United States Department of Labor
Employees' Compensation Appeals Board

L.C., Appellant	)	
and	)	**Docket No. 16-1717**
	)	**Issued: March 2, 2017**
U.S. POSTAL SERVICE, POST OFFICE, Shreveport, LA, 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
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 24, 2016 appellant filed a timely appeal from an April 14, 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 the case.

ISSUE

The issue is whether appellant met his burden of proof to establish disability from July 28, 2013 through May 22, 2015 due to his accepted employment injury.

On appeal appellant states his documentation establishes his claim for disability.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On October 12, 2013 appellant, then a 62-year-old mail handler, filed an occupational disease claim (Form CA-2) alleging that on approximately June 11, 2013 he was throwing sacks and bags of mail when he sustained an injury to his left wrist and right shoulder.

In support of his claim, appellant submitted documentation from the Department of Veterans Affairs, Overton Brooks Veterans Administration Medical Center (VAMC) in Shreveport, Louisiana. A July 16, 2013 note, with an illegible signature, indicated that appellant was seen for a medical problem, and that it was recommended that he rest for two weeks. In a July 31, 2013 note, a physician assistant indicated that appellant would need to be off work until August 30, 2013 at which time he would be reevaluated. In a September 4, 2013 note, a physician assistant indicated that appellant was to remain off of work until September 30, 2013 at which time he would be reevaluated. In a September 30, 2013 note, Dr. Mark D. Wilson, an orthopedic surgeon, indicated that appellant should not use his right arm for any lifting, pushing, or pulling for six weeks.

By letter dated December 11, 2013, OWCP informed appellant that he must submit certain evidence in support of his claim, and afforded him 30 days to submit this evidence. It did not continue to develop this claim.

On May 23, 2015 appellant filed a traumatic injury claim (Form CA-1) alleging an injury to his right shoulder that occurred on June 11, 2013 while he was unloading mailboxes, various containers, and sacks in the bulk mail area. He noted that he was told to file a Form CA-1 by OWCP.

In support of his claim, appellant submitted progress notes from the Houston VAMC dated April 25 through June 3, 2014. These notes indicate that appellant was initially scheduled to undergo surgery for his right rotator cuff tear on May 21, 2014 and was admitted to the hospital on that date. However, another note indicates that, while appellant was found "to be safe for the procedure," due to surgeon unavailability on May 21, 2014, he was rescheduled for June 2, 2014.

On June 2, 2014 Dr. Anastassios Karistinos, a Board-certified orthopedic surgeon, performed an arthroscopic repair of supraspinatus, infraspinatus, and upper subscapularis tear and open subpectoral biceps tenodesis. In a June 12, 2016 follow-up note, he noted that appellant reinjured his shoulder a few days prior and that there was some bulging at his biceps. Dr. Karistinos noted that appellant lived out of state and should follow up with his primary provider for referral to therapy. He followed up with appellant on October 9, 2014, and noted that he was progressing well overall, but had abnormal scapular posture and mild scapular dyskinesia.

On July 2, 2015 OWCP accepted appellant's June 11, 2013 occupational disease claim for sprain of shoulder and upper arm and rotator cuff. Appellant was advised that, if he wished to claim compensation for loss of work time, he should file a Form CA-7. On December 16, 2015 appellant filed a claim for compensation (Form CA-7) for the period July 28, 2013 through May 22, 2015.

In a December 30, 2015 letter, OWCP informed appellant that further information was necessary to support his claim or wage-loss compensation and afforded him 30 days to submit this evidence.

By decision dated April 14, 2016, OWCP denied appellant's claim for compensation benefits for the period July 28, 2013 through May 22, 2015 as there was no medical evidence explaining why appellant was unable to work during that period for the accepted conditions of sprain of the right shoulder, upper arm, and rotator cuff.

