United States Department of Labor
Employees' Compensation Appeals Board

J.R., Appellant	)	
and	)	**Docket No. 18-0801**
	)	**Issued: November 26, 2018**
U.S. POSTAL SERVICE, POST OFFICE, Essex Junction, VT, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
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 March 6, 2018, appellant, through counsel, filed a timely appeal from a January 5, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.; see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met her burden of proof to establish right elbow and right knee conditions causally related to the accepted factors of her federal employment.

FACTUAL HISTORY

On March 9, 2017 appellant, then a 49-year-old limited-duty automation clerk, filed an occupational disease claim (Form CA-2) alleging that, on or before February 14, 2017, repetitive reaching and lifting while processing mail caused right medial and lateral epicondylitis. She also claimed that standing and walking on hard surfaces caused right knee pain. Appellant acknowledged a history of right upper extremity and right knee problems, but related that her occupational disease claim was for new injuries.[3]

By development letter dated March 28, 2017, OWCP advised appellant of the type of factual and medical evidence needed to establish her claim, including a detailed description and factual corroboration of the identified work factors, and a report from her physician explaining how and why those tasks would cause the claimed injuries. It afforded her 30 days to provide such evidence.

In response, appellant submitted an April 4, 2017 statement. She alleged that sweeping letters, lifting trays, and sorting mail required repetitive twisting of her right elbow. Appellant also asserted that prolonged standing on hard floors caused right knee pain. She asserted that the employing establishment delayed issuing her an anti-fatigue mat from September 2016 to January 2017, then forbade her from moving the mat between her work areas. Appellant noted that she had received cortisone injections and physical therapy for prior right elbow and right knee conditions.

The employing establishment provided an April 21, 2017 statement contending that appellant was never required to work outside of her medical restrictions. It contended that "every place that [appellant] was stationary she had mats or mats were available," but that there were areas that "could not have mats due to their layout."

OWCP also received additional medical evidence. In a January 6, 2017 form report, Dr. Curtis Healey, a chiropractor, diagnosed cervical, thoracic, and lumbar subluxations.

[3] The present claim was assigned OWCP File No. xxxxxx735. Appellant filed a second Form CA-2 under this same claim on April 11, 2017. She noted that the employing establishment had advised her that she could not claim both a knee and elbow condition on the same form. On the reverse side of the claim form, the employing establishment asserted that appellant was on light duty at the time she filed her claim. It noted that "[appellant's] restrictions went from 25[-pound] limit to a 15[-pound] limit." On April 11, 2017 appellant filed a notice of traumatic injury (Form CA-1) for a right elbow condition sustained while sweeping mail and lifting trays of mail on February 14, 2017. OWCP assigned that claim OWCP File No. xxxxxx296. It denied the claim by decision dated August 18, 2017, which in turn was affirmed by an OWCP hearing representative on April 27, 2018, as the medical evidence of record was insufficient to establish causal relationship. OWCP administratively combined OWCP File Nos. xxxxxx735 and xxxxxx296, with the latter serving as the master file number.

Dr. William J. Cove, an attending osteopathic physician Board-certified in internal medicine and family practice, provided reports dated March 21, 2017. He documented appellant's account of right knee pain while at work in January 2017, and the onset of right elbow pain while lifting trays of mail at work in February 2017. Dr. Cove diagnosed medial and lateral epicondylitis, and probable chondromalacia or osteoarthritis of the knee. In an attending physician's report (Form CA-20) he checked a box marked "yes," indicating that the diagnosed conditions were caused or aggravated by an employment activity. Dr. Cove explained that appellant's "symptoms started while at work and they have been progressively aggravated by work." He administered corticosteroid injections to the right elbow and right knee. Dr. Cove returned appellant to work as of March 22, 2017 with lifting limited to 15 pounds.

In a report dated March 29, 2017, Dr. John T. Braun, an attending Board-certified orthopedic surgeon, related appellant's account of new right shoulder and elbow pain superimposed on a history of a right rotator cuff tear, right acromioclavicular arthritis, and right tennis elbow. He noted that he had previously performed an anterior cervical discectomy and fusion from C5 to C7.

In a report dated March 31, 2017, Dr. Christine Payne, an attending Board-certified family practitioner, related that appellant experienced a flare of right lateral and medial epicondylitis "after doing increased activities at work." She held appellant off work from March 29 to April 1, 2017, then returned her to light duty for four hours a day, with lifting restricted to 15 pounds and limited repetitive upper extremity motion. Dr. Payne noted that appellant could resume full-time limited-duty work after one week of working four hours a day.

