

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

S.M., Appellant	)	
	)	
and	)	Docket No. 24-0542
	)	Issued: July 11, 2024
U.S. POSTAL SERVICE, JACKSONVILLE	)	
POST OFFICE, Jacksonville, FL, Employer	)	
	)	

*Appearances:*  
*Appellant, pro se*  
*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 April 25, 2024 appellant filed a timely appeal from a February 23, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

**ISSUE**

The issue is whether appellant has met her burden of proof to establish a medical condition causally related to the accepted employment factors.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that, following the February 23, 2024 decision, OWCP received additional evidence. 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 July 26, 2022 appellant, then a 37-year-old mail handler, filed an occupational disease claim (Form CA-2) alleging she developed a left shoulder condition due to factors of her federal employment, including repetitive pushing, pulling, and lifting.<sup>3</sup> She indicated that she realized a crimpling pain in her left shoulder around March 1, 2022 and throughout the month and ongoing to the present, and that she believed she strained her left shoulder and it progressed to a more severe injury. Appellant noted that she first became aware of her condition and realized its relation to her federal employment on March 1, 2022. She stopped work on April 12, 2022.

A July 6, 2021 magnetic resonance imaging (MRI) scan of the left shoulder revealed minimal acromioclavicular (AC) arthropathy.

In an August 12, 2022 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.

In a November 3, 2021 medical report, Dr. Joseph Czerkawski, a physician Board-certified in internal medicine and sports medicine, diagnosed numerous medical conditions involving the cervical and lumbar spine and chronic fatigue. Regarding the left shoulder, he diagnosed impingement syndrome, superior glenoid labrum lesion, and sequela of traumatic complete tear of left rotator cuff. Dr. Czerkawski released appellant to return to work with restrictions of no lifting greater than 20 to 30 pounds, no pushing of large general-purpose containers (GPC), and no activity that exacerbated her left shoulder, neck, and shoulder girdle area.

In a March 23, 2022 note, Dr. Czerkawski advised that appellant was seen that day and could return to work with restrictions of no lifting greater than 20 pounds. He indicated that she was unable to perform any repetitive motion with the left shoulder due to instability in her shoulder and rotator cuff area. Dr. Czerkawski noted that appellant's "shoulder injury occurred approximately March 1, 2022 and symptoms have persisted thus far..." He also noted that she had permanent restrictions with respect to repeated lifting, pushing, and bending due to cervical and lumbar conditions.

In an April 4, 2022 work restrictions form, Dr. Czerkawski released appellant to return to work with no lifting, pushing, or pulling greater than 20 pounds intermittently and no standing, bending, or stooping greater than 20 minutes.

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<sup>3</sup> OWCP assigned the present claim OWCP File No. xxxxxx837. Appellant has a previously-accepted traumatic injury claim (Form CA-1) for an October 24, 2017 left shoulder sprain under OWCP File No. xxxxxx590. On April 29, 2022 she filed a notice of recurrence (Form CA-2a) under OWCP File No. xxxxxx590 alleging that the October 24, 2017 injury recurred on March 1, 2022 and that she stopped work on April 12, 2022. Appellant noted that "the recurrence happened when I was pushing and pulling heavy carts in and out of the robots.... The repetitive motion of using my shoulders caused the injury to go from a strain to an actual [tear]." By decision dated July 22, 2022, OWCP denied appellant's recurrence claim, noting that she alleged continuous repetitive activities which would be considered an intervening injury or new exposure, requiring a new claim to be filed. On February 23, 2024 OWCP administratively combined OWCP File Nos. xxxxxx590 and xxxxxx837, with the latter serving as the master file.

