

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

P.O., Appellant	)	
	)	
and	)	<b>Docket No. 23-1020</b>
	)	<b>Issued: June 25, 2024</b>
U.S. POSTAL SERVICE, POST OFFICE,	)	
San Bernardino, CA, Employer	)	
	)	

*Appearances:*  
Brett Elliot Blumstein, Esq., for the appellant<sup>1</sup>  
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  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On July 26, 2023 appellant, through counsel, filed a timely appeal from an April 27, 2023 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.

**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> 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.*

## **FACTUAL HISTORY**

On November 3, 2020 appellant, then a 46-year-old city carrier assistant, filed an occupational disease claim (Form CA-2) alleging that she developed right shoulder tendinitis due to factors of her federal employment, including repetitive casing, sorting, and delivering mail.<sup>3</sup> She noted that she first became aware of her condition on July 5, 2020 and realized its relation to her federal employment on August 3, 2020. Appellant did not stop work.

In an October 22, 2020 medical report, Dr. Ronny Ghazal, a Board-certified orthopedic surgeon and sports medicine specialist, noted that appellant related complaints of right shoulder pain radiating to her elbow and numbness in the right arm, which she attributed to picking up packages on or about August 3, 2020. He performed a physical examination, which revealed tenderness of the right coracoacromial notch, rotator cuff weakness, and positive impingement and supraspinatus tendinopathy signs. Dr. Ghazal diagnosed calcific tendinitis of the right shoulder and right cubital tunnel syndrome. He opined that “causation is cumulative trauma due to the repetitive use of her arm and is industrial in nature.”

In a November 3, 2020 statement, appellant indicated that around July 2020 she began to feel pain in her right arm with an occasional crackling sensation. On August 3, 2020 she felt a pulling sensation in her right shoulder, which radiated down to her elbow, followed by pain in the shoulder and numbness in the arm. Appellant related that she sought medical treatment, and her provider advised her that she had sustained a cumulative trauma injury due to repetitive use of the right shoulder.

By letter dated November 3, 2020, the employing establishment controverted the claim, and noted that management reviewed data from August 3, 2020, and found that appellant had 35 parcels in her vehicle on that date, eight weighing over one pound and one weighing 12 pounds.

In a November 25, 2020 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. No further evidence was received.

By decision dated February 2, 2021, OWCP denied appellant’s occupational disease claim, finding that she had not submitted sufficient evidence to establish that the events occurred, as alleged. Therefore, it concluded that the requirements had not been met to establish an injury as defined by FECA.

On February 2, 2022 appellant, through counsel, requested reconsideration of OWCP’s February 2, 2021 decision. In support of the request, she submitted a January 20, 2022 narrative consultation report by Dr. John B. Dorsey, a Board-certified orthopedic surgeon, who noted injuries to the right shoulder on July 5 and August 3, 2020, and that her employment duties since 2005 involved reaching, lifting overhead, and grasping items weighing up to 70 pounds while casing and delivering mail. Dr. Dorsey reviewed medical reports by Dr. Roger E. Fox, a physician Board-certified in family medicine, dated August 3 through September 3, 2020, who noted that

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<sup>3</sup> OWCP assigned the present claim OWCP File No. xxxxxx926. Appellant has a prior traumatic injury claim for an August 3, 2020 right shoulder injury, which OWCP denied under OWCP File No. xxxxxx141. OWCP has not administratively combined appellant’s claims.

