 4, 2021, OWCP denied appellant's traumatic injury claim, finding that the factual evidence of record was insufficient to establish that the employment incident occurred as described. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA has the burden of proof to establish 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 of FECA,<sup>4</sup> that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related

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<sup>4</sup> *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

to the employment injury.<sup>5</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>6</sup>

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (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 condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the identified employment factors.<sup>7</sup>

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.<sup>8</sup> A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.<sup>9</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>10</sup>

### ANALYSIS

The Board finds that this case is not in posture for a decision.

Appellant initially filed a Form CA-1 alleging a September 11, 2021 traumatic injury arising from his employment duties involving repetitively lifting parcels with his left arm. In an accompanying narrative statement, he alleged that his injury was due to delivering parcels by truck on September 10, 2021. In response to OWCP's development letter, however, appellant explained that on September 10, 2021 he delivered parcels by truck, and after his tour, his left arm and shoulder were very painful to the extent that he could not fully extend his left arm. Appellant reported informing his supervisor, J.G., of the incident who instructed him not to clock in and indicated that she would file a workers' compensation claim on his behalf using a Form CA-1. He subsequently asserted that he was claiming an occupational disease and that a Form CA-2 should have been filed instead.

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<sup>5</sup> *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>6</sup> *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>7</sup> *R.G.*, Docket No. 19-0233 (issued July 16, 2019). *See also* *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>8</sup> *T.H.*, 59 ECAB 388, 393 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>9</sup> *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

<sup>10</sup> *Victor J. Woodhams*, *supra* note 7.

A traumatic injury is defined as a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift.<sup>11</sup> An occupational disease is defined as a condition produced by the work environment over a period longer than a single workday or shift.<sup>12</sup> It is the duty of the claims examiner to develop a claim based on the facts at hand and not solely on the basis of the type of claim form filed.<sup>13</sup> OWCP's procedures provide that if the actual benefits claimed by the claimant cannot be determined from review of the form, OWCP should develop the claim based upon the claim form filed and direct questions to the claimant to determine the type of benefits claimed. Based upon the response to the development letter, it should make a determination as to whether the correct claim was established and, if not, it should convert the claim to the proper type of claim, and notify the claimant and employing establishment (and any representative, if applicable) of the conversion.<sup>14</sup>

As appellant indicated in his response to OWCP's development letter that he in fact intended to file an occupational disease claim, the case must be remanded to OWCP to determine whether the correct claim was established and, if not, it should convert the claim to the proper type of claim, and notify the claimant and employing establishment (and any representative, if applicable) of the conversion.<sup>15</sup> After this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.<sup>16</sup>

### CONCLUSION

The Board finds that this case is not in posture for decision.

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<sup>11</sup> 20 C.F.R. § 10.5(ee).

<sup>12</sup> *Id.* at § 10.5(q).

<sup>13</sup> *Id.*

<sup>14</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Development of Claims*, Chapter 2.800.3(c)(2)(b) (June 2011). *S.N.*, Docket No. 12-1814 (issued March 11, 2013).

<sup>15</sup> *Id.*

<sup>16</sup> *See Y.M.*, Docket No. 19-1445 (issued May 6, 2020).

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 4, 2021 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: December 2, 2022  
Washington, DC

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

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

James D. McGinley, Alternate Judge  
Employees' Compensation Appeals Board