United States Department of Labor
Employees' Compensation Appeals Board

T.R., Appellant	)	
and	)	**Docket No. 12-1553**
	)	**Issued: October 26, 2012**
U.S. POSTAL SERVICE, NEW YORK L & DC, Bethpage, NY, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 12, 2012 appellant filed a timely appeal from a May 31, 2012 decision of the Office of Workers' Compensation Programs (OWCP) that denied her claim. Pursuant to the Federal Employees' Compensation Act[1] (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 sustained an injury in the performance of duty on July 9, 2011.

FACTUAL HISTORY

On July 9, 2011 appellant, then a 40-year-old mail handler, filed a claim alleging that she injured her left shoulder that day while processing magazines. She noted that her shoulder popped at the site of an earlier injury and that she immediately had pain and loss of range of

[1] 5 U.S.C. §§ 8101-8193.

motion. The employing establishment noted that appellant had been given a letter of warning for poor attendance on June 30, 2011 and that she was working modified duty for six hours a day. The letter of warning was attached. OWCP indicated that it considered the July 9, 2011 incident a new injury and not a recurrence of her previous injury.[2]

An April 30, 2010 magnetic resonance imaging (MRI) scan study of the left shoulder indicated bone marrow edema within the greater tuberosity, small subscapularis bursal effusion, and no full thickness rotator cuff tear. In a June 8, 2011 report, Dr. Andranik Khatchatrian, an attending Board-certified physiatrist, noted seeing appellant for a work-related injury. He provided physical examination findings and diagnosed left shoulder internal derangement. A duty status report and attending physician's report with illegible signatures dated July 9, 2011 noted that appellant had a previous left shoulder injury and advised that she could not work. On July 13, 2011 Dr. Khatchatrian advised that appellant could not work. In treatment notes dated July 13 and August 10, 2011, he noted appellant's history of the new injury that caused worsening left shoulder pain. Dr. Khatchatrian provided physical examination findings of tenderness over the acromioclavicular joint and limited range of motion and advised that appellant could not work. In reports dated September 9, 2011, Dr. Paul Kubiak, an attending orthopedic surgeon, noted a history that appellant had several injuries to her left shoulder and sustained a new twisting injury on July 9, 2011. He provided physical examination findings, diagnosed left shoulder pain, recommended an updated MRI scan study, and advised that appellant was totally disabled.

On October 7, 2011 OWCP informed appellant of the evidence needed to perfect her claim. In reports dated October 14 and 21, 2011, Dr. Kubiak provided physical examination findings and reiterated his diagnosis of left shoulder pain. He continued to advise that appellant could not work. An October 20, 2011 MRI scan study of the left shoulder was interpreted as unremarkable.

By decision dated November 9, 2011, OWCP denied appellant's claim. It found that the incident established that appellant had submitted insufficient medical evidence.

Appellant requested reconsideration and submitted a November 18, 2011 report in which Dr. Kubiak noted that appellant injured her left shoulder at work on April 12, 2008, April 12, 2010 and July 9, 2011, and with each of these injuries no rotator cuff tears or severe soft tissue damage was noted, and that, therefore, he diagnosed sprain or strain of the left shoulder with continued pain and limited range of motion. Dr. Kubiak again diagnosed left shoulder pain and advised that appellant could work. On December 30, 2011 he advised that appellant was improved and could work four hours a day with left upper extremity lifting limited to 30 pounds. On April 6, 2012 Dr. Kubiak again noted the complaint of hand numbness and advised that she continued to have limited range of motion of the left shoulder. He diagnosed left shoulder pain with hand numbness and recommended electrodiagnostic studies.

[2] Appellant filed a CA-2a recurrence claim form on July 9, 2011. The initial claim that occurred on April 4, 2010 was adjudicated under OWCP file number xxxxxx659; the instant claim was adjudicated under file number xxxxxx687.

