United States Department of Labor
Employees' Compensation Appeals Board

L.F., Appellant	)	
and	)	**Docket No. 16-1010**
	)	**Issued: October 12, 2016**
DEPARTMENT OF VETERANS AFFAIRS, MINNEAPOLIS VETERANS MEDICAL CENTER, Minneapolis, MN, 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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On April 12, 2016 appellant filed a timely appeal from a December 10, 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 the case.

ISSUE

The issue is whether appellant has met his burden of proof to establish an injury causally related to an October 30, 2014 employment incident.

FACTUAL HISTORY

On November 7, 2014 appellant, then a 59-year-old nursing assistant, filed a traumatic injury claim (Form CA-1), alleging that on October 30, 2014 he sustained a left shoulder strain when he transferred a patient from a bed to a chair. He stated that the patient fell onto his

[1] 5 U.S.C. § 8101 *et seq.*

shoulder causing pain that ran down from his ear to his shoulder and arm. Appellant did not stop work.

Appellant submitted an October 31, 2014 left shoulder x-ray which revealed a chronic rotator cuff injury. He was treated by a physician assistant on October 31, 2014, for a work injury to his left shoulder. Appellant reported that on October 30, 2014 he was assisting a patient transfer from his bed to a chair when the patient fell backwards injuring his neck and causing left shoulder pain. The physician assistant noted findings and diagnosed a work injury to the left shoulder.

On November 13, 2014 appellant was treated in follow-up for increasing left shoulder pain and difficulty with movement and weakness. The physician assistant noted decreased left shoulder range of motion and diagnosed left rotator cuff injury at work. She placed appellant on light duty.

A December 11, 2014 magnetic resonance imaging (MRI) scan of the left shoulder revealed fluid signal in the subacromial/subdeltoid bursa consistent with bursal surface tendon fraying, reticulated fluid signal consistent with edema in the lateral acromion possibly related to prior trauma, and fluid signal surrounding the extra-articular biceps tendon consistent with mild tenosynovitis. Appellant underwent physical therapy for the left shoulder from November 26, 2014 to June 25, 2015.

On June 23, 2015 appellant was treated by Dr. Charles E. Kelly, a Board-certified internist, for neck and upper back pain. He reported that he developed neck and left arm symptoms on November 30, 2014 at work while transferring a patient from a bed to a chair. Dr. Kelly noted that appellant was referred for physical therapy, but his symptoms persisted. He noted findings on examination of limited range of motion of the neck, intact strength testing of the grip, pinch, finger abduction, intact bilateral wrist, elbow and shoulder extension, intact sensation of the right arm, disturbed sensation of the left arm on the lateral surface of the forearm and hand, reflexes were equal and symmetrical, and tenderness of the left trapezius muscle. Dr. Kelly diagnosed nonspecific cervical spine pain, shoulder pain of uncertain etiology, and deconditioning syndrome. He recommended a short-term active rehabilitation program. Dr. Kelly made no changes to the current work restrictions.

By letter dated September 16, 2015, OWCP noted that when appellant's claim was received it appeared to be a minor injury that resulted in minimal or no lost time from work, and payment of a limited amount of medical expenses was administratively approved without considering the merits of the claim. It noted that it was reopening the claim for further consideration and advised appellant of the type of evidence needed to establish his claim, particularly requesting that he submit a physician's reasoned opinion addressing the relationship of his claimed condition and specific employment factors.

Appellant submitted a September 28, 2015 statement and noted that he still had residuals of his October 30, 2014 injury. He reported that he had an "additional injury," noting that he broke his left arm due to residual weakness. Appellant advised that he could not use his left arm to hold onto a banister while descending steps because of his work injury, and fell fracturing his left arm.

Appellant underwent physical therapy on November 26, 2014 to June 23, 2015 for neck and left trapezius pain. He was treated by a physician assistant on January 9, 2015, for a left shoulder injury which occurred after a lifting incident at work on "November 30, 2014." Appellant reported radiation and pain in the lateral neck region and limited range of motion and strength. The physician assistant diagnosed left upper extremity pain most consistent with cervical radiculopathy, shoulder impingement, and rotator cuff tendinopathy. On May 14, 2015 appellant presented with worsening neck and shoulder pain. The physician assistant diagnosed rotator cuff injury left, sequela, left shoulder pain in the neck on left side, and referred appellant for physical therapy.

