United States Department of Labor
Employees' Compensation Appeals Board

S.Y., Appellant	)	
and	)	**Docket No. 18-1814**
	)	**Issued: April 18, 2019**
U.S. POSTAL SERVICE, POST OFFICE, Eureka, CA, 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:
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On September 28, 2018 appellant, through counsel, filed a timely appeal from an August 2, 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 back and right shoulder conditions causally related to the accepted September 28, 2017 employment incident.

FACTUAL HISTORY

On October 1, 2017 appellant, then a 38-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that, on September 28, 2017, she developed a back contusion, upper back strain, and a right shoulder injury while in the performance of duty. She stopped work on September 29, 2017. On the reverse side of the claim form, the postmaster controverted the claim, contending that appellant told management that she had a preexisting injury and that her shoulder was sore the prior week.

Subsequently, in an undated letter, appellant described the alleged September 28, 2017 employment incident. She advised that management gave her a direct order to change out overloaded containers from a belt. Appellant pulled a container overloaded with parcels and magazines from the backside of the belt and tried to go forward with it, but it would not move. She indicated that the container, which weighed approximately 500 pounds, seemed to have a broken wheel. Appellant reported the problem to management and was instructed to move the container again. She could not move it forward and, as a result, felt a pinch in her shoulder. Appellant reported her injury to management. After a manager unsuccessfully tried to move the container, he directed appellant to pull the container to the back of the building to be dealt with later. After so doing, appellant claimed that her shoulder pain intensified.

Appellant submitted an undated patient visit information form by Celine Pele, a certified physician assistant, who indicated that appellant was seen on September 29, 2017 for upper back strain, diagnosed back "contusion," and provided aftercare instructions. In an undated work release form, Ms. Pele noted that appellant may return to work on October 13, 2017 without restrictions.

Appellant also submitted an October 9, 2017 patient visit information form by Dr. Diana L. Yandell, a physician specializing in emergency medicine. Dr. Yandell provided aftercare instructions for appellant's diagnosis of neck sprain or strain. In a work release form of the same date, she advised that appellant may return to work on October 16, 2017 without restrictions.

In statements received on October 12, 2017 appellant's supervisor and postmaster, controverted the claim, respectively, primarily contending that appellant did not report an injury to either supervisor or to her coworkers.

By development letter dated October 19, 2017, OWCP advised appellant of the factual and medical deficiencies of her claim. It provided a questionnaire for her completion regarding the circumstances of the injury. Appellant was also asked to provide a narrative medical report from her physician which contained a detailed description of findings and diagnoses, explaining how the reported incident caused or aggravated her medical condition. OWCP afforded 30 days for response.

A medical report dated October 16, 2017 by Dr. William S. Harden, a Board-certified family practitioner, listed the date of injury as September 28, 2017. He related a history that appellant's supervisor instructed her to push a 500-pound cage. After doing so, appellant developed pain in her right shoulder down to her right arm for which she sought medical treatment on the next day. Dr. Harden reported findings on physical examination and diagnosed apparent right shoulder strain. He placed appellant off work from the date of his examination through November 15, 2017 due to work-related injuries.

In a statement received on October 27, 2017, appellant reiterated the factual history of her claim and again asserted that the September 28, 2017 employment incident caused her shoulder and back injuries.

Ms. Pele, in a report also received on October 27, 2017, diagnosed upper back strain and placed appellant off work until she was cleared by occupational health.

In an October 27, 2017 statement, appellant again described the claimed September 28, 2017 employment incident and maintained that she reported her right shoulder injury to both her supervisor and coworkers. She submitted statements from her coworker, which addressed the September 28, 2017 incident and her claimed right shoulder injury.

OWCP subsequently received x-ray reports dated October 25, 2017 by Dr. Ashlesha Sharma, an osteopathic physician specializing in radiology. Dr. Sharma reported that an x-ray of the cervical spine revealed an impression of no fracture and no significant degenerative change. She reported that a right shoulder x-ray revealed an impression of acromioclavicular and glenohumeral joints that appeared normal and no fracture or significant degenerative change.

An October 25, 2017 right shoulder magnetic resonance imaging (MRI) scan report by Dr. Adam A. Attoun, a Board-certified diagnostic radiologist, provided an impression of findings suggesting tendinosis of the rotator cuff without evidence of full-thickness discontinuity or retraction and mild tenosynovitis involving the long head of the biceps tendon. Dr. Attoun found no conclusive evidence of subacromial impingement or glenohumeral joint effusion.

In a progress note dated September 19, 2017, Dr. Jane E. Sonneland, a Board-certified family practitioner, assessed left scapular strain, resolving, that was presumed from repetitive motion activities both at home and work.

In an emergency department report dated October 9, 2017, Dr. Yandell noted that appellant sustained a back injury on September 28, 2017 while pulling a very heavy object. She discussed her medical background and findings on physical examination. Dr. Yandell provided a primary impression of upper back strain.

An additional prescription note dated November 13, 2017 by Dr. Harden set forth appellant's work restrictions through January 15, 2018.[3]

[3] On November 15, 2017 the employing establishment offered appellant a modified mail handler position, which she accepted on that date.

