United States Department of Labor
Employees' Compensation Appeals Board

K.B., Appellant	)	
and	)	**Docket No. 17-1363**
	)	**Issued: February 14, 2018**
U.S. POSTAL SERVICE, POST OFFICE, South Plainfield, NJ, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On June 2, 2017 appellant filed a timely appeal from a January 11, 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.

ISSUE

The issue is whether appellant met her burden of proof to establish a traumatic injury causally related to the accepted March 13, 2013 employment incident.

FACTUAL HISTORY

This case has previously been before the Board. In an order dated August 8, 2016, the Board remanded the case for OWCP to consolidate appellant's right upper extremity claims.[2]

[1] 5 U.S.C. § 8101 *et seq.*

[2] *Order Remanding Case*, Docket No. 16-1046 (issued August 8, 2016).

The facts and circumstances as set forth in the Board's prior order are incorporated herein by reference. The relevant facts are as follows.

On March 25, 2013 appellant, then a 46-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on March 13, 2013 she experienced pain in her right arm, right hand, and upper chest by the collar bone. The pain began while she was casing mail and spread down her arm. Appellant told her supervisor that she had chest pain and needed to go home. The employing establishment controverted the claim, noting that she became upset when she found out she could not leave early.[3]

OWCP previously accepted that appellant sustained a right shoulder strain on January 28, 2003, under File No. xxxxxx908. It also accepted her 2007 occupational disease claim for a sprain of the right shoulder and upper arm, under File No. xxxxxx856. Appellant further filed an occupational disease claim on June 10, 2013 for myofascitis, cervical radiculitis, and scapulothoracic dysfunction, under File No. xxxxxx810 and denied in decisions dated September 30, 2013 and May 28, 2014.

On March 13, 2013 Dr. Ajay Kumar, a Board-certified physiatrist, indicated that appellant could not work for one week due to cervical radiculopathy.[4] In a March 18, 2013 disability certificate, he diagnosed right upper extremity pain and advised her not to work pending further examination. On April 2, 2013 a provider in the same office released appellant to return to work on April 8, 2013 without limitations.[5]

Dr. Mark A.P. Filippone, a Board-certified physiatrist, evaluated appellant on April 5, 2013. He reviewed her description of the March 13, 2013 work incident and noted that a March 22, 2013 magnetic resonance imaging (MRI) scan study of the right shoulder showed prior acromioclavicular joint surgery and possible mild cuff tendinopathy and that a March 22, 2013 cervical MRI scan study showed a bulging C5-6 disc with a possible herniation. On examination, Dr. Filippone found a positive Tinel's sign over the right ulnar nerve and a positive Phalen's test on the right, and a loss of sensation over the left forearm. He diagnosed cervicalgia with radiculitis, internal derangement of the right shoulder, costochondritis, and possible cervical radiculopathy, ulnar neuropathy, and carpal tunnel syndrome. Dr. Filippone opined that appellant was totally disabled. In an April 5, 2013 attending physician's report (Form CA-20), he diagnosed internal derangement of the right shoulder and cervical radiculopathy. Dr. Filippone checked a box marked "yes" that the condition was caused or aggravated by her federal employment duties. He also completed a duty status report (Form CA-17) on April 5, 2013, finding that appellant was totally disabled.

On April 16, 2013 Dr. Filippone discussed appellant's complaints of "right shoulder and neck pain radiating into the right upper extremity" and unusual sensation in the left hand due to overuse. He found her totally disabled. Dr. Filippone, in an accompanying Form CA-20,

[3] The employing establishment submitted witness statements regarding the events on the workroom floor on March 13, 2013.

[4] The record contains the first page only of an authorization for examination and/or treatment, Form CA-16.

[5] The names of these providers are not legible.

diagnosed internal derangement of the right shoulder and possible cervical radiculopathy and double crush syndrome. He checked a box marked "yes" that the condition was caused or aggravated by employment and found that appellant was totally disabled.[6]

Appellant, in an April 18, 2013 statement, noted having right upper chest pain radiating to her arms casing mail. She specified that her claim was for a traumatic injury.

By decision dated May 14, 2013, OWCP denied appellant's traumatic injury claim. It found that the medical evidence was insufficient to show that she sustained a diagnosed condition causally related to the accepted March 13, 2013 work incident.

