

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

T.W., Appellant)	
)	
and)	Docket No. 19-0677
)	Issued: August 16, 2019
U.S. POSTAL SERVICE, POST OFFICE, Crivitz, 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 February 5, 2019 appellant, through counsel, filed a timely appeal from a November 28, 2018 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 left arm thoracic outlet syndrome causally related to the accepted October 16, 2010 employment incident.

FACTUAL HISTORY

On October 22, 2010 appellant, then a 43-year-old rural carrier associate, filed an occupational disease claim (Form CA-2) alleging that she developed a left shoulder and neck condition due to factors of her federal employment including the use of her left arm to drive and her right arm to deliver mail. She first realized that her condition was caused or aggravated by factors of her federal employment on October 16, 2010.

Appellant sought medical treatment on October 21, 2010. On October 22, 2010 Dr. Harold J. Schock, a Board-certified orthopedic surgeon, examined appellant and diagnosed left shoulder pain. On October 22, 2010 appellant returned to light-duty work.

In a November 1, 2010 development letter, OWCP advised appellant of the deficiencies of her claim. It requested additional factual and medical evidence from appellant, and provided a questionnaire for her completion. OWCP afforded her 30 days to respond.

Appellant submitted an October 21, 2010 note in which Dr. Schock related that he had examined appellant due to left arm pain and discomfort. Dr. Schock noted that appellant had shoulder surgery in 2006 and had received a diagnosis at the time of shoulder joint arthritis. He indicated that appellant was driving with her arm out the window and noticed a significant increase in pain. Dr. Schock diagnosed possible left shoulder rotator cuff injury *versus* chondromalacia flare. He also indicated that appellant had a neck condition, which was contributing to her shoulder discomfort and loss of range of motion (ROM).

On October 27, 2010 appellant underwent a cervical magnetic resonance imaging (MRI) scan which demonstrated C6-7 anterior spinal fusion, C5-6 disc bulge, and joint hypertrophy with mild bilateral neural foraminal stenosis. On the same date she also underwent a left shoulder MRI scan, which demonstrated mild supraspinatus tendinopathy.

Dr. Andrew R. Greene, an osteopath, examined appellant on October 11, November 1, 22, and 29, 2010 and diagnosed herniated cervical disc and cervical spinal stenosis. On December 7, 2010 he performed appellant's left C5-6 posterior cervical foraminotomy. Appellant also provided notes from Jill Hietpas, a physician assistant.

By decision dated January 26, 2011, OWCP denied appellant's occupational disease claim finding that she had not established causal relationship between her diagnosed medical condition and her accepted employment factors. On February 8, 2011 appellant, through counsel, requested an oral hearing before an OWCP hearing representative.

Dr. Schock examined appellant on November 18, 2010 and January 27, 2011 and noted that she continued to report pain and discomfort in the left upper extremity. He diagnosed possible thoracic outlet syndrome, continued radicular symptoms, and rotator cuff tendinitis.

In a report dated March 16, 2011, Dr. Boyd C. Lumsden, a Board-certified orthopedic surgeon, described appellant's 2006 left shoulder arthroscopy with decompression. He noted that at the time of surgery appellant's findings included early degenerative changes in the glenohumeral joint. Dr. Lumsden indicated that appellant reported developing left shoulder symptoms while driving on her mail route on October 10, 2010. He diagnosed left shoulder pain, left upper extremity paresthesias, and history of chronic left neck conditions resulting in two previous operations. Dr. Lumsden indicated that appellant's shoulder pain could possibly be attributed to preexisting arthritis, ongoing cervical conditions, peripheral nerve compression, or neurogenic thoracic outlet syndrome. He opined that none of these possible underlying causes were related to appellant's work. Dr. Lumsden explained that "driving a mail truck and holding her arm on the steering wheel or opening a mailbox with her left arm" would not cause arthritic problems, thoracic outlet problems, or cervical spine issues. He further noted that, after stopping work, appellant's symptoms had persisted and that this fact would argue against work being a major causative factor.

