

R.B., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Clendenin, WV, Employer**

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

DECISION AND ORDER

PATRICIA HOWARD FITZGERALD, Acting Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

On January 2, 2014 appellant filed a timely appeal of the December 12, 2013 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 the case.²

The issue is whether appellant met her burden of proof to establish that she sustained a traumatic injury on October 12, 2013, as alleged.

² On appeal, appellant submitted additional evidence. However, the Board may not consider new evidence for the first time on appeal, pursuant to 20 C.F.R. § 501.2(c).

FACTUAL HISTORY

On October 15, 2013 appellant, then a 40-year-old sales and service distribution associate, filed a Form CA-1, traumatic injury claim, alleging that on October 12, 2013 she injured her right shoulder while lifting a parcel. She stopped work on October 16, 2013.

Appellant submitted an August 2, 2013 report from Dr. Brendan O'Hara, Board-certified in emergency medicine, who treated her for chest pain, shortness of breath, fever, nausea and chills after undergoing a colonoscopy. In an October 1, 2013 report, Dr. Greta Guyer, a Board-certified internist, treated appellant for hypothyroidism.

Appellant was treated by a nurse practitioner on October 16, 2013 for a shoulder injury. She reported that on October 12, 2013, after lifting a heavy package at work, her right shoulder "popped" and she experienced sharp pain. The nurse practitioner noted a limited range of motion of the right shoulder and diagnosed injury to the right shoulder and upper arm. In a return to work slip and a duty status report dated October 16, 2013, she treated appellant for a shoulder injury. Appellant could return to work on October 21, 2013 with restrictions. An x-ray of the right shoulder dated October 17, 2013 revealed mild degenerative changes of the acromioclavicular joint. In an October 23, 2013 attending physician's report, the nurse practitioner noted that on October 12, 2013 appellant was carrying a heavy package at work and her right shoulder "popped." She noted with a check mark "yes" that appellant's condition was caused or aggravated by an employment activity and returned her to work on October 16, 2013 with restrictions. On October 24, 2013 the nurse practitioner diagnosed a shoulder and upper arm injury.

By letter dated October 28, 2013, OWCP advised appellant that her claim was originally received as a simple, uncontroverted case which resulted in minimal or no time loss from work. Appellant's claim was administratively handled to allow medical payments up to \$1,500.00 but the merits of the claim had not been formally adjudicated. Because she had not returned to full duty, her claim would be formally adjudicated. OWCP requested that appellant submit additional information including a comprehensive medical report from her treating physician which included a reasoned explanation as to how the specific work factors or incidents had contributed to her claimed right shoulder injury.

In an undated statement, appellant advised that on October 12, 2013 she retrieved a package for a customer which weighed about 50 pounds and her right shoulder "popped" resulting in severe pain. She continued to work at the counter but could not use her right hand and subsequently sought medical treatment. Appellant submitted duty status reports from the nurse practitioner dated October 24 to December 2, 2013. The nurse practitioner noted that appellant sustained a right shoulder injury related to her occupation and could return to work on November 22, 2013 subject to restrictions. In a November 21, 2013 note, she advised that appellant would remain on restricted duty until December 2, 2013. In a December 6, 2013 attending physician's report, the nurse practitioner noted that appellant was carrying heavy packages at work on October 12, 2013 and felt her right shoulder "pop." She noted with a check mark "yes" that appellant's condition was caused or aggravated by an employment activity and advised that appellant was partially disabled but could return to work with restrictions.

In a December 12, 2012 decision, OWCP denied appellant's claim. It accepted the October 12, 2013 lifting incident but found that the medical evidence was insufficient to establish that her right shoulder condition was causally related to the incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of establishing the essential elements of his or her claim including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was filed within the applicable time limitation of FECA, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed is causally related to the employment injury. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.³

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. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place and in the manner alleged. Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.⁴

Rationalized medical opinion evidence is generally required to establish causal relationship. 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 factors identified by the claimant.⁵

ANALYSIS

OWCP accepted that appellant worked as a sales and services distribution associate and on October 12, 2013 she lifted a heavy package and felt her right shoulder "pop." The Board finds that appellant did not submit sufficient medical evidence to establish that the diagnosed degenerative changes of the right shoulder are causally related to the October 12, 2013 work incident.

Appellant submitted various records from a nurse practitioner dated October 16 to December 2, 2013, for treatment of her right shoulder after the lifting incident. The nurse practitioner diagnosed mild degenerative changes of the acromioclavicular joint. The Board has held that documents signed by a nurse practitioner are not considered probative medical evidence

³ *Gary J. Watling*, 52 ECAB 357 (2001).

⁴ *T.H.*, 59 ECAB 388 (2008).

⁵ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

as a nurse practitioner is not a physician as defined under FECA.⁶ The treatment records from the nurse practitioner are of no probative medical value in establishing appellant's claim.

Appellant submitted an August 2, 2013 report from Dr. O'Hara who treated her for chest pain, shortness of breath, fever, nausea and chills after undergoing a colonoscopy. In an October 1, 2013 report, Dr. Guyer treated her for hypothyroidism. However, these reports are of no probative value in establishing the claimed right shoulder injury as they predate the October 12, 2013 incident and do not pertain to appellant's right shoulder condition.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that her condition was caused precipitated or aggravated by her employment is sufficient to establish causal relationship. Causal relationships must be established by rationalized medical opinion evidence.⁷ Appellant failed to submit such evidence and OWCP therefore properly denied her claim for compensation.

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 did not meet her burden of proof to establish that her claimed conditions were causally related to her employment.

⁶ *L.D.*, 59 ECAB 648 (2008) (a nurse practitioner is not a physician as defined under FECA). *See David P. Sawchuk*, 57 ECAB 316 (2006) (lay individuals such as physician's assistants, nurses and physical therapists are not competent to render a medical opinion under FECA); 5 U.S.C. § 8101(2) (this subsection defines a "physician" as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law).

⁷ *See Dennis M. Mascarenas*, 49 ECAB 215 (1997).

ORDER

IT IS HEREBY ORDERED THAT the December 12, 2013 decision of the Office of Workers' Compensation Programs is affirmed.⁸

Issued: June 2, 2014
Washington, DC

Patricia Howard Fitzgerald, Acting Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

⁸ Effective May 19, 2014, Patricia Howard Fitzgerald was appointed Acting Chief Judge.