In a progress report dated May 7, 2013, received by OWCP on May 28, 2013, Dr. Filippone discussed appellant's symptoms of cervical paraspinal and right upper trapezius pain. He provided findings and opined that she was totally disabled. Dr. Filippone submitted similar progress reports from May 16 to October 23, 2013. On May 16, 2013 he found pain, guarding, and spasm in the cervical paraspinals and about the shoulders. Dr. Filippone advised that appellant's symptoms were directly and solely the result of repetitive activities while at work at the employing establishment. He also completed CA-20 forms dated May 7 to October 29, 2013. In the form reports, Dr. Filippone diagnosed internal derangement of the right shoulder and possible cervical radiculopathy and cervical double crush syndrome. He checked a box marked "yes" that the condition was caused or aggravated by employment, and found appellant totally disabled.

By decision dated December 9, 2013, OWCP's hearing representative affirmed the May 14, 2013 decision. She found that appellant had established the identified work factor of casing mail on March 13, 2013, but that the medical evidence of record did not establish that she had a diagnosed condition as a result of the work duties. The hearing representative reviewed evidence from appellant's other right arm files, assigned OWCP File Nos. xxxxxx908 and xxxxxx856.

On July 7, 2014 Dr. Filippone related treating appellant since April 5, 2013 for a March 13, 2013 cervical and right shoulder injury that occurred at work. He described her continued complaints of neck pain primarily on the right and chest wall and right shoulder pain after the March 13, 2013 incident. Dr. Filippone discussed appellant's history of right shoulder surgery in September 2005 with residual problems that increased after March 13, 2013, and a trapezius strain due to a work injury in 2011. He advised that a March 8, 2014 cervical spine MRI scan showed a disc herniation at C5-6 with mild thecal sac compression and a March 6, 2014 electromyogram and nerve conduction velocity revealed cervical radiculopathy at C5-6 and bilateral carpal tunnel syndrome, especially on the left. Dr. Filippone diagnosed right shoulder internal derangement, a C5-6 disc herniation, and cervical radiculopathy. He found appellant totally disabled. Dr. Filippone related that it was within reasonably medical probability that the aforementioned abnormalities are directly and solely the result of injuries sustained while at work for the employing establishment on March 13, 2013 as stated in appellant's statement of April 5, 2013.

[6] Dr. Filippone submitted similar form reports dated May 7, 2013.

In CA-20 forms dated December 5, 2013 to December 17, 2014, Dr. Filippone diagnosed internal derangement of the right shoulder and ruled out cervical radiculopathy and cervical double crush syndrome. He checked a box marked "yes" that the condition was caused or aggravated by employment and found appellant totally disabled.

On November 12, 2014 appellant, through then counsel, requested reconsideration. Counsel indicated that he was submitting a December 9, 2013 report from Dr. Filippone.

By decision dated January 20, 2015, OWCP denied modification of its December 9, 2013 decision. It noted that it had not received a report from Dr. Filippone dated December 9, 2013.

In a progress report dated December 17, 2014, received by OWCP on February 5, 2015, Dr. Filippone described findings on examination and opined that appellant remained totally disabled. He provided similar progress reports on April 21, September 25, and November 13, 2015.

Dr. Filippone, on February 13, 2015, reviewed OWCP's January 20, 2015 decision. He related that at the time of his initial April 5, 2013 evaluation appellant had described her work duties, which included repetitive use of the right upper extremity. Dr. Filippone diagnosed right internal shoulder derangement, costochondritis, and tendinitis, noting that each condition was most frequently caused by overuse or over-extension, particularly when the activities are overhead. He attributed the diagnosed conditions to the repeated factors of appellant's employment and related that all of her present symptoms are directly and solely the result of the injuries sustained while at work for the employing establishment.

In a June 24, 2015 report, Dr. Filippone again described appellant's work duties, indicating that they required repeated use of the right arm. He diagnosed right shoulder internal derangement, costochondritis, and tendinitis due to overuse and overhead work. Dr. Filippone opined that employment factors caused the conditions based on objective findings and as the pathology of these conditions is so reminiscent of appellant's daily activities. He completed CA-20 forms dated February 13 through June 24, 2015. Dr. Filippone diagnosed right shoulder internal displacement, checked a box marked "yes" that the condition was employment related, and indicated that appellant was totally disabled.

