United States Department of Labor
Employees' Compensation Appeals Board

I.L., Appellant	)	
and	)	**Docket No. 16-1668**
	)	**Issued: September 8, 2017**
U.S. POSTAL SERVICE, POST OFFICE, Middle Village, NY, 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
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 17, 2016 appellant, through counsel, filed a timely appeal from a June 23, 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 met her burden of proof to establish an injury causally related to an October 7, 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.*

FACTUAL HISTORY

On October 7, 2014 appellant, then a 31-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on that date she pulled a muscle in her right elbow and felt sharp pain while delivering mail at work. She stopped work on October 7, 2014 and returned to light-duty work on October 17, 2014.

In a letter dated October 8, 2014, appellant's immediate supervisor indicated that the employing establishment was controverting appellant's traumatic injury claim. He noted that appellant had only been on the job for three months and that appellant's complaints might be due to a preexisting injury.

In support of her claim, appellant submitted a duty status report (Form CA-17) completed on October 7, 2014 in which a physician with an illegible signature listed the date of injury as October 7, 2014, listed the diagnosis due to injury as right elbow pain and epicondylitis of right elbow, and indicated that she could not resume work.

In a form report entitled "Authorization for Examination And/Or Treatment (Form CA-16), an emergency medicine physician with an illegible signature listed the mechanism of injury as right elbow pain developed while delivering mail on cart. The physician did not provide a diagnosis, but found that appellant was totally disabled from October 7 to 14, 2014.[3]

In a Form CA-17 dated October 14, 2014, a physician with an illegible signature, specializing in orthopedic surgery, listed the date of injury as October 7, 2014, the mechanism of injury as pushing mail container, and listed the diagnosis due to injury as epicondylitis of the right elbow. The physician indicated that appellant could not resume work.

In an attending physician's report (Form CA-20) dated October 14, 2014, Dr. David V. Tuckman, an attending Board-certified orthopedic surgeon, listed the date of injury as October 7, 2014, the mechanism of injury as "injured while pushing mail cart" and diagnosed right elbow medial epicondylitis (golfer elbow). He checked a box marked "Yes" indicating that the condition found was caused or aggravated by an employment activity and noted that appellant could perform light duty.

By letter dated October 21, 2014, OWCP requested that appellant submit additional factual and medical evidence in support of her claim, including a narrative report from a physician containing a medical explanation as to how the reported work incident caused or aggravated a medical condition.

[3] The Board notes 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, the Form CA-16 creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. *See Tracy P. Spillane*, 54 ECAB 608 (2003). The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP. *See* 20 C.F.R. § 10.300(c). The record is silent as to whether OWCP paid for the cost of appellant's examination or treatment for the period noted on the form.

Appellant submitted a November 18, 2014 statement in which she further described the circumstances of her claimed October 7, 2014 injury. She indicated that she was pushing a mail cart on October 7, 2014 when she "suddenly felt something in my inner right elbow pulled." Appellant indicated that she continued delivering mail for a few hours and stopped work when her right elbow pain became worse. She denied that she had a preexisting right elbow condition.

In an October 10, 2014 report, Dr. Tuckman noted that appellant reported experiencing severe pain in her right elbow after pushing a mail cart at work on October 7, 2014. He indicated that, upon examination of the right upper extremity, there was full range of motion, 5/5 strength, and normal sensation without atrophy, swelling, or crepitus/effusion. There was marked medial epicondyle tenderness. Dr. Tuckman found that x-rays taken on October 10, 2014 showed no boney or soft tissue abnormalities and he diagnosed right elbow medial epicondylitis (golfer elbow). He indicated that appellant could return to light-duty work.[4] On October 31, 2014 Dr. Tuckman noted that appellant could continue performing light-duty work.

In a November 24, 2014 decision, OWCP determined that appellant failed to meet her burden of proof to establish a traumatic injury in the performance of duty on October 7, 2014. It found that she established the occurrence of an employment incident on October 7, 2014 in the form of pushing a mail cart and delivering mail, but that she did not submit sufficient medical evidence to establish that she sustained a specific medical condition due to the accepted employment incident.[5]

Dr. Tuckman requested that appellant undergo a magnetic resonance imaging (MRI) scan of her right elbow. The findings from the MRI scan obtained on November 28, 2014 showed red marrow hyperplasia in the proximal radial shaft and distal humeral shaft without malalignment, ligament tear, tendon tear, or acute fracture. The findings also noted, specifically, there is no common flexor tendon tear or evidence of medial epicondylitis. On December 9, 2014 Dr. Tuckman again provided the diagnosis of right elbow medial epicondylitis (golfer elbow).

