

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

K.M., Appellant)

and)

U.S. POSTAL SERVICE, CHICAGO)
INTERNATIONAL SERVICE CENTER,)
O'HARE INTERNATIONAL AIRPORT,)
Chicago, IL, Employer)

Docket No. 25-0097
Issued: December 18, 2024

Appearances:
Appellant, pro se
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 November 5, 2024 appellant filed a timely appeal from a July 5, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

ISSUE

The issue is whether appellant has met her burden of proof to establish a medical condition causally related to the accepted December 10, 2022 employment incident.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the July 5, 2024 decision, appellant submitted additional evidence to OWCP and on appeal to the Board. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

FACTUAL HISTORY

On October 11, 2023 appellant, then a 45-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on December 10, 2022 while on light-duty status, she sustained a torn right rotator cuff and a tendon tear of the right shoulder when she lifted a bag of military mail then placed it in a postal container while in the performance of duty. She did not stop work.³ On February 13, 2023, appellant underwent OWCP-authorized anterior cervical discectomy and fusion (ACDF) at C5-6 and C6-7.

In an October 17, 2023 report, Dr. Dalip Pelinkovic, a Board-certified orthopedic surgeon, noted work restrictions of no prolonged sitting and overhead work, and limited lifting to 15 pounds.

In an October 19, 2023 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed to establish her claim and provided a questionnaire for her completion. OWCP afforded appellant 60 days to submit the necessary evidence. No additional medical evidence was received.

In a follow-up letter dated November 7, 2023, OWCP advised appellant that it had conducted an interim review, and the evidence remained insufficient to establish her claim. It noted that she had 60 days from the October 19, 2023 letter to submit the necessary evidence. OWCP further advised that if the evidence was not received during this time, it would issue a decision based on the evidence contained in the record.

Appellant subsequently submitted a completed development questionnaire dated November 2, 2023, wherein she explained that she was in light-duty status on December 10, 2022 when she injured her right shoulder while processing mail bags coming off of a machine, and her right arm “popped hard” when she lifted a mail bag and swung it into a postal container.

Thereafter, OWCP received an August 21, 2023 report wherein Dr. Ankur M. Chhadia, a Board-certified orthopedic surgeon, recounted that while at work on December 10, 2022, appellant, then on light duty for a cervical spine injury, lifted a heavy package from the floor and felt the immediate onset of right shoulder pain. Appellant continued to experience right shoulder pain, weakness and limited motion of the right shoulder. On examination, Dr. Chhadia observed mild-to-moderate tenderness to palpation about the right shoulder, limited range of motion, and positive Neer’s, Speed’s, O’Brien’s, and Hawkins’ tests. He diagnosed a complete right rotator cuff tear with associated biceps tendinitis. Dr. Chhadia prescribed medication and recommended arthroscopic right rotator cuff repair.

On October 17, 2023, Dr. Pelinkovic prescribed postsurgical physical therapy to address the cervical spine.

³ Previously, appellant filed an occupational disease claim (Form CA-2) under OWCP File No. xxxxxx055 for bilateral carpal tunnel syndrome and tendinitis sustained on or before January 8, 2020 due to factors of her federal employment. OWCP accepted the claim for bilateral carpal tunnel syndrome, and other synovitis and tenosynovitis of the hands. It subsequently expanded the acceptance of appellant’s claim to include bilateral ulnar nerve lesions, trigger thumbs, bilateral trigger long and ring fingers, bilateral hand and wrist sprains, bilateral wrist ganglia, and aggravation of cervical disc displacement.

In a November 6, 2023 duty status report (Form CA-17), Dr. Robert Barnes, an osteopath specializing in family medicine, limited lifting, pushing, and pulling to 15 pounds up to four hours a day, and reaching above shoulder level to two hours a day.

In a November 7, 2023 report, Dr. Barnes recounted that on December 10, 2022 appellant attempted to lift a heavy package from the floor while at work on a mail processing line and experienced the immediate onset of right shoulder pain. Subsequently, she experienced chronic right upper extremity pain and limited range of right shoulder motion. Dr. Barnes noted that an August 8, 2023 magnetic resonance imaging (MRI) scan of the right shoulder demonstrated a high grade partial supraspinatus tendon tear with prominent intrasubstance delamination on a background of diffuse tendinosis, and a possible full-thickness tear proximal to the insertion point. On examination of the right upper extremity, he observed muscle spasm and tenderness to palpation of the trapezius, posterior deltoid, lateral deltoid, and thoracic paraspinals, significantly restricted shoulder flexion and abduction, 2/5 weakness, positive Speed's, Dugas', Apley's, and Hawkins' tests on the right, and positive extension compression and flexion compression tests on the right. Dr. Barnes diagnosed a right shoulder lesion, and complete rotator cuff tear or rupture of the right shoulder "[unequivocally] a direct result from the lifting of the mail package that was too heavy off the floor." He explained that "[a]s a result of the lifting incident multiple muscles in [appellant's] rotator cuff were injured" as demonstrated by weakness, muscle spasm, and restricted motion on examination. Dr. Barnes opined that the immediate pain appellant experienced during the December 10, 2022 employment incident was the supraspinatus tendon partially tearing. "The load placed on her shoulder while attempting to lift the package from the ground put her rotator cuff in an awkward position thus tearing the muscles." The tearing caused rotator cuff inflammation as demonstrated by MRI scan and by clinical findings of limited motion, weakness, and tenderness to palpation. Dr. Barnes also noted that appellant sustained a neck injury "more likely than not caused by, aggravated by, or accelerated by the constant and repeated work activities."

