

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

G.F., Appellant	)	
	)	
and	)	Docket No. 23-0114
	)	Issued: May 12, 2023
U.S. POSTAL SERVICE, COOS BAY POST	)	
OFFICE, Coos Bay, OR, Employer	)	
	)	

*Appearances:* *Case Submitted on the Record*  
*Alan J. Shapiro, Esq., for the appellant*<sup>1</sup>  
*Office of Solicitor, for the Director*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On November 1, 2022 appellant, through counsel, filed a timely appeal from an October 18, 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 medical condition causally related to the accepted November 22, 2021 employment incident.

## FACTUAL HISTORY

On December 7, 2021 appellant, then a 55-year-old rural carrier associate, filed a traumatic injury claim (Form CA-1) alleging that on November 22, 2021 she sustained injuries to her right shoulder, upper arm, and trapezius when delivering mail while in the performance of duty. She stopped work on November 29, 2021.

In support of her claim, appellant submitted a November 29, 2021 after-visit summary by Kamara Dodd, a nurse practitioner, who diagnosed an overuse injury of the right deltoid, repetitive strain injury, and sprains and strains of the right shoulder, upper arm, and cervical portion of the right trapezius muscle. Ms. Dodd recommended a muscle relaxer and conservative treatment. In a separate letter of even date, she held appellant off work until December 6, 2021.

A report of x-rays of the right shoulder dated December 6, 2021 revealed calcification near the insertion of the supraspinatus tendon, but no significant osteoarthritic change.

In an after-visit summary, also dated December 6, 2021, Ms. Dodd noted that appellant related severe pain and limited range of motion, which she attributed to carrying and loading heavy packages on a daily basis at work. She reviewed the x-ray results and diagnosed strain and sprain of the right shoulder, sprain of the right upper arm and trapezius muscle, a repetitive strain injury, calcium deposits in tendon, and impingement syndrome of shoulder. Ms. Dodd administered a trigger point injection to the right shoulder. In a December 6, 2021 letter, she held appellant off work until December 9, 2021, followed by a return to light-duty work with no lifting over 10 pounds with the right arm for 30 days.

In a December 16, 2021 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence.

OWCP thereafter received a November 29, 2021 report by Ms. Dodd, who noted that appellant related right deltoid and acromioclavicular (AC) joint pain since July 2021 when she tripped over her dog and fell into her nightstand. Ms. Dodd indicated that appellant's pain had become more severe during the past week due to her work duties. She performed a physical examination, which revealed pain with palpation of the anterior deltoid muscle, pain with extension and forward flexion of the deltoid muscle, and tenderness over the right trapezius muscle. Ms. Dodd diagnosed an overuse injury of the right deltoid and held appellant off work for seven days.

In a progress note of November 29, 2021, Leslie Eberhardt, a nurse, indicated that appellant related complaints of worsening right shoulder pain for the past week and that her shoulder popped while she was washing her hair the day before.

In a December 6, 2021 progress note, Kelle Takis, a registered nurse, noted that appellant related complaints of worsening pain and range of motion in the right shoulder with a grinding sensation. She further asserted that medications had not alleviated her symptoms.

In a statement dated December 21, 2021, appellant recounted that her first day of work was October 21, 2021, and her job duties included delivering packages on a route and coming in early to throw packages. She related that prior to November 22, 2021, she worked 13 days in a row, 10 to 15 hours per day. On November 22, 2021 appellant felt a sharp pain in her right shoulder while opening and closing a mailbox. She continued working using her left arm and did not immediately report her injury due to fear of being terminated while on probation. Appellant related that she had trouble sleeping that night due to right shoulder pain, and the pain intensified as she continued to work for the next seven days. She noted that she sought treatment on November 29, 2021 and was off from work until December 6, 2021, but her symptoms did not improve.

By decision dated January 19, 2022, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish a medical diagnosis by a qualified physician in connection with the accepted November 22, 2021 employment incident. Consequently, it found that the requirements had not been met to establish an injury as defined by FECA.

