

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

A.M., Appellant)	
)	
and)	Docket No. 24-0116
)	Issued: April 16, 2024
U.S. POSTAL SERVICE, BETHLEHEM)	
AIRPORT POST OFFICE, Allentown, PA,)	
Employer)	
)	

Appearances:
Thomas Uliase, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On November 21, 2023 appellant filed a timely appeal from a July 27, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

¹ 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.

² 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 factors of her federal employment.

FACTUAL HISTORY

On June 9, 2021 appellant, then a 50-year-old postal distribution clerk, filed an occupational disease claim (Form CA-2) alleging that she developed left neck, shoulder, and arm pain due to factors of her federal employment, including heavy lifting, pushing and pulling heavy equipment, and holding letters and flats for extended periods of time. She noted that she first became aware of her condition and realized its relation to her federal employment on November 13, 2020. Appellant stopped work on April 14, 2021 and returned to work on June 7, 2021.

In a June 3, 2021 report, Dr. Farooq Qureshi, a Board-certified anesthesiologist, noted treating appellant on May 17, 2021 for left-sided neck and arm pain. He related appellant's neck and arm symptoms to disc protrusions and spondylosis that became aggravated after performing repetitive lifting and twisting at work. Dr. Qureshi returned appellant to work 20 hours a week for two weeks and then to full-duty work.

In a June 17, 2021 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence necessary to establish her claim and provided a questionnaire for her completion. In a separate development letter of the same date, OWCP requested that the employing establishment provide additional information, including comments from a knowledgeable supervisor. It afforded both parties 30 days to respond.

On April 26 and June 15, 2021 Dr. Amy Alves, a chiropractor, treated appellant for left neck pain radiating into the left arm and hand. She reported that her symptoms started in February 2021 as a result of sitting at a computer for several hours a day and performing repetitive motions. Dr. Alves diagnosed segmental and somatic dysfunction of the cervical, lumbar and thoracic regions, cervical radiculopathy, left shoulder pain, intractable tension headaches, and myalgia of the auxiliary muscles of the head and neck. On June 15, 2021 he reported improvement in appellant's condition and continued her treatment regimen.

In a statement dated May 1, 2021, appellant provided a detailed history of injury.

A magnetic resonance imaging (MRI) scan of the cervical spine dated May 2, 2021 revealed mild multilevel noncompressive degenerative changes.

On June 25, 2021 A.S., appellant's supervisor, noted that appellant worked for 27 years as a distribution clerk and was responsible for handling parcels, presorting mail, handling letters and flats, and computer work. She was required to pull, push, twist, bend, and lift.

In a July 14, 2021 response to OWCP's development letter, appellant indicated that she worked as a distribution clerk for 27 years and her work duties included handling parcels from five to eight hours a day, presorting parcels and banding bundles for one to three hours a day, sorting letters and flats for three to five hours a day, and computer processing. Her job duties required

repetitive bending, lifting, twisting, pushing, and pulling. Appellant noted that in 2014 she experienced right shoulder pain and underwent surgery. She attributed her left shoulder condition to performing repetitive work activities over 27 years.

On July 16, 2021 the employing establishment controverted appellant's claim, asserting that she failed to submit medical evidence establishing that her claimed condition was work related. A job description for a postal distribution clerk was submitted.

By decision dated July 28, 2021, OWCP denied appellant's occupational disease claim, finding that the medical evidence of record was insufficient to establish causal relationship between her diagnosed conditions and the accepted factors of her federal employment.

OWCP received additional evidence. On August 20, 2021 Dr. Wayne T. Luchetti, a Board-certified orthopedist, noted that appellant was under his care and could not return to work until cleared by a physician. On August 31, 2021 he held appellant off work from August 31 through September 6, 2021, and released her to return to full-duty work on September 7, 2021.

An MRI scan of the left shoulder dated August 26, 2021 revealed calcified tendinopathy of the distal supraspinatus tendon, mild tendinopathy of the infraspinatus tendon, mild tendinopathy of the subscapularis tendon, mild tendinopathy of the intra-articular long head biceps tendon, type II acromion, and mild thickening of the glenohumeral joint capsule.

On September 10, 2021 appellant requested reconsideration.

By decision dated December 3, 2021, OWCP denied modification of the July 28, 2021 decision.

On February 17, 2022 Dr. Scott Doroshow, a Board-certified orthopedist, treated appellant for left shoulder calcific tendinitis that was caused by performing repetitive duties with her left shoulder at work.

On April 5, 2022 appellant requested reconsideration.

OWCP received an unsigned orthopedic sports medicine note. Appellant also submitted a photograph of postal containers.

By decision dated April 12, 2022, OWCP denied modification of the December 3, 2021 decision.

