

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

I.S., Appellant	)	
	)	
and	)	<b>Docket No. 22-1210</b>
	)	<b>Issued: December 29, 2022</b>
U.S. POSTAL SERVICE, NEW JERSEY	)	
INTERNATIONAL & NATIONAL	)	
DISTRIBUTION CENTER, Jersey City, NJ,	)	
Employer	)	
	)	

*Appearances:*  
James D. Muirhead, Esq., for the appellant<sup>1</sup>  
Office of Solicitor, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
JANICE B. ASKIN, Judge

**JURISDICTION**

On August 15, 2022 appellant filed a timely appeal from a June 9, 2022 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.

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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.*

## ISSUE

The issue is whether appellant has met her burden of proof to establish a right shoulder condition causally related to the accepted December 14, 2019 employment incident.

## FACTUAL HISTORY

On December 14, 2019 appellant, then a 56-year-old clerk, filed a traumatic injury claim (Form CA-1) alleging that on December 14, 2019 she injured her right shoulder while in the performance of duty. She stopped work on that date.

In a report dated December 20, 2019, Judith Valera, a physician assistant, noted that appellant related a sudden onset of right shoulder pain while working on December 14, 2019. She performed a physical examination of the right shoulder, which revealed pain in the acromioclavicular (AC) joint and deltoid region. Ms. Valera diagnosed right shoulder pain and ordered an x-ray of the right shoulder.

In a note dated December 20, 2019, a healthcare provider with an illegible signature recommended that appellant remain off work from December 14 through 29, 2019 due to pain in the right shoulder.

In a note dated December 26, 2019, Dr. Anthony I. Parks, a Board-certified orthopedic surgeon, diagnosed right shoulder rotator cuff impingement and recommended that appellant remain off work pending a magnetic resonance imaging (MRI) scan.

A report of x-rays of the right shoulder dated December 27, 2019 revealed mild AC joint and glenohumeral joint arthropathy.

In an attending physician's report (Form CA-20) dated January 9, 2020, Dr. Parks diagnosed right shoulder pain and impingement. He checked a box marked "Yes" indicating that the conditions were caused or aggravated by an employment activity.

In a January 16, 2020 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence required and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence.

OWCP thereafter received two undated statements by appellant, who indicated that on December 14, 2019 she was throwing packages overhead continuously into all-purpose containers (APCs). Appellant noted the packages weighed between 5 and 50 pounds. After filling five APCs, she felt pain in her right shoulder.

Dr. Parks, in a report dated December 26, 2019, noted that appellant related complaints of right shoulder pain, which she attributed to repetitively lifting boxes above shoulder height weighing more than 50 pounds each on December 14, 2019. He performed a physical examination of the right shoulder, which revealed impingement and reduced range of motion and strength due to pain. Dr. Parks diagnosed right rotator cuff impingement syndrome and administered an injection to the right shoulder.

In a report dated January 6, 2020, Dr. Parks noted that appellant continued to report pain in the right shoulder, which was exacerbated by lifting and movement. He diagnosed rotator cuff impingement syndrome of the right shoulder. In a Form CA-20 of even date, Dr. Parks checked a box marked “Yes” indicating that appellant’s condition was caused or aggravated by an employment activity.

In a report dated January 16, 2020, Dr. Jonathan Gamss, a Board-certified internal and emergency medicine specialist, noted that appellant related a history of intermittent right shoulder pain since December 14, 2019, which had worsened the previous night. He performed a physical examination, which revealed tenderness over the rotator cuff area.

In CA-20 forms dated January 5 and 29 and February 5 and 19, 2020, Dr. Parks diagnosed work-related right shoulder pain and impingement.

By decision dated February 19, 2020, OWCP denied appellant’s claim, finding that the evidence of record was insufficient to establish a causal relationship between her diagnosed right shoulder conditions and the accepted December 14, 2019 employment incident.