OWCP continued to receive evidence. A February 21, 2022 report of x-rays of the pelvis and bilateral hips noted a history of a fall. No acute fractures were identified.

In a note dated June 17, 2022, Dr. Jason S. Bell, a Board-certified orthopedic surgeon, released appellant to return to modified-duty work effective July 18, 2022 with no use of the right arm. He anticipated a return to full-duty work on September 15, 2022.

On July 6, 2022 appellant, through counsel, requested reconsideration of OWCP's January 19, 2022 decision and submitted additional medical evidence.

In a February 18, 2022 medical report, Dr. Bell noted that appellant related pain, grinding, numbness, and tingling in the right shoulder, which she attributed to a forced extension injury to the right shoulder while working in November 2021. He also related complaints of unrelated right hip pain due to a recent trip and fall injury. Dr. Bell performed an examination of the right shoulder, which revealed pain with palpation throughout the entire shoulder girdle, significant guarding during range of motion testing, reduced effort during strength testing due to discomfort, and diminished sensation in the middle, ring, and index fingers of the right hand. He reviewed x-rays of the right shoulder and diagnosed impingement syndrome, calcific tendinitis, incomplete rotator cuff tear, and concern for adhesive capsulitis in the right shoulder. Dr. Bell recommended a magnetic resonance imaging (MRI) scan of the right shoulder.

A report of an MRI scan of the right shoulder dated March 11, 2022 revealed a focal, full-thickness tear of the anterior most supraspinatus tendon fibers with minimal retraction and moderate right AC joint degenerative hypertrophy.

In a follow-up report dated March 14, 2022, Dr. Bell reviewed the MRI scan results, performed a physical examination, and recommended arthroscopic surgery.

In an operative report dated May 5, 2022, Dr. Bell noted that he performed right shoulder arthroscopy with a rotator cuff repair and biceps tenodesis. He further noted pre- and postoperative diagnoses of right shoulder early arthritic changes, rotator cuff tear, and biceps tendinitis.

In a follow-up report dated May 18, 2022, Dr. Bell noted that appellant's skin was healed and her sensation was intact. He diagnosed impingement syndrome, calcific tendinitis, complete rotator cuff tear, and bicipital tendinitis of the right shoulder. Dr. Bell indicated that the complete rotator cuff tear "was not specified as traumatic." He recommended physical therapy.

In a July 14, 2022 letter, Dr. Bell concluded that appellant could return to modified-duty work effective July 18, 2022 with restrictions of no use of the right arm and no delivering mail. He recommended that she work inside the office with her left arm only. Dr. Bell continued to hold appellant off full-duty, unrestricted work until September 15, 2022.

OWCP also received evidence from Kimberly Kyllö-Martin and Ashley Merz, both nurse practitioners, for dates of service from January 17 through July 8, 2022, which contained diagnoses of fibromyalgia, right shoulder pain, bilateral hip pain, menopause, and anxiety.

By decision dated October 18, 2022, OWCP modified its January 19, 2022 decision, finding that appellant had submitted sufficient evidence to establish diagnoses of impingement syndrome, calcific tendinitis, complete rotator cuff tear or rupture, and bicipital tendinitis of the right shoulder. However, appellant's claim remained denied as she had not submitted rationalized medical evidence to establish that the accepted November 22, 2021 employment incident caused or aggravated her diagnosed conditions.

### **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,<sup>3</sup> that the claim was timely filed within the applicable time limitation period of FECA, 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 employment injury.<sup>4</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>5</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

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<sup>3</sup> *K.R.*, Docket No. 20-0995 (issued January 29, 2021); *A.W.*, Docket No. 19-0327 (issued July 19, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>4</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>5</sup> *J.B.*, Docket No. 20-1566 (issued August 31, 2021); *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).

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>6</sup>

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.<sup>7</sup> 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 incident identified by the employee.<sup>8</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>9</sup>

### ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a medical condition causally related to the accepted November 22, 2021 employment incident.

