United States Department of Labor
Employees' Compensation Appeals Board

K.K., Appellant	)	
and	)	**Docket No. 16-1642**
	)	**Issued: February 22, 2017**
U.S. POSTAL SERVICE, CADMAN PLAZA STATION, Brooklyn, NY, Employer	)	

Appearances:
James D. Muirhead, 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
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On August 9, 2016 appellant, through counsel, filed a timely appeal from a February 12, 2016 merit decision by 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.

[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.*

ISSUE

The issue is whether appellant met her burden of proof to establish a traumatic injury to her neck or right shoulder causally related to accepted October 24, 2014 employment incident.

Counsel requested, on appeal, that the Board to order OWCP to accept this case for a right shoulder injury including right rotator cuff tear and impingement. He noted that the November 17, 2014 magnetic resonance imaging (MRI) scan and the reports of her treating physician confirmed that these conditions were related to her accepted employment injury.

FACTUAL HISTORY

On October 25, 2014 appellant, then a 67-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on October 24, 2014 as she pulled a door open to pull in a mail cart in, the door closed on the cart, and then she stopped the door with her right hand. She alleged that this incident caused pain in her right arm and hand. Appellant stopped work on October 25, 2014.

In support of her claim, appellant submitted reports and forms signed by Dr. Charles Milchteim, an orthopedic surgeon. In an October 25, 2014 report, Dr. Milchteim noted an injury of right shoulder sprain after attempting to hold a heavy door. He opined that appellant's history of injury was consistent with objective findings upon examination. He indicated that an x-ray of the cervical spine showed straightening consistent with spasm and disc space narrowing, and multilevel degenerative disc disease. He noted an x-ray examination of the elbow showed no fractures, subluxation or dislocations. He indicated that an x-ray of the shoulder showed degenerative change and acromioclavicular joint arthrosis. He listed his diagnoses of cervicalgia, shoulder pain, shoulder impingement syndrome, shoulder contusion, cervical radiculopathy, and contusion of elbow. He noted that his impression was rotator cuff tear given appellant's inability to raise her arm after the injury of October 24, 2014. He ordered a magnetic resonance imaging (MRI) scan to rule out rotator cuff tear. He opined that appellant could not return to work until she obtained an MRI scan because she was unable to use her right arm and meet the requirements for sedentary work. In a November 11, 2014 work capacity evaluation, Dr. Milchteim indicated that appellant was unable to return to work.

In a November 3, 2014 report, Dr. Bennett H. Brown, a Board-certified orthopedic surgeon and colleague of Dr. Milchteim, diagnosed right wrist contusion and sprain. He noted that appellant's date of injury was October 24, 2014, and that she tried to stop a door and injured her right arm. Dr. Brown noted pain with twisting and turning appellant's wrist.

By letter dated November 17, 2014, OWCP informed appellant that further information was necessary to support her claim, and OWCP afforded appellant 30 days to submit the requested evidence.

A November 17, 2014 MRI scan of the right shoulder was interpreted by Dr. Steve Sharon, a Board-certified radiologist, as showing full thickness tear of the supraspinatus tendon insertion, mild to moderate surrounding bursitis, mild supraspinatus muscle belly atrophy; mild-

to-moderate partial tearing of subscapular tendon insertion without retraction or atrophy, mild partial tearing with delamination of the infraspinatus tendon without retraction, partial tearing of the biceps tendon with rotator interval superior and anterior labral tear, glen humeral joint effusion, and acromioclavicular joint arthrosis with undersurface bone spurring beneath the acromion with narrowing of the supraspinatus outlet.

In a November 19, 2014 report, Dr. Milchteim discussed the findings from the MRI scan of the right shoulder, and that appellant had a partial temporary impairment, precluding a return to work.

In a November 24, 2014 statement, appellant described the circumstances of her employment incident. She stated that she was returning from her route, that security buzzed the door and she pulled the door open with her right hand while she pulled the cart in with her left hand, but that before she could get the cart and herself into the door, the door started to close on her and she put her right arm up to stop the door from closing, while continuing to pull the cart. In an October 24, 2014 witness statement, appellant's coworker indicated that appellant had stated that she hurt her hand and the coworker observed that appellant's hand was swollen.