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 timely filed within the applicable time limitation period 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.[2] In general, the term disability under FECA means incapacity because of injury in employment to earn the wages which the employee was receiving at the time of such injury.[3] This meaning, for brevity, is expressed as disability to work.[4]

The medical evidence required to establish a causal relationship between a claimed period of disability and employment injury is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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.[5]

ANALYSIS

OWCP accepted that appellant sustained a sprain of the right shoulder, upper arm, and rotator cuff. Appellant filed a claim for compensation for the period July 28, 2013 through May 22, 2015. He underwent surgery on June 2, 2015 for arthroscopic repair of the right supraspinatus, infraspintus, and upper subscapularis tear.

The Board finds that appellant has not met his burden of proof to establish disability between July 28, 2013 and May 22, 2015 due to his accepted employment injury because he failed to submit sufficient medical evidence in support of his claim.

Appellant submitted multiple notes from the Shreveport VAMC dated July 16 through September 30, 2013. Two of these notes are authorized by a physician assistant. These notes

[2] *J.F.*, Docket No. 09-1061 (issued November 17, 2009).

[3] *See* 20 C.F.R. § 10.5(f).

[4] *Roberta L. Kaaumoana*, 54 ECAB 150 (2002); *see also A.M.*, Docket No. 09-1895 (issued April 23, 2010).

[5] *See B.S.*, Docket No. 16-1121 (issued September 16, 2016).

lack probative value because the Board has long held that reports from nurses, physician assistants, and occupational therapists are of no probative medical value as they are not considered a physician under FECA.[6]

OWCP also received a note that contains an illegible signature. The Board has held that a report that bears an illegible signature lacks proper identification and cannot be considered probative medical evidence.[7]

In a September 30, 2013 note, Dr. Wilson indicated that appellant should not use his right arm for six weeks. However, he provided no explanation as to why this was the case, did not provide a medical diagnosis, nor did he explain how any injury was causally related to the accepted employment injury.[8]

The notes from the Houston VAMC relate that appellant was seen on various dates from April 25 through June 3, 2014. Although appellant's initial surgery was rescheduled due to the unavailability of a surgeon, on June 2, 2014 appellant underwent a right rotator cuff repair peformed by Dr. Karistinos. The accepted conditions in this case, however, are sprain of the right shoulder, upper arm, and rotator cuff. However, none of the medical evidence of record establishes that appellant was disabled from work due to his accepted conditions. Dr. Karistinos did not address the cause of appellant's rotator cuff tear for which he underwent a repair. To meet his burden of proof appellant was required to submit a medical opinion addressing whether the diagnosed conditions, resultant surgery, and disability for work were caused or aggravated by the established employment factors.[9] Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value.[10]

The Board will not require OWCP to pay compensation for disability in the absence of any medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.[11]

[6] *See David P. Sawchuk,* 57 ECAB 316 (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). *See also Paul Foster,* 56 ECAB 208 (2004); *Joseph N. Fassi,* 42 ECAB 677 (1991); *Barbara J. Williams,* 40 ECAB 649 (1989).

[7] *See R.M.*, 59 ECAB 690, 693 (2008); *Merton J. Sills*, 39 ECABA 572, 575 (1988).

[8] *See T.D.*, Docket No. 15-18146 (issued September 23, 2016).

[9] *S.M.*, Docket No. 16-1312 (issued December 7, 2016).

[10] *See T.P.*, Docket No. 14-1946 (issued February 13, 2015).

[11] *N.G.*, Docket No. 16-1421 (issued December 12, 2016).

Appellant has therefore failed to establish that his accepted conditions caused any period of disability. Because he has not provided a rationalized opinion supporting his disability for work for the period in question, he has not met his burden of proof.[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 did not meet his burden of proof to establish disability from July 28, 2013 through May 22, 2015 due to his accepted employment injury.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 14, 2016 is affirmed.

Issued: March 2, 2017
Washington, DC

Christopher J. Godfrey, 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

[12] *T.D.*, Docket No. 15-1846 (issued September 23, 2016).