United States Department of Labor
Employees' Compensation Appeals Board

S.G., Appellant	)	
and	)	**Docket No. 18-0209**
	)	**Issued: October 4, 2018**
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Bellmawr, NJ, Employer	)	

Appearances:
Thomas R. Uliase, 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
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On November 7, 2017 appellant, through counsel, filed a timely appeal from an August 4, 2017 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 to consider the merits of this case.

ISSUE

The issue is whether appellant has met her burden of proof to establish a right shoulder or cervical condition causally related to the accepted June 2, 2014 employment incident.

[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.*

FACTUAL HISTORY

On June 6, 2014 appellant, then a 51-year-old maintenance support clerk, filed a traumatic injury claim (Form CA-1) alleging that, while at work on June 2, 2014, she sustained right shoulder pain when putting ink supplies away in the stockroom. She stopped work on June 6, 2014.

In support of her claim, appellant submitted a disability note dated June 11, 2014 from Dr. Mitesh Patel, Board-certified in family medicine and sports medicine, who diagnosed a right shoulder injury. Dr. Patel indicated that appellant was totally disabled from work through June 11, 2014 and that she could work light duty from June 11 to July 11, 2014. Appellant also submitted a June 11, 2014 form report from Dr. Patel diagnosing right rotator cuff tendinitis/bursitis.

On June 6, 2014 the employing establishment issued appellant a properly completed authorization for examination (Form CA-16) which indicated that she was authorized to seek medical treatment for her right shoulder from the June 2, 2014 employment incident. An accompanying unsigned June 11, 2014 attending physician's report noted that she developed pain after putting away boxes of ink. Appellant was first treated on June 11, 2014 with findings of a history of right shoulder acromioclavicular degenerative joint disease. The diagnosis noted on the form was right rotator cuff tendinitis. A box marked "yes" was checked, indicating that the diagnosed condition was caused or aggravated by the employment activity.

In another June 11, 2014 report, Dr. Patel diagnosed right rotator cuff tendon tendinitis with right shoulder subacromial bursitis. Appellant's physical examination revealed no tenderness, positive impingement sign and Speed's, full active elevation, and pain with Jobe's testing. Diagnostic tests were reviewed and showed congruent glenohumeral joint, mild-to-moderate right acromioclavicular joint degeneration, and no loose bodies or fracture.

On September 23, 2015 appellant filed a recurrence of disability claim (Form CA-2a) alleging a recurrence of her June 2, 2014 injury on August 2, 2015. She related that her right shoulder pain had worsened and the pain had spread to her neck and arm.

By development letter dated October 1, 2015, OWCP advised appellant that additional factual and medical evidence was necessary to establish her claim. It noted that her claim initially appeared to be a minor injury that resulted in minimal or no lost time from work and that the claim was administratively handled to allow a limited amount of medical payments. However, appellant's claim was being reopened as she had filed a claim for a recurrence of disability. OWCP informed appellant of the type of medical evidence needed to establish her claim and requested that she submit the necessary evidence within 30 days.

By decision dated November 2, 2015, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish that the injury occurred as alleged, as she had failed to provide a statement regarding how the alleged work incident occurred.

On October 21, 2015 appellant was seen by Dr. Patel for recurrent right shoulder pain. Dr. Patel noted that appellant was treated the previous year for her right shoulder injury and that she responded to treatment. Appellant returned as she developed right shoulder pain at work in August 2015 without any explicit injury. Dr. Patel provided physical examination findings and reviewed x-rays, which were unchanged from his prior report. Diagnoses included severe right shoulder pain, right shoulder bursitis, and right rotator cuff capsule sprain.

In October 29, 2015 notes, Dr. Patel related that appellant injured her right shoulder while at work in August 2015. He reviewed an October 29, 2015 magnetic resonance imaging (MRI) scan, which showed subscapularis bursitis and no rotator cuff tear. Dr. Patel diagnosed right shoulder bursitis.