OWCP subsequently received additional evidence. In a report dated May 19, 2022, Dr. Doroshow noted treating appellant for left shoulder calcific tendinitis. He opined that her medical condition was secondary to chronic repetitive motion of the shoulder, which correlated with appellant's job description. Appellant attributed her shoulder injury to performing her job duties that included sorting mail and repetitive reaching activities. In a note dated May 24, 2022, Dr. Doroshow related that appellant did not sustain an acute injury. He opined to a reasonable degree of medical certainty that her neck and left shoulder injury was caused by repetitive use of her upper extremities at work including heavy overhead lifting over years of continued service.

On June 1, 2022 appellant requested reconsideration.

In a note dated June 3, 2022, Dr. Maheep Vikram, a Board-certified family practitioner, indicated that appellant was undergoing surgery on June 8, 2022. In an undated return to work note, he advised that appellant would be off work until June 16, 2022.

By decision dated August 30, 2022, OWCP denied modification of the April 12, 2022 decision.

On July 26, 2023 appellant, through counsel, requested reconsideration. In support thereof, appellant submitted a January 6, 2022 report, wherein Dr. Doroshow noted his treatment of appellant for left shoulder calcific tendinitis that was aggravated by repetitive activity. He explained that calcific tendinitis was not caused by a work injury but was an underlying condition that was aggravated by her repetitive work duties. Dr. Doroshow opined that the aggravation and inflammatory process was likely caused by repetitive upper extremity activities. He performed an intra-articular injection on the left shoulder.

In an after-visit summary dated January 6, 2022, Dr. Doroshow diagnosed acute pain of the left shoulder and calcific tendinitis. On February 17, 2022 appellant reported significant improvement in her condition after the last intra-articular injection. She related that she was very short staffed at work and wanted to keep her left shoulder pain at bay and requested another intra-articular injection. Dr. Doroshow performed an intra-articular injection on the left shoulder. In an after-visit summary of the same date, he diagnosed calcific tendinitis. On February 17, 2022 Dr. Doroshow treated appellant for left shoulder calcific tendinitis caused by performing repetitive duties at work. In an after-visit summary dated May 19, 2022, Dr. Doroshow diagnosed calcific tendinitis.

On May 26, 2022 Dr. Vikram treated appellant for persistent left shoulder pain and calcific tendinitis. Appellant reported that heavy overhead lifting aggravated her condition. He diagnosed chronic left shoulder pain, calcific tendinitis, and glenohumeral arthritis. Dr. Vikram recommended an ultrasound-guided left shoulder calcific tendinitis percutaneous tenotomy. In an after-visit summary of the same date, he diagnosed calcific tendinitis, chronic left shoulder pain, and glenohumeral arthritis. On June 16, 2022 Dr. Vikram treated appellant postoperatively for chronic left shoulder pain. He noted that appellant underwent an ultrasound surgical procedure on June 8, 2022. Dr. Vikram noted the left shoulder surgical wound was healing well, there was no surrounding erythema or discharge, and minimal discomfort to palpation at the surgical site. He diagnosed calcific tendinitis, postoperative follow-up, and chronic left shoulder pain. In an after-visit summary of the same date, Dr. Vikram diagnosed calcific tendinitis, postoperative follow-up, and chronic left shoulder pain. In a note dated June 16, 2022, he returned appellant to work on June 20, 2022 with restrictions. On August 9, 2022 Dr. Vikram related that appellant was status post-surgical procedure for calcific tendinitis. Findings on physical examination revealed discomfort to palpation over the subacromial space. Dr. Vikram performed a left shoulder intra-articular injection and diagnosed subacromial bursitis of the left shoulder joint. In an after-visit summary of even date, he diagnosed subacromial bursitis of the left shoulder joint. On September 20, 2022 Dr. Vikram noted that appellant experienced improvement in left shoulder pain following surgery. In an after-visit summary of the same date, he diagnosed calcific tendinitis.

A May 26, 2022 x-ray of the left shoulder revealed no acute osseous abnormality calcific tendinitis, and degenerative changes.

By decision dated July 27, 2023, OWCP denied modification of the August 30, 2022 decision.

LEGAL PRECEDENT

A claimant seeking benefits under FECA³ 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,⁴ 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.⁵ 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.⁶

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit: (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 casually related to the identified employment factors.

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁷ The opinion of the physician must be based upon a complete factual and medical background, 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 factors.⁸

³ *Id.*

⁴ *F.H.*, Docket No.18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued December 13, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *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).

⁶ *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).

⁷ *I.J.*, Docket No. 19-1343 (issued February 26, 2020); *T.H.*, 59 ECAB 388 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

⁸ *D.C.*, Docket No. 19-1093 (issued June 25, 2020); *see L.B.*, Docket No. 18-0533 (issued August 27, 2018).

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a medical condition causally related to the accepted factors of her federal employment.

In a June 3, 2021 note, Dr. Qureshi related appellant's neck and arm symptoms to disc protrusions and spondylosis that became aggravated after performing repetitive lifting and twisting at work. Although he supported a work-related cause for appellant's present neck and arm condition, he did not provide adequate medical rationale on causal relationship.⁹ Thus, this report is insufficient to meet appellant's burden of proof.

