United States Department of Labor
Employees' Compensation Appeals Board

O.Y., Appellant	)	
	)	
and	)	**Docket No. 17-0651**
	)	**Issued: May 2, 2018**
U.S. POSTAL SERVICE, POST OFFICE, Little Rock, AR, 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 January 31, 2017 appellant filed a timely appeal from an August 16, 2016 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.[2]

ISSUE

The issue is whether appellant has met her burden of proof to establish diagnosed medical conditions causally related to the accepted December 12, 2015 employment incident.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The record provided to the Board includes evidence received after OWCP issued its August 16, 2016 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 considering this additional evidence for the first time on appeal. 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

On December 14, 2015 appellant, then a 57-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that she sustained a right wrist strain on December 12, 2015 when a mailbox fell from its post while in the performance of her duties. She did not stop work.

In a December 16, 2015 supplemental statement, appellant explained that a customer had a large mailbox designed to hold packages. As she placed a package inside and closed the lid, the mailbox fell off its post with her hand still on "it." Appellant indicated that her shoulder started to hurt/burn, but she finished her route.

In a December 14, 2015 work excuse note, Dr. J. Brad Tilley, a Board-certified family practitioner, excused appellant from work for the period December 14 to 21, 2015.

OWCP received a December 14, 2015 work excuse note and a December 18, 2015 attending physician's report (Form CA-20) from a nurse practitioner. The nurse practitioner indicated that appellant was off work the week of December 14, 2015 due to right upper extremity injury and pain.

A December 16, 2015 duty status report (Form CA-17) and an attending physician's report signed by a physical therapist were also submitted. In the December 16, 2015 attending physician's report, the physical therapist indicated that appellant was injured on December 12, 2015 with no prior history of injury and provided a diagnosis of right shoulder strain and right-sided neck strain. By checking a box marked "yes," the physical therapist indicated that the conditions found were caused or aggravated by employment activity.

By development letter dated December 29, 2015, OWCP advised appellant that the evidence submitted was insufficient to establish her claim. It noted that the evidence signed by the nurse practitioner would not qualify as medical evidence under FECA unless it was countersigned by a physician. OWCP also noted that the evidence signed by a physical therapist was of no probative medical value as physical therapists are not considered physicians under FECA. It requested that appellant submit additional medical evidence to establish that she sustained a diagnosed medical condition causally related to the employment incident. Appellant was afforded 30 days to submit the additional information.

In response, OWCP received December 14, 2015 x-ray reports of the right wrist and right shoulder, from Dr. Rajesh Sethi, a diagnostic radiologist. Dr. Sethi found no acute fracture or dislocation of the right wrist or acute findings in the right shoulder. An impression of arthritis in the wrist, acromioclavicular (AC) joint arthritis and early glenohumeral joint arthritis were provided.

OWCP also received a December 14, 2015 report from Dr. Tilley. Dr. Tilley related that appellant had right shoulder and wrist pain that occurred three days prior after a work-related injury. Appellant had reported that she was delivering mail and grabbed the lid to a mailbox, which fell off. As she held on to the mailbox lid, it pulled her shoulder and wrist back (extended). Dr. Tilley provided an assessment of shoulder pain and unspecified injury of shoulder and upper

arm, unspecified arm, sequela. In a December 14, 2015 referral to physical therapy, he diagnosed right shoulder and upper extremity pain.

In January 8 and 20, 2016 reports, Dr. Tilley noted that appellant was in physical therapy. He provided an assessment of unspecified injury of shoulder and upper arm, unspecified arm, sequela; muscle spasms of head and/or neck; and right shoulder pain. Dr. Tilley recommended that appellant continue physical therapy and work light duty with restrictions. In a January 25, 2016 letter, he noted that appellant was initially seen on December 14, 2015 due to a work-related injury that occurred on December 12, 2015. Dr. Tilley indicated that she was referred to physical therapy and that he followed the physical therapist's recommendation for light duty. He noted changes in appellant's light-duty status and her medical restrictions.

OWCP also received a January 5, 2015 duty status report, a January 8, 2016 note and January 8, 2016 certification of health care provider under the Family and Medical Leave Act, and a January 20, 2016 letter, all signed by a nurse practitioner; as well as a January 21, 2016 physical therapy note.

By decision dated February 1, 2016, OWCP accepted that the December 12, 2015 incident occurred as alleged, but denied the claim, finding that the medical evidence of record failed to establish a diagnosed medical condition causally related to the accepted employment incident.

On February 4, 2016 appellant requested an oral hearing before an OWCP hearing representative, which was held telephonically on July 11, 2016. During the hearing, appellant testified regarding the December 12, 2015 employment incident.

OWCP received a February 4, 2016 statement from appellant further describing the December 12, 2015 employment incident; physical therapy reports from December 16, 2015 through January 28, 2016 and reports signed by a nurse practitioner.

In a February 9, 2016 report, Dr. Tilley diagnosed muscle spasms of head and/or neck; unspecified injury of shoulder and upper arm, unspecified arm, sequela; and shoulder pain.

On February 16, 2016 OWCP received the December 16, 2015 attending physician's report initially signed by a physical therapist, countersigned by Dr. Tilley. This report diagnosed right shoulder and right neck strain.

In a June 21, 2016 letter, Dr. Tilley noted that appellant returned to work full time. He related that appellant's unspecified shoulder and upper arm injury that was caused from the work-related incident continued to cause her intermittent discomfort. Dr. Tilley opined that, but for the work-related incident, appellant would not have any pain to her right shoulder and right upper extremity.

