

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

T.M., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Albany, NY, Employer**

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**Docket No. 18-0433
Issued: June 19, 2018**

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 December 27, 2017 appellant filed a timely appeal from a November 15, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (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 has met her burden of proof to establish that her right elbow and shoulder conditions were causally related to accepted factors of her federal employment.

¹ 5 U.S.C. § 8101 *et seq.*

² The record provided to the Board includes evidence received after OWCP issued its November 15, 2017 decision. The Board's jurisdiction is limited to the evidence that was in the case record at the time of OWCP's 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 August 18, 2017 appellant, then a 57-year-old city letter carrier, filed an occupational disease claim (Form CA-2) for right elbow and shoulder conditions, which she attributed to opening and closing the sliding door on her long-life vehicle (LLV) while in the performance of duty. She noted that the door latch was not working properly, which required more movement to open and close the sliding door. Appellant identified July 6, 2017 as the date she first became aware of her claimed conditions, but it was not until August 8, 2017 that she first realized their relation to her federal employment. She did not stop work.

In an August 18, 2017 work status report, Michelle M. Maniace, a certified family nurse practitioner, diagnosed right shoulder and elbow tendinitis and found that appellant could perform her usual work duties. She also requested authorization for a tennis elbow strap, with a corresponding diagnosis of right lateral epicondylitis.

OWCP, by development letter dated October 12, 2017, requested that appellant submit additional factual and medical information in support of her claim, including a detailed report from her attending physician addressing the causal relationship between any diagnosed condition and the identified work factors. It informed her that the evidence submitted was insufficient to establish her claim and advised her that reports from a physician assistant, nurse, or nurse practitioner did not constitute medical evidence under FECA.

On October 24, 2017 the employing establishment indicated that appellant had previously reported problems with the door latch on her LLV. It described her work duties, noting that she entered and exited her LLV more than 30 times on her “park and loop” delivery route.

In a November 12, 2017 statement, appellant attributed her right elbow and shoulder condition to repetitively opening and closing the sliding door on her LLV.

By decision dated November 15, 2017, OWCP denied appellant’s occupational disease claim. It found that she had not submitted any medical evidence containing a diagnosis in connection with the accepted employment exposure. Consequently, OWCP determined that appellant failed to satisfy the medical component of fact of injury.

LEGAL PRECEDENT

A claimant seeking benefits under FECA³ 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 establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying

³ *Supra* note 1.

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

employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the diagnosed condition is causally related to the identified employment factors.⁵

Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence.⁶ 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 employee.⁷ Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.⁸

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish that her right elbow and shoulder conditions were causally related to the accepted factors of her federal employment.

The August 18, 2017 treatment notes are insufficient to satisfy appellant's burden of proof because the healthcare provider who authored the notes was a certified nurse practitioner. Certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered "physician[s]" as defined under FECA.⁹ Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.¹⁰

On October 12, 2017 OWCP advised appellant of the type of evidence necessary to establish her claim, including the need to submit a reasoned medical opinion from her physician explaining how any diagnosed condition was caused or aggravated by employment factors. As she did not submit sufficient evidence prior to the November 15, 2017 decision,¹¹ appellant has not met her burden of proof.¹²

⁵ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁶ *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

⁷ *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

⁸ *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

⁹ 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).

¹⁰ *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006). A report from a physician assistant or certified nurse practitioner will be considered medical evidence if countersigned by a qualified physician. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013).

¹¹ *See supra* note 2.

¹² *See J.D.*, Docket No. 17-2016 (issued April 16, 2018).

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 established that her right elbow and shoulder conditions were causally related to the accepted factors of her federal employment.

ORDER

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

Issued: June 19, 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