In notes dated November 24, 2015, Dr. Patel diagnosed right shoulder bursitis and subacromial bursitis, cervical displacement, cervical radiculopathy, and cervical radiculitis. He noted that appellant injured her right shoulder at work in August 2015. A review of appellant's right shoulder MRI scan revealed bursitis. Dr. Patel observed: a pain response on right shoulder elevation; positive impingement sign; a pain response to O'Brien's, Speed's, and Jobe's testing; some internal and external rotation weakness; positive right Spurling's maneuver; and pain with cervical flexion and extension.

In a November 24, 2015 form, Dr. Patel related that appellant was reinjured on June 2, 2014. He diagnosed right shoulder pain and possible cervical radiculitis. Dr. Patel checked a box marked "yes" to the question of whether the diagnosed condition was causally related to the injury.

On November 30, 2015 Dr. Patel diagnosed cervical radiculopathy. He related that appellant had a work-related June 2014 right shoulder injury, and that treatment for the June 2014 right shoulder condition was successful. Appellant related that her current complaints felt different from the June 2014 injury. Dr. Patel reviewed a November 25, 2015 MRI scan which showed significant central C4-5 cervical spondylosis and severe bilateral foraminal stenosis. A physical examination revealed limited right shoulder abduction, decreased cervical range of motion, a positive right Spurling's test, bilateral cervical spasms, and a negative bilateral Hoffmann's test.

In a December 14, 2015 report, Dr. Michael W. Molter, an examining Board-certified physiatrist, diagnosed right shoulder pain and cervical radiculopathy. He noted that appellant had a history of cervical radiculopathy and possible cervical spine plaque. A physical examination revealed decreased right shoulder and cervical range of motion and positive right Spurling's testing.

Dr. Patel, in a December 24, 2015 form, again related that June 2, 2014 was the date of appellant's injury. He diagnosed right shoulder bursitis and checked a box marked "yes" indicating that the diagnosed condition was causally related to the injury.

In notes dated December 24, 2015, Dr. Patel diagnosed right shoulder bursitis with cervical radiculitis. He related that appellant had injured her right shoulder at work in June 2014 when she was putting a wood angle on a hard shelf. Dr. Patel noted that she was diagnosed with bursitis due to the 2014 injury and her pain resolved with conservative treatment until the pain returned in August 2015. He observed pain on right shoulder elevation and internal and external rotation, and pain with O'Brien's, Speed's, and Jobe's testing.

On January 18, 2016 Dr. Patel diagnosed cervical radiculitis. He diagnosed right shoulder bursitis on the February 4, 2016 form and cervical stenosis and frozen right shoulder on a February 10, 2016 form, and right cervical radiculopathy due to frozen shoulder on the February 22, 2016 form. The diagnosis on his February 23, 2016 form was cervical radiculitis and adhesive capsule.

In a February 1, 2016 report, Dr. Michael W. Molter, an examining Board-certified physiatrist, noted appellant's history of injury. A physical examination revealed decreased right shoulder range of motion, cervical spasm, decreased L4-5 range of motion, and positive Spurling's testing. Based on these findings, Dr. Molter diagnosed right shoulder bursitis, cervical radiculopathy, and right shoulder pain. He advised that appellant was to remain off work.

On February 10, 2016 appellant was seen by Alan S. Hilibrand, a Board-certified orthopedic surgeon, who diagnosed cervicalgia, right shoulder pain, and cervical spinal stenosis and provided examination findings.

In reports dated February 22, 2016, Dr. Luke S. Austin, an examining Board-certified orthopedic surgeon, noted that appellant was seen for her right shoulder complaints. Appellant had related to him that she injured her shoulder at work in 2014 while lifting heavy boxes of ink, was treated for her injury, and had returned to work. In August 2015, she stated that she had increased pain, which was not due to a new injury. A review of a February 2, 2016 MRI scan showed shoulder bursitis.

On February 23, 2016 appellant was seen for a follow-up visit by Dr. Molter. Examination findings and injury history were unchanged from his February 1, 2016 report. Dr. Molter diagnosed right shoulder adhesive capsulitis, right shoulder pain, cervical stenosis, right shoulder bursitis, and cervical radiculopathy. He advised that appellant was to remain off work.

