United States Department of Labor
Employees' Compensation Appeals Board

I.S., Appellant	)	
and	)	**Docket No. 16-1813**
	)	**Issued: March 16, 2017**
U.S. POSTAL SERVICE, POST OFFICE, Melville, NY, Employer	)	

Appearances:
Paul Kalker, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On September 12, 2016 appellant, through counsel, filed a timely appeal from an August 10, 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.[3]

[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.*

[3] The Board notes that appellant submitted new evidence following the August 10, 2016 decision. As the Board's jurisdiction is limited to evidence that was before OWCP at the time it issued its final decision, the Board may not consider this evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c)(1); *Sandra D. Pruitt*, 57 ECAB 126 (2005).

ISSUE

The issue is whether appellant met her burden of proof to establish a traumatic injury causally related to an accepted January 28, 2015 employment incident.

FACTUAL HISTORY

On January 28, 2015 appellant, then a 34-year-old mail carrier, filed a traumatic injury claim (Form CA-1) alleging that on January 28, 2015 she sustained a right shoulder injury when she slipped and fell on ice on steps. She stopped work.

Appellant was transported by ambulance to the hospital emergency room where she was treated by Dr. Leo Menkes, an osteopath specializing in emergency medicine. In a discharge instruction report, Dr. Menkes related her complaints of shoulder pain. He noted that x-ray views of appellant's right shoulder demonstrated no evidence of fracture, dislocation, significant subluxation, or significant soft tissue abnormalities. Dr. Menkes diagnosed right shoulder contusion.

The record contains a signed authorization for examination (Form CA-16), dated January 28, 2015, which indicated that appellant was authorized to receive treatment from Dr. Eric Keefer, an orthopedic surgeon specializing in sports medicine. Dr. Keefer noted a date of injury of January 28, 2015. He reported examination findings of pain with cuff testing and shoulder range of motion. Dr. Keefer diagnosed rotator cuff tendinitis and subacromial bursitis. He checked a box marked "yes" indicating that appellant's condition was caused or aggravated by the described injury.

In a January 29, 2015 work status note, Dr. Keefer reported a date of injury of January 28, 2015 and a diagnosis of rotator cuff syndrome. He indicated that appellant could not return to work.

Appellant underwent a magnetic resonance imaging (MRI) scan of the right shoulder. In a January 29, 2015 report, Dr. Matthew Diament, a Board-certified radiologist, noted supraspinatus and infraspinatus tendinosis with bursal surface fraying, low-lying acromion process and acromioclavicular capsular hypertrophy narrowing in the rotator cuff outlet, and small subacromial-subdeltoid bursitis.

By letter dated February 3, 2015, OWCP advised appellant that the evidence submitted was insufficient to establish her claim. It requested that she respond to the attached questionnaire to establish that the January 28, 2015 incident occurred as alleged and provide additional medical evidence to establish that she sustained a diagnosed condition as a result of the alleged incident. Appellant was afforded 30 days to submit the requested information.

Dr. Keefer continued to treat appellant. In examination records dated February 4 and March 4, 2015, he indicated that on January 28, 2015 she experienced "new onset right shoulder pain with fall while working." Dr. Keefer related that appellant could not raise her arm at all and had no prior problems with her right shoulder. Upon physical examination of appellant's right

shoulder, he observed pain at the end point of all ranges of motion. Dr. Keefer reported positive Impingement signs, Speed's test, and Yergeson's test. He indicated that an MRI scan report of appellant's right shoulder showed bursal-sided fraying of the supra/infraspinatus tendons and subacromial bursitis. Dr. Keefer diagnosed rotator cuff syndrome and right shoulder pain. He concluded that appellant had "right shoulder pain after fall onto right arm working while slipping on ice.

In a February 4, 2015 work status note, a February 18, 2015 work capacity evaluation form, and March 4, 2015 duty status report (Form CA-17) and work status note, Dr. Keefer indicated that appellant was not capable of performing her usual job because she was unable to raise her arm at work due to right shoulder pain caused by a fall at work. He noted that he would decide when she could return to work after further evaluation.