On May 9, 2011 appellant testified at a telephonic hearing before an OWCP hearing representative. She clarified the nature of her claim and alleged a traumatic injury, while in the performance of duty on October 16, 2010. Appellant noted that she had been driving her left-sided steering vehicle while sitting on the right with her left arm extended for four to five hours when she began experiencing severe pain and losing strength in her left arm. She sought medical treatment at the emergency room on October 16, 2010.

Following the oral hearing, appellant submitted additional notes from Dr. Greene. On January 27, 2011 Dr. Greene found that appellant had slightly improved following her C5-6 posterior cervical foraminotomy. In a March 21, 2011 note, he reported that appellant was experiencing persistent left arm pain and attributed this to shoulder pathology. Dr. Greene diagnosed possible thoracic outlet syndrome. On May 27, 2011 he noted that appellant's sensory and motor nerve studies were normal.

In a May 23, 2011 note, Dr. Steward Gifford, a Board-certified surgeon, diagnosed thoracic outlet syndrome with occlusion occurring with hyperabduction of the left shoulder.

By decision dated July 29, 2011, OWCP's hearing representative affirmed the January 26, 2011 decision. She found that the medical evidence did not establish a causal relationship between appellant's diagnosed left shoulder and neck conditions and her accepted employment incident on October 16, 2010.

On October 13, 2011 appellant, through counsel, requested reconsideration of the July 29, 2011 decision. Additional medical records were submitted in support of her request.

On July 28, 2011 Dr. Robert B. Ballard, a Board-certified vascular surgeon, diagnosed left arm thoracic outlet syndrome due to left hand weakness and numbness associated with compression of the brachial plexus. He performed appellant's left upper extremity scalenectomy and left first rib resection on that date. In an August 13, 2011 note, Dr. Ballard reported that appellant's job duties included steering the vehicle as well as grabbing mail from the back seat area with her left hand and placing mail into mailboxes with her right hand out of the window. He opined that, based on appellant's job description, her thoracic outlet syndrome was "in part" related to her job duties.

On March 1, 2013 counsel requested a decision from OWCP on appellant's October 13, 2011 request for reconsideration, noting that more than one year had passed since the request was filed. He included a copy of appellant's initial request for reconsideration. On July 3, 2013 counsel again requested a decision from OWCP on appellant's requests for reconsideration. On October 9, 2018 appellant, through counsel, noted that the original request for reconsideration was dated October 13, 2011 and that she submitted repeated requests on March 1 and July 3, 2013.

By decision dated November 28, 2018, OWCP denied modification of its prior decisions.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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 timely filed within the applicable time limitation period of FECA,³ that an injury was sustained in the performance of duty as alleged, and that any disability or medical 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 upon a traumatic injury or an occupational disease.⁵

To determine if an employee has sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.⁶ The second component is whether the employment incident caused a personal injury.⁷

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's detailed opinion on whether there is causal relationship between the employee's diagnosed condition and the accepted employment incident.⁸ 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

³ *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁴ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁵ *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁶ *T.M.*, Docket No. 19-0380 (issued June 26, 2019); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁷ *M.H.*, Docket No. 18-1737 (issued March 13, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

⁸ *C.B.*, Docket No. 18-0071 (issued May 13, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

nature of the relationship between the diagnosed condition and the specific employment incident.⁹ Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.¹⁰

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish left arm thoracic outlet syndrome causally related to the accepted October 16, 2010 employment incident.

On October 21, 2010 Dr. Schock examined appellant due to left arm pain and discomfort and diagnosed possible left shoulder rotator cuff injury versus chondromalacia flare. He did not provide a clear diagnosis. In a March 21, 2011 note, Dr. Greene diagnosed possible thoracic outlet syndrome. He also failed to provide a definitive diagnosis. The Board has previously explained that it is not possible to establish causal relationship if a medical condition has not been diagnosed.¹¹

Appellant provided an October 22, 2010 report from Dr. Schock diagnosing left shoulder pain. The Board has held that pain is a symptom not a valid diagnosis.¹² Thus, this report lacks probative value.