OWCP, by decision dated January 28, 2016, denied modification of its January 20, 2015 decision. It noted that Dr. Filippone attributed appellant's condition to her work duties rather than events on March 13, 2013. OWCP noted that she had filed an occupational disease claim, assigned File No. xxxxxx810, alleging that her employment caused problems with her neck, shoulder, hands, and arm, which it had formally denied.

Appellant appealed to the Board. By August 8, 2016 order, the Board set aside the January 28, 2016 decision.[7] The Board noted that OWCP had referenced evidence not contained in the record before the Board. The Board remanded the case for OWCP to administratively combine the case records for File Nos. xxxxxx801, xxxxxx908, and xxxxxx856 and, after any required development, issue an appropriate decision.

[7] *See supra* note 2.

On remand, OWCP combined the case records. By letter dated October 17, 2016, it requested that Dr. Filippone submit a reasoned report addressing whether the March 13, 2013 work incident caused or aggravated a diagnosed condition.

In a June 15, 2016 report, Dr. Filippone noted findings and discussed appellant's complaints of right shoulder pain. He related, "[Appellant] remains totally disabled and despite not working and modifying her activities of daily living, she is still symptomatic. She still has right shoulder pain, right forearm pain, and right knee pain." Dr. Filippone indicated that appellant had to stop work March 13, 2013, but could resume limited-duty work on June 21, 2016.

By decision dated January 11, 2017, OWCP denied appellant's traumatic injury claim. It found that she had not submitted evidence supporting that she sustained a diagnosed condition due to the accepted March 13, 2013 work incident while casing mail.

LEGAL PRECEDENT

An employee seeking benefits under FECA[8] 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, that an injury was sustained while 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.[9] 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.[10]

To determine whether an employee sustained a traumatic injury in the performance of duty, OWCP must determine whether fact of injury has been established. First, an employee has the burden of proof to demonstrate the occurrence of an injury at the time and place, and in the manner alleged, by a preponderance of the reliable, probative, and substantial evidence.[11] Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish a causal relationship between the employment incident and the alleged disability and/or condition for which compensation is claimed.[12] An employee may establish that the employment incident occurred as alleged, but fail to show that his or her disability and/or condition relates to the employment incident.[13]

[8] *Supra* note 1.

[9] *Alvin V. Gadd*, 57 ECAB 172 (2005); *Anthony P. Silva*, 55 ECAB 179 (2003).

[10] *See Elizabeth H. Kramm (Leonard O. Kramm)*, 57 ECAB 117 (2005); *Ellen L. Noble*, 55 ECAB 530 (2004).

[11] *David Apgar*, 57 ECAB 137 (2005); *Delphyne L. Glover*, 51 ECAB 146 (1999).

[12] *Gary J. Watling*, 52 ECAB 278 (2001); *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

[13] *Id.*

ANALYSIS

Appellant alleged an injury to her right upper chest, right arm, and right hand on March 13, 2013 after casing mail. She has established that the March 13, 2013 incident occurred as alleged. The issue, consequently, is whether the medical evidence of record is sufficient to establish an injury as a result of this accepted employment incident. The Board finds that appellant has not established that the March 13, 2013 employment incident resulted in an injury. The determination of whether an employment incident caused an injury is generally established by medical evidence.[14]

Dr. Kumar, on March 13, 2013, advised that appellant was unable to work for one week due to cervical radiculopathy. He, however, did not address causation. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship.[15]

Dr. Filippone provided several reports addressing causal relationship. On July 7, 2014 he discussed appellant's treatment since April 2013 for a March 13, 2013 injury to the neck and right shoulder. Dr. Filippone diagnosed internal derangement of the right shoulder, a C5-6 disc herniation, and cervical radiculopathy and found that appellant was totally disabled. He attributed the disabling conditions to the March 13, 2013 work injury. Dr. Filippone, however, did not provide any rationale for his opinion. Medical conclusions unsupported by rationale are of diminished probative value.[16] Such rationale is particularly important given appellant's history of preexisting shoulder and trapezius conditions.[17]