OWCP denied appellant's traumatic injury claim in a decision dated March 6, 2015. It found that the factual evidence was not sufficient to establish that the January 28, 2015 incident occurred as alleged. OWCP noted that appellant failed to respond to the questionnaire provided with the February 3, 2015 development letter and did not provided a detailed description of how she sustained her alleged injury.

On April 2, 2015 OWCP received appellant's form requesting review of the written record by an OWCP hearing representative. In a March 18, 2015 statement, appellant recounted that on January 28, 2015 she was assigned to deliver mail in Route 10. She noted that she was walking down steps while delivering mail when her right foot hit a patch of black ice and caused her to slip and fall onto her right shoulder. Appellant explained that she could not move her right arm because of the pain she experienced. She used her left hand to dial 911 and was transported to the hospital where she was given pain medicine and underwent a series of x-ray examinations. Appellant related that the x-ray scans did not show any fracture, but the physician informed her that there was a spot on her shoulder that may be a tear. She explained that she was seen by an orthopedist and underwent an MRI scan on February 4, 2015, which showed narrowing and swelling by her right shoulder rotator cuff.

Appellant continued to receive treatment from Dr. Keefer. In examination records dated April 22 and June 10, 2015, Dr. Keefer noted a date of injury of January 28, 2015 and "new onset right shoulder pain with fall while working onto the right shoulder." He related appellant's complaints of persistent right shoulder pain. Dr. Keefer reviewed her history and provided physical examination findings similar to his previous examinations. He diagnosed rotator cuff syndrome, shoulder pain, and right shoulder with cuff tendinitis/bursitis. Dr. Keefer recommended physical therapy and a home exercise program.

In a July 22, 2015 examination record, Dr. Keefer indicated that appellant had continued right shoulder pain and began to experience neck pain without any new injury. He provided physical examination findings of her right shoulder similar to his previous reports. Upon examination of appellant's cervical spine, Dr. Keefer observed bilateral paracervical spasm and paracervical tenderness upon palpation. He reported diminished range of motion in all planes. Dr. Keefer diagnosed pain in shoulder, rotator cuff syndrome, right shoulder with cuff tendinitis and bursitis after January 28, 2015 work injury, and cervicalgia. He indicated that there was concern that appellant may have also sustained a neck injury during the employment incident.

Dr. Keefer provided various CA-17 forms which advised that appellant could not work.

By decision dated August 13, 2015, an OWCP hearing representative affirmed the March 6, 2015 decision with modification. She accepted that the January 28, 2015 incident occurred as alleged and that appellant was diagnosed with multiple medical conditions, including subacromial bursitis, fraying of the supra/infraspinatus tendons, and rotator cuff syndrome. The hearing representative denied appellant's claim because the medical evidence was insufficient to establish a causal relationship between her right shoulder conditions and the accepted January 28, 2015 employment incident.

Following the August 13, 2015 decision, appellant submitted an October 21, 2015 report from Dr. Keefer. Dr. Keefer noted that she continued to complain of right shoulder and neck pain. He provided physical examination findings of appellant's right shoulder and cervical spine similar to his previous examinations. Dr. Keefer also reported strength examination of her right shoulder of 2/5 for forward flexion and abduction and 4/5 for internal and external rotation. He noted that stiffness, weakness, and significant loss of motion were still present. Dr. Keefer diagnosed right rotator cuff syndrome, right shoulder pain, cervicalgia, and secondary adhesive capsulitis of right shoulder. He concluded that appellant had right shoulder cuff tendinitis/bursitis after slip and fall on ice at work on January 28, 2015.

On March 7, 2016 OWCP received appellant's request, through counsel, for reconsideration. Counsel alleged that appellant submitted several progress notes and OWCP forms by Dr. Keefer which clearly and repeatedly established a causal relationship between her injury-related condition and her accident at work. He asserted that OWCP's narrow interpretation of Dr. Keefer's forms, progress notes, and reports was clearly flawed. Counsel contended that OWCP had adopted an adversarial posture, rather than undertaking to develop the evidence in an impartial manner. He referenced OWCP procedure manual and noted that OWCP had a duty to assist in the development of the evidence and that an adversarial approach violated applicable case law and statute. Counsel noted that he would be attaching a November 18, 2015 narrative report by Dr. Keefer, which had not previously been reviewed by OWCP. He alleged that Dr. Keefer's report was solidly supportive of a causally-related work disability as a direct result of the accident in the course of appellant's employment.

