

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

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<b>B.M., Appellant</b>	)	
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<b>and</b>	)	<b>Docket No. 24-0922</b>
	)	<b>Issued: October 25, 2024</b>
<b>DEPARTMENT OF DEFENSE, DEFENSE</b>	)	
<b>LOGISTICS AGENCY, DISTRIBUTION</b>	)	
<b>REGIONAL CENTER, Albany, GA, Employer</b>	)	

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*Appearances:*  
*Paul H. Felser, 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  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On September 13, 2024 appellant, through counsel, filed a timely appeal from a March 19, 2024 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.

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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.*

## ISSUE

The issue is whether appellant has met her burden of proof to establish a left upper extremity condition causally related to the accepted September 13, 2019 employment incident.

## FACTUAL HISTORY

This case has previously been before the Board on a different issue.<sup>3</sup> The facts and circumstances as set forth in the Board's prior order are incorporated herein by reference. The relevant facts are as follows.

On November 8, 2019 appellant, then a 54-year-old distribution process worker, filed a traumatic injury claim (Form CA-1) alleging that on September 13, 2019 she sustained a rotator cuff tear when "lifting parts" while in the performance of duty. She did not stop work.

In support of her claim, appellant submitted reports dated October 1 through November 19, 2019 by Dr. John Waldrop, a Board-certified orthopedic surgeon, wherein he recounted a history of left shoulder pain that arose a few weeks prior to October 1, 2019 when pushing heavy items while at work. On examination of the left shoulder, Dr. Waldrop found positive O'Brien, Speed, and biceps tests, tenderness over the anterior cruciate ligament, and 4/5 rotator cuff weakness. He diagnosed left shoulder pain, left shoulder impingement, a partial thickness left rotator cuff tear, and biceps tendinitis of the left shoulder. Dr. Waldrop prescribed physical therapy and noted work restrictions.

In a January 2, 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 respond. No additional evidence was received.

By decision dated February 25, 2020, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish that the September 13, 2019 employment incident occurred, as alleged. It concluded, therefore, that she had not met the requirements to establish an injury as defined by FECA.

On September 21, 2020 appellant requested reconsideration of the February 25, 2020 decision. No additional evidence was received.

By decision dated October 2, 2020, OWCP denied appellant's request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

On February 25, 2021 appellant again requested reconsideration of the February 25, 2020 decision.

In an accompanying statement, appellant recalled that on September 13, 2019 her supervisor instructed her to weigh and measure items, including a heavy steel pipe, stored at

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<sup>3</sup> *Order Remanding Case*, Docket No. 21-1366 (issued February 13, 2023).

various warehouses. The pipe was over six feet tall, extended to another shelf, and weighed 45 pounds. As appellant lifted the pipe with her left hand to slide a scale beneath it with her right hand, she “heard a little snap and dropped the scale.” She then experienced pain in her shoulder and notified her supervisor of the incident.

In support of her request, appellant submitted a September 18, 2019 report by Dr. Donna Graf, a Board-certified obstetrician and gynecologist, wherein she recounted appellant’s left upper extremity pain with radiation to the left breast, scapula, and upper extremity with onset a few weeks previously. Dr. Graf noted that while appellant did “reach for parts overhead at her workplace” there was “[n]o specific injury.”<sup>4</sup> She provided work restrictions.

In reports dated October 29, 2019 through February 25, 2021, Dr. Waldrop diagnosed left shoulder impingement syndrome, partial thickness rotator cuff tear, and biceps tendinitis.<sup>5</sup> He noted work restrictions.

In reports dated December 11, 2020 through February 12, 2021, Dr. Nurulhusein Nurbhai, an osteopath Board-certified in orthopedic surgery, recounted a history of a left rotator cuff tear first diagnosed in October 2019. He diagnosed full-thickness rotator cuff tear, left shoulder derangement and recommended left shoulder arthroscopy with rotator cuff repair. Dr. Nurbhai placed appellant on light-duty work.