In a May 19, 2022 medical report, Dr. Czerkowski documented limited cervical range of motion and impingement signs and pain in the left shoulder. He noted that her clinical examination was consistent with a small tear in the rotator cuff, even though it was not well visualized on the July 6, 2021 left shoulder MRI scan. Dr. Czerkowski diagnosed cervical and lumbar conditions; impingement syndrome, instability, rotator cuff tear, and superior glenoid labrum lesion of the left shoulder; and tendinopathy of the left biceps tendon. He noted “injury sustained in a work-related injury from 2017 with ongoing pain rigidity and spasms directly related to the work-related injury at that date.” Dr. Czerkowski also noted that appellant’s cervical and lumbar conditions may prevent her from performing the essential functions of her job.

In a medical report dated July 26, 2022, Dr. Czerkowski noted that appellant related that she had been out of work since April 2022 and would like to try to return to work. He performed an injection into the left subacromial bursa. In a separate note of even date, Dr. Czerkowski released appellant to return to work, so long as she was provided with partner assistance with GPC robots for the next six months.

In an undated attending physician’s report (Form CA-20), Dr. Czerkowski indicated that he evaluated appellant on August 18, 2022 for bilateral shoulder pain and instability. He diagnosed bilateral rotator cuff tendinitis and shoulder instability and noted a date of injury of March 1, 2022.

By decision dated November 2, 2022, OWCP denied appellant’s occupational disease claim, finding that the medical evidence of record was insufficient to establish causal relationship between the diagnosed medical conditions and the accepted factors of her federal employment. Therefore, it concluded that the requirements had not been met to establish an injury.

On December 6, 2022 appellant requested reconsideration of OWCP’s November 2, 2022 decision. In support thereof, she submitted a November 15, 2022 medical report by Dr. Rahul Deshmukh, a physician Board-certified in orthopedic surgery and sports medicine, who noted that she related complaints of left shoulder pain due to her work duties as a mail handler since March 1, 2022. On examination of the left shoulder, Dr. Deshmukh documented tenderness at the bicipital groove and anterior joint line, reduced range of motion and strength, and positive AC joint compression, impingement signs, belly press test, lift-off test, cross arm guarding, and Hawkins’ test. He concluded that these findings were significant for rotator cuff impingement, AC osteoarthritis, and possible rotator cuff/labral tearing. Dr. Deshmukh diagnosed pain in left shoulder, osteoarthritis of left AC joint, and impingement syndrome of left shoulder region with reduced function “since March 1, 2022 after repetitive use working as a mail handler.”

A report of a December 8, 2022 MRI scan of the left shoulder revealed a small low-grade partial thickness articular sided tear of the supraspinatus tendon.

By decision dated February 9, 2023, OWCP denied modification of its November 2, 2022 decision.

OWCP continued to receive evidence, including a September 27, 2023 narrative medical report by Dr. Mark A. Seldes, a Board-certified family medicine specialist, who noted that appellant complained of left shoulder pain, which she attributed to pushing and pulling heavy GPCs out of a machine while at work on March 1, 2022. Dr. Seldes noted that she sought medical

treatment, was placed on work restrictions, and missed some time from work as a result. He also noted a prior injury to the left shoulder at work on October 24, 2017, which he indicated had resolved. On physical examination of the left shoulder, Dr. Seldes documented reduced range of motion and tenderness over the shoulder joint, bicipital groove, bicipital tendon, and AC joint. He compared the 2017 and 2018 MRI scans and diagnosed left shoulder rotator cuff tear, impingement, and AC joint arthritis. Dr. Seldes opined that appellant “suffered a traumatic injury when attempting to pull and extricate a very heavy GPC out of the machine.” In a separate duty status report (Form CA-17) of even date, he released appellant to return to work with limited reaching, pushing, and pulling, and no climbing.

By decision dated October 31, 2023, OWCP denied modification of its February 9, 2023 decision.

OWCP continued to receive evidence including a September 23, 2023 emergency department report wherein Dr. Cory H. Duncan, a Board-certified family medicine specialist, noted that appellant related bilateral shoulder pain, which she attributed to pulling on a box at work one hour prior to arrival. Dr. Duncan noted a 1.5-year history of left shoulder issues following an injury at work and that appellant mainly used her right arm at work as a result. He documented examination findings, reviewed an x-ray of the right shoulder, and diagnosed right trapezius muscle spasm, acute pain in the right shoulder, and acute on chronic left shoulder pain.