On March 12, 2020 appellant, through counsel, requested a telephonic hearing before a representative of OWCP’s Branch of Hearings and Review.

OWCP thereafter received additional nursing and triage notes associated with appellant’s January 16, 2020 emergency room visit.

A hearing was held on June 11, 2020, during which appellant testified that she had no prior problems with her right shoulder. Appellant indicated that she was handling an increased number of packages due to the Christmas holiday season and was constantly throwing packages overhead ranging from 5 to 50 pounds. She noted that she threw approximately six boxes that weighed 50 pounds and started to feel a pinch in her shoulder, followed by pain.

By decision dated August 19, 2020, the hearing representative affirmed OWCP’s February 19, 2020 decision.

In a March 15, 2021 permanent impairment evaluation report, Dr. Albert Johnson, a Board-certified orthopedic surgeon, noted that appellant related complaints of right shoulder pain and stiffness due to lifting and throwing boxes weighing up to 50 pounds at work on December 14, 2019. He reviewed the December 27, 2019 x-rays and a March 3, 2020 MRI scan of the right shoulder, which he found revealed degenerative changes of the AC and glenohumeral joints, thickening of the inferior glenohumeral ligament suggesting adhesive capsulitis, degeneration of the glenoid labrum with posterior superior tear, tendinosis, and an interstitial tear of the supraspinatus with bursitis in the subacromial region. Dr. Johnson performed a physical examination and documented tenderness over the right AC joint and bicipital groove and reduced range of motion. He diagnosed post-traumatic sprain/strain syndrome of the right shoulder, aggravation of underlying quiescent AC and glenohumeral arthropathy, interstitial tear of the supraspinatus with rotator cuff tendinosis and bursitis in the subacromial bursa, and aggravation of degenerated glenoid labrum with a tear in the posterosuperior margin. Dr. Johnson opined that the December 14, 2019 employment injury caused the diagnosed conditions and provided an

impairment rating of 18 percent of the right upper extremity under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).<sup>3</sup>

On June 9, 2021 appellant, through counsel, requested reconsideration of OWCP's August 19, 2020 decision. In support thereof, counsel submitted a May 24, 2021 narrative report by Dr. Johnson, who indicated that he had reviewed appellant's March 15, 2021 evaluation and various letters from counsel. Dr. Johnson noted that, based upon a review of medical literature, the AC joint can be injured by repetitive overload resulting in either degeneration or osteolysis of the clavicle and that awkward postures of the shoulder, such as 60 degrees of flexion, are considered occupational risk factors for shoulder pathology. He also noted that repeating the same shoulder motions can stress the rotator cuff muscles and tendons and lead to overuse tears. Dr. Johnson opined that the December 14, 2019 employment injury caused an aggravation of preexisting underlying quiescent AC and glenohumeral arthropathies and an aggravation of the degenerated labrum. He explained that repetitively reaching overhead and throwing packages "can certainly cause impingement leading to the rotator cuff tendinopathy found on [appellant's] MRI." Dr. Johnson further explained that preexisting age-related osteoarthritis in the AC joint resulted in less space in the area, which caused a greater probability of shoulder tendinopathy with shoulder elevation.

By decision dated August 31, 2021, OWCP denied modification of the August 19, 2020 decision.

On October 25, 2021 appellant, through counsel, requested reconsideration of the August 31, 2021 decision. In support thereof, counsel submitted an October 6, 2021 narrative report by Dr. Johnson, who opined that repetitive overhead activity caused impingement of the rotator cuff, which led to a rotator cuff tear and a posterior labral tear. Dr. Johnson explained that repetitive overhead activity was directly responsible for the tear of the supraspinatus and labrum as well as aggravation of underlying right shoulder arthropathy.

By decision dated June 9, 2022, OWCP denied modification of its August 31, 2021 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>4</sup> has the burden of proof to establish the essential elements of his or her claim, including 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 of FECA,<sup>5</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 to the

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<sup>3</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

<sup>4</sup> *Supra* note 2.