In a report dated April 18, 2017, Dr. Cove diagnosed medial and lateral epicondylitis of the right elbow, right knee pain, and "probably some quadriceps tendinitis and some chondromalacia." He increased appellant's work schedule from four to six hours a day and maintained the 15-pound lifting limitation. Dr. Cove also directed that she perform "all her work on the anti-fatigue mat." He renewed these restrictions in a May 3, 2017 report.

By decision dated May 8, 2017, OWCP denied appellant's claim. It accepted that the identified work factors occurred as alleged, but denied the claim on causal relationship. OWCP explained that the medical evidence submitted was insufficient to establish that the claimed right elbow and right knee conditions were causally related to the accepted work factors.

In a letter postmarked on May 27, 2017, appellant requested a telephonic oral hearing before an OWCP hearing representative. She submitted a May 4, 2017 statement contending that the employing establishment required her to work outside of her medical restrictions and that they provided conflicting instructions about the type of FECA claims she should file.

In a letter dated October 13, 2017, counsel requested that OWCP rescind its prior decision and consider the present claim conjunctively with appellant's traumatic injury claim under File No. xxxxxx296 for a right elbow injury sustained on February 14, 2017.

During the hearing, held November 15, 2017, appellant noted that she underwent a cervical spinal fusion on August 11, 2014, unrelated to her federal employment. She stated that she sustained a shoulder injury on March 24, 2016 when she reached for a tray stacked on a cart.

Appellant alleged that the employing establishment had assigned her to stand six hours a day, which exceeded a four-hour limitation due to right knee injuries sustained on February 14, 2017 and June 11, 2017. She noted that, after her February 14, 2017 right knee injury, she refused to stand in an area that did not have an anti-fatigue mat.[4] Appellant submitted additional evidence.

In a February 15, 2017 report, Alison Hobart, a nurse practitioner, noted appellant's acute right knee pain and diagnosis of right lateral epicondylitis.

In a report dated July 31, 2017, Dr. Cove related appellant's account of the recent onset of locking and grinding in the right knee. He noted that she "had to do more walking to visit son in hospital and her new apartment has stairs she has to climb." Appellant had missed work on July 27 and 28, 2017 due to right knee pain. Dr. Cove diagnosed right knee pain with probable quadriceps tendinitis and chondromalacia.

In a report dated September 5, 2017, Dr. Cove noted appellant's complaints of worsening right knee pain. He diagnosed an acute exacerbation of right knee pain. Dr. Cove held appellant off from work for that evening's shift.

In a letter dated September 19, 2017, Dr. Cove related appellant's account of right knee pain commencing in late January 2017, which she attributed to standing on a hard, unpadded floor at work. Appellant also reported right elbow pain beginning in early February 2017, which she attributed to "repeatedly lifting trays of mail" while at work. Dr. Cove diagnosed "a knee pain syndrome due to chondromalacia and tendinitis" and right medial and lateral epicondylitis. He treated both conditions with steroid injections. Dr. Cove opined that "[d]ue to temporal relationship of the onset of both [appellant's] painful injuries while doing her job and progressive worsening" each day appellant went to work, he believed that these were "work[-]related problems."

By decision dated January 5, 2018, an OWCP hearing representative affirmed OWCP's May 8, 2017 decision. He found that the additional medical evidence submitted was insufficient to establish causal relationship between the accepted work factors and the claimed right knee and right elbow conditions.

LEGAL PRECEDENT

An employee seeking benefits under FECA[5] has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial

[4] On December 7, 2017 the employing establishment submitted comments to the hearing transcript. It contended that the employing establishment's floor was made of asphalt planking, a "comfort walk flooring system." The employing establishment also asserted that appellant was permitted to sit on a stool while processing manual letters, and that she was not required to work beyond her medical restrictions.

[5] *See supra* note 2.

