United States Department of Labor
Employees' Compensation Appeals Board

L.O., Appellant	)	
and	)	**Docket No. 15-1573**
	)	**Issued: April 7, 2016**
U.S. POSTAL SERVICE, POST OFFICE, Denham, LA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On July 15, 2015 appellant filed a timely appeal from a June 9, 2015 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.[2]

ISSUE

The issue is whether appellant met her burden of proof to establish a traumatic injury causally related to the employment incident of April 28, 2015.

[1] 5 U.S.C. § 8101 *et seq.*

[2] Appellant timely requested oral argument before the Board. By order dated March 3, 2016, the Board exercised its discretion and denied appellant's request for oral argument as the issue on appeal required an evaluation of the medical evidence and could be adequately addressed in a decision based on review of the case record. *Order Denying Request for Oral Argument*, Docket No. 15-1573 (issued March 3, 2016).

FACTUAL HISTORY

On May 2, 2015 appellant, then a 47-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that she sustained an injury to her left shoulder and back as a result of casing mail on April 28, 2015. A supervisor noted that, while appellant stated that she injured herself lifting one magazine, the alleged injury did not coincide with her statement. Appellant stopped work on April 28, 2015.

A Form CA-16, authorization for examination and/or treatment, was issued by the employing establishment on April 28, 2015.[3]

Appellant submitted a report from John Knight, a certified physician's assistant, dated April 28, 2015.

By letter dated May 8, 2015, OWCP advised appellant that the evidence of record was insufficient to support her claim and noted that it had received no medical evidence to support her claim. Appellant was afforded 30 days to submit additional factual and medical evidence.

In a statement dated May 2, 2015, appellant described the incident alleged to have caused her injury. She wrote, "I [appellant] came to work pick up and handful of flats laid them on my case began to put them into the slots and then grabbed another piece of mail a flat and my back + left shoulder started hurting in excruciating pain. [illegible] cannot lift above 45 degrees. Cannot hold anything in my left hand."

Appellant submitted another report from certified physician assistant John Knight dated May 4, 2015.

There were several duty status reports submitted with illegible signatures including an April 28, 2015 note which stated that appellant had shoulder sprain and recommended that appellant return to work on April 28, 2015, with restrictions relating to her left arm. A second report dated May 4, 2015 stated that appellant had shoulder sprain and recommended that appellant return to work on May 4, 2015 with restrictions relating to her left arm.

In a duty status report dated May 12, 2015, Dr. Jimmy Guidry, Board-certified in pediatrics, diagnosed appellant with a resolved left shoulder sprain. He advised that she could return to full duty with no restrictions as of May 12, 2015.

Appellant submitted a third report from certified physician assistant Mr. Knight dated May 12, 2015.

In an attending physician's report dated April 28, 2015, a medical provider with an illegible signature stated that appellant had a left shoulder sprain.

[3] When the employing establishment properly executes a Form CA-16 which authorizes medical treatment as a result of an employee's claim for an employment-related injury, the Form CA-16 creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP. *See* 20 C.F.R. § 10.300(c); *Tracy P. Spillane*, 54 ECAB 608, 610 (2003).

By decision dated June 9, 2015, OWCP denied appellant's claim. It found that she had not submitted sufficient medical evidence containing a diagnosis from a qualified physician, noting that she had submitted evidence only from a physician assistant.

LEGAL PRECEDENT

An employee seeking benefits under FECA[4] 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[5] 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.[6]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. A fact of injury determination is based on two elements. 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. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury. An employee may establish that the employment incident occurred as alleged but fail to show that his or her condition relates to the employment incident.[7]

The claimant has the burden of establishing by the weight of reliable, probative, and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of employment.[8] An award of compensation may not be based on appellant's belief of causal relationship. 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 a causal relationship.[9]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.[10] Rationalized medical

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[4] *Supra* at note 1.

[5] OWCP's regulations define a traumatic injury as a condition of the body caused by a specific event or incident, or series of events of incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected. 20 C.F.R. § 10.5(ee).

[6] *T.H.*, 59 ECAB 388, 393 (2008); *see Steven S. Saleh*, 55 ECAB 169, 171-72 (2003); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[7] *See Shirley A. Temple*, 48 ECAB 404, 407 (1997); *John J. Carlone* 41 ECAB 354, 356-57 (1989).

[8] *Roma A. Mortenson-Kindschi*, 57 ECAB 418, 428 n.37 (2006); *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

[9] *P.K.*, Docket No. 08-2551 (issued June 2, 2009); *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

[10] *Y.J.*, Docket No. 08-1167 (issued October 7, 2008); *A.D.*, 58 ECAB 149, 155-56 (2006); *D Wayne Avila*, 57 ECAB 642, 649 (2006).

opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and compensable employment factors.[11] 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.[12]

ANALYSIS

Appellant alleged that on April 28, 2015 she sustained an injury to her left shoulder and arm as a result of casing mail. OWCP denied appellant's claim, finding that appellant had not established that she sustained a diagnosed medical condition in connection with the claimed incident. The Board finds, however, that appellant has submitted sufficient medical evidence to establish that she has been diagnosed with a medical condition that of left shoulder sprain, but further finds that she has not submitted sufficient medical evidence to establish that the incident of April 28, 2015 caused her injury.

In a duty status report dated May 12, 2015, Dr. Guidry, a Board-certified physician, diagnosed appellant with a resolved left shoulder sprain. He, however, offered no opinion regarding the cause of the diagnosed condition, as such his report is insufficient to establish causal relationship between the accepted incident and the diagnosed condition. An award of compensation may not be based on surmise, conjecture, or speculation. Neither, the fact that appellant's claimed condition became apparent during a period of employment nor her belief that the condition was caused by her employment is sufficient to establish causal relationship.[13] Because Dr. Guidry has not provided a medical opinion clearly explaining how the accepted employment incident resulted in a medical diagnosis, his report does not meet appellant's burden of proof.[14]

OWCP also received reports from a physician assistant. However, under FECA, the report of a nonphysician, including a physician assistant, does not constitute probative medical evidence.[15] Similarly reports bearing illegible signature do not constitute probative medical evidence as it is unclear that they were prepared by a physician.[16]

Appellant has submitted insufficient medical evidence to establish that the incident of April 28, 2015 caused or aggravated her left shoulder sprain. The record is devoid of a

[11] *J.J.*, Docket No. 09-27 (issued February 10, 2009); *Michael S. Mina*, 57 ECAB 379, 384 (2006).

[12] *I.J.*, 59 ECAB 408, 415 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[13] *D.I.*, 59 ECAB 158 (2007); *Ruth R. Price*, 16 ECAB 688, 691 (1965).

[14] *See M.H.*, Docket No. 15-1670 (December 15, 2015).

[15] 5 U.S.C. 8102(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 State law. 5 U.S.C. § 8101(2); 20 C.F.R. § 10.404; *Roy L. Humphrey*, 57 ECAB 238 (2005)

[16] *N.D.*, Docket No. 15-0027 (issued February 4, 2016).

rationalized opinion from a qualified physician on the issue of the causal relationship between her diagnosis of shoulder sprain and the incident of April 28, 2015.

As such, the Board finds that appellant has failed to establish that she sustained a traumatic injury in the performance of duty on April 28, 2015.

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 a traumatic injury causally related to the employment incident of April 28, 2015.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 9, 2015 is affirmed, as modified.

Issued: April 7, 2016
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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