<sup>5</sup> *F.H.*, Docket No.18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

employment injury.<sup>6</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>7</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. The first component is that the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time and place, and in the manner alleged. The second component is whether the employment incident caused a personal injury and can be established only by medical evidence.<sup>8</sup>

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.<sup>9</sup> A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment incident must be based on a complete factual and medical background.<sup>10</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 incident.<sup>11</sup>

In any case where a preexisting condition involving the same part of the body is present and the issue of causal relationship, therefore, involves aggravation, acceleration or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.<sup>12</sup>

### ANALYSIS

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

In his May 24, 2021 narrative report, Dr. Johnson opined that the December 14, 2019 employment injury caused an aggravation of preexisting underlying quiescent AC and glenohumeral arthropathies and an aggravation of the degenerated labrum. He explained that repetitively reaching overhead and throwing packages can certainly cause impingement leading to

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<sup>6</sup> *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>7</sup> *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>8</sup> *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>9</sup> *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>10</sup> *C.F.*, Docket No. 18-0791 (issued February 26, 2019); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

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

<sup>12</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); *M.B.*, Docket No. 20-1275 (issued January 29, 2021); *see R.D.*, Docket No. 18-1551 (issued March 1, 2019).

the rotator cuff tendinopathy found on appellant's MRI scan. Dr. Johnson further explained that preexisting age-related osteoarthritis in the AC joint resulted in less space in the area, which caused a greater probability of shoulder tendinopathy with shoulder elevation. In his October 6, 2021 narrative report, he clarified that repetitive overhead activity caused impingement of the rotator cuff, which led to a rotator cuff tear and a posterior labral tear. Dr. Johnson explained that repetitive overhead activity was directly responsible for the tear of the supraspinatus and labrum as well as aggravation of underlying right shoulder arthropathy. It is well established that proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter.<sup>13</sup> While appellant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.<sup>14</sup> OWCP has an obligation to see that justice is done.<sup>15</sup>

The Board finds that Dr. Johnson's opinion, while not fully rationalized, is sufficient to require further development of the case record by OWCP as it provides a pathophysiological explanation as to how the accepted December 14, 2019 employment incident caused or contributed to appellant's diagnosed condition(s).<sup>16</sup>

The Board will, therefore, remand the case for further development of the medical evidence. On remand OWCP shall prepare a statement of accepted facts and obtain a rationalized opinion from a physician in the appropriate field of medicine as to whether the accepted employment incident caused, contributed to, or aggravated the diagnosed right shoulder conditions.<sup>17</sup> If the physician opines that the diagnosed conditions are not causally related, he or she must explain with rationale how or why their opinion differs from that of Dr. Johnson. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

### CONCLUSION

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

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<sup>13</sup> *M.T.*, Docket No. 19-0373 (issued August 22, 2019); *B.A.*, Docket No. 17-1360 (issued January 10, 2018).

<sup>14</sup> *See M.M.*, Docket No. 22-0637 (issued November 30, 2022); *A.P.*, Docket No. 17-0813 (issued January 3, 2018); *Jimmy A. Hammons*, 51 ECAB 219, 223 (1999).

<sup>15</sup> *See M.M., id.*; *B.C.*, Docket No. 15-1853 (issued January 19, 2016); *E.J.*, Docket No. 09-1481 (issued February 19, 2010); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>16</sup> *M.S.*, Docket No. 20-1095 (issued March 29, 2022); *B.F.*, Docket No. 20-0990 (issued January 13, 2021); *Y.D.*, Docket No. 19-1200 (issued April 6, 2020).

<sup>17</sup> *C.G.*, Docket No. 20-1121 (issued February 11, 2021); *A.G.*, Docket No. 20-0454 (issued October 29, 2020).

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 9, 2022 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 29, 2022  
Washington, DC

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

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board