In notes dated October 11, November 1, 22, and 29, 2010, Dr. Greene diagnosed herniated cervical disc and cervical spinal stenosis. On November 18, 2010 and January 27, 2011 Dr. Schock diagnosed rotator cuff tendinitis. In a May 23, 2011 note, Dr. Gifford diagnosed thoracic outlet syndrome with occlusion occurring with hyperabduction of the left shoulder. These physicians did not provide an opinion relative to the cause of the diagnosed conditions. 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.¹³ These reports, therefore, are insufficient to establish appellant's claim.

On July 28, 2011 Dr. Ballard diagnosed left arm thoracic outlet syndrome and, in an August 13, 2011 note, opined that based on appellant's job description, her thoracic outlet syndrome was, "in part," related to her job duties. He noted that appellant used her right hand to deliver mail out of the window and used her left hand for grabbing mail from the back seat and steering. However, the mere recitation of a claimant's history does not suffice for purposes of establishing causal relationship between a diagnosed condition and the employment incident.¹⁴

⁹ *S.S.*, Docket No. 18-1488 (issued March 11, 2019).

¹⁰ *J.L.*, Docket No. 18-1804 (issued April 12, 2019).

¹¹ *M.K.*, Docket No. 19-0428 (issued July 15, 2019).

¹² *R.C.*, Docket No. 19-0376 (issued July 15, 2019); *Robert Broome*, 55 ECAB 339 (2004).

¹³ *R.W.*, Docket No. 19-0010 (issued June 18, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁴ *N.S.*, Docket No. 19-0167 (issued June 21, 2019); *J.G.*, Docket No. 17-1382 (issued October 18, 2017).

Without explaining physiologically how the accepted employment incident caused or contributed to the diagnosed conditions, the physician's report is of limited probative value.¹⁵ Therefore, Dr. Ballard's reports are insufficient to meet appellant's burden of proof.

The Board further notes that on March 16, 2011 Dr. Lumsden indicated that appellant's shoulder pain could possibly be attributed to preexisting arthritis, ongoing cervical conditions, peripheral nerve compression or neurogenic thoracic outlet syndrome. Dr. Lumsden opined that none of these possible underlying causes were related to appellant's work. He explained that driving a mail truck and holding her arm on the steering wheel or opening a mailbox with her left arm would not cause arthritic problems, thoracic outlet problems, or cervical spine issues. Dr. Lumsden's report directly negates causal relationship between appellant's diagnosed thoracic outlet syndrome and her employment duties. It does not support appellant's claim.

In support of her traumatic injury claim, appellant also submitted a series of notes signed solely by a physician assistant. These notes are insufficient to satisfy appellant's burden of proof as a physician assistant is not considered a "physician" as defined under FECA.¹⁶

Appellant also submitted diagnostic imaging studies in the form of a cervical spine MRI scan in support of her claim. The Board has explained that diagnostic studies lack probative value as they do not address whether the employment incident caused any of the diagnosed conditions.¹⁷ These reports are therefore also insufficient to establish appellant's claim.

Causal relationship is a medical question that must be established by probative medical opinion from a physician.¹⁸ As appellant has not submitted such medical evidence, she has not met her burden of proof to establish her left arm thoracic outlet syndrome claim.¹⁹

¹⁵ *A.B.*, Docket No. 16-1163 (issued September 8, 2017).

¹⁶ 5 U.S.C. § 8101(2) provides that a physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law. *See id.* at § 8102(2); *M.M.*, Docket No. 16-1617 (issued January 24, 2017); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as nurses, physician assistants, and physical therapists are not competent to render a medical opinion under FECA). *See also Gloria J. McPherson*, 51 ECAB 441 (2000); *Charley v. B. Harley*, 2 ECAB 208, 211 (1949) (a medical issue such as causal relationship can only be resolved through the submission of probative medical evidence from a physician).

¹⁷ *R.C.*, Docket No. 19-0376 (issued July 15, 2019).

¹⁸ *T.K.*, Docket No. 18-1239 (issued May 29, 2019).

¹⁹ A properly completed CA-16 form authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP. 20 C.F.R. § 10.300(c); *P.R.*, Docket No. 18-0737 (issued November 2, 2018); *N.M.*, Docket No. 17-1655 (issued January 24, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).

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 left arm thoracic outlet syndrome causally related to the accepted October 16, 2010 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the November 28, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 16, 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