United States Department of Labor
Employees' Compensation Appeals Board

S.M., Appellant	)	
and	)	**Docket No. 16-0593**
	)	**Issued: February 24, 2017**
U.S. POSTAL SERVICE, POST OFFICE, West Sacramento, CA, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On February 9, 2016 appellant, through counsel, filed a timely appeal from a December 15, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (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 his burden of proof to establish a traumatic injury causally related to a September 2, 2014 employment incident.

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On October 1, 2014 appellant, then a 51-year-old sales and distribution associate, filed a traumatic injury claim (Form CA-1) alleging that on September 2, 2014 he sustained an injury to his right shoulder while processing undeliverable parcels. The employing establishment controverted the claim and checked a box marked "no" in response to whether he was injured in the performance of duty. The employing establishment indicated that appellant did not report the injury and faxed the claim forms over 30 days later. Appellant stopped work on September 2, 2014.

In an October 3, 2014 statement, appellant indicated that he got off the telephone with his human resources office, who advised him to notify them of the injury. He indicated that on September 2, 2014 he was helping to scan and move parcels. When he went to retrieve a parcel from the hamper, he heard a popping sound in his right shoulder. Appellant explained that he waited to provide notice of his injury as he had hoped that it would get better. He further noted that, when he was working at the plant, his belly button popped and was sticking out as he had sustained an umbilical hernia.

In an October 3, 2014 report, Dr. Theodore Muller, Board-certified in emergency medicine, noted that appellant was moving and lifting boxes and was reaching to retrieve a package from a plastic hamper when he felt his right shoulder pop. He advised that later that evening appellant began to experience pain in the right shoulder. Dr. Muller diagnosed bilateral shoulder strain.

October 3, 2014 hospital discharge instructions from Dr. Gurmail Brar, Board-certified in family medicine, revealed that appellant had shoulder pain and overuse syndrome.

In a January 7, 2015 letter, OWCP advised appellant that additional factual and medical evidence was needed in support of his claim. It asked that he further explain how the injury occurred and why he had delayed informing the employing establishment of his claimed injury. OWCP also explained that a physician's opinion explaining how the reported work incident caused or contributed to appellant's condition was crucial to his claim.

In December 19, 2014 reports, Dr. Deven Merchant, Board-certified in emergency medicine, noted that appellant's chief complaint was an injury to the right shoulder and the "injury happened about 4 months ago." He noted that appellant had a twisting injury that occurred at work on September 2, 2014. Dr. Merchant examined him and found upper back pain, joint pain involving the right shoulder and left shoulder, and neck pain. He found no tenderness, swelling or deformity and no limitation of motion in the right shoulder or decreased range of motion at the shoulders. Dr. Merchant diagnosed sprained right shoulder.

OWCP received copies of previously submitted reports including a copy of the October 3, 2014 report from Dr. Muller, nursing notes, physician assistant's notes, and a medication form.

In a January 19, 2015 statement, appellant explained that he tried to file the claim forms by faxing them to his supervisor and his postmaster, but he never received a response. He

explained that he was concerned that he would be subjected to harassment, discrimination, or intimidation from his supervisor if he filed a claim. Appellant filed the forms and his supervisors resisted assisting him. He described his injury when he felt a pop in his right shoulder and the excruciating pain he felt afterwards on the following morning. Appellant denied any history of prior injuries. He also indicated that on September 3, 2014 he called in his claim *via* an automated system. Appellant also provided a copy of an October 3, 2014 e-mail to his supervisors advising them that he injured his right shoulder at work. He also provided a December 19, 2014 statement in which he again described his injury and explained that he immediately got up and notified the employing establishment of the work-related injury through an automated system. Appellant explained that he continued to call-in for a month using his sick and annual leave trying to rest his shoulder in hope that the injury would heal. He noted that after four weeks, it had not improved, so he visited the emergency room and then faxed a CA-1 claim form to his supervisor on October 1, 2014.

In a December 7, 2014 report, Dr. Muller noted appellant's history of injury at work and diagnosed bilateral shoulder strain. He checked a box marked "yes" in response to whether his diagnosis was consistent with the history of injury and treatment.

OWCP also received status reports dated January 8 and 16, 2015 from a nurse and reports from a physician assistant and copies of previous reports.

A January 8, 2015 cervical spine x-ray read by Dr. Robert Wankmuller, Jr., a Board-certified diagnostic radiologist, revealed mild C4-C5 and moderate-to-severe C5-C6 degenerative disc disease with endplate spurring and a nonacute fracture of the base of the odontoid. A January 8, 2015 x-ray of both shoulders read by Dr. Wankmuller, Jr. revealed mild right acromioclavicular (AC) joint arthritis and negative bilateral shoulders.

In a January 8, 2015 treatment note, Dr. Rajpreet Dhesi, Board-certified in physical medicine and rehabilitation, diagnosed right shoulder strain and recommended physical therapy. In a January 9, 2015 attending physician's report (Form CA-20), he checked the box marked "yes" in response to whether he believed the condition was caused or aggravated by an employment activity. Dr. Dhesi advised that appellant could return to light-duty work on that date with restrictions including no work over shoulder level, limited pulling and pushing to five pounds, and no safety sensitive job duties. In a January 16, 2015 treatment note, he diagnosed: sprain of the shoulder and arm; sprain of the neck; radiculitis cervical and brachial not otherwise specified; and carpal tunnel syndrome. Dr. Muller recommended a return to modified duty on January 16, 2015 and opined that, based upon the information he had received, the problem was work related.

On February 5, 2015 OWCP received an additional statement from appellant describing his activities at work on September 2, 2014.

