United States Department of Labor
Employees' Compensation Appeals Board

C.B., Appellant	)	
and	)	**Docket No. 13-760**
	)	**Issued: June 20, 2013**
DEPARTMENT OF DEFENSE, DOVER AIR FORCE BASE, Dover, DE, Employer	)	

Appearances:
John S. Grady, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 13, 2013 appellant, through her representative, filed a timely appeal from January 11, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 met her burden of proof to establish that her left shoulder condition was causally related to the February 19, 2010 employment incident.

FACTUAL HISTORY

On June 22, 2011 appellant, then a 47-year-old store associate, filed a traumatic injury claim alleging that on February 19, 2010 she pulled a muscle in her left shoulder and pinched a cyatic nerve in her right leg when she lifted cases of detergent bottles weighing about 12 pounds

[1] 5 U.S.C. § 8101 *et seq.*

each. She stopped work on February 19, 2010 and returned on February 24, 2011. The employing establishment controverted appellant's claim due to timeliness and lack of witness statements.

On July 6, 2011 OWCP advised appellant that no evidence was submitted to establish her claim and requested additional evidence.

In a decision dated August 10, 2011, OWCP denied appellant's claim finding insufficient evidence to establish that the February 19, 2010 employment incident occurred as alleged and that she sustained any diagnosed condition causally related to the alleged incident.

By letter dated August 22, 2011, appellant, through counsel, requested reconsideration.

In a December 6, 2010 report, a physician's assistant noted appellant's complaints of left shoulder pain for the past eight or nine months and noted that she repetitively lifted heavy boxes at work. Appellant stated that she developed soreness in her shoulder but the pain gradually increased. The physician's assistant noted that appellant worked at a grocery store and did a lot of scanning with internal and external rotation that increased her pain. Examination of the left shoulder revealed tenderness over the acromioclavicular (AC) joint and superior aspect of the shoulder. No erythema, lesions, soft tissue swelling or joint effusion were noted. Hawkins-Kennedy and Neer sign were positive. X-rays revealed a type 2 acromion with a high-riding humeral head. The physician's assistant diagnosed rotator cuff tendinitis and bursitis of the left shoulder. Appellant submitted other progress notes and return to work slips by a physician's assistant dated December 6, 2010 to June 6, 2011.

In a January 7, 2011 magnetic resonance imaging (MRI) scan report, Dr. Raphael Caccese, Jr., a Board-certified diagnostic radiologist, noted appellant's complaints of left shoulder pain. He observed an intact supraspinatus tendon with no evidence of a partial or full-thickness tear, pathological fluid collection and acute focal bony abnormalities. Dr. Caccese found a small cyst in the humeral head which he opined could be related to chronic impingement.

In January 11 to February 17, 2011 patient chart notes, Dr. Michael L. Mattern, a Board-certified orthopedic surgeon, noted that appellant was scheduled for left shoulder surgery on January 19, 2011. Upon examination, he opined that it was apparent that she had rotator cuff disease. Dr. Mattern also observed tenderness at the AC joint and stated that the AC joint may be the significant component of her shoulder pain. He diagnosed left shoulder chronic impingement syndrome and acromioclavicular arthritis.

In February 13 and 23, 2011 return to work slips, Dr. Mattern stated that appellant was disabled for left shoulder surgery and authorized her to return to light duty on February 22, 2011. He restricted her to avoid overhead lifting, pushing and pulling over 20 pounds.

In progress notes dated from February 23 to April 26, 2011, Dr. Mattern noted that appellant underwent left shoulder surgery on January 19, 2011 and was recovering well. He observed nearly 100 degrees glenohumeral abduction, 95 degrees external rotation and about 30 degrees internal rotation. Dr. Mattern also noted some tenderness about appellant's shoulder but stated that her strength and range of motion continued to improve. He recommended that she

continue with light-duty restrictions of no lifting, pushing or pulling over 15 to 20 pounds and no overhead use.

