United States Department of Labor
Employees' Compensation Appeals Board

T.G., Appellant	)	
and	)	**Docket No. 17-1840**
	)	**Issued: December 20, 2018**
U.S. POSTAL SERVICE, POST OFFICE, Joshua Tree, CA, 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 29, 2017 appellant, through counsel, timely appealed from a July 27, 2017 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.

[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. § 810 *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 June 13, 2016 employment incident.

FACTUAL HISTORY

On June 13, 2016 appellant, then a 59 year-old clerk, filed a traumatic injury claim (Form CA-1) alleging that on that date she injured her left shoulder when she pushed a postal container while in the performance of duty. She explained that it kept getting caught on the left and right side where workers had blocked one half of the door. Appellant did not initially stop work. The employing establishment responded, "no" with regard to whether their knowledge of the facts of this injury agreed with the statements of the employee and/or witness. The employing establishment responded that appellant complained of shoulder pain in the past. Additionally, it was noted that "a reenactment of the incident does not make sense as to how the left shoulder would have been injured."

Appellant provided a separate statement dated June 14, 2016 in which she noted that she was not currently seeking medical attention for the incident of June 13, 2016, when she injured her left shoulder.

OWCP received a report of accident/incident from EHS. The report noted that appellant indicated that she "was trying to push a wire lobster cage outside back door, it kept getting caught on the left and right side where workers had blocked one half of door."

A June 20, 2016 left shoulder x-ray read by Dr. Michael Allen, a Board-certified internist, was normal. Dr. Allen noted that appellant was pushing a huge basket when she bumped into the door and hurt her left shoulder. He advised that it was work related and noted that she had blunt trauma and contusions or hematomas on the left shoulder.

In a report, initially received on June 29, 2016, Dr. Robert Evans, an internist, noted that appellant indicated that she was trying to push a postal container through an outer doorway that was blocked on one side. He indicated that her subjective complaints included pain in the left shoulder. Dr. Evans diagnosed left shoulder sprain. OWCP received an undated duty status report (Form CA-17) from Dr. Evans, who advised no regular work. In a June 20, 2016 duty status report, Dr. Evans noted her history of injury and noted she had pain on the left shoulder. In June 27, 2016 reports, he advised that appellant still had pain from the left shoulder. Dr. Evans completed a duty status report including work restrictions. In a July 4, 2016 progress report, he noted that appellant's shoulder felt better from pain and diagnosed shoulder strain. Dr. Evans advised continuing modified work with limited use of the left arm. He continued to treat appellant and provided reports on July 11, 15, 18, and August 1, 9, 2016. In July 11 and August 15, 2016 disability certificates, Dr. Evans advised returning to work with restrictions.

OWCP also received a series of physical therapy reports from August 2016. In an August 2, 2016 physical therapy report, the physical therapist noted that appellant presented with a left shoulder strain following an incident at work on June 13, 2016. He noted that the x-ray was unremarkable. The physical therapist related that appellant claimed that the same incident had

occurred in December 2015, but that she did not file an incident report at work. He noted that appellant explained that her son, an orthopedic surgeon, explained that she "probably tore something and needs surgery." In an August 31, 2016 discharge report, the therapist diagnosed strain of other muscles, fascia, and tendons at the shoulder and upper arm level, unspecified arm and pain in the left shoulder. He advised that appellant was discharged as she had completed treatment.

By development letter dated September 23, 2016, OWCP advised appellant of the deficiencies in the evidence received. It requested that she complete a questionnaire and respond to factual questions regarding the prior injury in December 2015 and her son's suggestion of surgery. OWCP also requested a narrative medical report from appellant's physician, which should include: dates of examination and treatment; history and date of injury given by appellant to the physician; description of findings; results of x-rays and tests; a diagnosis and clinical course of treatment followed; and the physician's opinion supported by a medical explanation as to how the reported work incident caused or aggravated a medical condition. OWCP afforded her 30 days to provide the requested evidence.

