

FACTUAL HISTORY

On August 22, 2014 appellant, then a 54-year-old nursing assistant, filed a traumatic injury claim (Form CA-1) alleging that on July 29, 2014 she sustained a right shoulder injury after she unlocked a bed and felt burning pain in her right shoulder.

By letter dated October 2, 2014, OWCP notified appellant that her claim was initially administratively handled to allow medical payments as her claim appeared to involve a minor injury resulting in minimal or no lost time from work. However, the merits of her claim had not been formally considered and her claim had been reopened because she had not returned to work in a full-time capacity. OWCP notified appellant that the evidence of record was insufficient to support her claim. Appellant was advised of the medical and factual evidence needed and was afforded 30 days to respond.

In support of her claim, appellant submitted July 29 and August 12, 2014 medical notes, an August 24, 2014 magnetic resonance imaging (MRI) scan of the right shoulder, and September 15 and October 15, 2014 progress notes from a physician assistant.

By decision dated November 13, 2014, OWCP denied appellant's claim finding that the medical evidence of record failed to establish a firm medical diagnosis which could be reasonably attributed to the July 29, 2014 employment incident.

By letter dated December 3, 2014, appellant requested reconsideration of OWCP's decision and provided details pertaining to the July 29, 2014 employment incident and alleged employment injury.

In support of her claim, appellant submitted progress notes dated July 29 through October 3, 2014 from Dr. Caroline E. Fernandez, Board-certified in internal medicine. She also submitted a July 30, 2014 x-ray of the right shoulder and physical therapy notes dated October 7 through 23, 2014.

By decision dated February 23, 2015, OWCP affirmed the November 13, 2014 decision, as modified, finding that the evidence of record failed to establish that her diagnosed condition was causally related to the accepted July 29, 2014 employment incident.

By letter dated July 30, 2015, appellant, through counsel, requested reconsideration of the OWCP decision. Counsel noted submission of new medical evidence in the form of a June 30, 2015 medical report from Dr. Matthew Landfried, a Board-certified orthopedic surgeon, in support of appellant's traumatic injury claim.

In a June 30, 2015 medical report, Dr. Landfried reported that he evaluated appellant on May 9, 2014 due to complaints of pain and discomfort in her shoulder after pushing a bed and experiencing a sudden onset of pain. He reported that appellant had been his patient since 2009 and had no history of shoulder problems. Dr. Landfried explained that it was not unusual for chronic syndrome and bursitis or acromioclavicular (AC) joint arthrosis to develop pain after an injury. He did not believe that appellant's impingement syndrome was due to other problems as the onset of symptoms occurred after the workplace incident. Dr. Landfried diagnosed AC joint

arthritis with bursitis and partial rotator cuff tear. He opined that there was a direct relationship between the injury and the diagnosis.

By decision dated July 31, 2015, OWCP denied appellant's request for reconsideration finding that she neither raised substantive legal questions nor included relevant and pertinent new evidence. It noted that Dr. Landfried's June 30, 2015 medical report was of no probative value and could not be considered medical evidence. OWCP found that the report contained an electronic signature by "Joann" and provided no basis to assume that the report was signed and completed by the physician. In the July 31, 2015 decision, the senior claims examiner noted:

"Underneath the electronic signature on the note provided, it states, 'electronically signed by agent of provider: Joann on [July 10, 2015] at 2:28.' As such, there is no basis to assume that the report was indeed completed by the physician. It would appear that other persons have access to the physician's electronic signature. Moreover, there is no indication that 'Joann' is a physician within the meaning of FECA. As such, the note cannot be regarded as medical evidence."

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under FECA section 8128(a), OWCP regulations at 20 C.F.R. § 10.606(b)(3) provide that the evidence or argument submitted by a claimant must: (1) show that OWCP erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by OWCP; or (3) constitute relevant and pertinent new evidence not previously considered by OWCP.² Section 10.608(b) of OWCP regulations provides that when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(3), OWCP will deny the application for reconsideration without reopening the case for a review on the merits.³

ANALYSIS

The Board finds that this case is not in posture for decision.

In its July 31, 2015 denial of appellant's reconsideration request, OWCP noted that the only evidence submitted was a June 30, 2015 note from Dr. Landfried. It found that this report was irrelevant/immaterial and could not be regarded as medical evidence because it failed to contain a physician's signature. Thus, OWCP denied merit review of her claim finding that she failed to submit any new and relevant medical evidence addressing causal relationship.⁴

Contrary to OWCP's assertion, the Board finds that Dr. Landfried's report contains a proper handwritten signature located directly above the signature line with his name. Moreover, the report was printed on the physician's letterhead and contains sufficient indicia of

² *D.K.*, 59 ECAB 141 (2007).

³ *K.H.*, 59 ECAB 495 (2008).

⁴ *M.H.*, Docket No. 13-2051 (issued February 21, 2014).

identification concerning its author and authorship.⁵ An electronic signature, or e-signature, is any electronic means that indicates that a person adopts the contents of an electronic message.⁶ Given that the report was signed by the physician and contains proper identification, the report is of probative value as the evidence establishes that it was created by Dr. Landfried.⁷ Thus, the Board finds Dr. Landfried's report to be relevant and pertinent new evidence not previously considered by OWCP and, therefore, sufficient to warrant further review of the case on the merits.⁸

The case will be remanded to OWCP for a decision on the merits of appellant's claim. On remand, OWCP should consider Dr. Landfried's June 30, 2015 medical report, together with the previously submitted evidence of record, to determine if appellant has established that she sustained a right shoulder injury in the performance of duty causally related to the accepted July 29, 2014 employment incident.⁹

CONCLUSION

The Board finds that this case is not in posture for decision.

⁵ Cf. *D.D.*, 57 ECAB 734-39 (2006); and *Merton J. Sills*, 39 ECAB 572, 575 (1988) (unsigned medical evidence with no adequate indication that it was completed by a physician is not considered probative medical evidence).

⁶ 15 U.S.C. § 7001(a)(1) provides that a signature, contract, or other record relating to such transaction may not be denied legal effect, validity, or enforceability solely because it is in electronic form.

⁷ *Id.*

⁸ See *R.M.*, Docket No. 08-734 (issued September 5, 2008); *Donald T. Pippin*, 54 ECAB 631 (2003); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

⁹ As the Board's decisions are final as to the subject matter appealed, it is crucial that all evidence relevant to the subject matter of the claim which was properly submitted to OWCP prior to the time of issuance of its final decision be reviewed and addressed by OWCP. See *Yvette N. Davis*, 55 ECAB 475 (2004); see also *William A. Couch*, 41 ECAB 548 (1990) (OWCP did not consider new evidence received four days prior to the date of its decision); see *Linda Johnson*, 45 ECAB 439 (1994). Because OWCP did not consider the new medical evidence submitted by appellant, the Board cannot review such evidence for the first time on appeal. 20 C.F.R. § 501.2(c)(1).

ORDER

IT IS HEREBY ORDERED THAT the July 31, 2015 decision of the Office Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this decision of the Board.

Issued: April 22, 2016
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board