By decision dated August 16, 2016, an OWCP hearing representative affirmed the February 1, 2016 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] 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[4] including that he or she sustained an injury in the performance of duty and that any specific condition or disability from work for which he or she claims compensation is causally related to that employment injury.[5]

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.[6] There are two components involved in establishing the 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.[7] Second, the employee must submit probative medical evidence to establish that the employment incident caused a personal injury.[8] 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.[9]

Whether an employee sustained an injury in the performance of duty requires the submission of rationalized medical opinion evidence.[10] 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.[11] 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.[12]

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[3] *Supra* note 1.

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

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

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

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

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

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

[10] *See J.Z.*, 58 ECAB 529 (2007); *Paul E. Thams*, 56 ECAB 503 (2005).

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

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

ANALYSIS

The Board finds that appellant has not established diagnosed conditions causally related to the accepted December 12, 2015 employment incident.

Appellant claimed that, on December 12, 2015, she sustained injuries to her right wrist and right shoulder when a large mailbox fell from its post with her hand still on it. OWCP accepted that the December 12, 2015 employment incident occurred as alleged, but denied her claim as the medical evidence of record failed to establish a diagnosed condition as a result of the accepted employment incident.

In a December 14, 2015 report, Dr. Tilley reported that appellant's right shoulder and wrist pain occurred three days prior, following a work-related injury. He noted the history of injury and provided an assessment of shoulder pain and unspecified injury of shoulder and upper arm, unspecified arm, sequela. In a December 14, 2015 referral to physical therapy, Dr. Tilley diagnosed right shoulder and upper extremity pain. In January 8 and 20, and February 9, 2016 reports, he provided an assessment of unspecified injury of shoulder and upper arm, unspecified arm sequela; muscle spasms of head and/or neck; and right shoulder pain. Dr. Tilley's assessment that appellant was experiencing pain in her right shoulder and upper extremity as well as muscle spasms of head and/or neck, without any explanation of the condition causing such pain or spasms, is a description of a symptom rather than a firm diagnosis of a compensable medical condition.[13] In his June 21, 2016 letter, he explained that the shoulder pain diagnosis was caused from the unspecified shoulder and upper arm injury from her work-related incident. However, Dr. Tilley again failed to provide a medical diagnosis.[14] It is not possible to establish the cause of a medical condition if the physician has not provided a diagnosis, but only notes pain.[15] Because Dr. Tilley failed to provide medical diagnoses, his opinion is of diminished probative value. These reports, which fail to provide diagnoses of appellant's condition, are therefore insufficient to establish appellant's claim.

On January 9, 2016 Dr. Tilley countersigned the December 16, 2015 attending physician report previously signed by a physical therapist. As such, the December 16, 2015 report is probative medical evidence.[16] This report noted that appellant was injured on December 12, 2015 with no prior history of injury and diagnosed a right shoulder strain and right-sided neck strain. By checking a box marked "yes," he indicated that the conditions found were caused or aggravated by appellant's federal employment activity. The Board has held 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, the opinion is of diminished probative value and is insufficient to establish

[13] The Board has consistently held that pain is a symptom, rather than a compensable medical diagnosis. *C.F.*, Docket No. 08-1102 (issued October 10, 2008).

[14] *Id.*, *K.W.*, Docket No. 12-1590 (issued December 18, 2012).

[15] *See M.P.*, Docket No. 17-1634 (issued November 24, 2017).

[16] *L.B.*, Docket No. 13-1253 (issued September 18, 2013) (physical therapists do not qualify as physicians under FECA and, therefore, their medical reports do not qualify as probative medical evidence, unless such medical reports are countersigned by a physician).

a claim.[17] Therefore while this report is sufficient to establish medical diagnoses, it is insufficient to establish causal relationship.

The diagnostic reports from Dr. Sethi are also insufficient to discharge appellant's burden of proof. The Board has previously explained that diagnostic testing is of limited probative value as it fails to provide a physician's reasoned opinion on causal relationship between appellant's work incident and the diagnosed conditions.[18]

Nurse practitioner notes and physical therapy reports were also submitted. As nurse practitioners and physical therapists are not considered physicians as defined under FECA,[19] these reports are insufficient to establish appellant's claim.[20]

An award of compensation may not be based on surmise, conjecture, or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that her condition was caused, precipitated, or aggravated by her employment is sufficient to establish causal relationship. Causal relationship must be established by rationalized medical opinion evidence.[21] Appellant failed to submit such evidence, and therefore failed to meet her 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 established diagnosed conditions causally related to the accepted December 12, 2015 employment incident.

[17] *Sedi L. Graham*, 57 ECAB 494 (2006); *D.D.*, 57 ECAB 734 (2006).

[18] *M.S.*, Docket No. 17-1044 (issued February 2, 2018).

[19] *A.C.*, Docket No. 08-1453 (issued November 18, 2008). Section 8101(2) of FECA provides as follows: (2) physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. The term physician includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulations by the secretary. *See Merton J. Sills*, 39 ECAB 572, 575 (1988). 5 U.S.C. § 8101(2); *Sean O Connell*, 56 ECAB 195 (2004) (nurse practitioners are not physicians under FECA); *Jennifer L. Sharp*, 48 ECAB 209 (1996) (physical therapists are not physicians under FECA).

[20] *Allen C. Hundley*, 53 ECAB 551 (2002); *Lyle E. Dayberry*, 9 ECAB 369 (1998).

[21] *See Dennis M. Mascarenas*, 49 ECAB 215 (1997).

ORDER

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

Issued: May 2, 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