By decision dated March 3, 2015, OWCP denied appellant's claim, finding that he had not established an injury as alleged. It indicated that it was difficult to understand that if appellant actually injured his right shoulder and felt a "pop" after a heavy parcel slipped out of his hands then, why would he not immediately report this to his supervisor or to a physician as a work-related injury. OWCP noted that the only explanation he had provided was his fear of

harassment and retaliation, along with his hope that he would heal with rest so he would not have to file a claim. It found that appellant failed to submit sufficient evidence to support that a right shoulder injury occurred at the time, place, and in the manner alleged. OWCP also found that the medical evidence of record did not contain a diagnosis in connection with the injury or events alleged.

On March 12, 2015 counsel requested a telephonic hearing, which was held before an OWCP hearing representative on October 5, 2015.

OWCP also received a December 8, 2014 response to appellant's claim for discrimination, a March 31, 2015 Equal Employment Opportunity (EEO) report and copies of prior submitted reports.

In a letter dated November 4, 2015, I.W., a human resources specialist, confirmed that there was no automated system to report accidents or injuries. She explained that, in order to report a work injury, the employee must "personally tell the supervisor/manager verbally or in writing (CA-1 or CA-2) that an injury occurred."

By decision dated December 15, 2015, an OWCP hearing representative affirmed the March 3, 2015 decision. He found that it was accepted that appellant was required to perform lifting of parcels in the performance of duty. However, appellant failed to provide sufficient medical evidence which addressed the causal relationship of the injury and diagnosis provided of sprain right acromioclavicular by medical rationale to the accepted employment trauma of September 2, 2014.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] 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,[4] and that an injury was sustained in the performance of duty.[5] 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.[6]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the fact of injury has been established. There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at

[3] *Id*.

[4] *Joe D. Cameron*, 41 ECAB 153 (1989).

[5] *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[6] *Delores C. Ellyett*, 41 ECAB 992 (1990).

the time, place, and in the manner alleged.[7] In some traumatic injury cases, this component can be established by an employee's uncontroverted statement on the Form CA-1.[8] 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.[9]

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.[10]

ANALYSIS

OWCP accepted that on September 2, 2014 appellant was required to lift parcels in the performance of duty. The Board finds that the first component of fact of injury is established as the incident occurred as alleged on September 2, 2014.

However, the Board finds that the medical evidence of record is insufficiently rationalized to establish the second component of fact of injury, that the employment incident caused an injury. The medical evidence contains no reasoned explanation of how the specific employment incident on September 2, 2014 caused or aggravated an injury.[11]

Appellant submitted to OWCP an October 3, 2014 report from Dr. Muller, noting that appellant was moving and lifting boxes and was reaching to pick up a package from a plastic hamper when he felt his right shoulder pop. Dr. Muller advised that, later that evening, he began to experience pain in the right shoulder. He diagnosed bilateral shoulder strain. However, Dr. Muller offered no opinion on causal relationship. 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.[12]

In a December 7, 2014 report, Dr. Muller noted appellant's history of injury at work and diagnosed bilateral shoulder strain. He checked a box marked "yes" in response to whether his diagnosis was consistent with the history of injury and treatment. However, the Board has held

[7] *Julie B. Hawkins*, 38 ECAB 393, 396 (1987); *see* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.3.b (August 2012).

[8] *John J. Carlone*, 41 ECAB 354 (1989).

[9] *Id.*

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

[11] *See George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

[12] *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

that checking of a box "yes" in a form report, without additional explanation or rationale, is insufficient to establish causal relationship.[13]

In December 19, 2014 reports, Dr. Merchant noted that appellant's chief complaint was an injury to the right shoulder and that the "injury happened about 4 months ago." He noted that appellant had a twisting injury that occurred at work on September 2, 2014. Dr. Merchant examined him and found upper back pain, joint pain involving both shoulders, and neck pain. He diagnosed a sprained right shoulder. While he noted that the injury occurred at work on September 2, 2014, Dr. Merchant did not offer a rationalized opinion on causal relationship. Therefore, this report is of limited probative value.[14]

In a January 9, 2015 attending physician's report, Dr. Dhesi checked a box marked "yes" in response to whether he believed appellant's medical condition was caused or aggravated by an employment activity. He also provided a return to light-duty work with restrictions. However, as found above, checking of a box "yes" in a form report, without additional explanation or rationale, is insufficient to establish causal relationship.[15]

A January 8, 2015 cervical spine x-ray read by Dr. Wankmuller, Jr. revealed mild C4-C5 and moderate-to-severe C5-C6 degenerative disc disease with endplate spurring and a nonacute fracture of the base of the odontoid. In addition, a January 8, 2015 x-ray of both shoulders revealed mild right AC joint arthritis and negative bilateral shoulders. However, these reports are insufficient to prove causal relationship because Dr. Wankmuller, Jr. did not offer any opinion as to whether the established work incident was sufficient to cause or aggravate the diagnosed medical conditions. Therefore, these reports have no probative value in establishing causal relationship.[16]

The record contains nursing and physician assistant's notes. However, registered nurses, licensed practical nurses, and physician assistants are not considered "physicians" as defined under FECA. Therefore, their opinions are of no probative value.[17]

Other medical records of evidence do not address causal relationship and are, therefore, of no probative value.

Because the medical evidence of record fails to address how the September 2, 2014 employment incident caused or aggravated a right shoulder condition, appellant has failed to meet his burden of proof.

[13] *Calvin E. King*, 51 ECAB 394 (2000); *Linda Thompson*, 51 ECAB 694 (2000).

[14] *See supra* note 11.

[15] *See supra* note 12.

[16] *See Michael E. Smith*, 50 ECAB 313 (1999).

[17] *Roy L. Humphrey*, 57 ECAB 238 (2005).

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 his burden of proof to establish that he sustained a traumatic injury causally related to a September 2, 2014 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the December 15, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 24, 2017
Washington, DC

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

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

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