On February 13, 2015 Dr. Filippone reviewed appellant's work duties, which he noted required repetitive right arm use and overhead work. He diagnosed right internal shoulder derangement, costochondritis, and tendinitis. Dr. Filippone indicated that the diagnosed conditions resulted from overuse, especially with overhead activities. He related the conditions to repeated factors of employment and injuries sustained at the employing establishment. On June 24, 2015 Dr. Filippone also attributed the diagnosed conditions to overuse and overhead work while performing repetitive work duties encountered in daily activities. He did not relate any condition to the work events of March 13, 2013. A physician must provide a narrative description of the identified employment incident and a reasoned opinion on whether the employment incident described caused or contributed to appellant's diagnosed medical condition.[18] Instead, Dr. Filippone appeared to find that work factors over time caused the

[14] *Lois E. Culver (Clair L. Culver)*, 53 ECAB 412 (2002).

[15] *See S.E.*, Docket No. 08-2214 (issued May 6, 2009); *Conard Hightower*, 54 ECAB 796 (2003).

[16] *See Jacquelyn L. Oliver*, 48 ECAB 232 (1996).

[17] *See E.D.*, Docket No. 16-1854 (issued March 3, 2017).

[18] *See John W. Montoya*, 54 ECAB 306 (2003).

diagnosed conditions. Consequently, his opinion in these reports does not support appellant's traumatic injury claim.[19]

OWCP, by letter dated October 17, 2016, requested that Dr. Filippone provide a reasoned opinion regarding whether appellant sustained an injury as a result of work factors occurring on March 13, 2013. In a June 15, 2016 response, Dr. Filippone advised that she continued to have right shoulder, right forearm, and right knee pain. He discussed the findings and noted that appellant had symptoms despite not working. Dr. Filippone found that appellant had to stop work on March 13, 2013, but could return to limited duty on June 21, 2016. He did not provide a reasoned opinion, as requested, explaining whether work events on March 13, 2013 caused or aggravated a diagnosed condition, and consequently his opinion is of little probative value.[20]

Appellant also provided various form reports from Dr. Filippone covering the period April 5, 2013 to June 24, 2015. In these reports, Dr. Filippone offered diagnoses and indicated by checking a box marked "yes" that the diagnosed conditions were caused or aggravated by employment. The Board has held, however, that when a physician's opinion on causal relationship consists only of checking a box marked "yes" to a form question, without explanation or rationale, that opinion has little probative value and is insufficient to establish a claim.[21] Other reports from Dr. Filippone are of limited probative value and insufficient to establish the claim because the physician did not specifically address whether the March 13, 2013 employment incident caused the diagnosed conditions.[22]

Appellant also provided reports from healthcare providers with illegible signatures. Medical opinions, in general, can only be given by a qualified physician.[23] A report that is unsigned or bears an illegible signature lacks proper identification and cannot be considered probative medical evidence.[24]

In order to establish causal relationship, a physician must provide an opinion that the condition for which compensation is claimed is causally related to federal employment and such relationship must be supported with affirmative evidence, explained by medical rationale, and be based upon a complete and accurate medical and factual background of the claimant.[25]

[19] A traumatic injury is defined as a "condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift." 20 C.F.R. § 10.5(ee). An occupational disease is defined as a condition produced by the work environment over a period longer than a single workday or shift." 20 C.F.R. § 10.5(q).

[20] *See supra* notes 16 and 17.

[21] *See Sedi L. Graham*, 57 ECAB 494 (2006); *Deborah L. Beatty*, 54 ECAB 340 (2003).

[22] *See supra* note 15.

[23] *E.K.*, Docket No. 09-1827 (issued April 21, 2010); *see* 5 U.S.C. § 8101(2) (defines the term "physician" to include surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law).

[24] *Thomas L. Agee*, 56 ECAB 465 (2005); *Richard F. Williams*, 55 ECAB 343 (2004).

[25] *See J.W.*, Docket No. 17-0870 (issued July 12, 2017).

Appellant has not submitted a medical report sufficient to show a diagnosed condition causally related to the March 13, 2013 employment incident, and thus did not meet her burden of proof.

On appeal appellant argues that OWCP erred in considering the claim as a traumatic injury rather than an occupational disease. She maintains that it should have converted the claim to an occupational disease in accordance with its procedures. Appellant, however, specified in response to OWCP's initial development letter that she was claiming a traumatic injury on March 13, 2013.

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 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 traumatic injury causally related to the accepted March 13, 2013 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the January 11, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 14, 2018
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board