Appellant submitted several notes and reports, dated between late-2014 and mid-2015, in which Dr. Tuckman diagnosed right elbow medial epicondylitis, prescribed pain medication, and indicated that she should continue with light-duty work. She visited the hospital on December 6, 2014 with complaints of right shoulder pain and the findings of December 6, 2014 x-rays of appellant's right shoulder showed "unremarkable radiographs of the shoulder."

In an April 5, 2015 Form CA-17, a physician with an illegible signature, specializing in physiatry, listed the mechanism of injury as pushing a mail cart and delivering mail on October 7, 2014 and the diagnosis due to injury as right elbow tendinitis and right shoulder tendinitis. The physician indicated that appellant could work with restrictions.

[4] In a Form CA-17 dated October 14, 2014, a physician with an illegible signature, specializing in orthopedic surgery, diagnosed epicondylitis of the right elbow and indicated that appellant could resume work on that date with restrictions.

[5] OWCP indicated that appellant's physician did not explain how her pushing a mail cart and delivering mail on October 7, 2014 caused, contributed to, or aggravated her diagnosed condition of right elbow medial epicondylitis (golfer elbow).

Appellant requested a hearing with an OWCP hearing representative. During the hearing held on June 10, 2015, she testified regarding the symptoms she experienced on October 7, 2014 and counsel argued that the medical evidence of record was sufficient to require further development of the claim.

After the hearing, appellant submitted a July 1, 2015 report in which Dr. Neofitos Stefanides, an attending Board-certified orthopedic surgeon, noted that appellant reported right elbow and right shoulder pain which began on October 7, 2014 when she was working as a postal carrier. She indicated that she was doing quite a bit of work that day. Dr. Stefanides reported physical examination findings, including marked medial epicondyle tenderness to palpation, and diagnosed medial epicondylitis of the right elbow, and right shoulder impingement and bursitis. He indicated that she was partially disabled from her usual work and noted, "[I]t is my opinion based upon the patient's history, physical examination, and radiographic findings, that there is a reasonable degree of medical certainty that the patient's physical injuries are causally related to the accident noted above."

By decision dated July 21, 2015, OWCP's hearing representative affirmed OWCP's November 24, 2014 decision finding that appellant did not meet her burden of proof to establish a traumatic injury in the performance of duty on October 7, 2014. She found that appellant did not submit a rationalized medical report relating a medical condition to the accepted October 7, 2014 work incident.

In a January 26, 2016 letter, appellant, through counsel, requested reconsideration of the July 21, 2015 decision denying her claim.

Appellant submitted a September 21, 2015 Form CA-17 in which Dr. Stefanides listed the mechanism of injury as pushing a mail cart when delivering mail on October 7, 2014 and the diagnosis due to injury as right shoulder joint pain and disorders of bursae/tendons of the right shoulder. He indicated that appellant could perform her regular work on a full-time basis without restrictions.

In a November 6, 2015 report, Dr. Stefanides noted that appellant complained of right-sided neck, arm, elbow, and thumb pain which began on November 4, 2015 when she was delivering mail and had to constantly pull a heavy mail cart towards herself and sideways to prevent it from rolling away. He reported physical examination findings and diagnosed neuritis and cervical radiculitis of the upper extremities, right shoulder impingement and bursitis, and a sprain/strain of the right thumb/finger. Dr. Stefanides indicated that appellant was totally disabled from her usual work and noted, "[I]t is my opinion based upon the patient's history, physical examination, and radiographic findings, that there is a reasonable degree of medical certainty that the patient's physical injuries are causally related to the accident noted above."

In an undated Form CA-20, Dr. Stefanides listed the date of injury as November 4, 2014, the mechanism of injury as "continuous pulling, pushing of the mail cart," and diagnosed cervical spine sprain/radiculopathy, right shoulder impingement/bursitis, and right elbow and thumb sprains. He checked a box marked "Yes" indicating that the conditions found were caused or aggravated by an employment activity and noted that she was totally disabled from November 4 to December 4, 2015.

In a decision dated June 23, 2016, OWCP denied modification of its July 21, 2015 decision, finding that appellant did not meet her burden of proof to establish a traumatic injury causally related to the October 7, 2014 employment incident. It noted that she did not submit rationalized medical evidence establishing such an injury.

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.[6] These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[7]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the fact of injury has been established. There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.[8] Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.[9]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship 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.[10]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a traumatic injury causally related to an October 7, 2014 employment incident.

---

[6] *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[7] *S.P.*, 59 ECAB 184 (2007); *Victor J. Woodhams*, 41 ECAB 345 (1989). A traumatic injury refers to injury caused by a specific event or incident or series of incidents occurring within a single workday or work shift whereas an occupational disease refers to an injury produced by employment factors which occur or are present over a period longer than a single workday or work shift. 20 C.F.R. §§ 10.5 (q), (ee); *Brady L. Fowler*, 44 ECAB 343, 351 (1992).