In a May 9, 2011 report, Dr. Mattern noted that appellant was recovering from left shoulder surgery and was released to light duty. He also related her new complaints of right knee pain. Dr. Mattern diagnosed right knee patellar chondromalacia and noted that appellant's condition was chronic. He recommended she use knee pads when kneeling down.

In a June 21, 2011 witness statement, Master Sergeant (MSgt.) Thomas A. Mathias stated that on or about February 19, 2010 he saw appellant load detergent onto a "U" boat to stock on the sales floor. He noted that each box weighed approximately 35 to 40 pounds and related that she hurt her left arm, shoulder, leg and back while lifting one of the boxes. MSgt. Mathias stated that in the following weeks she mentioned to him and other coworkers that her left shoulder was still hurting and seemed to be worse. He reported that, although appellant had restrictions of lifting, reaching or pulling, their manager would have her reaching and pulling items on the shelves instead of having her do clerical work.

In a June 23, 2011 statement, Lamont Wilson, a store worker, noted that in mid-February 2010 he witnessed appellant lift detergent cases onto a cart and hurt herself in the process. He stated that she was out of work for a few days and when she returned she informed him that she had a pinched nerve in her back or leg and shoulder problems. Mr. Wilson reported that appellant continued to do her job to the best of her ability until she eventually had left shoulder surgery.

In a letter dated June 23, 2011, counsel related that in February 2010 appellant sustained an injury when she lifted boxes of detergent as a sales associate at the employing establishment. He stated that the injury occurred on Friday and when she returned to work on Monday, she complained of problems with her shoulder. Counsel noted that medical records dated May 2010 revealed that appellant had severe pain. Between February and November 2010, appellant was on and off work due to her shoulder injury and used vacation and sick leave. She returned to work on January 4, 2011 but stopped again when she had surgery. Appellant returned to light duty in March 2011 until her last day of work on June 14, 2011 when she was dismissed because the employing establishment could no longer accommodate her light-duty requirements. Counsel reported that she was now in the process of completing the paperwork to request workers' compensation benefits and in the process of filing an Equal Employment Opportunity complaint. He requested that appellant be reinstated in her position and receive workers' compensation for the time that she took off work.

In a June 25, 2011 statement, Sandra Dee Ruiz, a store vendor, stated that on February 19, 2010 she saw appellant load up a U-boat with several cases of detergent and helped her push it to the sales floor because it was very heavy. She observed that appellant was having trouble lifting and adjusting shelves. Ms. Ruiz reported that appellant told another worker that she thought she pulled a muscle in her shoulder and leg. She stated that the following day she heard from other workers that appellant was in the emergency room in severe pain. Ms. Ruiz noted that appellant did not return to work for a couple of days.

In July 11, 2011 report and release to work slip, Dr. Mattern related that appellant continued to complain of left shoulder pain and noted that she was no longer working due to lack of light duty availability. Upon examination, he observed tenderness at the AC joint region and rotator cuff area. Dr. Mattern noted that range of motion was good and abduction strength was good with some pain on abduction against resistance. He diagnosed residual left shoulder pain. Dr. Mattern authorized appellant to return to light duty with restrictions of no lifting over 20 pounds.

In a July 13, 2011 certification of health care provider form, Dr. Mattern noted that appellant's condition commenced approximately March or April 2010 and listed the dates of treatment. He reported that she was unable to perform heavy and overhead use of the left arm and no lifting over 20 pounds. Dr. Mattern noted appellant's condition of left shoulder pain, left subacromial decompression, acromioplasty and distal clavicle resection.

In a July 14, 2011 MRI scan report, Dr. Victoria E. Kong, a Board-certified diagnostic radiologist, noted appellant's history of left shoulder pain. She observed postsurgical changes at the AC joint and an intact rotator cuff. No subacromial enthesophyte or bursitis, significant tendinopathy and partial or full thickness rotator cuff tear were found.

By decision dated December 22, 2011, OWCP found that fact of injury had been established as the evidence supported that the February 19, 2010 incident occurred as alleged. It also found that appellant sustained a diagnosed left shoulder condition, but denied her claim finding insufficient evidence to establish that her condition was causally related to the accepted incident.

