United States Department of Labor
Employees' Compensation Appeals Board

C.M., Appellant	)	
and	)	**Docket No. 17-1376**
	)	**Issued: September 22, 2017**
U.S. POSTAL SERVICE, POST OFFICE, Winder, GA, 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 June 5, 2017 appellant filed a timely appeal from a May 15, 2017 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 her burden of proof to establish an injury causally related to a February 17, 2017 employment incident.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that appellant submitted additional evidence to OWCP after the May 15, 2017 decision was issued. The Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its final decision. Therefore, the Board lacks jurisdiction to review this additional evidence. 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

On February 22, 2017 appellant, a 56-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that she injured "her shoulder" on February 17, 2017 while she was delivering a parcel. She stated that her shoe caught a ridge in a driveway and she "fell on her shoulder." Appellant stopped work on February 21, 2017, and resumed work the following day with restrictions.

In a February 22, 2017 report, Dr. Darrell Scales, a Board-certified orthopedic surgeon, asserted that appellant was seen for right shoulder pain and noted that she "has had this in the past." He stated that she recalled back in 2008 or 2009 that she was being seen at Athens Orthopedic and had steroid injections with Center for Physical Therapy and got better. Appellant had slowly gotten worse over the past year or so and had a little bit of worsening over the Christmas holiday when she delivered a lot of packages at work. Dr. Scales indicated that more recently, she had an acute injury on February 17, 2017 when she was going into a driveway, caught her foot, and then fell forward. Appellant fell onto both arms and upper extremities while carrying packages. Dr. Scales reviewed her right shoulder x-ray and noted that there were some changes to the greater tuberosity to suggest previous rotator cuff tendinitis and insertional tendinitis. His assessment of appellant's x-ray was "probable history of rotator cuff tendinitis to the right shoulder, otherwise normal radiographs of the right shoulder." Dr. Scales indicated that she had what appeared to be a work-related injury of the right shoulder with "possibility" of a rotator cuff tear versus internal derangement. He ordered a right shoulder magnetic resonance imaging scan, and advised that appellant was unable to work on February 21, 2017 because of pain due to a right shoulder injury.

In a February 22, 2017 duty status report (Form CA-17), Dr. Scales diagnosed right shoulder pain and advised that appellant could return to work with restrictions.

On February 24, 2017 appellant accepted a limited-duty job offer as a modified rural carrier, which required up to eight hours of sitting and one to two hours of walking. Her duties included processing second notices, answering telephones, and performing administrative duties as needed.

In an April 7, 2017 claim development letter, OWCP advised appellant that the medical evidence received thus far was insufficient to establish entitlement to compensation benefits. It requested a narrative medical report from appellant's attending physician, and afforded her at least 30 days to submit the required medical evidence.

In response, appellant resubmitted Dr. Scales' February 22, 2017 report.

By decision dated May 15, 2017, OWCP accepted that the February 17, 2017 employment incident occurred as alleged, but denied appellant's traumatic injury claim because she failed to submit medical evidence containing a diagnosis in connection with the injury or event(s). Thus, it concluded that she had not established the medical component of fact of injury.

LEGAL PRECEDENT

A claimant seeking benefits under FECA[3] 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.[4]

To determine if 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.[5] The second component is whether the employment incident caused a personal injury.[6] 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.[7]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical evidence. 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.[8]

ANALYSIS

OWCP accepted that the February 17, 2017 employment incident occurred as alleged. The issue is whether appellant sustained an injury as a result. The Board finds that she has not meet her burden of proof to establish that she sustained an injury related to the February 17, 2017 employment incident.

In his February 22, 2017 report, Dr. Scales diagnosed right shoulder pain and noted the "possibility" of a rotator cuff tear versus internal derangement. The Board finds that Dr. Scales'

[3] *See supra* note 1.

[4] 20 C.F.R. § 10.115(e), (f); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

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

[6] *John J. Carlone*, 41 ECAB 354 (1989). Causal relationship is a medical question that generally requires rationalized medical opinion evidence to resolve the issue. *See 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.*

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

[8] *See O.W.*, Docket No. 09-2110 (issued April 22, 2010).

notation of right shoulder pain is a description of a symptom rather than a clear diagnosis of the medical condition.[9] The Board further finds that his mention of the "possibility" of a rotator cuff tear or internal derangement is speculative and equivocal in nature.[10] For these reasons, Dr. Scales' February 22, 2017 report and Form CA-17 are insufficient to establish a medical diagnosis in connection with appellant's February 17, 2017 work-related fall. Consequently, appellant has not met her burden of proof to establish her claim because she has not submitted competent medical evidence addressing how the February 17, 2017 work incident caused or resulted in an injury.

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 an injury causally related to a February 17, 2017 employment incident.

[9] *See P.S.*, Docket No. 12-1601 (issued January 2, 2013); *C.F.*, Docket No. 08-1102 (issued October 10, 2008).

[10] Medical opinions that are speculative or equivocal in character are of little probative value. *See Kathy A. Kelley*, 55 ECAB 206 (2004).

ORDER

IT IS HEREBY ORDERED THAT the May 15, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 22, 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