In a November 13, 2023 narrative report, Dr. Seldes noted that appellant continued to have pain with limited range of motion in her left shoulder which she attributed to “an occupational injury that occurred over time.” He noted that she related that her 2017 left shoulder injury had never fully healed, and that she eventually went back to work and had an exacerbation and aggravation of the underlying injury on March 1, 2022. Dr. Seldes indicated that the December 8, 2022 MRI was consistent with a supraspinatus tendon tear and that he had “provided a rationalized medical opinion and establishing a cause-and-effect relationship between her diagnosed condition and the work factors of her position as a mail handler.”

In a December 6, 2023 letter, appellant requested that Dr. Seldes clarify that her left shoulder injury occurred as a result of repetitive work at the employing establishment as a mail handler and provide an explanation including the pathophysiological process of how her repetitive work activities, over time, caused or contributed to the diagnosed conditions.

In a narrative report dated December 12, 2023, Dr. Seldes again noted appellant’s prior October 24, 2017 left shoulder injury and that she “continued to work with this injured left shoulder until eventually she exacerbated and actually aggravated the left shoulder on March 1, 2022.” He opined that “repetitive traumatic work duties such as pulling and pushing these large cages out and in from the automated equipment eventually caused her injury to the left shoulder for the left rotator cuff tear and left shoulder impingement and left AC joint osteoarthritis.”

On December 20, 2023 appellant requested reconsideration of OWCP’s February 9, 2023 decision.

OWCP thereafter received records pertaining to appellant's October 24, 2017 left shoulder injury, including an emergency department report by Dr. Nam Huynh, a Board-certified family medicine specialist, who diagnosed a sprain of the left shoulder with possible labrum pathology. In an October 30, 2017 report, Dr. William Davis, an osteopath, diagnosed strain of muscle and tendon of front wall of thorax and recommended a 10-pound lifting restriction.

On January 9, 2024 OWCP referred the medical record, a statement of accepted facts (SOAF), and a series of questions to Dr. Arthur Harris, a Board-certified orthopedic surgeon serving as an OWCP district medical adviser (DMA), and requested that he address causal relationship. In a January 19, 2024 report, Dr. Harris noted that Dr. Seldes had diagnosed left partial thickness rotator cuff tear and AC joint osteoarthritis, but as Dr. Seldes did not document appellant's subjective complaints or objective findings, he, Dr. Harris, was unable to verify these diagnoses.

OWCP thereafter received a December 26, 2023 narrative report by Dr. Seldes, who again reviewed appellant's MRI scans and documented physical examination findings. Dr. Seldes diagnosed left shoulder rotator cuff tear, impingement, and AC joint osteoarthritis and opined that she sustained "an occupational injury and not a traumatic injury," due to moving cages at work on March 1, 2022. In a Form CA-17 of even date, he released appellant to work with no lifting greater than 20 pounds, no lifting above shoulder level on the left, and 1 to 2 hours of overtime per week.

By decision dated February 23, 2024, OWCP denied modification of its October 31, 2023 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 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 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

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<sup>4</sup> *Supra* note 1.

<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).

<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).

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>8</sup>

The medical evidence required to establish causal relationship between a claimed condition and the accepted employment factors 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 factors 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 factors.<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 appellant has not met her burden of proof to establish a medical condition causally related to the accepted employment factors.

In support of her claim, appellant submitted a March 23, 2022 note and undated Form CA-20 by Dr. Czerkawski, who diagnosed rotator cuff tendinitis and shoulder instability and noted a date of injury of March 1, 2022. However, Dr. Czerkawski did not provide an opinion on causal relationship.<sup>13</sup> As such, this evidence is insufficient to meet appellant's burden.

