

ISSUE

The issue is whether appellant met her burden of proof to establish a right shoulder and cervical injury causally related to an October 15, 2016 employment incident.

FACTUAL HISTORY

On October 26, 2016 appellant, then a 37-year-old mail carrier, filed a traumatic injury claim (Form CA-1), alleging that on October 15, 2016, while removing mail trays from a rack and loading them into a tub, she felt a sharp pain in the right side of her neck and shoulder. She stopped work on October 31, 2016 and returned to work on November 4, 2016.

On October 26, 2016 appellant was treated by Dr. Shaun Brownlee, Board-certified in occupational medicine, who diagnosed strain of muscle, fascia, tendon at the neck, shoulder, and upper right arm. Dr. Brownlee noted that she could return to work on October 26, 2016 with restrictions. He anticipated that the date of maximum medical improvement would be November 9, 2016. In a patient referral prescription note, Dr. Brownlee diagnosed strain of muscle, fascia, tendon at the neck, shoulder, and upper right arm and referred appellant for physical therapy.

Appellant was treated by Dr. Joshua M. McNatt, a Board-certified family practitioner, on October 28, 2016, who diagnosed strain of muscle, fascia, tendon at the neck, shoulder, and upper right arm. Dr. McNatt returned her to work restricted duty, eight hours a day, on October 28, 2016. He noted that the anticipated date of maximum medical improvement was November 11, 2016.

In a verification of treatment note dated October 31, 2016, Dr. Mary R. Varghese, a Board-certified internist, excused appellant from work from October 31 to November 4, 2016 and returned her to work without restrictions on November 7, 2016. The record also contains physical therapy records.

By letter dated November 14, 2016, OWCP advised appellant of the type of evidence needed to establish her claim, particularly requesting that she submit a physician's reasoned opinion addressing the relationship of her claimed condition and specific employment factors. It noted that medical evidence must be submitted by a qualified physician.

Appellant was treated by Dr. Brownlee on November 4, 2016 who diagnosed strain of muscle, fascia, tendon at the neck, shoulder, and upper right arm. Dr. Brownlee noted that she could work with restrictions. He anticipated that maximum medical improvement would occur on November 18, 2016. Dr. Brownlee treated appellant again on November 9, 2016 for right shoulder pain. Appellant reported right anterior shoulder pain, but indicated that her symptoms were improving. She attended physical therapy and demonstrated functional improvement. Appellant indicated that she was not working because light duty was not available. Dr. Brownlee noted findings on examination of joint pain, muscle pain, no joint stiffness, no muscle weakness, the right shoulder appeared normal, full range of motion, and intact muscle strength bilaterally. He diagnosed right shoulder strain and cervical strain. Dr. Brownlee

recommended that appellant continue physical therapy. He returned her to full-time modified duty.

Appellant submitted a report from Dr. McNatt dated November 16, 2016 who treated her for right shoulder pain. She reported pain in the right lateral shoulder which was improving. Dr. McNatt noted findings on examination of normal gait, no tenderness or swelling of the extremities, normal range of motion, normal strength and tone, the right shoulder appeared normal, palpation was normal, full range of motion, extension and abduction with pain, and normal motor strength bilaterally. He diagnosed right shoulder strain and released appellant from his care. Dr. McNatt noted that maximum medical improvement was reached and she could return to work regular duty. OWCP also received additional physical therapy records.

In a December 20, 2016 decision, OWCP accepted that the October 15, 2016 employment incident occurred as alleged. However, it denied the claim finding that fact of injury had not been established. OWCP found that appellant failed to submit medical evidence sufficient to establish a diagnosed medical condition causally related to the accepted work incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ 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 filed within the applicable time limitation of FECA, that an injury was sustained in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed is causally related to the employment injury. 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.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. There are two components involved in establishing 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. Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.⁶

Rationalized medical opinion evidence is generally required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, 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.⁷

⁴ *Supra* note 2.

⁵ *Gary J. Watling*, 52 ECAB 357 (2001).

⁶ *T.H.*, 59 ECAB 388 (2008).