By letter dated February 7, 2012, counsel appealed the December 22, 2011 decision. He stated that he obtained a report from Dr. Mattern that supported that appellant's shoulder condition was related to the accident.

In a February 6, 2012 report, Dr. Mattern stated that he initially treated appellant on December 6, 2010 for complaints of left shoulder pain. He noted that the pain began around March or April 2010 and contributed it to repetitive lifting of heavy boxes at work. Upon initial examination, Dr. Mattern observed tenderness over the AC joint and positive impingement signs. He initially opined that appellant had rotator cuff tendinitis and bursitis of the left shoulder. Dr. Mattern noted that x-rays revealed type 2 acromion and an MRI scan revealed thinning of the supraspinatus tendon, consistent with shoulder impingement syndrome. He explained that this indicated that it had been ongoing for some period of time and was not an acute condition. Dr. Mattern opined that, based on appellant's history, examination and MRI scan it was medically probable that she injured her shoulder doing repetitive activities at work. He explained that impingement typically came from overhead-type activities under the appropriate circumstances and that it would be difficult to lift up to 40 pounds on a regular basis. Dr. Mattern stated that appellant's overhead work aggravated her shoulder. He reported that, although she underwent surgery in January 2011, she still showed evidence of chronic tendinitis and complained of left shoulder problems.

On October 8, 2012 appellant submitted a request for reconsideration.

In a decision dated January 11, 2013, OWCP denied modification of the December 22, 2011 decision denying appellant's traumatic injury claim. It also denied entitlement to continuation of pay beginning February 20, 2010.

LEGAL PRECEDENT

An employee seeking benefits under FECA[2] has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence[3] including that he or she sustained an injury in the performance of duty and that any specific condition or disability for work for which he or she claims compensation is causally related to that employment injury.[4]

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.[5] There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.[6] Second, the employee must submit evidence, generally only in the form of probative medical evidence, to establish that the employment incident caused a personal injury.[7] An employee may establish that the employment incident occurred as alleged but fail to show that his disability or condition relates to the employment incident.[8]

Whether an employee sustained an injury in the performance of duty requires the submission of rationalized medical opinion evidence.[9] The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.[10] The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.[11]

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[2] 5 U.S.C. §§ 8101-8193.

[3] *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

[4] *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[5] *S.P.,* 59 ECAB 184 (2007); *Alvin V. Gadd,* 57 ECAB 172 (2005).

[6] *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

[7] *David Apgar,* 57 ECAB 137 (2005); *John J. Carlone*, 41 ECAB 354 (1989).

[8] *T.H.,* 59 ECAB 388 (2008); *see also Roma A. Mortenson-Kindschi,* 57 ECAB 418 (2006).

[9] *See J.Z.,* 58 ECAB 529 (2007); *Paul E. Thams,* 56 ECAB 503 (2005).

[10] *I.J.,* 59 ECAB 408 (2008); *Victor J. Woodhams,* 41 ECAB 465 (2005).

[11] *James Mack,* 43 ECAB 321 (1991).

ANALYSIS

OWCP accepted that on February 19, 2010 appellant lifted heavy cases of detergent bottles onto shelves in the performance of duty but denied her traumatic injury claim finding insufficient medical evidence addressing how her diagnosed left shoulder condition was a result of the accepted incident. The Board finds that she did not meet her burden of proof to establish that her left shoulder condition was causally related to the February 19, 2010 employment incident.