By decision dated November 20, 2017, OWCP denied appellant's traumatic injury claim, finding that the medical evidence of record was insufficient to establish that her diagnosed upper back and neck conditions were causally related to the accepted September 28, 2017 employment incident.

On December 1, 2017 appellant, through counsel, requested a telephonic hearing before an OWCP hearing representative.

Dr. Harden, in a progress report dated January 15, 2018, noted that appellant worked with tendinitis in her right shoulder and that she experienced pain by the end of her workday. He reported examination findings and assessed her as having work-related right shoulder tendinitis. Dr. Harden advised that appellant could continue to work with restrictions.

In a report dated March 19, 2018, Dr. Erik T. McGoldrick, an orthopedic surgeon, related that appellant presented for evaluation of her right shoulder pain since the September 2017 employment incident. He noted her history and findings on physical and x-ray examination. Dr. McGoldrick assessed appellant as having a partial tear of the rotator cuff. He was suspicious that she had subluxed her shoulder while pushing a crate last year as her left shoulder subluxed on an O'Brien's test during his examination.

Following a telephonic hearing, held on May 22, 2018, OWCP, on June 4, 2018, received a letter and an after visit summary dated May 22, 2018 by Dr. Malia L. Honda, an internist. In the letter, Dr. Honda noted that appellant had a right shoulder injury. She listed work restrictions until further notice. In the after visit summary, Dr. Honda provided instructions for the care of appellant's diagnosis of chronic right shoulder pain.

Dr. Harden, in a duty status report (Form CA-17) dated December 11, 2017, noted a history of the accepted September 28, 2017 employment incident and described clinical findings. He diagnosed right shoulder tendinitis due to injury. Dr. Harden indicated that appellant could perform her regular full-time work with restrictions. On January 16, 2018 he referred her to Dr. Raymond A. Koch, a Board-certified orthopedic surgeon, for a consultation regarding her right shoulder tendinitis. A February 13, 2018 medical bill by Dr. Harden indicated that appellant had an additional diagnosis of right shoulder internal derangement.

Reports dated February 19 through April 3, 2018 from appellant's physical therapist, addressed the treatment of her diagnosed right shoulder conditions.

In an additional report dated March 19, 2018, Dr. McGoldrick diagnosed right shoulder posterior labral tear and right shoulder ligamentous laxity.

In an April 19, 2018 letter, Ellen Taylor, a certified physician assistant, indicated that appellant was doing very well with her work restrictions and recommended that these restrictions be continued.

On April 30, 2018 Dr. McGoldrick again examined appellant and reiterated his assessment of partial tear of the rotator cuff and ordered an MRI scan arthrogram of her right shoulder to evaluate her partial tear of the rotator cuff.

The findings of a June 1, 2018 right shoulder MRI scan arthrogram by Dr. James B. Moore, a Board-certified diagnostic radiologist, contained an impression of normal right shoulder. There were no signs of a rotator cuff tear, partial or full-thickness, and no labral abnormality.

A right shoulder x-ray report dated June 1, 2018 by Dr. Stephen L. Viltrakis, a Board-certified diagnostic radiologist, provided an impression of uncomplicated percutaneous right shoulder arthrocentesis for injection of gadolinium into the joint space.

A report dated June 18, 2018 by Dr. McGoldrick noted appellant's history, reviewed diagnostic test results, and discussed findings on physical examination. Appellant was assessed as having right shoulder subluxation. She could continue to perform modified work up to a maximum of five hours a day, five days a week.

By decision dated August 2, 2018, an OWCP hearing representative affirmed the November 20, 2017 decision, finding that the medical evidence of record was insufficient to establish the claim as it did not contain a rationalized physician's opinion explaining how appellant's medical condition was caused or aggravated by the accepted September 28, 2017 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA[4] 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.[5] 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.[6]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. 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. Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.[7]

Rationalized medical opinion evidence is 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

[4] *Supra* note 2.

[5] *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[6] *S.P.*, 59 ECAB 184 (2007); *Victor J. Woodhams*, 41 ECAB 345 (1989); *Joe D. Cameron*, 41 ECAB 153 (1989).

[7] *John J. Carlone*, 41 ECAB 354 (1989); *see* 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(ee), 10.5(q) (traumatic injury and occupational disease defined, respectively).

nature of the relationship between the diagnosed condition and the specific employment incident identified by the claimant.[8]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish back and right shoulder conditions causally related to the accepted September 28, 2017 employment incident.

Dr. Harden's January 15, 2018 progress report found that appellant had work-related right shoulder tendinitis and that she could continue to work with restrictions. However, he did not provide an explanation or rationale as to how the accepted September 28, 2017 employment incident caused or aggravated her diagnosed condition and work restrictions. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how a given medical condition/disability was related to employment factors.[9] Likewise, Dr. Harden's October 16, 2017 report which ordered appellant off work through November 15, 2017 due to work-related injuries, and his December 11, 2017 Form CA-17 report which found that she had right shoulder tendinitis due to the September 28, 2017 employment incident, also failed to offer medical rationale explaining how her right shoulder condition and resultant disability were causally related to the accepted employment incident.[10] The remaining reports, prescriptions, and the medical bill from Dr. Harden are of limited probative value with regard to establishing causal relationship as they do not provide a rationalized medical opinion establishing that her diagnosed right shoulder conditions and work restrictions were caused or aggravated by the accepted employment incident.[11] The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.[12] For the reasons stated, the Board finds that Dr. Harden's reports and prescriptions are insufficient to establish appellant's burden of proof.

