United States Department of Labor
Employees' Compensation Appeals Board

M.K., Appellant	)	
and	)	**Docket No. 16-1772**
	)	**Issued: February 6, 2017**
U.S. POSTAL SERVICE, POST OFFICE, Lake Zurich, IL, 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 September 2, 2016 appellant, through counsel, filed a timely appeal from an August 8, 2016 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 has met her burden of proof to establish a left shoulder injury causally related to a December 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.*

On appeal, counsel contends that OWCP's decision is contrary to fact and law.

FACTUAL HISTORY

On December 5, 2014 appellant, then a 50-year-old mail carrier, filed an occupational disease claim (Form CA-2) alleging a left shoulder injury as a result of performing physical activities at work such as lifting. She first became aware of her condition on December 2, 2014 and first realized that it was caused by her employment on December 3, 2014. Appellant stopped work on December 3, 2014.

In a note dated December 4, 2014, Dr. Monica E. Gavran, an attending Board-certified internist, placed appellant off work. Appellant also submitted an illegible duty status form report (Form CA-17).

By letter dated December 16, 2014, OWCP advised appellant of the deficiencies of her claim and afforded her 30 days to submit additional evidence.

In a December 5, 2014 attending physician's report (Form CA-20), Dr. Gavran provided a history that on December 2, 2014 appellant felt severe pain in her left shoulder while lifting a heavy package. She provided findings on examination and diagnosed shoulder impingement/rotator cuff injury. Dr. Gavran checked a box marked "yes" indicating that appellant's condition was caused or aggravated by an employment activity. She indicated that appellant was totally disabled commencing on December 3, 2014.

Work status reports dated December 12, 2014 and January 9, 2015 from Dr. Justin J. Gent, an attending Board-certified orthopedic surgeon, noted a date of injury as December 2, 2014 and provided diagnoses of left shoulder pain, left shoulder partial thickness bursal-sided rotator cuff tear, and possible superior labrum anterior to posterior (SLAP) tear. He advised that appellant could not return to work.

In a December 30, 2014 narrative statement, appellant described the claimed incident. On December 2, 2014 she was delivering mail and lots of packages on her regular route and when she moved packages for delivery forward in her truck, she felt a snap in her left shoulder. Appellant did not immediately feel pain, but knew something was not right. She continued to deliver all of her mail that day. Appellant did not know that she should have reported her injury because she had not realized the seriousness of her injury at that time. On the next day at 4:00 a.m., she was awakened by excruciating pain in her shoulder and neck. Appellant called into work at 5:00 a.m. and requested unscheduled sick leave.

In an undated narrative statement, J.A., an employee, controverted appellant's claim on behalf of the employing establishment. She noted that on December 3, 2014 appellant called in sick for two days. Appellant went to her physician who told her she had an on-the-job injury. She notified the employing establishment about her condition. The employing establishment gave appellant a Form CA-2 because she could not point to any specific cause of her injury. J.A. noted the Form CA-20 (attending physician's) report, which found that appellant's injury was caused by lifting a heavy package and contended that this was never conveyed to anyone at work.

By decision dated January 16, 2015, OWCP considered appellant's claim as one for a traumatic injury and accepted that the December 2, 2014 work incident occurred as alleged. However, it denied her claim because the medical evidence of record did not contain a rationalized medical opinion to establish a causal relationship between her diagnosed condition and the accepted employment incident.

Appellant continued to submit medical evidence. In a December 10, 2014 left shoulder magnetic resonance imaging (MRI) scan report, Dr. Scott S. White, a Board-certified radiologist, found evidence of a fairly significant deep bursal surface partial-thickness tear involving the posterior margin of the supraspinatus tendon near the myotendinous junction as it overlaid the humeral head. He also found associated edema of the posterior aspect of the supraspinatus muscle without significant appearing tendon retraction. There was tendinosis of the supraspinatus tendon more anteriorly and distally at its insertion, subscapularis tendinosis without evidence of a frank tear, and suspected low-grade SLAP lesion.