On February 24, 2016 OWCP received a January 12, 2016 electromyography (EMG) study which reported abnormal findings with evidence of mild right medial entrapment neuropathy and mild carpal tunnel syndrome.

Dr. Molter, in an April 13, 2016 report, diagnosed cervical stenosis and cervical radiculopathy. There was no change in either the injury history or examination findings. Dr. Molter reviewed an EMG study, which was positive for radiculopathy. He attributed appellant's condition to her June 2014 work injury.

In a form dated April 27, 2016, Dr. Hilibrand noted a June 2, 2014 injury date, diagnosed cervical radiculopathy, and checked a box marked "yes" indicating that the diagnosed condition was causally related to the date of injury. He recommended anterior cervical fusion surgery pending authorization.

On May 16, 2016 appellant was seen by Dr. Patel for a follow up regarding her right shoulder. Examination and injury history findings were unchanged. Diagnoses included right shoulder adhesive capsulitis and cervical radiculopathy. In a May 16, 2016 form, Dr. Patel reported an injury date of June 2, 2014, a diagnosis of right frozen shoulder, and checked a box marked "yes" indicating causal relationship between the diagnosed condition and the June 2014 work injury.

On June 9, 2016 OWCP received a March 22, 2016 EMG study which related findings of cervical radiculopathy.

On July 7, 2016 OWCP received a form from Dr. Anthony Dibona, a Board-certified family medicine physician, dated April 13, 2016. Dr. Dibona noted an injury date of June 2, 2014,

a diagnosis of cervical radiculopathy and cervical stenosis. He checked a box marked "yes" indicating that the diagnosed condition was causally related to the history of injury.

In a July 6, 2016 report, Dr. Molter diagnosed cervical stenosis and cervical radiculopathy. The report was duplicative of his prior reports.

In a letter dated October 5, 2016, appellant, through counsel, requested reconsideration.

On October 19, November 16, and December 14, 2016 and January 11, 2017 appellant was seen by Dr. Molter who reiterated findings and diagnoses from his prior reports.

OWCP received forms dated July 6, October 19, November 16, and December 24, 2016 from Dr. Dibona diagnosing cervical radiculopathy. Dr. Dibona noted June 2, 2014 as the date of injury and checked the box marked "yes" indicating causal relationship.

In an October 24, 2016 report, Dr. Molter opined that appellant's significant cervical radicular symptoms were due to her work injury and that her symptoms were the result of an aggravation of her cervical degenerative disc disease. In support of causation, Dr. Molter noted that appellant was asymptomatic prior the injury and the progression of symptoms subsequent to the injury established causal relationship to the work injury.

By decision dated January 18, 2017, OWCP modified its prior decision to find that the evidence of record was sufficient to establish that the June 2, 2014 employment incident occurred as alleged. However, the claim remained denied as OWCP found that the medical evidence of record was insufficient to establish causal relationship between the diagnosed condition and the accepted employment incident.

In a report dated February 8, 2017, Dr. Molter reiterated diagnoses and findings from prior reports. Diagnoses included cervical radiculopathy and spinal stenosis and right shoulder adhesive capsulitis.

Dr. Dibona, in February 4 and May 8, 2017 forms noted an injury date of June 2, 2014, a diagnosis of cervical radiculopathy, and indicated by checking a box marked "yes" a causal relationship between the diagnosed condition and the accepted employment incident.

OWCP received a March 3, 2017 report from Dr. Molter which was unchanged from his prior reports.

In a March 16, 2017 report, Dr. Molter wrote that appellant had a known history of cervical radiculopathy due to cervical disc herniation and was developing right shoulder adhesive capsulitis. He noted that prior to her work injury there were no underlying preexisting conditions. Dr. Molter opined that appellant sustained a disc herniation due to her work injury which resulted in her cervical and shoulder symptoms.