Dr. McGoldrick's March 19, 2018 report noted a history that appellant had experienced right shoulder pain since the September 28, 2017 employment incident. He assessed her as having a partial tear of the rotator cuff. Dr. McGoldrick related that he was suspicious that appellant had subluxed her shoulder while pushing a crate last year because her left shoulder subluxed on an O'Brien's test during his examination. The Board notes that he did not definitively relate appellant's diagnosed medical condition to the accepted September 28, 2017 employment incident. Dr. McGoldrick's opinion on causation was highly speculative and couched in equivocal terms. To be of probative value, a physician's opinion on causal relationship should be one of

[8] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams, supra* note 6.

[9] *See A.J.*, Docket No. 18-1116 (issued January 23, 2019); *Y.D.*, Docket No. 16-1896 (issued February 10, 2017) (finding that a report is of limited probative value regarding causal relationship if it does not contain medical rationale describing the relation between work factors and a diagnosed condition/disability).

[10] *Id.*

[11] *See S.W.*, Docket No. 18-0721 (issued November 6, 2018).

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

reasonable medical certainty.[13] In his remaining reports, Dr. McGoldrick reiterated his assessment of partial tear of the rotator cuff and also diagnosed right shoulder posterior labral tear and right shoulder ligamentous laxity. However, he did not provide an opinion that the diagnosed right shoulder conditions were caused or aggravated by the accepted employment incident.[14] For the reasons stated, the Board finds that Dr. McGoldrick's reports are insufficient to meet appellant's burden of proof.

Dr. Yandell's October 9, 2017 patient visit information form and emergency department report diagnosed neck sprain or strain and upper back strain and found that appellant could work without restrictions. However, she did not offer a medical opinion addressing causal relationship between the diagnosed conditions and the September 28, 2017 employment incident. The Board finds, therefore, that Dr. Yandell's reports are of no probative value and are insufficient to establish appellant's claim.[15]

Dr. Honda, in a May 22, 2018 report, noted that appellant had a right shoulder injury and listed her work restrictions until further notice, but she neither offered diagnosis nor an opinion on causal relationship. As such, her report is of no probative value.[16] The Board notes that, in her May 22, 2018 after visit summary, Dr. Honda failed to provide a firm medical diagnosis as she only diagnosed chronic right shoulder pain. The Board has consistently held that pain is a symptom, not a compensable medical diagnosis.[17] Thus, for the reasons stated, the Board finds that Dr. Honda's reports are insufficient to establish appellant's claim.

Dr. Sonneland's September 19, 2017 progress report predates the September 28, 2017 pulling incident, and thus, is not relevant to the issue of whether the accepted employment incident caused or contributed to appellant's right shoulder condition.[18]

Further, the diagnostic studies of record from Drs. Sharma, Attoun, Moore, and Viltrakis lack probative value as they do not provide an opinion on causal relationship between the accepted employment factors and a diagnosed condition.[19]

The reports from physician assistants and a physical therapist have no probative medical value in establishing appellant's claim. Such healthcare providers are not considered

[13] *See S.G.*, Docket No. 18-1373 (issued February 12, 2019); *Beverly R. Jones*, 55 ECAB 411 (2004).

[14] *See supra* note 12.

[15] *Id*.

[16] *Id.*

[17] *See M.V.*, Docket No. 18-1141 (issued January 3, 2019); *B.B.*, Docket No. 18-1036 (issued December 31, 2018); *K.V.*, Docket No. 18-0723 (issued November 9, 2018).

[18] *See S.L.*, Docket No. 16-0222 (issued August 1, 2016); *S.L.*, Docket No. 12-0315 (issued June 8, 2012).

[19] *See C.F.*, Docket No. 18-1156 (issued January 22, 2019); *S.G.*, Docket No. 17-1054 (issued September 14, 2017).

"physician[s]" as defined under FECA.[20] Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.[21]

Appellant failed to submit a rationalized opinion from a qualified physician relating her conditions to the accepted September 28, 2017 employment incident.[22] Thus, she has not met her burden of proof to establish that she sustained back and right shoulder conditions causally related to the accepted September 28, 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.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish back and right shoulder conditions causally related to the accepted September 28, 2017 employment incident.

[20] 5 U.S.C. § 8101(2). This subsection defines a physician as surgeons, podiatrist, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law.

[21] *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006). Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *see M.F.*, Docket No. 17-1973 (issued December 31, 2018).

[22] *See C.S.*, Docket No. 17-1267 (issued December 18, 2017); *G.H.*, Docket No. 17-1387 (issued October 24, 2017).

ORDER

IT IS HEREBY ORDERED THAT the August 2, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 18, 2019
Washington, DC

Patricia H. Fitzgerald, Deputy 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