OWCP received new evidence as well as copies of previously submitted reports.

In a September 13, 2016 duty status report, Dr. Evans repeated his description of how the incident occurred and diagnosed left shoulder strain. He noted that appellant was advised to resume modified work on September 13, 2016.

A September 21, 2016 magnetic resonance imaging (MRI) scan of the left shoulder read by Dr. John F. Feller, a diagnostic radiologist, revealed no evidence of full-thickness rotator cuff tear. Other findings included, but were not limited to a history of clinical syndrome of impingement including mild osteoarthritis involving the acromioclavicular joint; mild subacromial bursitis; and severe tendinosis throughout the supraspinatus tendon extending as moderate tendinosis along the articular surface of the infraspinatus tendon. Dr. Feller noted that the supraspinatus and the infraspinatus tendon pathology in part or in whole may be traumatic in etiology.

In an October 16, 2016 response to the questionnaire, appellant explained that her prior injury occurred on approximately December 20, 2015. She explained that the injury occurred when she was distributing packages to carrier routes. Appellant noted that she scanned the packages with her right hand while throwing them with her left. She explained that she threw one to route two's hamper and felt a sharp pain in her left shoulder. Appellant assumed that she had strained a muscle and kept working. She noted that she did not receive medical treatment, but she did tell the postmaster about the incident when she arrived. Appellant also informed her son, an orthopedic surgeon, of this incident. She responded that, with regard to her son advising her that she needed surgery, he was in town on December 19, 2015 for the holidays and he examined her shoulder. Appellant advised that he recommended a left shoulder MRI scan as it was possible that she may have a rotator cuff tear and could possibly need surgery.

In an October 14, 2016 report, Dr. Evans noted that appellant was seen in his office for multiple visits from June 20 to September 13, 2016. He confirmed the history of injury and provided findings which included that appellant was tender and had pain when her arm was

elevated above 90 degrees. Dr. Evans found her ligaments were intact. He reviewed the MRI scan findings from September 21, 2016 and concluded that appellant had shoulder pain, which was a result of the injury at the workplace.

By decision dated October 27, 2016, OWCP denied appellant's claim. It found that the evidence of record was insufficient to establish that the claimed medical condition was causally related to the accepted work event(s).

Following its decision OWCP received copies of prior reports.

On April 28 and May 1, 2017 appellant requested reconsideration. She noted that she was providing two letters one from Dr. Evans and one from her son. Appellant explained that Dr. Evans had been treating her since the injury of June 13, 2016. She indicated that she believed that her claim was unfairly denied because both injuries to her shoulder happened at work. Appellant denied any prior shoulder problems. She also explained why she never filed for the first injury. Appellant noted that, when she injured her left shoulder on June 13, 2016, it was more painful, so she filed a claim.

In an undated report, Dr. Randall Roy, an orthopedic sports specialist, and appellant's son, noted that on December 19, 2015 he examined her shoulder at her home due to an injury sustained at work earlier that week. He noted that he found weakness in her left shoulder, and recommended that she get a left shoulder MRI scan, as he suspected a rotator cuff injury. Dr. Roy explained that, to his knowledge, appellant had not received treatment for this problem and continued to have pain.

In a March 30, 2017 report, Dr. Evans noted that appellant's left shoulder pain was not improving. He repeated the history of injury of June 13, 2016. Dr. Evans opined that this was a work injury. He recommended an orthopedic evaluation.

By decision dated July 27, 2017, OWCP denied modification of the October 27, 2016 decision.

LEGAL PRECEDENT

A claimant seeking benefits under FECA 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.[3]

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

[3] 20 C.F.R. § 10.115(e), (f); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

allegedly occurred.[4] The second component is whether the employment incident caused a personal injury.[5] 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.[6]

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.[7] 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.[8] 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).[9]

In any case where a preexisting condition involving the same part of the body is present and the issue of causal relationship, therefore, involves aggravation, acceleration, or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.[10]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a left shoulder condition causally related to the accepted June 13, 2016 employment incident.