appellant pulled her right shoulder while moving packages in her postal vehicle. He also reviewed reports by Alex Belko, a physical therapist, dated August 3 through 21, 2020; Dr. Ghazal dated September 10 through December 3, 2020; a February 16, 2021 report of x-rays of the right shoulder, which revealed degenerative changes; and a February 24, 2021 report of magnetic resonance imaging (MRI) scan of the right shoulder, which revealed degenerative changes of the acromioclavicular (AC) joint, and tendinosis at the supraspinatus. On physical examination, he documented tenderness, reduced range of motion, and impingement signs in the right shoulder. Dr. Dorsey also noted tenderness and clinical signs of lateral epicondylitis in the right elbow, but indicated that appellant advised him that she was not claiming an employment injury to her right elbow. He diagnosed supraspinatus tendinosis, calcific tendinitis, and impingement of the right shoulder, which he opined were caused by repetitive trauma at work and the incident of August 3, 2020. Dr. Dorsey explained that appellant sprained her right shoulder while moving materials in her postal vehicle on August 3, 2020, which irritated or tore her supraspinatus insertion, causing supraspinatus tendinosis and aggravation of the degenerative changes and calcific tendinitis and ultimately an impingement syndrome. He also noted that she did not have degenerative changes in any other part of her body, did not perform physical activity outside of work, had no other source for the chronic degenerative changes, and that these injuries were common with mail carriers.

By decision dated May 3, 2022, OWCP denied modification of its February 2, 2021 decision.

On January 30, 2023 appellant, through counsel, requested reconsideration of OWCP's May 3, 2022 decision. In support thereof, counsel submitted appellant's January 17, 2023 response to OWCP's development questionnaire, which described her job duties, including repetitive lifting and pulling to case, sort, and deliver mail. She indicated that those duties required her to use her arm, shoulder, and elbow every day for 17 years, and that her symptoms began in early 2020 and worsened thereafter.

By decision dated April 27, 2023, OWCP modified its May 3, 2022 decision to find that appellant had established compensable factors of employment, and diagnoses of tendinitis of the supraspinatus with calcific tendinitis, impingement syndrome, and lateral epicondylitis of the right elbow. The claim remained denied, however, as the medical evidence of record was insufficient to establish causal relationship between the diagnosed medical conditions and the accepted factors of her federal employment.

### **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>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 whether the employee actually experienced the employment incident at the time and place, and in the manner alleged. The second component is whether the employment incident caused an 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 January 20, 2022 narrative report, Dr. Dorsey noted appellant's employment duties since 2005 and specific right shoulder injuries on July 5 and August 3, 2020. He reviewed medical reports, diagnostic testing, and documented positive examination findings. Dr. Dorsey diagnosed supraspinatus tendinosis, calcific tendinitis, and impingement of the right shoulder, which he opined were caused by repetitive trauma at work and the incident of August 3, 2020. He explained that appellant sprained her right shoulder while moving materials in her postal vehicle on August 3,

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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).

2020, which irritated or tore her supraspinatus insertion, causing supraspinatus tendinosis and aggravation of the degenerative changes and calcific tendinitis and ultimately an impingement syndrome. Dr. Dorsey also noted that she did not have degenerative changes in any other part of her body, did not perform physical activity outside of work, had no other source for the chronic degenerative changes, and that these injuries were common with mail carriers.

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. Dorsey's opinion, while not fully rationalized, is sufficient to require further development of the case record by OWCP.<sup>16</sup>

The case must, therefore, be remanded for further development of the medical evidence. On remand, OWCP shall administratively combine the case record in the present claim with OWCP File No. xxxxxx141. This will allow OWCP to consider all relevant claim files in adjudicating this claim.<sup>17</sup> It shall then refer appellant, along with a statement of accepted facts and the medical record, to a physician in the appropriate field of medicine for a rationalized opinion regarding whether the accepted employment factors caused, contributed to, or aggravated the claimed conditions.<sup>18</sup> If the referral 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. Dorsey. 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*, *supra* note 8.

<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> *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8(c)(1) (February 2000); *W.W.*, Docket No. 19-0884 (issued June 16, 2020); *L.P.*, Docket Nos. 18-1558, 18-1568 (issued June 21, 2019); *L.S.*, Docket Nos. 17-1863, 17-1867, 17-1868 (issued April 18, 2018); *W.S.*, Docket No. 15-0969 (issued October 5, 2015); *C.C.*, Docket No. 14-1576 (issued March 9, 2015).

<sup>18</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 April 27, 2023 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: June 25, 2024  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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