

**United States Department of Labor
Employees' Compensation Appeals Board**

_____)	
T.J., Appellant)	
)	
and)	Docket No. 17-0211
)	Issued: April 3, 2018
DEPARTMENT OF TREASURY, INTERNAL)	
REVENUE SERVICE, Richmond, VA, Employer)	
_____)	

Appearances:
Alan J. Shapiro, Esq., for the appellant¹
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 November 9, 2016 appellant, through counsel, filed a timely appeal from a September 16, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this claim.

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.*

ISSUE

The issue is whether appellant has met her burden of proof to establish a left shoulder condition causally related to the accepted January 8, 2014 employment incident.

FACTUAL HISTORY

On February 10, 2014 appellant, then a 57-year-old tax law specialist, filed a traumatic injury claim (Form CA-1) alleging that she sustained injury on January 8, 2014 while moving files and boxes in the performance of duty.³ In a May 22, 2014 supplemental statement, she explained that she injured her left shoulder while boxing up coworker's personal belongings and moving files across the office on January 8, 2014 following a water pipe break. Appellant claimed that she left the office that day feeling tired and faint. The next day she was ill and used sick leave. Appellant then began having body aches and pains and could only use her left shoulder for limited activity. She underwent physical therapy for her left shoulder. Appellant noted that, on March 17, 2014, while on her way to physical therapy, she was involved in an automobile accident which left her incapacitated.

Evidence submitted with the claim included physical therapy prescription notes dated February 20 through June 9, 2014. The notes contain diagnoses of bicipital tenosynovitis and note the work history of January 8, 2014.

In a January 30, 2014 report, Dr. Michael F. Bartell, an internist, noted that appellant had a left shoulder injury with pain in the joint involving the left shoulder region. He indicated that, approximately 21 days ago, she injured her left rotator cuff tendon at work while helping to move furniture and equipment in her office. Dr. Bartell indicated that a diagnosis had not been determined. In a February 13, 2014 note, he indicated that appellant was seen on January 30, 2014 for a left shoulder injury and he had recommended referral to an orthopedic specialist.

In a February 7, 2014 report, Dr. Julienne Lippe, an orthopedic surgeon, advised that appellant was under her care for left shoulder biceps tenosynovitis. She indicated that appellant received a steroid injection and was given a prescription for physical therapy.

In a March 21, 2014 treatment note, Dr. Ellen Loeffler, a family practitioner, noted that appellant had been involved in a March 17, 2014 motor vehicle accident and presented for emergency room follow-up. An assessment of acute upper back pain, lower back pain, left leg pain, and left arm pain was provided. Diagnostic testing was ordered. Dr. Loeffler indicated that the leg pain was likely sciatic involvement from muscle spasm. She indicated that a disc herniation could not be ruled out, but noted no major nerve deficits.

An unsigned May 12, 2014 treatment note from St. Louis Orthopedic Institute, Inc., noted back pain.

³ OWCP initially administratively approved a limited amount of medical expenses as there was minimal or no lost time from work and the employing establishment did not controvert continuation of pay or challenge the merits of the case.

By development letter dated May 16, 2014, OWCP advised appellant of the factual and medical evidence needed to establish her claim. It allotted her 30 days to submit the requested evidence. Appellant did not respond.

By decision dated July 16, 2014, OWCP denied appellant's claim as the medical evidence of record did not demonstrate that a medical condition was causally related to the accepted employment incident.

On July 30, 2014 appellant, through counsel, requested a telephone hearing before an OWCP hearing representative, which was held on March 11, 2015. At the hearing, appellant testified that she did not seek medical treatment until January 30, 2014 as she thought she was "just having some pain." She also testified as to the events of March 17, 2014 when she was involved in a motor vehicle accident as a passenger. Appellant indicated that she was enroute to her physical therapy appointment for her left shoulder, but cancelled her physical therapy appointment after the accident. Counsel also presented argument, but no additional evidence was submitted.

By decision dated April 30, 2015, an OWCP hearing representative affirmed the July 16, 2014 decision as the medical evidence of record did not establish causal relationship. The hearing representative further found that, as the claimed January 8, 2014 injury had not been shown to be the cause of appellant's current medical condition, it was premature to determine whether the March 17, 2014 motor vehicle accident was a consequential injury.⁴

On January 21, 2016 OWCP received appellant's January 21, 2016 request for reconsideration. Additional evidence, including medical reports pertaining to her pelvis and left knee were received along with diagnostic testing of bilateral knees. None of the reports discussed appellant's claimed left shoulder condition.

In a November 19, 2015 report, Dr. Charles W. Ampadu, an internist, stated that appellant was under his care for a shoulder injury, chronic back pain, and migraine headaches. He indicated that her pain medications caused drowsiness and lack of concentration and that she may not be able to perform her usual work functions.

By decision dated September 16, 2016, OWCP denied modification of the April 30, 2015 decision. It again found that appellant had not established that her left shoulder condition was causally related to the accepted January 8, 2014 employment incident.⁵

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 filed within the applicable time

⁴ The hearing representative further noted that additional evidence would be needed to determine whether or not the motor vehicle accident arose in the performance of duty.