In a letter received by OWCP on May 10, 2017 appellant, through counsel, requested reconsideration.

In a June 5, July 3, and August 1, 2017 forms, Dr. Dibona noted an injury date of June 2, 2014, a diagnosis of cervical radiculopathy and stenosis and right shoulder adhesive capsulitis, and he checked the box marked "yes" indicating causal relationship.

By decision dated August 4, 2017, OWCP denied modification of its prior decision. It found that appellant had not met her burden of proof to establish causal relationship as the medical evidence of record did not include a rationalized opinion explaining how the right shoulder condition was caused or aggravated by the accepted June 2, 2014 incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was filed within the applicable time limitation, that an injury was sustained while in the performance of duty as alleged, and that any disability or specific conditions for which compensation is claimed is causally related to the employment injury.[4] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[5]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty it must first be determined whether fact of injury has been established.[6] 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 sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.[8]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.[9] Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is causal relationship between the employee's diagnosed condition and the accepted employment incident.[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 event identified by the employee.[11]

[3] 5 U.S.C. § 8101 *et seq.*

[4] *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

[5] *S.P.*, 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

[6] *B.F.*, Docket No. 09-60 (issued March 17, 2009); *Bonnie A. Contreras*, *supra* note 4.

[7] *D.B.*, 58 ECAB 464 (2007); *David Apgar*, 57 ECAB 137 (2005).

[8] *C.B.*, Docket No. 08-1583 (issued December 9, 2008); *D.G.*, 59 ECAB 734 (2008); *Bonnie A. Contreras*, *supra* note 4.

[9] *Y.J.*, Docket No. 08-1167 (issued October 7, 2008); *A.D.*, 58 ECAB 149 (2006); *D'Wayne Avila*, 57 ECAB 642 (2006).

[10] *J.J.*, Docket No. 09-27 (issued February 10, 2009); *Michael S. Mina*, 57 ECAB 379 (2006)

[11] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a right shoulder or cervical injury causally related to the accepted June 2, 2014 employment incident.

The record contains reports from June 11, 2014 to May 16, 2016 from Dr. Patel diagnosing various conditions, including right rotator cuff tendinitis/bursitis, right shoulder subacromial bursitis, severe right shoulder pain, right rotator cuff capsule sprain, frozen right shoulder, cervical radiculitis, and cervical stenosis. In these form reports he checked boxes marked "yes" indicating that the diagnosed conditions were caused or aggravated by the injury date noted on these forms. The Board has held that a report that addresses causal relationship with a checkmark, without medical rationale explaining how the employment incident caused or aggravated the diagnosed condition, is of diminished probative value and insufficient to establish causal relationship.[12]

In reports submitted in October and November 2015, Dr. Patel related that appellant had responded well to medical treatment of her right shoulder in 2014, but in August 2015 she developed worsening right shoulder complaints without explicit injury. However, these reports did not offer any opinion regarding the cause of the diagnosed condition. 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. Thus, these reports from Dr. Patel are of limited probative value and insufficient to meet appellant's burden of proof.[13]

Appellant also submitted reports for the period February 1, 2016 to March 3, 2017 from Dr. Molter. Dr. Molter diagnosed right shoulder bursitis, and cervical radiculopathy. Similarly in reports dated February 10 and April 27, 2016, Dr. Hilibrand diagnosed cervicalgia, right shoulder pain, and cervical stenosis. However, these reports did not offer any opinion regarding the cause of the diagnosed condition. 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] Thus, these reports from Dr. Hilibrand and Dr. Molter are of limited probative value and insufficient to meet appellant's burden of proof.[15]

Appellant submitted an October 24, 2016 report by Dr. Molter diagnosing significant radicular symptoms which he attributed to her work injury. Dr. Molter explained that her cervical degenerative disc disease had been aggravated by the employment incident as she was asymptomatic prior to the injury. The Board has held that an opinion that a condition is causally related because the employee was asymptomatic prior to the injury is insufficient, without adequate rationale, to establish causal relationship. Dr. Molter failed to provide sufficient medical rationale explaining how appellant's cervical degenerative disc disease had been caused or

[12] *See R.A.*, Docket No. 17-1472 (issued December 6, 2017); *Sedi L. Graham*, 57 ECAB 494 (2006); *Deborah L. Beatty*, 54 ECAB 340 (2003).

