United States Department of Labor
Employees' Compensation Appeals Board

W.O., Appellant	)	
and	)	**Docket No. 16-1502**
	)	**Issued: March 10, 2017**
U.S. POSTAL SERVICE, POST OFFICE, Palm Desert, CA, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On July 14, 2016 appellant filed a timely appeal from a June 30, 2016 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 this case.[2]

ISSUE

The issue is whether appellant met his burden of proof to establish a right shoulder condition causally related to a May 19, 2016 employment incident.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The record includes additional evidence received after OWCP rendered its June 30, 2016 decision. The Board's jurisdiction, however, 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).

FACTUAL HISTORY

On May 20, 2016 appellant, then a 62-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on May 19, 2016 he was setting the handbrake in his work vehicle when he "tweaked" his right shoulder, and experienced "sharp pain." He did not stop work.

In a May 20, 2016 duty status report (Form CA-17), Dr. Marion R. Windham, a Board-certified family practitioner, noted a diagnosis of right shoulder sprain with a May 19, 2016 date of injury. The reported history of injury was "setting parking brake." According to Dr. Windham, appellant was able to work as of May 20, 2015 with restrictions of no use of the right arm.

In a letter dated May 27, 2016, OWCP informed appellant of the type of evidence needed to support his claim and requested that he submit such evidence within 30 days.

OWCP subsequently received a May 20, 2016 work progress and status report and a doctor's first report of occupational injury or illness from Dr. Windham. Dr. Windham noted that appellant sprained his right shoulder setting the parking brake on May 19, 2016. He related that the handbrake tension was hard to set and that appellant's right shoulder "twinged" with pain and worsened through the night. A right shoulder x-ray reportedly revealed no significant abnormalities. Dr. Windham diagnosed right shoulder sprain and checked the box marked "yes" in response to the question of whether the findings and diagnosis were consistent with appellant's account of injury. He recommended a return to work with restrictions of no right arm use. Dr. Windham also recommended physical therapy and advised appellant to return for follow-up on May 27, 2016.

OWCP also received May 27, 2016 progress notes and a duty status report (Form CA-17) from, Craig N. Estes, a physician assistant.

Dr. Michael Mostyn, a Board-certified internist, examined appellant on June 3, 2016 and diagnosed right shoulder strain. He noted a May 19, 2016 date of injury. Dr. Mostyn reported that appellant was feeling better, but there was some tightness on reaching across his chest. He advised that appellant could immediately return to regular work activities without restrictions. Dr. Mostyn saw appellant for follow up on June 9, 2016 and indicated that appellant was discharged and released from care.

By decision dated June 30, 2016, OWCP denied appellant's claim, finding that he failed to establish causal relationship between the May 19, 2016 employment incident and the diagnosed right shoulder condition.

LEGAL PRECEDENT

A claimant 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,

including that an injury was sustained in the performance of duty as alleged and that any specific condition or disability claimed is causally related to the employment injury.[3]

To determine whether an employee sustained a traumatic 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 that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.[4] The second component is whether the employment incident caused a personal injury.[5] An employee may establish that an injury occurred in the performance of duty as alleged, but fail to establish that the disability or specific condition for which compensation is being claimed is causally related to the injury.[6]

To establish a causal relationship between the condition as well as any attendant disability claimed and the employment injury, an employee must submit rationalized medical evidence based on a complete medical and factual background supporting such a causal relationship.[7] Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.[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] Neither the mere 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 employment factors or incidents is sufficient to establish causal relationship.[10]

Certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered "physician[s]" as defined under FECA.[11]

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[3] 20 C.F.R. § 10.115(e), (f); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

[4] *Elaine Pendleton*, 40 ECAB 1143 (1989).

[5] *John J. Carlone*, 41 ECAB 354 (1989). Causal relationship is a medical question that generally requires rationalized medical opinion evidence to resolve the issue. *Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s). *Id.*

[6] *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

[7] *M.W.*, 57 ECAB 710 (2006); *John D. Jackson*, 55 ECAB 465 (2004).

[8] *D.E.*, 58 ECAB 448 (2007); *Mary J. Summers*, 55 ECAB 730 (2004).

[9] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, *supra* note 5.

[10] *V.W.*, 58 ECAB 428 (2007); *Ernest St. Pierre*, 51 ECAB 623 (2000).

[11] 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).

Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.[12]

ANALYSIS

OWCP accepted that the May 19, 2016 employment incident occurred as alleged and that appellant received a contemporaneous medical diagnosis with respect to his right upper extremity. However, it denied his traumatic injury claim on the basis that the medical evidence was insufficient to establish causal relationship between the diagnosed right shoulder sprain and the accepted employment incident. The Board finds that appellant failed to establish causal relationship.

Dr. Windham examined appellant on May 20, 2016 and diagnosed right shoulder strain. He noted a May 19, 2016 date of injury, which appellant described as "parking vehicle and setting handbrake." Appellant reported that he felt a twinge in his right shoulder with pain that worsened through the night. On the form report, Dr. Windham checked a box marked "yes" in response to the question of whether the findings and diagnosis were consistent with appellant's account of injury. He did not elaborate. The Board has consistently held that merely checking a box marked "yes" on a form report, without not more by way of rationale, will not suffice for purposes of establishing causal relationship.[13]

When appellant returned for follow up on May 27, 2016, he was seen by Mr. Estes, a physician assistant. Because Mr. Estes is not considered a physician as defined under FECA, his May 27, 2016 findings are of no probative value, and are therefore insufficient to establish entitlement to FECA benefits.[14]

Dr. Mostyn examined appellant on June 3, 2016 and diagnosed right shoulder strain. Although he identified May 19, 2016 as the date of injury, he did not explain how setting the handbrake either caused or contributed to appellant's right shoulder strain. Dr. Mostyn's June 9, 2016 follow-up report similarly fails to explain the relationship between appellant's right shoulder condition and the May 19, 2016 employment incident. A physician's opinion on causal relationship must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s).[15]

Because the medical reports submitted by appellant do not sufficiently address how the May 19, 2016 employment incident either caused or aggravated a right shoulder condition, these

[12] *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006). A report from a physician assistant or certified nurse practitioner will be considered medical evidence if countersigned by a qualified physician. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013).

[13] *See D.D.*, 57 ECAB 734, 739 (2006); *Deborah L. Beatty*, 54 ECAB 340, 341 (2003).

[14] *See supra* note 8.

[15] *See W.H.*, Docket No. 16-1483 (issued January 30, 2017); *supra* note 4.

reports are of limited probative value, and thus, insufficient to establish entitlement under FECA.[16] Accordingly, the Board finds that appellant failed to meet his burden of proof to establish his traumatic injury claim.

CONCLUSION

The Board finds that appellant failed to meet his burden of proof to establish a right shoulder condition causally related to the May 19, 2016 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the June 30, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 10, 2017
Washington, DC

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

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

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

[16] *See Linda I. Sprague*, 48 ECAB 386, 389-90 (1997).