United States Department of Labor
Employees' Compensation Appeals Board

S.M., Appellant	)	
and	)	**Docket No. 17-1727**
	)	**Issued: July 9, 2018**
U.S. POSTAL SERVICE, POST OFFICE, Brooklyn, NY, 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 August 7, 2017 appellant filed a timely appeal from a July 13, 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 the claim.[2]

ISSUE

The issue is whether appellant met his burden of proof to establish a right shoulder injury causally related to an accepted May 4, 2017 employment incident.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The record provided to the Board includes evidence received after OWCP issued its July 13, 2017 decision. The Board's jurisdiction is limited to the evidence that was before OWCP at the time of its final decision. Therefore, the Board is precluded from reviewing this additional evidence for the first time on appeal. 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

On May 11, 2017 appellant, then a 36-year-old mail processing clerk, filed a traumatic injury claim (Form CA-1) alleging that, on May 4, 2017, he injured his right shoulder while lifting a tray of mail. Appellant stopped work the next day and returned to work on June 13, 2017.

Appellant provided a May 5, 2017 note to his supervisor, D.B., in which he requested emergency leave to see a doctor for severe shoulder pain. He noted that he could not lift or move his right hand and that the pain began when he awoke. Although he took pain medication, appellant was still in severe pain and needed to see an emergency doctor.

In a May 5, 2017 emergency department discharge form, Dr. Richard Wong, an emergency medicine specialist, diagnosed rotator cuff impingement syndrome of appellant's right shoulder. General information about rotator cuff tendinitis was provided. Dr. Wong restricted appellant from heavy lifting until cleared by his primary care physician.

In a May 6, 2017 note, Dr. Eduard Shnaydman, a family physician and osteopath, requested that appellant be excused from work due to illness from May 6 to 13, 2017.

A May 7, 2017 accident report form noted the history of injury and that appellant had finished his assignment and finalized his tour on May 4, 2017. It also indicated that he went to his own treating physician on May 5, 2017. In a May 8, 2017 statement, acting supervisor, R.M., contended that appellant never reported an injury on May 4, 2017.

In May 11 and 18, 2017 duty status reports (Form CA-17) and an attending physician report (Form CA-20), Elizabeth Thomas, a physician assistant, diagnosed appellant with right shoulder tendinitis. Appellant was held off work and referred to physical therapy.[3]

A May 11, 2017 prescription note from Citimedical indicated that appellant was diagnosed with right rotator cuff tendinitis.

In a June 6, 2017 development letter, OWCP informed appellant that when his claim was first received it appeared to be a minor injury that resulted in minimal or no lost time from work. As such, it administratively approved a limited amount of medical expenses without considering the merits of the claim. OWCP since reopened appellant's claim as appellant had not returned to work in a full-time capacity. It requested that he provide additional medical evidence which contained a physician's opinion supported by a medical explanation as to how the reported work incident caused or aggravated a medical condition. Appellant was afforded 30 days to provide the necessary evidence.

OWCP received supplemental statements from appellant dated June 13 and 14, 2017.

In a May 11, 2017 initial report, Dr. Manuel Ceja, an internist, noted the history of appellant's May 4, 2017 employment incident and indicated that he had not returned to work since

[3] Below Ms. Thomas' signature on the form reports is a stamp indicating the name and address of "Manuel A. Ceja, MD AME." However, the form reports were not signed by the physician.

the incident. He provided an assessment of right shoulder pain and right shoulder impingement syndrome. Dr. Ceja indicated that appellant was not fit for duty and was temporarily totally disabled.

On May 18, 2017 Ms. Thomas completed CA-7 and CA-20 form reports wherein she opined that appellant's right shoulder tendinitis was a result of the employment activity of lifting a heavy tray.

In May 18 and June 1, 2017 reports, Dr. Ceja provided an assessment of unspecified sprain of right shoulder joint. He continued to opine that appellant was unfit for duty.

In a June 5, 2017 report, Dr. Ceja reported that the May 25, 2017 magnetic resonance imaging (MRI) scan of appellant's right shoulder revealed rotator cuff tear and suggested an additional labral injury with associated bursitis. He continued to provide an assessment of unspecified right shoulder joint sprain. Dr. Ceja indicated that appellant was fit for light duty and had temporary total disability. A copy of the May 25, 2017 MRI scan was provided.

CA-7 medical forms dated June 1 and 13, 2017 and CA-20 attending physician forms dated June 1, 5, and 13, 2017 were also provided. The reports were signed either by Dr. Ceja or a physician with an illegible signature. The duty status reports and attending physician reports dated June 1 and 5, 2017 indicated that appellant's diagnosis of right shoulder tendinitis condition was causally related to the employment activity of lifting a heavy tray. The June 13, 2017 duty status and attending physician reports indicated that the diagnosed right rotator cuff tear was due to the reported injury of lifting a heavy tray. On the CA-20 forms, Dr. Ceja noted with a check mark in a box marked "yes" that appellant's condition was caused or aggravated by an employment injury.