In support of her claim, appellant submitted a February 18, 2022 medical report by Dr. Bell, who noted that appellant related pain, grinding, numbness, and tingling in the right shoulder, which she attributed to a forced extension injury to the right shoulder while working in November 2021. He diagnosed impingement syndrome, calcific tendinitis, incomplete rotator cuff tear, and concern for adhesive capsulitis in the right shoulder. While Dr. Bell noted that appellant indicated her symptoms occurred while she was working in November 2021, he failed to document a specific mechanism of injury or make an independent finding regarding causation.<sup>10</sup> The Board has held that a medical report that does not offer an opinion on causal relationship is of no probative value and, thus, is insufficient to establish the claim.<sup>11</sup> In addition, without providing an

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<sup>6</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>7</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>8</sup> *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>9</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); *R.D.*, Docket No. 18-1551 (issued March 1, 2019).

<sup>10</sup> *K.R.*, Docket No. 19-1452 (issued June 29, 2020); *T.S.*, Docket No. 18-1501 (issued March 4, 2019).

<sup>11</sup> *T.D.*, Docket No. 19-1779 (issued March 9, 2021); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018); *Charles H. Tomaszewski*, 39 ECAB 461 (1988).

independent opinion explaining how the accepted employment incident caused or contributed to the diagnosed condition, Dr. Bell's February 18, 2022 medical report is of little probative value.<sup>12</sup>

In his reports and letters dated March 14, May 5, June 17, and July 14, 2022, Dr. Bell discussed appellant's right shoulder surgery and work capabilities and diagnosed impingement syndrome, calcific tendinitis, complete rotator cuff tear, and bicipital tendinitis of the right shoulder. He did not, however, offer an opinion as to the cause of the diagnosed conditions. As noted above, a medical report which does not render an opinion on causal relationship is of no probative value and, thus, these reports are also insufficient to establish the claim.<sup>13</sup>

OWCP also received reports and letters from Ms. Dodd, Ms. Kylo-Martin, and Ms. Merz, all nurse practitioners, and Ms. Eberhardt and Ms. Takis, both registered nurses. Certain healthcare providers such as physician assistants, nurse practitioners, and physical therapists are not considered qualified physicians as defined under FECA.<sup>14</sup> Their medical findings, reports and/or opinions, unless cosigned by a qualified physician, will not suffice for purposes of establishing entitlement to FECA benefits.<sup>15</sup> As these reports were not cosigned by a physician, they are of no probative value and, thus, insufficient to establish appellant's claim.<sup>16</sup>

The remainder of the evidence of record consists of diagnostic study reports. The Board has held that diagnostic studies, standing alone, lack probative value on the issue of causal relationship as they do not address whether the accepted employment injury caused any of the additional diagnosed conditions.<sup>17</sup>

As appellant has not submitted rationalized medical evidence to establish a medical condition causally related to the accepted November 22, 2021 employment incident, the Board finds that she 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.

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<sup>12</sup> See *A.B.*, Docket No. 18-0577 (issued October 10, 2018).

<sup>13</sup> *Supra* note 11.

<sup>14</sup> Section 8101(2) of FECA provides that physician "includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law." 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). See also *supra* note 9 at Chapter 2.805.3a(1) (January 2013 *E.P.*, Docket No. 22-0606 (issued March 23, 2023) (registered nurses are not considered physicians as defined under FECA); *J.D.*, Docket No. 21-0164 (issued June 15, 2021) (nurse practitioners are not physicians as defined under FECA); *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).

<sup>15</sup> See *K.A.*, Docket No. 18-0999 (issued October 4, 2019); *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, *id.*

<sup>16</sup> *Supra* note 14.

<sup>17</sup> *F.D.*, Docket No. 19-0932 (issued October 3, 2019); *J.S.*, Docket No. 17-1039 (issued October 6, 2017).

**CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish a medical condition causally related to the accepted November 22, 2021 employment incident.

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 18, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 12, 2023  
Washington, DC

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

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

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