⁵ OWCP again explained that the matter concerning the motor vehicle accident would be further considered if the original injury was accepted as work related.

limitation, that an injury was sustained while 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 and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁷

Whether an employee actually sustained an injury in the performance of duty begins with an analysis of whether fact of injury has been established.⁸ To establish fact of injury in an occupational disease claim, an employee must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.⁹

The medical evidence required to establish causal relationship is generally rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. 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 established a left shoulder condition causally related to the accepted January 8, 2014 employment incident.

OWCP accepted that the January 8, 2014 employment incident occurred as alleged and that a medical diagnosis had been provided for a left shoulder condition, *i.e.*, left shoulder biceps tenosynovitis. It denied the claim, however, as the medical evidence of record failed to establish a causal relationship between the accepted employment incident and the diagnosed left shoulder condition.

In a January 30, 2014 report, Dr. Bartell noted that appellant had sustained a left shoulder injury with pain in joint involving left shoulder region. While he noted the history of the work injury, he related that no diagnosis had been made. In his February 13, 2014 note, Dr. Bartell indicated that he had referred appellant to an orthopedic physician. His reports are insufficient to

⁶ *Joe D. Cameron*, 41 ECAB 153 (1989).

⁷ *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

⁸ *See S.P.*, 59 ECAB 184, 188 (2007).

⁹ *See Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *see also P.W.*, Docket No. 10-2402 (issued August 5, 2011).

¹⁰ *Solomon Polen*, 51 ECAB 341 (2000).

establish her claim as he failed to provide a medical diagnosis or offer any opinion regarding the cause of her condition.¹¹

In a February 7, 2014 report, Dr. Lippe noted that appellant was under her care for left shoulder biceps tenosynovitis and discussed appellant's treatment. In a November 19, 2015 report, Dr. Ampadu noted that appellant was under his care for a shoulder injury, chronic back pain, and migraine headaches and indicated that her pain medications may not allow her to perform her usual work functions. These reports, however, are of limited probative value as neither physician noted the history of the January 8, 2014 work incident or offered any opinion regarding the cause of her condition.¹²

The diagnostic testing of record is of diminished probative value and is insufficient to establish appellant's claim as diagnostic reports do not provide an opinion on the cause of her diagnosed conditions.¹³

OWCP also received physical therapy records. Physical therapy reports are likewise insufficient to establish appellant's claim as reports by a physical therapist are of no probative value because a physical therapist is not a physician under FECA.¹⁴

While appellant also claimed a consequential injury due to a March 17, 2014 automobile accident enroute to physical therapy for her claimed left shoulder condition and submitted medical evidence, including Dr. Loffler's March 21, 2014 report and the May 12, 2014 treatment note pertaining to conditions other than her left shoulder, the Board finds that a determination on a consequential injury is premature until the claimed January 8, 2014 injury has been shown to be causally related to her claimed left shoulder condition.¹⁵

Accordingly, the medical evidence contained in this case record does not provide a well-rationalized medical opinion establishing that the diagnosed condition of left shoulder biceps tenosynovitis was causally related to the accepted January 8, 2014 employment incident. OWCP advised appellant that it was her responsibility to provide a comprehensive medical report

¹¹ *L.L.*, Docket No. 16-0896 (issued September 13, 2016) (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).

¹² *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

¹³ See *C.P.*, Docket No. 15-0600 (issued June 2, 2015).

¹⁴ 5 U.S.C. 8102(2) of FECA provides that the term physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law; *J.G.*, Docket No. 15-0251 (issued April 13, 2015); *A.C.*, Docket No. 08-1453 (issued November 18, 2008) (records from a physical therapist do not constitute competent medical opinion in support of causal relation, as physical therapists are not considered physicians as defined under FECA).

¹⁵ The general rule respecting consequential injuries is that, when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent intervening cause, which is attributable to the employee's own intentional conduct. A claimant bears the burden of proof to establish a claim for a consequential injury. See *R.O.*, Docket No. 16-1516 (issued August 28, 2017).

explaining how the diagnosed medical condition was caused by the accepted employment incident. Appellant failed to submit appropriate medical documentation in response to OWCP's request.¹⁶

The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference of causal relation.¹⁷ An award of compensation may not be based on surmise, conjecture, speculation, or upon appellant's own belief that there was a causal relationship between his or her condition and his or her employment.¹⁸ Causal relationship must be based on rationalized medical opinion evidence.¹⁹ As appellant did not submit a rationalized medical opinion supporting that her left shoulder condition was causally related to the accepted January 8, 2014 employment incident, she did not meet her burden of proof.

On appeal counsel argues generally that the decision is contrary to fact and law. Based on the findings and reasons stated above, the Board finds that counsel's arguments are not substantiated.²⁰

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 that her left shoulder condition was causally related to the accepted January 8, 2014 employment incident.

¹⁶ See *D.B.*, Docket No. 16-1219 (issued November 8, 2016); see also *T.H.*, Docket No. 15-0772 (issued May 12, 2016).

¹⁷ *L.D.*, Docket No. 09-1503 (issued April 15, 2010); *D.I.*, 59 ECAB 158 (2007); *Daniel O. Vasquez*, 57 ECAB 559 (2006).

¹⁸ *Patricia J. Glenn*, 53 ECAB 159-60 (2001).

¹⁹ *M.E.*, Docket No. 14-1064 (issued September 29, 2014).

²⁰ See *E.L.*, Docket No. 16-0635 (issued November 7, 2016).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 16, 2016 is affirmed.

Issued: April 3, 2018
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