In a May 31, 2012 decision, OWCP modified the November 9, 2011 decision to show that, while appellant had submitted medical evidence, it was insufficient to establish that the diagnosed condition was caused by the July 9, 2012 employment 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 timely filed within the applicable time limitation period 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 are causally related to the employment injury. Regardless of whether the asserted claim involves traumatic injury or occupational disease, an employee must satisfy this burden of proof.[3]

OWCP regulations, at 20 C.F.R. § 10.5(ee) define a traumatic injury as a condition of the body caused by a specific event or incident or series of events or incidents within a single workday or shift.[4] To determine whether an employee sustained a traumatic injury in the performance of duty, OWCP must determine whether "fact of injury" is established. First, an employee has the burden of demonstrating the occurrence of an injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish a causal relationship between the employment incident and the alleged disability and/or condition for which compensation is claimed. An employee may establish that the employment incident occurred as alleged, but fail to show that his or her disability and/or condition relates to the employment incident.[5]

Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence.[6] The opinion of the physician must be based on a complete factual and medical background of the claimant, 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.[7] 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.[8]

[3] *Gary J. Watling*, 52 ECAB 278 (2001).

[4] 20 C.F.R. § 10.5(ee); *Ellen L. Noble*, 55 ECAB 530 (2004).

[5] *Gary J. Watling*, *supra* note 3.

[6] *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[7] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 385 (1989).

[8] *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

ANALYSIS

OWCP found that the July 9, 2011 employment incident occurred as alleged. The Board, however, finds that the medical evidence of record is insufficient to establish that appellant sustained an injury or medical condition caused by this incident.

The April 30, 2010 MRI scan study of the left shoulder predates the July 9, 2011 employment incident. The October 20, 2011 MRI scan was unremarkable. Moreover, neither study includes an opinion on the cause of any diagnosed condition. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[9] The reports with illegible signatures do not constitute competent medical evidence.[10]

While Dr. Khatchatrian diagnosed internal derangement of the left shoulder, the October 20, 2011 MRI scan study was interpreted as unremarkable. His opinion is, therefore, of diminished probative value. Dr. Kubiak merely diagnosed left shoulder pain. Pain is a symptom, not a compensable diagnosis.[11] Moreover, on attending physician's reports dated September 9 and October 14, 2011, Dr. Kubiak advised that appellant had a preexisting left shoulder condition. On the September 9, 2011 report, he checked a form box "yes," indicating that the condition was caused by the July 9, 2011 incident; however, on the October 14, 2011 report, he checked the form box "no," indicating that her current condition was not caused by the July 9, 2011 employment incident. When a physician's opinion on causal relationship consists only of checking "yes" to a form question, that opinion has little probative value and is insufficient to establish a causal relationship,[12] and Dr. Kubiak's opinion in this regard is also equivocal and inconsistent. Medical opinions based upon an incomplete history or which are speculative or equivocal in character have little probative value.[13]

While the medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute certainty, neither can such opinion be speculative or equivocal. The opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to federal employment and such relationship must be supported with affirmative evidence, explained by medical rationale and be based upon a complete and accurate medical and factual background of the claimant.[14] Drs. Khatchatrian and Kubiak did not provide any explanation as to how the July 9, 2011 employment incident caused the diagnosed conditions. Their opinions are therefore insufficient to meet appellant's burden of proof.

[9] *Willie M. Miller*, 53 ECAB 697 (2002).

[10] *K.W.*, 59 ECAB 271 (2007).

[11] *C.F.*, Docket No. 08-1102 (issued October 10, 2008).

[12] *D.D.*, 57 ECAB 734 (2006).

[13] *Frank Luis Rembisz*, 52 ECAB 147 (2000).

[14] *Patricia J. Glenn*, 53 ECAB 159 (2001).

As appellant did not submit sufficient medical evidence to establish that she sustained a diagnosed condition caused by the July 9, 2011 employment incident, she did not meet her burden of proof.[15]

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 establish that she sustained an injury causally related to the July 9, 2011 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the May 31, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 26, 2012
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

[15] *Gary J. Watling*, *supra* note 3. The Board notes that appellant submitted medical evidence with his appeal to the Board. The Board cannot consider this evidence, however, as its review of the case is limited to the evidence that was before OWCP at the time it rendered its final decision. 20 C.F.R. § 501.2(c)(1) (2009).