By decision dated March 23, 2021, OWCP denied appellant’s request for reconsideration, finding that it was untimely filed and failed to demonstrate clear evidence of error.

Appellant, through counsel, filed an appeal with the Board.<sup>6</sup>

By order issued February 13, 2023, the Board found that appellant had submitted a timely request for reconsideration and remanded the case to OWCP for consideration of the evidence under the appropriate standard for timely reconsideration requests and issuance of an appropriate decision.<sup>7</sup>

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<sup>4</sup> An October 9, 2019 magnetic resonance imaging (MRI) scan of the left shoulder revealed a moderate grade partial tearing of the anterior-most supraspinatus tendon with both articular-sided and bursal-sided tearing, and mild-to-moderate acromioclavicular joint osteoarthritis with mild mass effect on the myotendinous junction of the supraspinatus.

<sup>5</sup> A January 7, 2021 MRI scan of the left shoulder revealed a high-grade articular-sided partial tear of the anterior supraspinatus tendon versus near complete full-thickness tear, superior subscapularis tendinosis with low-grade intra substance partial tear, biceps tenosynovitis, and mild acromioclavicular joint osteoarthritis with a small amount of fluid in the subacromial subdeltoid bursa.

<sup>6</sup> During the pendency of the prior appeal, OWCP received a March 3, 2021 computerized tomography (CT) scan of the cervical spine, which demonstrated multilevel cervical spondylosis resulting in a one millimeter C4-5, C5-6, C7-T1 and C5-6 kyphotic deformity. A March 9, 2021 CT scan of the chest revealed a highly stenotic or sclerotic or chronically-occluded left axillary vein.

<sup>7</sup> *Supra* note 3.

Thereafter, OWCP received a March 3, 2022 operative note, wherein Dr. Nurbhai reported performing left shoulder arthroscopy, left shoulder arthroscopic synovectomy, left shoulder mini open rotator cuff repair, supraspinatus tendon repair, and shoulder open bursectomy.

By decision dated March 22, 2023, OWCP modified the February 25, 2020 decision to accept that the September 13, 2019 employment incident occurred, as alleged. However, the claim remained denied as the medical evidence of record was insufficient to establish causal relationship between the diagnosed conditions and the accepted September 13, 2009 employment incident.

On March 15, 2024 appellant, through counsel, requested reconsideration and submitted additional evidence.

In a partial June 8, 2021 report, Dr. Daniel Martin, Board-certified in vascular surgery, recounted treating appellant for a deep venous thrombosis (DVT) in the left upper extremity, which developed “months ago after rotator cuff injury.”

In an April 12, 2023 report, Dr. Nurbhai diagnosed adhesive capsulitis of the left shoulder and full-thickness left rotator cuff tear. He recounted that appellant injured her left shoulder at work when she tried to “lift up a pipe” that weighed 50 to 60 pounds and did not realize the pipe extended to some shelves. Dr. Nurbhai opined that, “[t]his is probable Worker’s Comp[ensation] claim with regards to her left shoulder.”

By decision dated March 19, 2024, OWCP denied modification of its March 22, 2023 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>8</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, 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>9</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>10</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

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<sup>8</sup> *Supra* note 2.

<sup>9</sup> *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>10</sup> *B.H.*, Docket No. 20-0777 (issued October 21, 2020); *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).

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.<sup>11</sup>

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.<sup>12</sup> A physician's opinion on whether there is a causal relationship between the diagnosed condition and the employment injury must be based on a complete factual and medical background.<sup>13</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 the accepted employment incident.<sup>14</sup> 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.<sup>15</sup>

### ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a left upper extremity condition causally related to the accepted September 13, 2019 employment incident.