By decision dated July 13, 2017, OWCP denied appellant's claim. It accepted that the May 4, 2017 work incident occurred as alleged and that appellant had been diagnosed with right shoulder conditions. However, OWCP found that the medical evidence of record was insufficient to establish that appellant's diagnosed conditions were causally related to the accepted employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA[4] 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,[5] including that he or she sustained an injury in the performance of duty and that any specific condition or disability from work for which compensation is claimed is causally related to that employment injury.[6]

[4] *Supra* note 1.

[5] *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

[6] *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established.[7] There are two components involved in establishing 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, generally only in the form of probative medical evidence, to establish that the employment incident caused a personal injury.[9] An employee may establish that the employment incident occurred as alleged, but fail to show that his or her disability or condition relates to the employment incident.[10]

Causal relationship is a medical question that generally requires the submission of rationalized medical opinion evidence to resolve the issue.[11] 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.[12] The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.[13]

ANALYSIS

The Board finds that appellant failed to establish that he sustained a right shoulder injury causally related to the accepted May 4, 2017 employment incident.

Dr. Ceja initially evaluated appellant on May 11, 2017. He noted the history of the May 4, 2017 employment incident and diagnosed right shoulder pain and right shoulder impingement syndrome. In subsequent reports, Dr. Ceja diagnosed unspecified sprain of right shoulder joint. While Dr. Ceja accurately reported the history of the May 4, 2017 incident, he did not opine that appellant's right shoulder conditions were causally related to the May 4, 2017 employment incident. The Board has held that 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.[14]

While Dr. Ceja submitted Form CA-20 and Form CA-17 reports which opined that appellant's conditions of right shoulder tendinitis and right shoulder rotator cuff tear were due to

[7] *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

[8] *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

[9] *David Apgar*, 57 ECAB 137 (2005); *John J. Carlone*, 41 ECAB 354 (1989).

[10] *T.H.*, 59 ECAB 388 (2008); *see also Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006).

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

[12] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

[13] *James Mack*, 43 ECAB 321 (1991).

[14] *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006).

the work incident of lifting a heavy tray, those reports are also insufficient to establish appellant's claim as Dr. Ceja did not provide a rationalized explanation, supported by objective findings, to establish whether or how the diagnosed conditions were caused or affected by the May 4, 2017 work incident. A medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale.[15] On the CA-20 forms he checked a box marked "yes" indicating that appellant's diagnosed conditions were caused or aggravated by his federal employment activity. The Board has held that form reports which contain a box checked "yes" in support of causal relationship, without further explanation or rationale, are insufficient to establish the claim.[16]

In the May 5, 2017 emergency department report, Dr. Wong diagnosed rotator cuff impingement syndrome of the right shoulder. However, this report is also insufficient to establish appellant's claim as Dr. Wong did not provide an opinion on the cause of appellant's right shoulder condition.[17]

The MRI scan report of record is of limited probative value because it is a diagnostic test which provides only interpretative data. The Board has held that reports of diagnostic tests are of limited probative value as they fail to provide an opinion on the causal relationship between appellant's employment duties and the diagnosed conditions. For this reason, this evidence is insufficient to meet appellant's burden of proof.[18]

The medical form reports by physician assistant Ms. Thomas also fail to establish appellant's traumatic injury claim. Physician assistants are not considered physicians as defined under FECA and their medical opinions regarding diagnosis and causal relationship are of no probative value.[19]

The work excuse and prescription notes are not probative medical evidence as they do not contain rationalized medical opinion that appellant's diagnosed conditions were causally related to his accepted May 4, 2017 employment incident.[20]

The Board, therefore, finds that appellant has not met his burden of proof to establish an injury causally related to the accepted May 4, 2017 employment incident.

[15] *S.E.*, Docket No. 08-2214 (issued May 6, 2009); *T.M.*, Docket No. 08-0975 (issued February 6, 2009).

[16] *See R.S.*, Docket No. 15-1834 (issued December 23, 2015).

[17] *See supra* note 14.

[18] *See A.B.*, Docket No. 17-0301 (issued May 19, 2017).

[19] 5 U.S.C. § 8101(2); *Roy L. Humphrey*, 57 ECAB 238 (2005). Section 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. *See also R.H.*, Docket No. 16-1802 (issued February 1, 2017) (physician assistants are not considered physicians under FECA).

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

On appeal appellant reiterates that he injured his right shoulder while lifting a heavy tray of mail and was treated for same. The issue of causal relationship is a medical question that must be established by probative medical opinion from a physician.[21] As explained above, appellant has not submitted such probative medical evidence in this case. Thus, the Board finds that he has not met his burden of proof.

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 his burden of proof to establish a right shoulder injury causally related to the accepted May 4, 2017 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the July 13, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 9, 2018
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

[21] *W.W.*, Docket No. 09-1619 (issued June 2, 2010); *David Apgar*, 57 ECAB 137 (2005).