By decision dated December 19, 2014, OWCP denied appellant's claim, finding the medical evidence of record failed to establish causal relationship between the accepted employment incident and the medical diagnosis.

On January 9, 2015 appellant requested reconsideration.

OWCP thereafter received a December 3, 2014 report wherein Dr. Milchteim indicated that appellant complained of right shoulder pain and radiation to her fingers. He noted that his reports showed prior wrist pain but no prior elbow or shoulder injury. Dr. Milchteim discussed appellant's MRI scan. Dr. Milchteim examined appellant's right shoulder and determined that the range of motion showed pain with flexion, extension, and rotation. Dr. Milchteim noted appellant's physical examination findings and again opined that appellant had partial temporary impairment. Dr. Milchteim also noted that he had discussed with appellant the risks and benefits of various treatments, and that appellant wished to proceed with surgery.

In a December 31, 2014 physician's report, Dr. Milchteim listed his diagnoses as cervicalgia, shoulder pain, shoulder impingement syndrome, shoulder contusion, cervical radiculopathy, contusion of the right elbow, biceps tendon tear, acromioclavicular joint arthritis, and rotator cuff tear with retraction. He opined that the condition was caused or aggravated by an employment activity as the pain in the shoulder began after the injury at work, and that the rotator cuff tear and biceps tear was most likely due to the October 24, 2014 injury. Dr. Milchteim indicated that appellant was totally disabled commencing October 21, 2014, and was unable to work in any capacity. He further indicated that surgery would significantly benefit appellant.

By decision dated March 18, 2015, OWCP denied modification of its prior decision, finding that Dr. Milchteim failed to provide medical rationale explaining how the diagnosed

conditions were causally related, aggravated, or exacerbated, by the injury that occurred on October 24, 2014.

On August 19, 2015 appellant, through her counsel, requested reconsideration. Counsel resubmitted the October 25 and November 19, 2014 reports by Dr. Milchteim. The November 19, 2014 report added was identical to his prior report but, added a new paragraph in the assessment section, dated June 20, 2015, wherein he opined that, based upon the mechanism of injury, appellant had a full thickness rotator cuff tear which was caused or at least exacerbated by trying to stop a heavy door at work. He noted that appellant had no prior history of right shoulder pain or injury so this tear was likely a result or exacerbation of the employment incident.

By decision dated November 13, 2015, OWCP declined appellant's reconsideration request, finding that the evidence was not sufficient to warrant review of the March 18, 2015 decision.

On November 19, 2015 and February 3, 2016 appellant's counsel requested reconsideration. He attached a copy of the November 19, 2014 report by Dr. Milchteim which contained the June 20, 2015 addendum, and circled the added portion of the report.

Also submitted was a January 25, 2016 report in which Dr. Milchteim discussed appellant's history of illness and the results of his physical examinations. Dr. Milchteim reviewed his treatment of appellant, and again listed the diagnoses of cervicalgia, right shoulder impingement, right shoulder contusion, cervical radiculopathy, and right elbow contusion. Dr. Milchteim indicated that appellant remained in his care, and that appellant's prognosis remained guarded. Dr. Milchteim indicated, "I do feel that the injuries she sustained to her right wrist and right shoulder are causally related to her injury when trying to stop the door on [October 24, 2014] as she did not have pain in the right shoulder and right wrist prior to this work injury."

By decision dated February 12, 2016, OWCP determined that the evidence was sufficient to vacate the March 18, 2015 decision in part because a witness provided a statement confirming that appellant's wrist and arm were swollen after she held the door open, and that appellant's case was now accepted for contusion of her right wrist and right elbow. However, it determined in a separate decision that the evidence of record remained insufficient to establish that the tear of her right rotator cuff or impingement of her neck was caused or aggravated by the accepted work event. OWCP noted that Dr. Milchteim's opinion was not well-rationalized and speculative, and therefore of little probative value.[3] In a separate decision issued on February 12, 2016, it accepted appellant's claim for contusion of right elbow and contusion of right wrist.