Dr. Graf, in a September 18, 2019, recounted that appellant's left upper extremity symptoms began a few weeks previously. She noted that appellant had reached overhead for parts while at work, but there was no specific injury. Accordingly, Dr. Graf's opinion negates causal relationship between the diagnosed conditions and the September 13, 2019 employment incident.<sup>16</sup>

Dr. Waldrop, in reports dated October 1, 2019 through February 25, 2021, recounted that appellant's left shoulder symptoms began when pushing heavy items at work a few weeks prior to October 1, 2019. He diagnosed left shoulder impingement, a partial thickness left rotator cuff tear, and biceps tendinitis of the left shoulder. The Board finds that as Dr. Waldrop did not provide rationale explaining the September 13, 2019 employment incident would have caused or

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<sup>11</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>12</sup> *R.P.*, Docket No. 21-1189 (issued July 29, 2022); *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>13</sup> *S.W.*, Docket No. 24-0302 (issued July 26, 2024); *R.P.*, *id.*; *F.A.*, Docket No. 20-1652 (issued May 21, 2021); *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

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

<sup>15</sup> *S.W.*, *supra* note 13; *T.M.*, Docket No. 22-0220 (issued July 29, 2022); *S.S.*, Docket No. 18-1488 (issued March 11, 2019); *see also J.L.*, Docket No. 18-1804 (issued April 12, 2019).

<sup>16</sup> *S.M.*, Docket No. 24-0542 (issued July 11, 2024); *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).

aggravated the diagnosed conditions, his opinion is insufficient to meet appellant's burden of proof.<sup>17</sup>

Dr. Nurbhai, in reports dated December 11, 2020 through March 3, 2022, diagnosed left shoulder derangement and left rotator cuff tear. In an April 12, 2023 report, he recounted that appellant injured her left shoulder at work when she attempted to lift a pipe that weighed 50 to 60 pounds. Dr. Nurbhai indicated that the left shoulder injury was employment related. While he provided an opinion as to the cause of appellant's diagnosed left upper extremity conditions, Dr. Nurbhai did not support his opinion with medical rationale explaining how the September 13, 2019 incident caused her claimed conditions. Without explaining how, physiologically, the specific effects of lifting a heavy pipe on September 13, 2019 caused, contributed to, or aggravated the diagnosed conditions, the opinion in these reports is of limited probative value and insufficient to establish the claim.<sup>18</sup>

Dr. Martin, in a partial June 21, 2021 report, recounted treating appellant for a DVT in the left upper extremity, which developed following a rotator cuff injury. However, he did not explain, with rationale, how the accepted September 13, 2019 employment incident would cause a rotator cuff injury or lead to development of a DVT.<sup>19</sup> Dr. Martin's opinion is therefore insufficient to establish appellant's claim.<sup>20</sup>

OWCP also received March 3 and 9, 2021 CT scans, and October 9, 2019 and January 7, 2021 MRI scans. The Board has held that diagnostic studies, standing alone, lack probative value as they do not provide an opinion regarding whether the accepted employment incident caused a diagnosed condition.<sup>21</sup> These reports, therefore, are insufficient to establish the claim.

As the medical evidence of record is insufficient to establish causal relationship between a left upper extremity condition and the accepted September 13, 2019 employment incident, 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.

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<sup>17</sup> *T.S.*, Docket No. 23-0772 (issued March 28, 2024); *D.F.*, Docket No. 19-0067 (issued May 3, 2019).

<sup>18</sup> *See A.G.*, Docket No. 24-0647 (issued July 31, 2024); *T.F.*, Docket No. 20-0260 (issued June 12, 2020); *D.J.*, Docket No. 18-0694 (issued March 16, 2020); *K.G.*, Docket No. 18-1598 (issued January 7, 2020); *K.O.*, Docket No. 18-1422 (issued March 19, 2019).

<sup>19</sup> *S.M.*, *supra* note 16; *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

<sup>20</sup> *S.M.*, *id.*

<sup>21</sup> *See J.J.*, Docket No. 24-0724 (issued July 30, 2024); *R.K.*, Docket No. 24-0545 (issued June 28, 2024); *P.G.*, Docket No. 24-0511 (issued June 26, 2024).

**CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish a left upper extremity condition causally related to the accepted September 13, 2019 employment incident.

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 19, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 25, 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