By decision dated January 2, 2024, OWCP denied appellant's traumatic injury claim. It found that appellant had not established that the claimed incident occurred on December 10, 2022, as alleged. OWCP, therefore, concluded that the requirements had not been met to establish an injury as defined by FECA.

OWCP received work slips dated January 23 through 30, 2024, wherein Dr. Barnes held appellant off work during the period January 6 through 28, 2024.

On March 5, 2024, appellant requested reconsideration.

By decision dated March 29, 2024, OWCP denied modification of its prior decision.

On May 16, 2024, appellant requested reconsideration.

Thereafter, OWCP received appellant's April 19, 2024 statement, wherein she explained that she had been off work from February 9, 2023 through July 21, 2024 due to February 13, 2023 cervical fusion approved under OWCP File No. xxxxxx055.

On June 26, 2024, OWCP administratively combined OWCP File Nos. xxxxxx794 and xxxxxx055, with the latter serving as the master file.

By decision dated July 5, 2024, OWCP modified its March 29, 2024 decision to find that appellant had established that the December 10, 2022 employment incident occurred as alleged, and that a medical condition was diagnosed in connection with the accepted employment incident. However, the claim remained denied as the medical evidence of record was insufficient to establish causal relationship between the diagnosed conditions and the accepted December 10, 2022 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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 determine if an employee has sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident at the time and place, and in the manner alleged.⁷ The second component is whether the employment incident caused an injury.⁸

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue. The opinion of the physician must be based on 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 incident.⁹ Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.¹⁰

⁴ *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).

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

⁶ *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).

⁷ *B.P.*, Docket No. 16-1549 (issued January 18, 2017); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁸ *M.H.*, Docket No. 18-1737 (issued March 13, 2019).

⁹ *A.B.*, Docket No. 25-0057 (issued November 26, 2024); *S.S.*, Docket No. 18-1488 (issued March 11, 2019).

¹⁰ *J.L.*, Docket No. 18-1804 (issued April 12, 2019).

ANALYSIS

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

In a November 7, 2023 report, Dr. Barnes recounted the accepted December 10, 2022 employment incident wherein appellant attempted to lift a heavy package from the floor and experienced the immediate onset of right shoulder pain. He noted that an August 8, 2023 MRI scan demonstrated a partial supraspinatus tendon tear with a possible full-thickness tear proximal to the insertion point, and noted detailed findings on examination of the right shoulder. Dr. Barnes diagnosed a right shoulder lesion and complete rotator cuff tear. He opined that the load placed on her shoulder while attempting to lift the package from the ground put her rotator cuff in an awkward position thus tearing the muscles. Dr. Barnes opined that appellant's diagnoses were directly and unequivocally related to lifting the heavy package from the floor. Although his opinion is insufficiently rationalized to establish causal relationship, it is sufficient to require that OWCP further develop the medical evidence in the claim.¹¹

It is well established that proceedings under FECA are not adversarial in nature and, while appellant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.¹² OWCP has an obligation to see that justice is done.¹³

The Board shall, therefore, remand the case to OWCP for further development of the medical evidence. On remand, OWCP shall refer appellant, along with a statement of accepted facts and the case record to a specialist in the appropriate field of medicine for a reasoned opinion regarding whether appellant sustained right upper extremity injuries causally related to the accepted December 10, 2022 employment incident. If the second opinion physician disagrees with the opinion of Dr. Barnes, he or she must provide a fully-rationalized explanation of why the accepted employment incident was insufficient to have caused or aggravated appellant's medical condition. After this and other such further development of the case record as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

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

¹¹ *J.K.*, Docket No. 20-0816 (issued May 4, 2022); *M.H.*, Docket No. 18-1068 (issued June 2, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *D.S.*, Docket No. 17-1359 (issued May 3, 2019); *X.V.*, Docket No. 18-1360 (issued April 12, 2019); *C.M.*, Docket No. 17-1977 (issued January 29, 2019); *John J. Carlone*, 41 ECAB 354 (1989); *William J. Cantrell*, 34 ECAB 1223 (1983).

¹² *Id.*; see also *C.S.*, Docket No. 24-0819 (issued October 16, 2024); *S.G.*, Docket No. 22-0330 (issued April 4, 2023); see *M.G.*, Docket No. 18-1310 (issued April 16, 2019); *Walter A. Fundinger, Jr.*, 37 ECAB 200, 204 (1985); *Michael Gallo*, 29 ECAB 159, 161 (1978).

¹³ See *C.M.*, *supra* note 11; *A.J.*, Docket No. 18-0905 (issued December 10, 2018); *B.C.*, Docket No. 15-1853 (issued January 19, 2016); *E.J.*, Docket No. 09-1481 (issued February 19, 2010); *John J. Carlone*, *supra* note 11.

ORDER

IT IS HEREBY ORDERED THAT the July 5, 2024 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 18, 2024
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