In support of her claim, appellant submitted a series of medical reports from Dr. Evans, an internist. Dr. Evans reported that appellant had indicated that she was trying to push a postal container through an outer doorway that was blocked on one side by workers. He indicated that her subjective complaints included pain in the left shoulder. Dr. Evans initially diagnosed left shoulder sprain. He reviewed the MRI scan findings from September 21, 2016 and concluded that appellant had shoulder pain, which was a result of the injury at the workplace. Dr. Evans opined that he believed that her condition was the result of a work injury. He recommended an orthopedic evaluation. The Board finds that the medical records of Dr. Evans are insufficient to establish appellant's claim. While he diagnosed a left shoulder sprain he failed to provide medical reasoning as to how and why the accepted employment incident would result in such a condition. The mere recitation of patient history does not suffice for purposes of establishing causal relationship

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

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

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

[7] *Robert G. Morris*, 48 ECAB 238 (1996).

[8] *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[9] *Id*.

[10] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013).

between a diagnosed condition and the employment incident.[11] Without explaining physiologically how the accepted employment incident caused or contributed to the diagnosed conditions, the physician's reports are of limited probative value.[12] Thus, the reports of Dr. Evans are insufficient to establish a left shoulder condition causally related to the accepted June 13, 2016 employment incident.

Appellant also submitted a medical report Dr. Allen, a Board-certified internist, who noted the history of injury. Dr. Allen noted that she had contusions or hematomas on her left shoulder and noted they were work related. A medical opinion should reflect a correct history and offer a medically sound explanation by the physician of how the specific employment incident physiologically caused or aggravated the diagnosed conditions.[13] As Dr. Allen merely noted that the condition was work related, without any explanation for his opinion, this report is insufficient to establish appellant's claim.

In an undated report, Dr. Roy, an orthopedic sports specialist, noted that on December 19, 2015 he had examined her shoulder at her home due to an injury sustained at work earlier that week. He noted that he found weakness in her left shoulder, and recommended an MRI scan, as he suspected a rotator cuff injury. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.[14] This report is, therefore, insufficient to establish appellant's claim.

Appellant also submitted MRI scan reports and numerous reports from physical therapists who provided treatment. Diagnostic studies, such as MRI scan reports, are of limited probative value as they do not address whether the employment incident caused any of the diagnosed conditions.[15] As to the physical therapy notes, these documents do not constitute competent medical evidence because a physical therapist is not considered a "physician" as defined under FECA.[16] As such, this evidence is also insufficient to meet appellant's burden of proof.

An award of compensation may not be based on surmise, conjecture, speculation, or appellant's belief of causal relationship.[17] Appellant's honest belief that the June 13, 2016

[11] *See J.G.*, Docket No. 17-1382 (issued October 18, 2017).

[12] *See A.B.*, Docket No. 16-1163 (issued September 8, 2017).

[13] *See J.M.*, Docket No. 17-1002 (issued August 22, 2017).

[14] *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[15] *See J.S.*, Docket No. 17-1039 (issued October 6, 2017).

[16] *See M.M.*, Docket No. 17-1641 (issued February 15, 2018); *K.J.*, Docket No. 16-1805 (issued February 23, 2018); *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).

[17] *John D. Jackson*, 55 ECAB 465 (2004); *William Nimitz*¸ 30 ECAB 57 (1979).

employment incident caused her medical conditions, however sincerely held, does not constitute the medical evidence necessary to establish causal relationship.[18]

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 left shoulder condition causally related to the accepted June 13, 2016 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the July 27, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 20, 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

[18] *See D.A.,* Docket No. 18-0783 (issued November 8, 2018); *H.H.,* Docket No. 16-0897 (issued September 21, 2016).