[3] In a separate decision issued on February 12, 2016, it accepted appellant's claim for contusion of right elbow and contusion of right wrist.

LEGAL PRECEDENT

An employee seeking benefits under FECA[4] has the burden of proof to establish that 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 caused 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.[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 must first be determined whether a fact of injury has been established. 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.[7] 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.[8]

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.[9] The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.[10]

ANALYSIS

OWCP accepted that on October 24, 2014 appellant sustained a contusion of her right elbow and wrist, but denied appellant's claim for a right rotator cuff tear and injury to her neck. The Board finds that appellant has not established a neck or right shoulder injury causally related to the October 24, 2014 work incident.

[4] *Id.*

[5] *Joe D. Cameron*, 42 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[6] *Victor J. Woodhams*, 41 ECAB 345 (1989).

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

[8] *Id.*

[9] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams, 41 ECAB 465 (2005).*

[10] *James Mack*, 43 ECAB 321 (1991).

In his November 3, 2014 report, Dr. Brown noted that appellant complained of pain in the neck right shoulder, right arm, and right hand. He noted that the condition was a result of a work-related injury due to reaching. Dr. Brown accurately described the incident of October 24, 2014 as appellant trying to stop a door and injuring her arm. However, he limited his diagnoses to a right wrist contusion and sprain of the wrist. While he noted that appellant complained of pain in her neck and right shoulder, he did not provide a medical diagnosis with regard to these complaints of pain. The Board has held that the mere diagnosis of "pain" does not constitute the basis for payment of compensation.[11]

Dr. Sharon provided an interpretation of the right upper extremity MRI scan of November 17, 2014 as showing, a full thickness tear of the supraspinatus tendon, mild partial tearing of the infraspinatus tendon, partial tearing of the biceps tendon with rotator interval superior, and anterior labral tear. However, his report is limited to interpreting the MRI scan, with no discussion of cause of these conditions. Accordingly, the diagnostic study report of Dr. Sharon is of limited probative value.[12]

Dr. Milchteim diagnosed appellant with cervicalgia, right shoulder impingement, right shoulder contusion, cervical radiculopathy, and right elbow contusion. He discussed the MRI scan showing a rotator cuff tear. Dr. Milchteim opined that appellant's injuries to her right wrist and right shoulder were most likely causally related to the employment incident of October 24, 2014 as she did not have pain in the right shoulder and right wrist prior to the accepted employment incident. His reports, however, are insufficient to establish causal relationship. The Board has held that the use of terms such as "most likely due to the October 24, 2014 injury" are speculative, and medical opinions that are speculative or equivocal in character are diminished probative value.[13]

Furthermore, while Dr. Milchteim related in his reports dated December 31, 2014, and June 20, 2015 that appellant's rotator cuff and biceps tears were caused or least exacerbated when appellant tried to stop the door from closing, he based his opinion on appellant's statement that she was not in pain before the October 24, 2014 incident. However, neither the fact that a disease or condition manifested 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.[14] The Board finds that Dr. Milchteim did not provide a rationalized medical opinion explaining how any of appellant's employment activities on October 24, 2014 would have physiologically caused the diagnosed condition.[15] A rationalized medical opinion is especially necessary in light of appellant's preexisting degenerative changes

[11] *H.G.*, Docket No. 16-1603 (issued December 14, 2016).

[12] *G.M.*, Docket No. 14-2057 (issued May 12, 2015).

[13] *J.E.*, Docket No. 16-509 (issued September 16, 2016).

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

[15] *J.B.*, Docket No. 16-1192 (issued December 6, 2016).

of the neck and right shoulder.[16] Accordingly, Dr. Milchteim's reports are found insufficient establish a causal relationship.between appellant's neck and shoulder diagnoses and the accepted October 24, 2014 work 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 traumatic injury to her neck or right shoulder causally related to the accepted October 24, 2014 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 12, 2016 is affirmed.

Issued: February 22, 2017
Washington, DC

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

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

[16] *N.M.*, Docket No. 16-0403 (issued June 6, 2016).