⁷ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

ANALYSIS

It is undisputed that on October 15, 2016 appellant was performing her mail carrier duties, which included removing mail trays from a rack and loading them into a tub. However, the Board finds that she has failed to submit sufficient medical evidence to establish that this work incident caused or aggravated her right shoulder and cervical strain. In a letter dated November 14, 2016, OWCP requested that appellant submit a comprehensive report from her treating physician which included a reasoned explanation as to how the accepted work incident had caused her claimed injury.

The Board finds that appellant did not meet her burden of proof.

Appellant was treated by Dr. Brownlee on November 9, 2016 for right anterior shoulder pain. Dr. Brownlee noted findings on examination of joint pain, muscle pain, no muscle weakness, the right shoulder appeared normal, full range of motion, and intact muscle strength bilaterally. He diagnosed right shoulder strain and cervical strain. Dr. Brownlee recommended that appellant continue physical therapy and returned to full-time modified duty. Similarly, in reports dated October 26 and November 4 2016, he diagnosed strain of muscle, fascia, tendon at the neck, shoulder, and upper right arm and noted that she could return to work restricted duty on October 26, 2016. Likewise, in a patient referral form, Dr. Brownlee noted diagnoses and referred appellant for physical therapy. His notes are insufficient to establish the claim as he did not provide a history of injury⁸ or specifically address whether her employment activities had caused or aggravated a diagnosed medical condition.⁹

Appellant submitted an October 28, 2016 report from Dr. McNatt who diagnosed strain of muscle, fascia, tendon at the neck, shoulder, and upper right arm. Dr. McNatt returned her to restricted duty on October 28, 2016. In a November 16, 2016 report, he treated appellant for right shoulder pain. Dr. McNatt noted an essentially normal examination and diagnosed right shoulder strain. He released appellant from his care noting maximum medical improvement was reached. Dr. McNatt noted that she could return to work regular duty. Similarly, these notes are insufficient to establish appellant's claim as he did not provide a history of injury¹⁰ or specifically address whether her employment activities had caused or aggravated a diagnosed medical condition.¹¹

The remainder of the medical evidence, including an October 31, 2016 verification of treatment note from Dr. Varghese, is of limited probative value as it fails to provide a physician's

⁸ *Frank Luis Rembisz*, 52 ECAB 147 (2000) (medical opinions based on an incomplete history or which are speculative or equivocal in character have little probative value).

⁹ *A.D.*, 58 ECAB 149 (2006); Docket No. 06-1183 (issued November 14, 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).

¹⁰ *Frank Luis Rembisz*, *supra* note 8.

¹¹ *A.D.*, *supra* note 9.

opinion on the causal relationship between appellant's work incident and her diagnosed right shoulder and cervical strain.¹² Thus, this evidence is insufficient to meet her burden of proof.

The record also contains physical therapy treatment records. The Board has held that notes signed by a physical therapist are not considered medical evidence as they are not physicians under FECA.¹³ Thus, these treatment records are of no probative medical value in establishing appellant's claim.

An award of compensation may not be based on surmise, conjecture, or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that her condition was caused, precipitated, or aggravated by her employment is sufficient to establish causal relationship. Causal relationships must be established by rationalized medical opinion evidence.¹⁴ Appellant failed to submit such evidence and therefore she has not met her burden of proof.

On appeal appellant contends that she submitted sufficient medical evidence in support of her claim. She notes that OWCP's decision incorrectly indicated a date of injury of October 15, 2015 when the injury actually occurred on October 15, 2016. The Board finds this date disparity as harmless error as it does not go to the substance of the claim. Appellant advised that her injury was immediately reported and medical treatment was obtained the same day. As found above, however, the medical evidence of record is insufficient to establish a diagnosed medical condition causally related to the accepted work incident. Appellant has not submitted a physician's report which addresses how the work incident on October 15, 2016 caused or aggravated a right shoulder and cervical strain.

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 her burden of proof to establish a right shoulder and cervical injury causally related to the accepted October 15, 2016 employment incident.

¹² See *id.*

¹³ See *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (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).

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

ORDER

IT IS HEREBY ORDERED THAT the December 20, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 17, 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