In a January 9, 2015 report, Dr. Gent noted a history of the December 2, 2014 employment incident and appellant's continuing left shoulder symptoms and treatment. He reported findings on examination and assessed left shoulder pain after an injury that occurred at work on December 2, 2014, partial thickness rotator cuff tear, and possible SLAP tear. Dr. Gent was concerned that appellant's condition was worsening and recommended additional diagnostic testing. He also kept her off work. In a January 13, 2015 report, Dr. Gent noted that physical examination was unchanged. He reviewed MRI scan results which showed a complete tear of the supraspinatus tendon that appeared significantly worse. Dr. Gent related that there was also muscle contusion in the rotator cuff and a large glenohumeral joint effusion. He reiterated his prior left shoulder diagnoses of left shoulder pain from an injury at work on December 2, 2014, partial thickness rotator cuff tear, and possible SLAP tear. Dr. Gent found that appellant could not return to work. He restated these diagnoses and his opinion regarding her disability in a January 13, 2015 work status report.

In a January 12, 2015 left shoulder MRI scan report, Dr. Linda L. Dew, a Board-certified radiologist, found a complete supraspinatus tear at the distal insertion rotator cuff tendinosis. She also found a contusion supraspinatus muscle, downward sloping of the lateral aspect of the distal acromion, and Type 1 acromion. There was fluid in the subacromial/subdeltoid bursa, large glenoid humeral joint effusion with very severe tenosynovitis, and a bone contusion in the lateral two thirds of the humeral head. Dr. Dew reported that the remainder of the study was unremarkable.

A February 4, 2015 operative report indicated that Dr. Gent performed left shoulder arthroscopy with an arthroscopic rotator cuff repair and extensive debridement of synovitis biceps tendon including, biceps tenotomy, and subacromial space adhesions.

On February 19, 2015 appellant requested a review of the written record by an OWCP hearing representative.

In a June 15, 2015 decision, an OWCP hearing representative affirmed the January 16, 2015 decision, finding that appellant failed to submit rationalized medical evidence sufficient to

establish that her left shoulder condition was causally related to the December 2, 2014 work incident.

OWCP received an October 9, 2015 work status report in which Dr. Gent reiterated his prior left shoulder diagnoses and noted appellant's February 9, 2015 left shoulder surgery. Dr. Gent diagnosed left shoulder adhesive capsulitis with subacromial and subdeltoid bursitis with loculation and a small anterior supraspinatus, recurrent SLAP tear on a May 13, 2015 MRI scan, and status post left shoulder incision and drainage for deep abscess and neurotoma on January 15, 2015. He advised that appellant could not return to work.[3]

On December 2, 2015 appellant appealed the January 15, 2016 OWCP decision to the Board. On January 11, 2016 she requested that the appeal be dismissed. By order dated May 4, 2016, the Board granted appellant's request for dismissal of her appeal.

OWCP received a March 24, 2016 work status report from Dr. Gent who provided a diagnosis of status post left shoulder scope and debridement. He again found that appellant was unable to return to work.

On May 12, 2016 appellant, through counsel, requested reconsideration of OWCP's June 15, 2015 decision and submitted additional medical evidence. In progress notes dated December 14, 2014 and January 30, 2015 and a report dated July 15, 2015, Dr. Gavran noted appellant's history and provided results on examination. She again assessed left shoulder impingement and left shoulder rotator cuff tear. Dr. Gavran also assessed left shoulder adhesion. In a December 16, 2015 letter, she restated appellant's history. Dr. Gavran diagnosed left shoulder recurrent rotator cuff tear with left shoulder infection and glenohumeral chondromalacia with significant impairment in appellant's movement. She related that recovery seemed to be minimal and appellant's situation was worsening since her injury had occurred. Appellant was unable to lift with her left shoulder and return to her work at the employing establishment.

In a December 21, 2015 report, Dr. Gent noted a history of injury of the December 2, 2014 employment incident and appellant's symptoms. He reported examination results and noted diagnostic tests performed. Dr. Gent diagnosed status post left shoulder arthroscopy, rotator cuff repair, and extensive debridement performed on February 4, 2015. He also diagnosed status post left shoulder incision and drainage for deep abscess and hematoma performed on July 15, 2015. Dr. Gent signed his name below a form statement and advised that "the facts of injury" were "the direct and proximate cause" of the above-noted diagnosis.

In a June 3, 2016 work status report, Dr. Anthony A. Romeo, a Board-certified orthopedic surgeon, indicated that appellant was currently under his medical care and that she had undergone shoulder surgery on May 24, 2016. He related that she would remain off work for six weeks postoperative.