[8] *Julie B. Hawkins*, 38 ECAB 393 (1987).

[9] *John J. Carlone*, 41 ECAB 354 (1989).

[10] *See I.J.*, 59 ECAB 408 (2008); *Donna Faye Cardwell*, 41 ECAB 730 (1990).

Appellant submitted a Form CA-20 dated October 14, 2014 in which Dr. Tuckman, an attending physician, listed the date of injury as October 7, 2014, the mechanism of injury as "injured while pushing mail cart," and diagnosed right elbow medial epicondylitis (golfer elbow). Dr. Tuckman checked a box marked "Yes" indicating that the diagnosed condition was caused or aggravated by an employment activity and noted that she could perform light duty. The submission of this report fails to establish appellant's claim for an October 7, 2014 work injury because Dr. Tuckman did not provide medical rationale in support of 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 more by the way of medical rationale, that opinion has little probative value and is insufficient to establish causal relationship. A claimant's burden of proof includes the necessity of furnishing an affirmative opinion from a physician who supports his or her conclusion with sound medical reasoning.[11] Dr. Tuckman did not discuss nor describe appellant's activities at work on October 7, 2014 in any detail or describe the medical mechanism through which they could have caused the diagnosed medical condition.[12] Dr. Tuckman produced other reports in which he diagnosed appellant with a right elbow condition, but these reports do not contain an opinion on the cause of the diagnosed condition.[13]

In an April 5, 2015 Form CA-17, a physician with an illegible signature listed the mechanism of injury as pushing a mail cart and delivering mail on October 7, 2014 and the diagnosis due to injury as right elbow tendinitis and right shoulder tendinitis. The physician indicated that appellant could work with restrictions. The submission of this report would not establish appellant's claim for a work-related October 7, 2014 injury because, although the medical specialty is listed, it is unknown whether the author of the report is a physician. The Board has held that a report bearing an illegible signature lacks proper identification and cannot be considered probative medical evidence.[14] Thus, it is of no probative value.

In a July 1, 2015 report, Dr. Stefanides, an attending physician, noted that appellant reported right elbow and right shoulder pain which began on October 7, 2014 when she was working as a postal carrier. He diagnosed medial epicondylitis of the right elbow, and right shoulder impingement and bursitis. Dr. Stefanides indicated that appellant was partially disabled from her usual work and noted, "[I]t is my opinion based upon the patient's history, physical examination, and radiographic findings, that there is a reasonable degree of medical certainty that the patient's physical injuries are causally related to the accident noted above." However, he did not support this opinion on causal relationship with any further medical explanation.

[11] *Lillian M. Jones*, 34 ECAB 379, 381 (1982).

[12] The provision of such medical rationale is especially necessary in this case as Dr. Tuckman obtained a report of a November 28, 2014 MRI scan of appellant's right elbow in which it was noted, "Specifically, there is no common flexor tendon tear or evidence of medial epicondylitis."

[13] The record also contains several form reports from early- to mid-October 2014 in which physicians with illegible signatures indicated that appellant sustained right elbow conditions due to pushing a mail cart and delivering mail on October 7, 2014. However, these reports are of no probative value as the author cannot be identified as a physician despite the reference to the medical specialties. *See C.N.*, Docket No. 16-1597 (issued August 10, 2017); *see also Merton J. Sills*, 39 ECAB 572, 575 (1988).

[14] *Id.*

Dr. Stefanides did not discuss appellant's activities at work on October 7, 2014 in any detail or explain how specific objective findings on physical examination and diagnostic testing supported the occurrence of a work-related injury on October 7, 2014.[15] The record contains a September 21, 2015 report in which Dr. Stefanides related right elbow and shoulder conditions to appellant's October 7, 2014 work activities, but it is also deficient because it lacks medical rationale in support of its opinion on causal relationship.[16]

For these reasons, appellant did not meet her burden of proof to establish a traumatic injury causally related to an October 7, 2014 employment incident.

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 an injury causally related to an October 7, 2014 employment incident.

[15] In particular, Dr. Stefanides did not explain how the diagnosed right shoulder condition could have been related to the October 14, 2014 work activities given appellant's above-noted history of reporting symptoms.

[16] Appellant submitted a November 6, 2015 narrative report and an undated form report in which Dr. Stefanides related right shoulder, cervical radiculopathy, elbow, thumb, and finger conditions to her handling of a mail cart at work on November 4, 2015. The record does not presently contain a claim for a November 4, 2015 work injury or a decision concerning a November 4, 2015 work injury and as such the matter is not currently before the Board.

ORDER

IT IS HEREBY ORDERED THAT the June 23, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 8, 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