Appellant submitted reports by Dr. Mattern dated January 2011 to February 2012. Dr. Mattern noted that he began treating her on December 6, 2010 for complaints of left shoulder pain that began in approximately March or April 2010. Initial examinations revealed tenderness at the AC joint and rotator cuff disease. X-rays revealed type 2 acromion and an MRI scan revealed thinning of the supraspinatus tendon, which was consistent with shoulder impingement syndrome. Dr. Mattern reported that appellant underwent left shoulder surgery on January 19, 2011 and was disabled from work. Subsequent reports revealed that appellant was recovering well from surgery. Dr. Mattern observed some tenderness and pain about her shoulder but improved strength and range of motion. He authorized appellant to return to light duty on February 22, 2011 with restrictions of no overhead lifting, pushing and pulling over 20 pounds. In a February 6, 2012 report, Dr. Mattern noted that her job involved repetitive lifting of heavy boxes at work. He opined that it was medically probable that appellant injured her shoulder doing repetitive activities at work. Dr. Mattern explained that impingement typically came from overhead-type activities under the appropriate circumstances and that it would be difficult to lift up to 40 pounds on a regular basis. He concluded that appellant's overhead work activity aggravated her shoulder.

The Board notes that Dr. Mattern provided findings on examination and a firm diagnosis. Dr. Mattern did not, however, describe any February 19, 2010 employment incident nor attribute appellant's left shoulder condition to the accepted incident. He reported that her left shoulder condition began in March or April 2010, not on February 19, 2010. The Board has held that medical opinions based on an incomplete or inaccurate history are of limited probative value.[12] Dr. Mattern also opined that appellant's left shoulder impingement syndrome resulted from repetitive lifting of heavy boxes at work. Although he generally supported causal relationship to her employment, he attributed her condition to general occupational factors such as repetitive lifting and not to the accepted February 19, 2010 incident.[13] A physician must provide a narrative description of the identified employment incident and a reasoned opinion on whether the employment incident described caused or contributed to appellant's diagnosed medical condition.[14] Accordingly, Dr. Mattern's opinion is insufficient to establish her claim.

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[12] *J.R.,* Docket No. 12-1099 (issued November 7, 2012); *Douglas M. McQuaid,* 52 ECAB 382 (2001).

[13] A traumatic injury is defined 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. 20 C.F.R. § 10.5(ee). An occupational disease is defined as a condition produced by the work environment over a period longer than a single workday or shift. 20 C.F.R. § 10.5(q).

[14] *John W. Montoya,* 54 ECAB 306 (2003).

The additional diagnostic reports by Drs. Caccese and Kong are likewise insufficient to establish appellant's claim. While both physicians provided examination findings and a medical diagnosis, they did not offer any opinion on the cause of her left shoulder condition. The Board has found that 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.[15] The diagnostic reports, therefore, also fail to establish causal relationship.

Appellant also submitted reports and progress notes by a physician's assistant. The Board has noted, however, that a physician's assistant is not a physician as defined under FECA, and therefore, these reports are of no probative value.[16]

On appeal, counsel described appellant's job duties as a sales associate and related the medical treatment she received since February 2010 for left shoulder pain. He alleged that OWCP too narrowly construed her compensation claim because Dr. Mattern attributed her condition to repetitively lifting and moving heavy boxes at work but failed to mention the February 19, 2010 employment incident. As previously stated, however, to establish a traumatic injury claim, appellant must submit evidence that the employment incident occurred as alleged and that employment incident caused a personal injury.[17] In this case, she alleged in her Form CA-1 that she sustained a left shoulder condition as a result of a February 19, 2010 employment incident, but she did not submit any medical evidence establishing that her left shoulder condition was causally related to the accepted incident.

The Board finds that the record does not contain sufficient medical evidence to establish appellant's claim. Appellant did not meet her burden of proof to establish that her left shoulder condition was causally related to the February 19, 2010 employment incident.[18]

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 her left shoulder condition was causally related to the February 19, 2010 employment incident.

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[15] *R.E.,* Docket No. 10-679 (issued November 16, 2010); *K.W.,* 59 ECAB 271 (2007).

[16] Section 8102(2) 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 State law. 5 U.S.C. § 8101(2); *Roy L. Humphrey*, 57 ECAB 238 (2005).

[17] *Supra* notes 6 and 7.

[18] Because appellant's traumatic injury claim is denied she is not eligible for continuation of pay (COP). To be eligible for COP an employee must have a traumatic injury which is job related. *See* 20 C.F.R. § 10.205(a)(1).

ORDER

IT IS HEREBY ORDERED THAT the January 11, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 20, 2013
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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