Along with his reconsideration request, counsel submitted a November 18, 2015 narrative report by Dr. Keefer. Dr. Keefer related that appellant was initially treated on January 29, 2015 when she was injured after slipping on a patch of ice while walking down the stairs in the course of performing her work duties as a letter carrier on January 28, 2015. Upon physical examination of her right shoulder, he observed 2/5 strength and pain at the endpoint of all ranges of motion and with cuff testing. Dr. Keefer reported that Impingement sign and Yergeson's tests were positive. He related that x-ray examination of the right shoulder showed no fracture, subluxations, dislocations, or significant abnormalities. Dr. Keefer discussed the various medical examinations he provided for appellant and noted that he last treated her on October 21, 2015 for complaints of continued right shoulder and neck pain. He diagnosed cervicalgia, rotator cuff syndrome, right shoulder pain, and secondary adhesive capsulitis of the right shoulder. Dr. Keefer recommended an MRI scan of the cervical spine and possible surgery. He reported that appellant could not return to work and that his limitations included lifting and the use of the upper extremities. Dr. Keefer opined that "if the history reported … is accurate then the injury to

[appellant's] right shoulder and neck are a direct result of her slip and fall on ice on January 28, 2015 while working."

In March 30 and June 22, 2016 examination records, Dr. Keefer indicated that pain and weakness in appellant's right shoulder and neck continued to persist. He provided physical examination findings of her right shoulder and cervical spine similar to his previous examinations. Dr. Keefer diagnosed secondary adhesive capsulitis of the right shoulder, cervicalgia, pain in the right shoulder, and right rotator cuff syndrome. He continued to assess that appellant had "right shoulder with cuff tendinitis/bursitis after slip and fall on ice at work in January." Dr. Keefer related that appellant did not have any stiffness or problems with her neck or shoulder before this incident and that her weakness and stiffness continued to persist and worsen.

By decision dated August 10, 2016, OWCP denied modification of the August 13, 2015 decision because the medical evidence failed to establish that appellant sustained a right shoulder condition causally related to the accepted January 28, 2015 employment incident. It determined that the new medical evidence lacked sufficient medical rationale and explanation to establish how the accepted January 28, 2015 employment incident caused or contributed to her right shoulder condition.

LEGAL PRECEDENT

An employee seeking benefits under FECA[4] 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[5] 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.[6]

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.[7] 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.[8] Second, the employee must submit evidence, generally only in the form of probative medical evidence, to establish that the employment incident caused a personal injury.[9] An employee may establish that the employment incident

[4] *Supra* note 2.

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

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

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

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

[9] *David Apgar*, 57 ECAB 137 (2005); *John J. Carlone*, 41 ECAB 354 (1989).

occurred as alleged, but fail to show that his or her disability or condition relates to the employment incident.[10]

Whether an employee sustained an injury in the performance of duty requires the submission of rationalized medical opinion evidence.[11] 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.[12] 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.[13]

ANALYSIS

Appellant alleged that she sustained a right shoulder and neck injury as a result of a January 28, 2015 slip and fall accident at work. OWCP accepted that the January 28, 2015 incident occurred as alleged and that she was diagnosed with right shoulder and neck conditions. However, it denied appellant's claim finding insufficient medical evidence to establish that her diagnosed medical conditions were causally related to the accepted incident. The Board finds that she has not established that she sustained a traumatic injury on January 28, 2015.

Appellant was initially treated in the emergency room by Dr. Menkes. Dr. Menkes related her complaints of shoulder pain and diagnosed a right shoulder contusion. While he provided a medical diagnosis, he did not, however, provide any opinion on the cause of appellant's right shoulder condition. The Board has held that 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.[14] Similarly, Dr. Diament's January 29, 2015 MRI scan examination report also noted some supraspinatus and infraspinatus tendinosis of appellant's right shoulder condition without an opinion on cause of her right shoulder condition. As neither physician offered an opinion on whether her right shoulder condition was causally related to her employment, they are insufficient to establish appellant's claim.[15]

Dr. Keefer also treated appellant and provided various examination records, work status notes, and Forms CA-17 dated January 29, 2015 to June 22, 2016. He noted a date of injury of January 28, 2015 when see experienced a new onset of right shoulder pain after falling at work. Dr. Keefer related appellant's complaints of persistent right shoulder and neck pain. He

[10] *T.H.*, 59 ECAB 388 (2008); *see also Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006).

