United States Department of Labor
Employees' Compensation Appeals Board

T.O., Appellant	)	
and	)	**Docket No. 18-0139**
	)	**Issued: May 24, 2018**
U.S. POSTAL SERVICE, POST OFFICE, Eagan, MN, 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 October 23, 2017 appellant filed a timely appeal from a September 15, 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 has met his burden of proof to establish an injury causally related to the accepted April 10, 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 September 15, 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 considering this additional for the first time on appeal. 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

On April 11, 2017 appellant, then a 29-year-old postal clerk, filed a traumatic injury claim (Form CA-1) alleging that, on April 10, 2017, he injured his left hand and shoulder while attempting to keep mail from falling off a postal cart that had a bad wheel. On the claim form, a witness verified that she saw appellant preventing the mail from falling off the cart which had a broken wheel. Appellant did not stop work following the injury. In an April 24, 2017 development letter, OWCP advised appellant of the deficiencies in his claim and requested additional factual and medical information. Appellant was afforded 30 days to respond.

OWCP subsequently received an April 24, 2017 narrative statement from appellant. Appellant further explained that he sustained his injury while he was supporting the postal cart to keep it upright, to keep the mail from falling off the cart.

Appellant went to Fairview Eagan Urgent Care on April 15, 2017 and was seen by Andrea Hutchens-Wojahn, a certified physician assistant. In an April 15, 2017 report, Ms. Hutchens-Wojahn indicated that appellant was evaluated for an acute onset of left shoulder pain related to a work injury the prior Monday. She noted that "it looks most likely that he has shoulder tend[i]nitis and/or impingement syndrome. However, it is possible appellant could have a rotator cuff tear." Ms. Hutchens-Wojahn indicated that appellant could try light-duty work for the next two days. In the April 15, 2017 After Visit Summary, she diagnosed left shoulder tendinitis, impingement syndrome of left shoulder, acute pain of left shoulder and pain in humerus. Care instructions related to impingement syndrome and referrals were also provided.

In an April 17, 2017 note, Dr. Sara E. Hartfeldt, a Board-certified family practitioner, indicated that appellant was seen on April 17, 2017 for a workers' compensation injury which had occurred on April 10, 2017. She noted that appellant had improved and was able to resume full-work duties without restrictions.

By decision dated May 26, 2017, OWCP denied appellant's claim. It found that, while the claimed event occurred as alleged, the medical component of fact of injury had not been met as the medical evidence submitted did not contain a diagnosis in connection with the accepted employment incident.

On June 19, 2017 OWCP received appellant's request for review of the written record by an OWCP hearing representative.

In an April 15, 2017 x-ray report of the left shoulder, Dr. Andrew Lee, a diagnostic radiologist, advised that there was no acute fracture and minimal evaluation of the distal left clavicle at the acromioclavicular (AC) joint. He indicated that the question remained whether this was a mid AC joint injury versus an anatomic variant.

A copy of Ms. Hutchens-Wojahn's April 15, 2017 note was resubmitted and countersigned by Dr. Nasser Ani, a Board-certified orthopedic surgeon.

By decision dated September 15, 2017, an OWCP hearing representative affirmed the denial of the claim. The hearing representative found that appellant had not met his burden of

proof to establish that a firm diagnosis from a physician was made in connection with the April 10, 2017 employment incident.

LEGAL PRECEDENT

A claimant 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, 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 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 allegedly occurred.[5] The second component is whether the employment incident caused a personal injury.[6] 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.[7]

Rationalized medical opinion evidence is generally required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, 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 claimant.[8]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish an injury causally related to the accepted April 10, 2017 employment incident.

OWCP accepted that the employment incident of April 10, 2017 occurred as alleged. It denied his claim because he had not submitted sufficient medical evidence which contained a medical diagnosis in connection with the claimed April 10, 2017 employment injury.

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[3] *Supra* note 1.

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

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

[6] *John J. Carlone*, 41 ECAB 354 (1989). Findings of pain or discomfort alone do not satisfy the medical aspect of the fact of injury medical determination. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.4a(6) (August 2012).

[7] *Shirley A. Temple*, 48 ECAB 404, 407 (1997). *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[8] *M.L.*, Docket No. 17-1026 (issued April 20, 2018).

OWCP received two reports dated April 15, 2017 from Ms. Hutchens-Wojahn, a certified physician assistant. The April 15, 2017 After Visit Summary is of no probative value as it was not countersigned by a physician.[9] However, Ms. Hutchens-Wojahn's April 15, 2017 report was countersigned by Dr. Ani and is thus considered medical evidence. While Dr. Ani noted appellant's acute onset of left shoulder pain related to a work injury, he failed to describe the work injury or offer a definite medical diagnosis. Rather, he noted that "it looks most likely that he has shoulder tend[i]nitis and/or impingement syndrome. However, it is possible appellant could have a rotator cuff tear." Medical opinions that are speculative or equivocal are of diminished probative value.[10] Therefore, the April 15, 2017 report of Dr. Ani is of limited probative value and insufficient to establish a firm medical diagnosis.

The April 15, 2017 report from Dr. Lee merely interpreted the x-ray report. He failed to provide an opinion relating a firm diagnosed condition to the accepted employment incident.[11] Accordingly, this diagnostic study is of limited probative value.[12]

In an April 17, 2017 note, Dr. Hartfeldt indicated that appellant was seen in follow-up for a workers' compensation injury of April 10, 2017. However, she did not report the history of the April 10, 2017 employment incident or provide a diagnosis of a medical condition causally related to the employment incident. Dr. Hartfeldt's note is insufficient to establish the medical component of the fact-of-injury inquiry.[13]

For these reasons, the Board finds that there is no medical evidence of record establishing an injury causally related to the accepted April 10, 2017 employment incident.

On appeal appellant contends that the claimed "injury or incident happened on the job and it was work related." As noted, OWCP accepted that the April 10, 2017 employment incident occurred as alleged. Appellant, however, has not met his burden of proof to establish an injury causally related to the accepted April 10, 2017 employment incident.

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.

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[9] *E.K.*, Docket No. 09-1827 (issued April 20, 2010); *J.M.*, 58 ECAB 303 (2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006). A physician assistant is not considered a physician under FECA and his or her opinion is of no probative value. 5 U.S.C. § 8101(2) provides that a physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law.

[10] *Lourdes Harris*, 45 ECAB 545, 547 (1994).

[11] *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) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

[12] *G.M.*, Docket No. 14-2057 (issued May 12, 2015).

[13] *Supra* note 8.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish an injury causally related to the accepted April 10, 2017 employment incident.

ORDER

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

Issued: May 24, 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