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.[6]

To establish that an injury was sustained in the performance of duty in an occupational disease claim, an employee 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 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.[7]

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.[8] Physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.[9] Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s).[10]

In any case where a preexisting condition involving the same part of the body is present and the issue of causal relationship therefore involves aggravation, acceleration, or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.[11]

ANALYSIS

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

OWCP received reports from Dr. Cove, an attending Board-certified internist and family practitioner. In a Form CA-20 dated March 21, 2017, Dr. Cove checked a box marked "yes" indicating that his support for causal relationship as appellant's symptoms arose and were aggravated by work. Although the "yes" checkmark indicates support for causal relationship, the Board has held that when a physician's opinion on causal relationship consists only of a checkmark on a form, without more by way of medical rationale, the opinion is of diminished probative value.[12] In a September 19, 2017 letter, Dr. Cove opined that as appellant's right knee and right

[6] 20 C.F.R. § 10.115(e), (f); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

[7] *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

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

[9] *Supra* note 7.

[10] *Id.*

[11] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013).

[12] *See C.D.*, Docket No. 17-0292 (issued June 19, 2018).

elbow symptoms began and increased while she was at work, they were "work-related problems." The Board finds that he based his support for causal relationship on the temporal relationship between the onset of her symptoms and repetitive upper extremity motions and prolonged standing at work. The Board has held that the fact that a condition manifests itself during a period of employment is insufficient to establish causal relationship.[13] Temporal relationship alone will not suffice.[14] Dr. Cove's reports did not include sufficient medical rationale explaining how the accepted work duties either caused or contributed to appellant's conditions.

Additionally, Dr. Cove failed to address appellant's history of prior right knee and elbow conditions. He did not appear to be aware of her cervical fusion or prior right upper extremity and right knee injuries and conditions. Dr. Cove's conclusion on causal relationship is not supported by an accurate history. It is well established that medical reports must be based on a complete and accurate factual and medical background, and medical opinions based on an incomplete or inaccurate history are of little probative value.[15] For these reasons, the Board finds that the evidence from Dr. Cove is insufficient to establish that appellant's diagnosed conditions are causally related to repetitive lifting or prolonged standing at work.

In his March 29, 2017 report, Dr. Braun related appellant's pain complaints and her diagnoses. He however did not offer a medical opinion regarding causal relationship. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.[16]

Likewise, Dr. Payne, an attending Board-certified family practitioner, related appellant's account of a flare of right lateral and medial epicondylitis due to unspecified work tasks. As she did not provide a rationalized opinion regarding causal relationship, her opinion is of limited probative value.[17]

Appellant submitted a January 6, 2017 form report from chiropractor Dr. Healey. As Dr. Healey did not indicate that he diagnosed spinal subluxations by x-ray, he is not considered a physician under FECA for the purposes of this case, and his opinion is of no probative medical value.[18] Similarly, OWCP also received a report from a nurse practitioner. The Board has held that reports from a nurse practitioner lack probative value as healthcare providers such as physician

[13] 20 C.F.R. § 10.115(e).

[14] *M.B.*, Docket No. 17-0780 (issued July 9, 2018).

[15] *R.C.*, Docket No. 17-0643 (issued July 23, 2018); *Douglas M. McQuaid*, 52 ECAB 382 (2001).

[16] *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[17] *See R.C., supra* note 15.

[18] Section 8101(2) of FECA provides that medical opinion, in general, can only be given by a qualified physician. This section defines a physician as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law. Section 8101(3) of FECA, which defines services and supplies, limits reimbursable chiropractic services to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulation by the Secretary. 5 U.S.C. § 8101(3). *See Thomas W. Stevens*, 50 ECAB 288 (1999); *George E. Williams*, 44 ECAB 530 (1993).

assistants, physical therapists, and nurse practitioners are not considered physicians as defined under FECA.[19]

As there is no rationalized medical evidence of record explaining how appellant's employment duties caused or aggravated a medical condition involving her right elbow or right knee, the Board finds that she has not met her burden of proof.

On appeal, counsel contends that OWCP's January 5, 2018 decision is contrary to fact and law. As noted above, the medical evidence of record contains insufficient rationale to meet appellant's burden of proof to establish causal relationship.

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 her burden of proof to establish right elbow and right knee conditions causally related to the accepted factors of her federal employment.

[19] *See David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses and physical therapists are not competent to render a medical opinion under FECA); 5 U.S.C. § 8101(2) (this subsection defines a physician as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law). *S.J.*, Docket No. 17-0783, n. 2 (issued April 9, 2018) (nurse practitioners are not considered physicians under FECA).

ORDER

IT IS HEREBY ORDERED THAT the January 5, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 26, 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