[11] *See J.Z.*, 58 ECAB 529 (2007); *Paul E. Thams*, 56 ECAB 503 (2005).

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

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

[14] *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006).

[15] *R.E.*, Docket No. 10-0679 (issued November 16, 2010); *K.W.*, 59 ECAB 271 (2007).

provided physical examination findings and diagnosed rotator cuff syndrome, shoulder pain, cervicalgia, and right shoulder with cuff tendinitis/bursitis. In a Form CA-16 and various Forms CA-17, Dr. Keefer marked "yes" that appellant's condition was caused or aggravated by the described injury. He, however, did not provide any explanation or offer any medical rationale to support his opinion on causal relationship. The Board has held that when a physician's opinion on causal relationship consists only of checking "yes" to a form question, without explanation or rationale, that opinion is of diminished probative value and is insufficient to establish a claim.[16]

Dr. Keefer also continued to report that appellant had right shoulder with cuff tendinitis/bursitis after a slip and fall on ice at work in January 2015. In a November 18, 2015 narrative report, he discussed the medical treatment he had provided for her and provided physical examination findings and diagnosis similar to his previous reports. Dr. Keefer indicated that appellant could not return to work and that his limitations included lifting and the use of the upper extremities. He opined that "if the history reported … is accurate then the injury to [appellant's] right shoulder and neck are a direct result of her slip and fall on ice on January 28, 2015 while working." Although Dr. Keefer provided an affirmative opinion which supported causal relationship, he did offer any rationalized medical explanation to support his opinion. Medical evidence that states a conclusion, but does not offer any rationalized medical explanation regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[17] The Board has found that a physician must provide a narrative description of the identified employment incident and a reasoned opinion on whether the employment incident described caused or contributed to appellant's diagnosed medical condition.[18] For these reasons, Dr. Keefer's reports fail to establish appellant's claim.

On appeal counsel alleges that the evidence firmly supported appellant's claim of work-related injury and subsequent disability. He asserts that OWCP had placed an unreasonable high burden of proof upon her in requiring him to establish a causal relationship beyond all reasonable doubt. As previously explained, the medical evidence fails to establish that appellant sustained a right shoulder and neck injury as a result of the accepted January 28, 2015 incident. In order to obtain benefits under FECA an employee 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.[19] Because appellant has failed to provide such evidence demonstrating that her right shoulder and neck conditions were causally related to the January 28, 2015 incident, she has failed to meet her burden of proof to establish her claim and she has not established that OWCP placed an unreasonable burden on her.

The Board notes that the employing establishment executed a Form CA-16 on January 28, 2015 authorizing medical treatment. The Board has held that where an employing establishment properly executes a Form CA-16, which authorizes medical treatment as a result of an employee's claim for an employment-related injury, it creates a contractual obligation, which

[16] *D.D.*, 57 ECAB 734, 738 (2006); *Deborah L. Beatty*, 54 ECAB 340 (2003).

[17] *J.F.*, *supra* note 14; *A.D.*, *supra* note 14.

[18] *John W. Montoya*, 54 ECAB 306 (2003).

[19] *Supra* note 5.

does not involve the employee directly, to pay the cost of the examination or treatment regardless of the action taken on the claim.[20] Although OWCP denied appellant's claim for an injury, it did not address whether she is entitled to reimbursement of medical expenses pursuant to the Form CA-16.[21]

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 not met her burden of proof to establish a traumatic injury causally related to the accepted January 28, 2015 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the August 10, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 16, 2017
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

[20] *See D.M.*, Docket No. 13-0535 (issued June 6, 2013). *See also* 20 C.F.R. §§ 10.300, 10.304.

[21] *L.D.*, Docket No. 16-1289 (issued December 8, 2016).