

**United States Department of Labor
Employees' Compensation Appeals Board**

T.B., Appellant)	
)	
and)	Docket No. 18-1694
)	Issued: April 23, 2019
U.S. POSTAL SERVICE, POST OFFICE,)	
Franklin, WI, Employer)	
)	

Appearances:
Alan J. Shapiro, Esq., for the appellant¹
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 4, 2018 appellant, through counsel, filed a timely appeal from a November 29, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (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 a right elbow condition causally related to the accepted November 28, 2016 employment incident.

FACTUAL HISTORY

On November 29, 2016 appellant, then a 50-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on November 28, 2016 she injured her right upper arm when trying to lift a jammed cargo door while in the performance of duty. She did not stop work. The employing establishment controverted the claim asserting that appellant had a preexisting condition and had not established a new injury.³

On November 29, 2016 appellant was seen by Dr. Christopher J. Kolimas, Board-certified in family and occupational medicine, who provided work restrictions. Dr. Kolimas diagnosed a right elbow strain, noted an injury date of November 28, 2016 and attributed the strain to the employment injury.

By development letter dated December 7, 2016, OWCP notified appellant of the deficiencies regarding her claim. It advised that she should submit a medical report from her attending physician which included a diagnosis, history of the injury, examination findings, and a rationalized opinion explaining how the reported work incident caused or aggravated her medical conditions. OWCP also provided a questionnaire for completion. It afforded appellant 30 days to respond.

Dr. Kolimas, in a return to work report dated December 6, 2016, diagnosed right elbow strain and chronic left elbow pain, which he opined were employment related.

By decision dated January 10, 2017, OWCP denied appellant's claim finding the medical evidence insufficient to establish that the diagnosed condition was causally related to the accepted November 28, 2016 employment incident.

In a December 29, 2016 report, Dr. Kolimas noted that appellant was seen for a follow-up visit for a "right elbow injury."⁴ He provided physical examination findings and diagnosed chronic right elbow pain and right elbow strain. Under assessment Dr. Kolimas noted appellant's history of acute right elbow pain which occurred on November 28, 2016 after she attempted to free a jammed door by lifting and pulling. He opined that appellant's symptoms were consistent with a diagnosis of right elbow distal muscle and tendon strain and volar forearm muscle and tendon strain at the median epicondyle. Dr. Kolimas noted that appellant had a history of right elbow contusion, numbness and tingling of the right hand ring and little finger, bicipital tendinitis, and

³ Appellant has previously alleged a left upper extremity occupational disease claim which was previously before the Board in Docket No. 18-0641. See *T.B.*, Docket No. 18-0641 (issued October 2, 2018).

⁴ The Board notes that Dr. Kolimas incorrectly noted the date of injury as December 22, 2016 which appears to be a typographical error.

right hand lateral and medial epicondylopathy. He opined that the November 28, 2016 incident appeared to have aggravated appellant's previously diagnosed conditions.

Dr. Kolimas, in January 19, 2017 progress notes, indicated that appellant was seen for employment injuries sustained on November 28, 2016 involving her right elbow and shoulder. He diagnosed right elbow and shoulder strains, right elbow lateral and medial epicondylitis, and right ulnar neuritis. Under assessment Dr. Kolimas reiterated the injury history from his December 29, 2016 report. According to him appellant's symptoms were consistent with a diagnosis of right elbow distal muscle and tendon strain and volar forearm muscle and tendon strain at the median epicondyle from the November 28, 2016 employment incident.

On August 31, 2017 appellant, through counsel, requested reconsideration.

By decision dated November 29, 2017, OWCP denied modification of its prior decision finding that the medical evidence was insufficient to establish a causal relationship between the diagnosed medical condition and the accepted November 16, 2016 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁵ 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.⁶ 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.⁷

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.⁸ First, the employee must submit sufficient evidence to establish that she actually experienced the employment incident at the time, place, and in the manner alleged.⁹ 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.¹⁰

⁵ *Id.*

⁶ *N.C.*, Docket No. 17-0425 (issued June 21, 2018); *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

⁷ *M.S.*, Docket No. 18-1280 (issued March 12, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁸ *D.B.*, Docket No. 18-1348 (issued January 4, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

⁹ *D.S.*, Docket No. 17-1422 (issued November 9, 2017); *Elaine Pendleton*, 40 ECAB 1143 (1989).

¹⁰ *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *John J. Carlone*, 41 ECAB 354 (1989).

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.¹¹ A 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.¹² 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).¹³

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a right elbow injury causally related to the accepted November 28, 2016 employment incident.

Appellant submitted reports by Dr. Kolimas who examined appellant on November 29, 2016 and diagnosed right elbow strain. Although Dr. Kolimas noted that appellant hurt her right elbow at work the day before, his opinion conclusory in nature and therefore of limited probative value.¹⁴ There is no discussion or description of the employment incident and his statement of causal relationship is unsupported by adequate medical rationale explaining how the employment incident actually caused the diagnosed conditions.¹⁵ Appellant also submitted progress notes from Dr. Kolimas diagnosing right elbow distal muscle and tendon strain and median epicondyle volar forearm and tendon strain due to the accepted November 28, 2016 employment incident. He opined that the November 28, 2016 employment incident appeared to have aggravated appellant's previous diagnosed conditions. The Board has held that medical opinions that are speculative or equivocal in character are of diminished probative value.¹⁶ Dr. Kolimas provided no rationale explaining how his diagnoses were caused or aggravated by the accepted November 28, 2016 employment incident. To be of probative medical value regarding causal relationship, a medical report must provide a reasoned opinion on whether the employment incident described caused or contributed to the diagnosed medical condition.¹⁷ The need for rationale is particularly important as the evidence indicates that appellant had a preexisting condition.¹⁸ Therefore, the Board finds that the reports from Dr. Kolimas are insufficient to establish causal relationship.

¹¹ *R.M.*, Docket No. 18-1281 (issued March 6, 2018); *Robert G. Morris*, 48 ECAB 238 (1996).

¹² *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

¹³ *Id.*

¹⁴ *B.W.*, Docket No.16-1012 (issued October 21, 2016); *see also T.H.*, 59 ECAB 388 (2008).

¹⁵ *B.B.*, Docket No. 18-1036 (issued December 31, 2018); *K.W.*, Docket No. 10-0098 (issued September 10, 2010).

¹⁶ *T.H.*, Docket No. 18-1736 (issued March 13, 2019); *Kathy A. Kelley*, 55 ECAB 206 (2004).

¹⁷ *J.S.*, Docket No. 17-1039 (issued October 6, 2017); *John W. Montoya*, 54 ECAB 306 (2003).

¹⁸ *N.L.*, Docket No. 17-1823 (issued December 17, 2018); *R.E.*, Docket No. 14-0868 (issued September 24, 2014).

As appellant has not provided sufficient evidence demonstrating that her diagnosed conditions were causally related to the accepted November 28, 2016 employment incident, she has not met her burden of proof to establish her traumatic injury claim.

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 right elbow condition causally related to the accepted November 28, 2016 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the November 29, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 23, 2019
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