United States Department of Labor
Employees' Compensation Appeals Board

L.L., Appellant	)	
and	)	**Docket No. 13-829**
	)	**Issued: August 20, 2013**
U.S. POSTAL SERVICE, POST OFFICE, Portland, OR, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 26, 2013 appellant filed a timely appeal from a January 29, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP) denying 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 has met her burden of proof to establish that she sustained an injury causally related to factors of her federal employment.

FACTUAL HISTORY

On May 2, 2012 appellant, then a 40-year-oldrural carrier, filed an occupational disease claim alleging that shehadleft arm pain while using a scanner at work. She alleged that she needed to press the button to scan constantly which caused muscle pain in her left

[1] 5 U.S.C. § 8101 *et seq.*

forearm.Appellant first became aware of the injury and its relation to her work on March 23, 2012.She did not stop work. The employing establishment noted that appellant was currently working six-hour limitedduty due to a prior claim.[2]

In an undated statement received by OWCP on May 11, 2012, appellant contended that she sustained a right arm injury at work on June 16, 2011 and could not use her right arm to work. She advised that she returned to light duty in August 2011. Appellant explained that she only used her left arm to work sorting mail. Shehad another assignment in March 2012, which involved using the small scanner. Appellant noted that she did not feel any pain in her left arm until she began using the big scanner, which weighed a pound.

In a March 27, 2012 treatment note, Lynne Nguyen, a physician's assistant, advised that appellant was seen for left arm pain. She recommended light duty with restrictions.

In a letter dated May 8, 2012, Maro Kersey, a facility manager with the employing establishment, controverted the claim. She advised that appellant noted that she became aware of her injury on March 23, 2012 after her new assignment of March 12, 2012. Ms. Kerseystated that appellant did not notify her supervisor until May 3, 2012. Shealso indicated that appellant's restrictions allowed her to lift from three to five pounds for up to six hours. Appellant went to her physician when the scanner was weighed and was given a one-pound lifting restriction. Ms. Kersey noted that appellant was instructed as to how to use the scanner.

By letter dated May 15, 2012, OWCP advised appellant that additional factual and medical evidence was needed. It received industrial accident/injury investigation reports, nursing notes, a position description, work history information, a request for medical information and a medical history questionnaire. OWCP also received treatment notes pertaining to the cervical spine dated June 14 and September 11, 2007 from Dr. Tyrone Wei, a chiropractor,who found that the cervical spine was negative for recent fracture. Dr. Wei also found minimal foraminal narrowing at C3-4.

By decision dated June 21, 2012, OWCP denied appellant's claim. It found that the medical evidence did not establish a left arm condition related to accepted work activities.

On July 17, 2012 appellant's representative requested a telephonic hearing, which was held on November 9, 2012.

In an October 29, 2012 treatment note, Dr. Hoang Nguyen, a Board-certified internist, saw appellant in follow up regarding her workers' compensation claim. He diagnosed a right wrist fracture and a right frozen shoulder.

A December 20, 2011 magnetic resonance imaging (MRI) scan of the right shoulder read by Dr. J. Michael Pearson, a Board-certified diagnostic radiologist, revealed mild supraspinatus tendinopathy without a tear and minimal subacromial-subdeltoid fluid which might represent changes of mild bursitis.

[2]Claim No. xxxxxx064.This other claim is not presently before the Board.

In an April 27, 2012 treatment record, Dr. Anthony S. Wei, a Board-certified orthopedic surgeon, noted that appellant previously had no problem with her right shoulder. Headvised that on June 16, 2011 she was working at the employing establishment when she was struck by a mail container weighing 1,000 pounds. Dr. Weistated that appellant sustained a wrist dislocation and a radius fracture. He diagnosed right shoulder adhesive capsulitis. Notes from a physician's assistant and occupational therapist were also submitted.

By decision dated January 29, 2013, an OWCP hearing representative affirmed the June 21, 2012 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] 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.[4] 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.[5]

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employing establishment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employing establishment factors identified by the claimant. The medical evidence required to establish causal relationship, generally, is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. 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.[6]

[3] 5 U.S.C. §§ 8101-8193.

[4] *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[5] *Victor J. Woodhams*, 41 ECAB 345 (1989).

[6] *Id.*

ANALYSIS

Appellant claimed a left arm conditionrelated to such activities as scanning at work.The Board finds that she did not submit sufficient medical evidence to establish that the left arm conditionwas caused or aggravated by these work activitiesor any other factors of her federal employment.

Appellant submitted an April 17, 2012 treatment note from Dr. Wei, who diagnosed right shoulder adhesive capsulitis. This report is of limited probative value, as he provided no opinion as to a left arm condition commencing in March 2012. Dr. Wei addressed appellant's right arm condition but did not address how employment duties, such as using a scanner, contributed to the claimed left arm condition.[7] Consequently, the Board finds that this evidence is insufficientto establish appellant's claim.

An October 29, 2012 treatment note from Dr. Nguyen also addressed appellant's right arm.This report is not sufficient to establish the claim as it is not related to the left arm claim that is at issue in the matter before the Board. Dr. Pearson's December 20, 2011 MRI scan of the right shoulder also does not address the present claim for a left arm condition.[8]

The record contains notes from a physician's assistant, nurseand occupational therapist. Section 8101(2) of FECA provides that the term "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by the applicable state law. Only medical evidence from a physician as defined by FECA will be accorded probative value. Health care providers such as nurses, acupuncturists, physician's assistants and physical therapists are not physicians under FECA. Thus, their opinions on causal relationship do not constitute rationalized medical opinions and have no weight or probative value.[9]

OWCP also received chiropractic reports from Dr. Tyrone Wei. Section 8101(2) of FECA[10] provides that the term physician, as used therein, includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulations by the Secretary.[11] Dr. Tyrone Wei did not diagnose a spinal subluxation. Without a diagnosis of a spinal subluxation from x-ray, a chiropractor is not a physician under FECA and his opinion

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

[8] *See id.*

[9] *Jane A. White*, 34 ECAB 515, 518 (1983).

[10] 5 U.S.C. § 8101(2).

[11] *See* 20 C.F.R. § 10.311.

does not constitute competent medical evidence.[12] The Board also notes that the issue is a left arm condition and chiropractor is not competent to treat such a condition under FECA.[13]

The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.[14] Neither the fact that the condition became apparent during a period of employment nor the belief that the condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[15] Causal relationship must be substantiated by reasoned medical opinion evidence, which is appellant's responsibility to submit.

As there is no reasoned medical evidence explaining how appellant's employment duties caused or aggravated a medical condition involving her left arm, appellant has not met her burden of proof in establishing that she sustained a medical condition in the performance of duty causally related to factors of heremployment.

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 her burden of proof in establishing that she sustained an injury in the performance of duty causally related to factors of her federal employment.

[12] *Jay K. Tomokiyo*, 51 ECAB 361 (2000).

[13] *See George E. Williams*, 44 ECAB 530 (1993).

[14] *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

[15] *Id.*

ORDER

IT IS HEREBY ORDERED THATthe January 29, 2013 decision of the Office of Workers' Compensation Programsis affirmed.

Issued: August 20, 2013
Washington, DC

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

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

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