United States Department of Labor
Employees' Compensation Appeals Board

V.G., Appellant	)	
and	)	**Docket No. 18-0551**
	)	**Issued: October 2, 2018**
U.S. POSTAL SERVICE, POST OFFICE, Lake Forest, IL, 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
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On January 19, 2018 appellant filed a timely appeal from an October 19, 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 to consider the merits of this case.[2]

ISSUE

The issue is whether appellant met her burden of proof to establish a right shoulder condition causally related to the accepted July 13, 2017 employment incident.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that, following the October 19, 2017 decision, OWCP received additional evidence. However, the Board's jurisdiction is limited to the evidence that was in the record at the time OWCP issued its final decision. Thus, the Board is precluded from reviewing this evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

On July 14, 2017 appellant, then a 42-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on July 13, 2017 while in the performance of duty she injured her right shoulder "rotator cup" while lifting packages off the long life vehicle (LLV) to the dock side of the dolly. She stopped work on July 15, 2017 and returned later on July 20, 2017.

In a July 15, 2017 note, Dr. Krystal M. Baciak, an emergency medicine specialist, reported that appellant was treated in the emergency room on July 14, 2017 and could return to work on July 16, 2017.

In a July 25, 2017 return to work note, Dr. Michael E. Perrone, an orthopedic surgeon, related that appellant was seen that day for a right shoulder injury. He released her to return to work on July 26, 2017 with a restriction of no right shoulder use.

On July 25, 2017 Dr. Lewis Shi, an orthopedic surgeon, diagnosed right shoulder pain. He reported that appellant had sustained a right shoulder injury at work on July 13, 2017. Physical examination findings were detailed. Dr. Shi reported that appellant's pain was "suspicious for rotator cuff tend[i]nitis," but it was unclear whether it was another pathology or rotator cuff tear.

In an August 11, 2017 attending physician's report (Form CA-20), Dr. Shi diagnosed right shoulder pain. He checked the box marked "yes" to the question of whether the diagnosed condition was due to her work injury. Dr. Shi further explained that any lifting or carrying aggravated her pain. In an August 22, 2017 note, he reported that appellant had a persistent right shoulder injury and that she had started physical therapy.

By development letter dated September 7, 2017, OWCP advised appellant that, when her claim was received, it appeared to be a minor injury that resulted in minimal or no lost time from work and, since the employing establishment did not controvert continuation of pay or challenge the case, a limited amount of medical expenses were administratively approved and paid. It noted that her claim had been reopened because the medical bills had exceeded $1,500.00. Appellant was advised regarding the medical evidence necessary to establish her claim. OWCP afforded her 30 days to submit the necessary evidence.

In a return to work note dated September 26, 2017, Dr. Shi diagnosed a persistent right shoulder injury. He reported that appellant had no use of her right arm and requested authorization for a magnetic resonance imaging (MRI) scan.

In a September 26, 2017 report, Dr. Shi diagnosed right shoulder pain and work injury. He provided examination findings, treatment provided, and treatment dates. Dr. Shi opined that appellant sustained a work injury. He explained the employment incident aggravated her right shoulder due to the lack of any symptoms prior to the work incident.

By decision dated October 19, 2017, OWCP denied appellant's claim finding that she failed to establish fact of injury. It found that she failed to submit any medical evidence with a diagnosis causally related to the accepted July 13, 2017 employment 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 condition 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]

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.[9]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a right shoulder condition causally related to the accepted July 13, 2017 employment incident.

Dr. Baciak reported that appellant was treated in the emergency room on July 14, 2017, however, she did not provide a diagnosis. In a July 25, 2017 note, Dr. Perrone released appellant to return to work and noted that she was seen for a right shoulder injury. These reports are

[3] *Id.*

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

insufficient to establish appellant's claim as the reports failed to provide a firm medical diagnosis or offer any opinion regarding the cause of appellant's condition.[10]

Appellant submitted several reports from Dr. Shi. In narrative reports dated July 25, 2017, Dr. Shi diagnosed right shoulder pain. In an August 11, 2017 Form CA-20, he diagnosed right shoulder pain and checked a box marked "yes" to the question of whether it was a work injury. On the September 26, 2017 report Dr. Shi diagnosed right shoulder pain. His diagnosis of right shoulder pain in the July 25, August 11, and September 26, 2017 reports, without any explanation of the shoulder condition causing the pain, is a description of a symptom rather than a firm diagnosis of a compensable medical condition.[11] Dr. Shi, in the remaining medical evidence, indicated that appellant had a right shoulder condition. He, however, failed to provide a medical diagnosis.[12] Because Dr. Shi failed to provide a medical diagnosis, his opinion is of diminished probative value. These reports, which fail to provide diagnosis of appellant's condition, are therefore insufficient to establish appellant's claim.

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.[13] 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 met her burden of proof to establish a diagnosed right shoulder condition causally related to the accepted July 13, 2017 employment incident.

[10] *Id.*

[11] 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).

[12] *See V.S.*, Docket No. 09-2308 (issued September 1, 2010). Medical evidence is of diminished probative value if it fails to provide a firm diagnosis.

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

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 19, 2017 is affirmed.

Issued: October 2, 2018
Washington, DC

Christopher J. Godfrey, 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