By decision dated August 8, 2016, OWCP denied modification of its June 15, 2015 decision. It found that the medical evidence of record was not sufficiently rationalized to

[3] Docket No. 16-0287 (issue May 4, 2016).

establish that appellant's left shoulder condition was caused by the accepted December 2, 2014 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence[4] including that he or she sustained an injury in the performance of duty and that any specific condition or disability for work for which he or she claims compensation is causally related to that employment injury.[5]

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.[6] There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that she actually experienced the employment incident at the time, place, and in the manner alleged.[7]

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.[8] The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing a causal relationship between the claimed condition and the identified factors.[9] The belief of the claimant that a condition was caused or aggravated by the employment is insufficient to establish a causal relationship.[10]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish that she sustained a traumatic injury caused or aggravated by the accepted December 2, 2014 employment incident. Appellant failed to submit sufficient medical evidence to establish that she had a left shoulder injury causally related to the accepted employment incident.

Dr. Gavran's December 5, 2014 Form CA-20 report provided a history of the December 2, 2014 work incident and diagnosed shoulder impingement/rotator cuff injury. She checked a box marked "yes" indicating that the condition was caused or aggravated by an

[4] *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

[5] *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[6] *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

[7] *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

[8] *John J. Carlone*, 41 ECAB 354 (1989); *see supra* note 2 at § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(ee), 10.5(q) (traumatic injury and occupational disease defined, respectively).

[9] *Lourdes Harris*, 45 ECAB 545 (1994); *see Walter D. Morehead*, 31 ECAB 188 (1979).

[10] *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

employment activity and found that appellant was totally disabled commencing on December 3, 2014. However, the Board has held that a checkmark, without supporting rationale, is of limited probative value, and is insufficient to establish the claim.[11] Dr. Gavran did not explain how appellant's diagnosed condition and resultant disability were caused or contributed to by the accepted work incident. While her remaining prescription, progress notes, and reports dated December 4, 2014 to December 16, 2015 noted a history of the December 2, 2014 employment incident and noted diagnoses, she did not opine whether appellant's conditions and resultant disability were caused by the accepted employment incident.[12] Thus, the Board finds that Dr. Gavran's reports are insufficient to meet appellant's burden of proof.

The remaining medical evidence is also insufficient to establish causal relationship between appellant's injury and the December 2, 2014 employment incident. Dr. Gent assessed left shoulder conditions including rotator cuff tear and possible SLAP tear, which he generally attributed to the accepted work incident and found that appellant could not work. In a December 21, 2015 report, he noted a history of injury of the December 2, 2014 employment incident and appellant's symptoms. Dr. Gent signed his name below a form statement advised that "the facts of injury" were "the direct and proximate cause" of the above-noted diagnosis. He did not provide a probative, rationalized opinion regarding whether the December 2, 2014 employment incident caused a personal injury.[13] Dr. Gent did not sufficiently explain the reasons why, medically, appellant would have sustained a left shoulder injury that resulted in her disability and surgery because she lifted heavy packages at work on December 2, 2014. Therefore, his reports are of limited probative value.

Similarly, the diagnostic test results from Dr. White and Dr. Dew are of limited probative value. These two physicians failed to offer an opinion on whether these conditions were caused or aggravated by the accepted December 2, 2014 employment incident.[14] Likewise, Dr. Romeo's report failed to provide an opinion as to whether appellant's May 24, 2016 shoulder surgery and postoperative disability were causally related to the accepted work incident.

The Board finds that appellant has failed to submit rationalized, probative medical evidence sufficient to establish that she sustained a left shoulder injury causally related to the December 2, 2014 employment incident. Appellant therefore did not meet her burden of proof.

On appeal, counsel contends that OWCP's decision is contrary to fact and law. For the reasons stated above, the Board finds that the weight of the medical evidence does not establish that appellant sustained a left shoulder condition causally related to the accepted December 2, 2014 work incident.

[11] *See D.S.*, Docket No. 15-1930 (issued January 30, 2016).

[12] *A.D.*, 58 ECAB 159 (2006) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

[13] *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).

[14] *See supra* note 12.

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 has failed to meet her burden of proof to establish a left shoulder injury causally related to a December 2, 2014 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the August 8, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 6, 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