In a program status report dated July 21, 2015, Dr. Kelly indicated that appellant was evaluated but did not complete the physical therapy program. He noted that appellant completed one session and did not finish due to insurance issues. Appellant was treated in the emergency room by a nurse on August 20 and 23, 2015 for a left upper arm fracture and wrist sprain.

In a December 10, 2015 decision, OWCP denied appellant's claim because he failed to establish that he sustained an injury or medical condition causally related to accepted work events.

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 filed within the applicable time limitation 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.[2]

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. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place, and in the manner alleged. Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.[3]

Rationalized medical opinion evidence is generally required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, 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.[4]

[2] *Gary J. Watling*, 52 ECAB 357 (2001).

[3] *T.H.*, 59 ECAB 388 (2008).

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

ANALYSIS

It is undisputed that on October 30, 2014 appellant was transferring a patient from his bed to a chair and the patient fell backwards into his left shoulder. However, the Board finds that he has not submitted sufficient medical evidence to establish that this work incident caused or aggravated his diagnosed left shoulder and neck conditions.

Appellant was treated by Dr. Kelly on June 23, 2015 for neck and upper back pain which he noted had developed on November 30, 2014 while transferring a patient from his bed to a chair. Dr. Kelly noted findings and diagnosed nonspecific cervical spine pain, shoulder pain of uncertain etiology and deconditioning syndrome. Regarding causal relationship, his report merely repeats the history of injury as reported by appellant without providing his own opinion regarding whether appellant's medical condition was work related. This report also indicated that the etiology of the left shoulder pain was unknown. To the extent that Dr. Kelly is providing his own opinion, the physician failed to provide a rationalized opinion regarding the causal relationship between appellant's left shoulder and neck conditions and the work incident believed to have caused or contributed to such condition.[5] The report is also of diminished probative value as it is based on an inaccurate history as Dr. Kelly reports that the claimed injury occurred on November 30, 2014 while the record indicates that the employment incident occurred on October 30, 2014. Therefore, this report is insufficient to meet appellant's burden of proof. Dr. Kelly's July 21, 2015 program status report is also insufficient to establish the claim as Dr. Kelly did not address the cause of appellant's claimed condition.[6]

Other evidence submitted by appellant included reports from a physician assistant and reports from a nurse and physical therapy notes dated November 26, 2014 to June 23, 2015. The Board has held that treatment notes signed by a physician assistant,[7] nurse or physical therapist are not considered medical evidence as these providers are not considered physicians under FECA[8] and are therefore not competent to render a medical opinion under FECA. Thus, this evidence is insufficient to meet appellant's burden of proof.

The remainder of the medical evidence fails to provide an opinion on the causal relationship between appellant's job and his diagnosed left shoulder condition. For this reason, this evidence is insufficient to meet appellant's burden of proof.

An award of compensation may not be based on surmise, conjecture, or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that his condition was caused, precipitated, or aggravated by his employment is

[5] *Id. See Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962) (where the Board held that medical opinions based upon an incomplete history have little probative value).

[6] *See M.B.*, Docket No. 16-0884 (issued September 8, 2016) (causal relationship not addressed).

[7] *See S.E.*, Docket No. 08-2214 (issued May 6, 2009) (reports of a physician assistant have no probative value as medical evidence).

[8] *See David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses and physical therapists are not competent to render a medical opinion under FECA); 5 U.S.C. § 8101(2) (this subsection defines a "physician" as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law).

sufficient to establish causal relationship. Causal relationships must be established by rationalized medical opinion evidence.[9] Appellant failed to submit such evidence, and OWCP therefore properly denied appellant's claim for compensation.

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 his burden of proof to establish an injury causally related to an October 30, 2014 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the December 10, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 12, 2016
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

[9] *See Dennis M. Mascarenas,* 49 ECAB 215 (1997).