In April 26 and June 15, 2021 reports, Dr. Alves, a chiropractor, diagnosed segmental and somatic dysfunction of the cervical, lumbar and thoracic regions, cervical radiculopathy, left shoulder pain, intractable tension headaches, and myalgia of the auxiliary muscles of the head and neck. However, she did not diagnose a spinal subluxation as demonstrated by x-ray to exist and, thus, she is not considered a physician under FECA. Therefore, these reports are of no probative value.¹⁰

On August 20, 2021 Dr. Luchetti, noted appellant was under his care and could not return to work until cleared by a physician. On August 31, 2021 he noted that appellant was off work from August 31 through September 6, 2021, and could return to full-duty work on September 7, 2021. However, Dr. Luchetti did not provide an opinion on the cause of appellant's condition. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value on the issue of causal relationship.¹¹ As such, these reports are insufficient to meet appellant's burden of proof.¹²

On February 17, 2022 Dr. Doroshow treated appellant for left shoulder calcific tendinitis that was caused by performing repetitive duties with her left shoulder at work. In a report dated May 19, 2022, he opined that her medical condition was secondary to chronic repetitive motion of the shoulder, which correlated with appellant's job description. Similarly, in a note dated May 24, 2022, Dr. Doroshow opined to a reasonable degree of medical certainty that appellant's neck and left shoulder injury was caused by repetitive use of her upper extremities at work including heavy overhead lifting over years of continued service. On January 6 and February 17, 2022 he explained that her calcific tendinitis was aggravated by repetitive work duties. Dr. Doroshow opined that the aggravation and inflammatory process was likely caused by repetitive upper extremity activities. Although these reports support causal relationship between appellant's neck and left

⁹ *See id.*

¹⁰ 5 U.S.C. § 8101(2) provides that the term physician includes chiropractors only if the treatment consists of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist; *see also G.P.*, Docket No. 23-1133 (issued March 19, 2024); *D.P.*, Docket No. 13-1721 (issued February 21, 2014); *P.D.*, Docket No. 13-2034 (issued May 8, 2014); *Paul Foster*, 56 ECAB 208 (2004).

¹¹ *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *see also C.S.*, Docket No. 21-0354 (issued June 27, 2023); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹² *T.R.*, Docket No. 18-1272 (issued February 15, 2019).

shoulder conditions and the accepted factors of her federal employment, he did not provide rationale explaining his conclusions. Without explaining the mechanism of injury by which the repetitive movements involved in appellant's employment duties caused or contributed to the diagnosis, Dr. Doroshov's opinion is of limited probative value.¹³ Thus, these reports are insufficient to meet appellant's burden of proof.

On May 26, 2022 Dr. Vikram diagnosed chronic left shoulder pain, calcific tendinitis, and glenohumeral arthritis. Appellant reported that heavy overhead lifting aggravated her condition. In after-visit summaries dated May 26, June 16, August 9, and September 20, 2022, he diagnosed calcific tendinitis, chronic left shoulder pain, subacromial bursitis of the left shoulder joint, and glenohumeral arthritis. On June 3 and 16, 2022 Dr. Vikram noted that appellant had surgery on June 8, 2022 and diagnosed calcific tendinitis, postoperative follow-up, and chronic left shoulder pain. On August 9 and September 20, 2022 he related that appellant was status postsurgical procedure for calcific tendinitis and diagnosed subacromial bursitis of the left shoulder joint. However, these reports failed to provide an opinion regarding the cause of appellant's left shoulder condition.¹⁴ As stated above, 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.¹⁵ These reports are thus insufficient to establish causal relationship.

Appellant submitted unsigned treatment notes from orthopedic sports medicine. The Board has held that reports that are unsigned or bear an illegible signature lack proper identification and cannot be considered probative medical evidence as the author cannot be identified as a physician.¹⁶ Therefore, these reports are also insufficient to establish the claim.

Appellant submitted MRI scans of his cervical spine and left shoulder. The Board has held that diagnostic tests, standing alone, lack probative value on the issue of causal relationship as they do not address the relationship between the accepted employment factors and a diagnosed condition.¹⁷ For this reason, this evidence is insufficient to meet appellant's burden of proof.

As the medical evidence of record is insufficient to establish causal relationship between appellant's diagnosed medical conditions and the accepted factors of her federal employment, 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.

¹³ *Y.F.*, Docket No. 19-1576 (issued August 4, 2020); *see A.P.*, Docket No. 19-0224 (issued July 11, 2019).

¹⁴ *L.D.*, Docket No. 18-1468 (issued February 11, 2019).

¹⁵ *See L.B.*, *supra* note 11; *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁶ *T.S.*, Docket No. 23-0772 (issued March 28, 2024); *T.D.*, Docket No. 20-0835 (issued February 2, 2021); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

¹⁷ *See W.M.*, Docket No. 19-1853 (issued May 13, 2020); *L.F.*, Docket No. 19-1905 (issued April 10, 2020).

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a medical condition causally related to the accepted factors of her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the July 27, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 16, 2024
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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