[13] *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

[14] *Id.*

[15] *See L.M.*, Docket No. 14-0973 (issued August 25, 2014); *R.G.*, Docket No. 14-0113 (issued April 25, 2014); *K.M.*, Docket No. 13-1459 (issued December 5, 2013); *A.J.*, Docket No. 12-0548 (issued November 16, 2012).

aggravated by the June 2, 2014 work incident.[16] Therefore, his report is insufficient to establish appellant's claim.

Appellant continued to submit form reports from Dr. Dibona and Dr. Hilibrand; however, these reports are also of diminished probative value. Dr. Dibona, in forms covering the period April 13, 2016 to August 1, 2017, diagnosed cervical radiculopathy, cervical stenosis, and right shoulder adhesive capsulitis, and by checking a box marked "yes" indicated causal relationship between the diagnosed conditions and the accepted employment incident. On an April 27, 2016 form, Dr. Hilibrand diagnosed cervical radiculopathy and checked the box marked "yes" to the question of whether the diagnosed conditions were causally related to the June 2, 2014 employment incident. As discussed above, a report that addresses causal relationship with a checkmark, without medical rationale explaining how the employment incident caused a diagnosed condition, is of diminished probative value and insufficient to establish causal relationship.[17]

The remaining medical evidence of record is also insufficient to establish appellant's claim. Dr. Austin's February 22, 2016 note interpreting diagnostic studies pertaining to the right shoulder and cervical spine offer no opinion regarding causal relationship. As noted above, the Board has held that medical evidence is of limited probative value when it fails to provide an opinion on the causal relationship between appellant's employment duties and the diagnosed conditions.[18] As such, this evidence is insufficient to meet her burden of proof.

Causal relationship is a medical question that must be established by probative medical opinion from a physician.[19] In this case, the Board finds that none of the medical evidence appellant submitted constitutes rationalized medical evidence sufficient to establish causal relationship between the accepted work incident and her diagnosed conditions.[20] Without explaining how, physiologically, appellant's accepted employment incident caused or contributed to her diagnosed right shoulder and cervical conditions, the medical evidence of record is of limited probative value.[21] Accordingly, the Board finds that appellant has not met her burden of proof.

[16] *K.P.*, Docket No. 17-1145 (issued November 15, 2017); *T.M.*, Docket No. 08-0975 (issued February 6, 2009); *Michael S. Mina,* 57 ECAB 379 (2006).

[17] *See supra* note 12.

[18] *Supra* note 14.

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

[20] *See T.C.*, Docket No. 16-0586 (issued August 9, 2016); *Patricia J. Bolleter*, 40 ECAB 373 (1988).

[21] *See D.P.*, Docket No. 16-1358 (issued December 19, 2016).

On appeal counsel contends that the evidence submitted is sufficient to establish appellant's claim. However, as explained above, appellant has not submitted sufficiently rationalized medical evidence to support her allegation that she sustained an injury causally related to the accepted June 2, 2014 employment incident. As such she has not met her burden of proof.[22]

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a right shoulder or cervical condition causally related to the accepted June 2, 2014 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 4, 2017 is affirmed.

Issued: October 4, 2018
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

[22] The Board notes that the employing establishment executed a Form CA-16 June 6, 2014 authorizing medical treatment. The Board has held that where an employing establishment properly executes a Form CA-16, which authorizes medical treatment as a result of an employee's claim for an employment-related injury, it creates a contractual obligation, which does not involve the employee directly, to pay the cost of the examination or treatment regardless of the action taken on the claim. Although OWCP denied appellant's claim for an injury, it did not address whether she is entitled to reimbursement of medical expenses pursuant to the Form CA-16. *L.D.,* Docket No. 16-1289 (issued December 8, 2016).