In reports dated September 27 through December 26, 2023, Dr. Seldes opined that appellant had aggravated the left shoulder on March 1, 2022 due to repetitive traumatic work duties such as pulling and pushing large cages. However, Dr. Seldes did not explain, with rationale, how the accepted employment factors caused or contributed to the diagnosed conditions.<sup>14</sup> Medical rationale is particularly necessary where, as here, there are preexisting conditions involving some

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<sup>8</sup> *T.W.*, Docket No. 20-0767 (issued January 13, 2021); *L.D.*, Docket No. 19-1301 (issued January 29, 2020); *S.C.*, Docket No. 18-1242 (issued March 13, 2019).

<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 (May 2023); *M.B.*, Docket No. 20-1275 (issued January 29, 2021); *see R.D.*, Docket No. 18-1551 (issued March 1, 2019).

<sup>13</sup> *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

<sup>14</sup> *Id.*

of the same body parts.<sup>15</sup> In such cases, the Board has required medical rationale differentiating between the effects of the work-related injury and the preexisting condition.<sup>16</sup> Consequently, this evidence is insufficient to establish appellant's claim.

In his May 19, 2022 medical report, Dr. Czerkawski attributed appellant's left shoulder pathology to "a work-related injury from 2017 with ongoing pain rigidity and spasms directly related to the work-related injury at that date." Accordingly, his opinion negates causal relationship between the diagnosed condition and the implicated employment factors in appellant's present occupational disease claim.<sup>17</sup>

In his November 15, 2022 medical report, Dr. Deshmukh noted "increased left shoulder pain and decreased function since March 1, 2022 after repetitive use working as a mail handler." He diagnosed pain, osteoarthritis, and impingement syndrome of left shoulder region. However, the fact that a condition manifests itself during a period of employment is insufficient to establish causal relationship. Temporal relationship alone will not suffice.<sup>18</sup> This is therefore insufficient to establish the claim.

In November 3, 2021 and April 4, 2022 reports, Dr. Czerkawski diagnosed impingement syndrome, superior glenoid labrum lesion, and sequela of traumatic complete tear of left rotator cuff and recommended work restrictions. In a September 23, 2023 emergency department report, Dr. Duncan diagnosed acute on chronic left shoulder pain. However, none of these reports included an opinion as to the cause of appellant's conditions. 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 on the issue of causal relationship.<sup>19</sup> Therefore, these additional reports are also insufficient to establish appellant's claim.

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 factors caused any of the diagnosed conditions.<sup>20</sup>

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<sup>15</sup> *R.W.*, Docket No. 19-0844 (issued May 29, 2020); *A.M.*, Docket No. 19-1138 (issued February 18, 2020); *A.J.*, Docket No. 18-1116 (issued January 23, 2019).

<sup>16</sup> *Id.*

<sup>17</sup> *Supra* note 8.

<sup>18</sup> *R.G.*, Docket No. 21-1238 (issued May 9, 2022); *Z.S.*, Docket No. 19-1010 (issued October 1, 2020); *S.S.*, Docket No. 19-0675 (issued August 22, 2019); *M.H.*, Docket No. 18-1737 (issued March 13, 2019); *Daniel O. Vasquez*, 57 ECAB 559 (2006).

<sup>19</sup> *See S.S.*, Docket No. 21-0837 (issued November 23, 2021); *J.M.*, Docket No. 19-1926 (issued March 19, 2021); *L.D.*, Docket No. 20-0894 (issued January 26, 2021); *T.F.*, Docket No. 18-0447 (issued February 5, 2020); *L.B.*, *supra* note 13; *D.K.*, *supra* note 13.

<sup>20</sup> *F.D.*, Docket No. 19-0932 (issued October 3, 2019); *J.S.*, Docket No. 17-1039 (issued October 6, 2017).

As the medical evidence of record is insufficient to establish a medical condition causally related to the accepted employment factors, the Board finds that appellant 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.

**CONCLUSION**

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

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 23, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 11, 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