

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

M.Y., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Minneapolis, MN, Employer)
-----)

**Docket No. 24-0865
Issued: October 18, 2024**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORD

Before:

ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge

JURISDICTION

On August 25, 2024 appellant filed a timely appeal from a March 6, 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 his burden of proof to establish a medical condition causally related to the accepted factors of his federal employment.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that following the March 6, 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 caserecord 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 December 7, 2023 appellant, then a 44-year-old letter carrier, led an occupational disease claim (Form CA-2) alleging that he developed multiple conditions due to factors of his federal employment, including overuse of his right shoulder, back and feet while working mandatory overtime to deliver mail for 12 hours per day for more than two months. He noted that he first became aware of his condition and realized its relation to his federal employment on November 14, 2022. On the reverse side of the claim form, the employing establishment noted that appellant first reported his condition to her supervisor on December 7, 2023.

Work status notes from Dr. Won S. Choi, a family medicine specialist, were provided. In a December 23, 2022 work status note, Dr. Choi indicated that appellant was seen by a podiatrist and had work restrictions until February 4, 2023. In an August 15, 2023 note, he indicated that appellant underwent physical therapy and had work restrictions until October 31, 2023. In a December 7, 2023 note, Dr. Choi indicated that appellant underwent physical therapy and had work restrictions until June 6, 2024.

In a May 4, 2023 work status note, Dr. David S. Supik, a Board-certified osteopathic family practitioner, opined that appellant could return to work with restrictions.

An August 9, 2023 work status note from a registered nurse and certified nurse practitioner was also provided who held him off work on August 10, 2023.

In a December 15, 2023 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence required and provided a questionnaire for his completion. OWCP afforded appellant 60 days to submit the necessary evidence.

In a November 29, 2023 duty status report (Form CA-17), Dr. Choi noted that appellant was a letter carrier and provided a diagnosis of right shoulder arthritis. He noted restrictions, but indicated that appellant was not advised to resume work.

In a December 13, 2023 report, Dr. Frank Norberg, a Board-certified orthopedic surgeon, noted a history of injury for right shoulder pain of one year duration, worse in the last month, with no injury or acute trauma. Appellant reported that the pain started last year while working 13-hour days at the employing establishment loading trucks, opening heavy metal truck doors, and delivering packages. He noted that appellant's right shoulder pain persisted despite being on reduced workdays with weight restrictions over the past six months. Dr. Norberg provided right shoulder examination findings and noted that x-rays of the right shoulder revealed moderate acromioclavicular (AC) joint arthropathy and type III acromion. He diagnosed "probable" right shoulder superior labrum anterior to posterior (SLAP) tear.

In a follow-up letter dated December 27, 2023, OWCP advised appellant that it had conducted an interim review, and the medical evidence remained insufficient to establish his claim. It noted that he had 60 days from the December 15, 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.

OWCP received an undated statement from appellant, a June 2015 article from a postal union publication regarding maximum hour limits, and an offer of modified assignment, which appellant accepted January 16, 2024.

By decision dated March 6, 2024, OWCP denied appellant's occupational disease claim, finding that the medical evidence of record was insufficient to establish causal relationship between his diagnosed conditions and the accepted factors of his federal employment.

LEGAL PRECEDENT

An employee 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, an employee must submit the following: (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 causally related to the employment factors identified by the employee.⁷

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁸ A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.⁹ Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical

³ *Supra* note 1.

⁴ *E.K.*, Docket No. 22-1130 (issued December 30, 2022); *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 *S.H.*, Docket No. 22-0391 (issued June 29, 2022); *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 *E.H.*, Docket No. 22-0401 (issued June 29, 2022); *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 *R.G.*, Docket No. 19-0233 (issued July 16, 2019); *see also Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁸ *S.M.*, Docket No. 22-0075 (issued May 6, 2022); *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).

⁹ *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

rationale explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s).¹⁰

ANALYSIS

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

In support of his claim, appellant submitted a December 13, 2023 report from Dr. Norberg who reported the history of appellant's right shoulder pain as starting last year while working 13-hour days at the employing establishment loading trucks, opening heavy metal truck doors, and delivering packages. He noted that appellant's right shoulder pain persisted despite working reduced days with weight restrictions over the past six months. Dr. Norberg diagnosed "probable" right shoulder SLAP tear. The Board has held that medical reports lacking a rationalized medical opinion regarding causal relationship are of no probative value.¹¹ Therefore, this evidence is insufficient to establish appellant's claim.

In a November 29, 2023 duty status report (Form CA-17), Dr. Choi noted that appellant was a letter carrier and diagnosed right shoulder arthritis. He did not provide an opinion on causal relationship.¹² This report is, therefore, insufficient to establish appellant's claim.

OWCP also received work status notes from Drs. Choi and Supik providing work restrictions. However, they did not include a diagnosis or address causal relationship. The Board has held that medical reports lacking a rationalized medical opinion regarding causal relationship are of no probative value.¹³ Therefore, this evidence is insufficient to establish appellant's claim.

Appellant also submitted an August 9, 2023 work status note from a registered nurse and certified nurse practitioner. Certain healthcare providers such as physician assistants, nurse practitioners, and physical therapists are not considered qualified physicians as defined under FECA.¹⁴ Their medical findings, reports and/or opinions will not suffice for purposes of

¹⁰ *J.D.*, Docket No. 22-0935 (issued December 16, 2022); *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodhams*, *supra* note 7.

¹¹ *See A.C.*, Docket No. 20-1510 (issued April 23, 2021); *J.P.*, Docket No. 20-0381 (issued July 28, 2020); *R.L.*, Docket No. 20-0284 (issued June 30, 2020); *see also L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹² *Id.*

¹³ *N.E.*, Docket No. 24-0644 (issued August 23, 2024); *F.C.*, Docket No. 23-0132 (issued May 25, 2023); *G.R.*, Docket No. 21-1196 (issued March 16, 2022); *L.R.*, Docket No. 16-0736 (issued September 2, 2016); *Douglas M. McQuaid*, 52 ECAB 382 (2001).

¹⁴ 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* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (May 2023); *J.D.*, Docket No. 21-0164 (issued June 15, 2021) (nurse practitioners are not physicians as defined under FECA); *C.G.*, Docket No. 20-0957 (issued January 27, 2021); *P.S.*, Docket No. 17-0598 (issued June 23, 2017) (registered nurses are not considered 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).

establishing entitlement to FECA benefits.¹⁵ Accordingly, this evidence is insufficient to establish the claim.

As the medical evidence of record is insufficient to establish causal relationship between a medical condition and the accepted factors of federal employment, the Board finds that appellant has not met his 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 his burden of proof to establish a medical condition causally related to the accepted factors of his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the March 6, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 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

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