

**United States Department of Labor
Employees' Compensation Appeals Board**

S.M., Appellant)	
)	
and)	Docket No. 16-0641
)	Issued: July 5, 2016
U.S. POSTAL SERVICE, NORTHERN OHIO)	
PERFORMANCE CLUSTER, Cleveland, OH,)	
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
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On February 17, 2016 appellant filed a timely appeal of an October 27, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the case.²

ISSUE

The issue is whether appellant met her burden of proof to establish an injury causally related to the accepted August 31, 2015 employment incident.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that appellant submitted additional evidence after OWCP rendered its October 27, 2015 decision. The Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its final decision. Therefore, this additional evidence cannot be considered by the Board. 20 C.F.R. § 501.2(c)(1); *Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952).

FACTUAL HISTORY

On September 1, 2015 appellant, then a 52-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that on August 31, 2015, while carrying/loading large boxes from carts on the dock into the truck, she injured her left shoulder and low back center. She stopped work on September 1, 2015 and returned to work on September 4, 2015.

In support of her claim, appellant submitted a September 1, 2015 report from Dr. Jonathon Leizman, a family practitioner. Dr. Leizman related that appellant's work-related diagnoses were left shoulder and lumbar strain.

By letter dated September 23, 2015, OWCP informed appellant that further medical evidence was necessary to establish her claim. Appellant was afforded 30 days within which to submit the information.

In response, appellant submitted a September 10, 2015 request for medical service wherein Dr. Leizman requested that appellant seek follow up with physical therapy and a left shoulder magnetic resonance imaging scan. She also submitted an October 1, 2015 duty status report (Form CA-17) from Dr. Leizman which prohibited appellant from reaching above her shoulder and provided limitations on simple grasping and lifting over 10 pounds.

On October 23, 2015 OWCP received a September 10, 2015 report from a physician assistant which noted diagnoses of left shoulder strain and lumbar strain.

By decision dated October 27, 2015, OWCP denied appellant's claim as the medical evidence did not demonstrate that the claimed medical conditions were related to the established work-related event.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish 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. 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.³

In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components, which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident or exposure, which is alleged to have occurred.⁴

³ *Jussara L. Arcanjo*, 55 ECAB 281, 283 (2004).

⁴ *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803(2)(a) (August 2012).

In order to meet his or her burden of proof to establish the fact that he or she sustained an injury in the performance of duty, an employee must submit sufficient evidence to establish that he or she actually experienced the employment injury or exposure at the time, place, and in the manner alleged.⁵

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.⁶ The medical evidence required to establish causal relationship is usually rationalized medical 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.⁷

ANALYSIS

OWCP accepted that the work incident had occurred as alleged and that the medical evidence established a diagnosis of left shoulder and lumbar strain. However, it denied appellant's claim as she had failed to submit rationalized medical evidence describing how the accepted incident caused or aggravated her diagnosed conditions.

In his September 1, 2015 report, Dr. Leizman noted diagnoses of left shoulder and lumbar strain. However, he did not provide a history of injury or any opinion regarding the cause of the diagnosed conditions. The Board has found that medical opinions which provide diagnoses, but lack opinion regarding the cause of the diagnosed conditions, and specifically lack any opinion on the issue of whether the conditions were caused or aggravated by the employment incident are of limited probative value on the issue of causal relationship.⁸

Similarly, in his September 10, 2015 report, Dr. Leizman requested physical therapy treatments and a left shoulder MRI scan, but did not provide any opinion regarding causal relationship. Likewise, in his October 1, 2015 duty status report, Dr. Leizman noted appellant's work restrictions, but offered no opinion regarding causal relationship. Lacking a rationalized opinion regarding causal relationship, these reports are of little probative value in establishing appellant's claim.⁹

⁵ *Linda S. Jackson*, 49 ECAB 486 (1998).

⁶ *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

⁷ *Judith A. Peot*, 46 ECAB 1036 (1995); *Ruby I. Fish*, 46 ECAB 276 (1994).

⁸ *See A.M.*, Docket No. 14-1399 (issued September 23, 2014).

⁹ *Id.*

Finally, appellant submitted a form report signed by a physician assistant. This does not constitute competent medical evidence as a physician assistant is not considered a physician under FECA.¹⁰

The Board finds that as appellant failed to submit rationalized medical evidence establishing a causal relationship between the accepted incident and a medical diagnosis, OWCP properly denied her claim. Neither the 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 the employment factors or incident is sufficient to establish causal relationship.¹¹

An award of compensation may not be based on surmise, conjecture, or speculation.¹² To support a claim for compensation, the evidence should offer a medically-sound explanation of how the claimed work event caused or aggravated the claimed condition.¹³ No physician provided a rationalized medical opinion explaining a causal relationship between appellant's accepted employment incident and a medical diagnosis. Appellant, therefore, did not meet her burden of proof to establish an injury causally related to the accepted August 31, 2015 employment incident.

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 failed to meet her burden of proof to establish an employment-related injury on August 31, 2015 causally related to the accepted employment incident.

¹⁰ 5 U.S.C. § 8101(2) (this subsection defines a physician as surgeons, podiatrists, dentist, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law.) See also *Roy L. Humphrey*, 57 ECAB 238, 242 (2005).

¹¹ See *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

¹² *D.I.*, 59 ECAB 158 (2007); *Ruth R. Price*, 16 ECAB 688, 691 (1965).

¹³ *K.H.*, Docket No. 15-1809 (issued January 7, 2016).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 27, 2015 is affirmed.

Issued: July 5, 2016
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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