

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

S.J., Appellant)	
)	
and)	Docket No. 19-0693
)	Issued: August 23, 2019
DEPARTMENT OF VETERANS AFFAIRS,)	
VETERANS CANTEEN SERVICE, Chicago, IL,)	
Employer)	
)	

Appearances:
Alan J. Shapiro, Esq., for the appellant¹
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 February 12, 2019 appellant, through counsel, filed a timely appeal from a January 3, 2019 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 medical condition causally related to the accepted June 25, 2018 employment incident.

FACTUAL HISTORY

On July 25, 2018 appellant, then a 53-year-old food service worker, filed a traumatic injury claim (Form CA-1) alleging on June 25, 2018 she injured her left shoulder, arm, and hand as well as her back and shoulder blade, when a coworker released a safe room door which hit her on the left shoulder while in the performance of duty.

In an August 9, 2018 development letter, OWCP advised appellant of the deficiencies of her claim. It requested additional factual and medical evidence and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond.

Appellant submitted a note indicating that on July 9, 2018 she sought emergency room treatment from Alyse N. Ahrweiler, a physician assistant, who diagnosed shoulder pain.

On September 7, 2018 appellant completed the development questionnaire, alleging that on June 25, 2018 a coworker released an open safe room door which struck appellant on her left shoulder.

By decision dated September 13, 2018, OWCP denied appellant's claim finding that she failed to submit medical evidence establishing a diagnosed condition in connection with her accepted June 25, 2018 employment incident. It concluded, therefore, that she had not met the requirements to establish an injury as defined by FECA.

On October 4, 2018 appellant requested reconsideration and submitted additional medical evidence. In an August 31, 2018 note, Dr. Damien J. McKnight, a Board-certified family practitioner, noted appellant's history of injury to her neck and left shoulder and diagnosed neck pain and fibromyalgia. Dr. McKnight further noted that he suspected that appellant had sustained a musculoskeletal strain complicated by preexisting fibromyalgia. On September 10, 2018 he reported that given appellant's previous history of severe fibromyalgia, her injury at work on June 25, 2018 "likely exacerbated" her fibromyalgia which had delayed her healing and resolution of symptoms. Appellant also provided notes signed by several physical therapists.

By decision dated January 3, 2019, OWCP modified the September 13, 2018 decision to reflect that appellant had submitted medical evidence of a diagnosed medical condition, preexisting fibromyalgia, but denied her claim as she had not established causal relationship between that condition and the accepted June 25, 2018 employment incident.

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. Generally, 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 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 that a medical condition was causally related to the accepted June 25, 2018 employment incident.

Appellant provided August 31 and September 10, 2018 notes from Dr. McKnight which included her history of injury to her left neck and shoulder on June 25, 2018 while at work.

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).

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

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

Dr. McKnight diagnosed neck pain and fibromyalgia. He reported, that given appellant's previous history of severe fibromyalgia, her injury at work on June 25, 2018 "likely exacerbated" her fibromyalgia which had delayed her healing and resolution of symptoms. The Board finds that his opinion was speculative in nature and he did not sufficiently explain how the accepted incident caused or aggravated the diagnosed conditions.¹¹ Without explaining how, physiologically, the movements involved in the employment incident caused or contributed to a diagnosed condition, Dr. McKnight's opinion is of limited probative value and insufficient to establish causal relationship.¹²

Appellant submitted a treatment note from a physician assistant and physical therapy notes. The Board has held, however, that neither physician assistants nor physical therapists are considered physicians as defined under FECA.¹³ A report from a physician assistant or physical therapist will only be considered medical evidence if countersigned by a qualified physician.¹⁴ Thus, as there is no countersignature by a qualified physician, these notes do not constitute competent medical evidence and have no probative value.¹⁵ As such, this evidence is insufficient to meet appellant's burden of proof.

As the record lacks rationalized medical evidence establishing causal relationship between the June 25, 2018 employment incident and appellant's diagnosed condition, she has not met 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 medical condition causally related to the accepted June 25, 2018 employment incident.

¹¹ *S.R.*, Docket No. 18-1295 (issued March 20, 2019); *G.M.*, Docket No. 18-0989 (issued January 3, 2019).

¹² *M.C.*, Docket No. 18-0951 (issued January 7, 2019).

¹³ The term physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law. *See* 5 U.S.C. § 8102(2); *see M.H.*, Docket No. 18-1737 (issued March 13, 2019); *M.M.*, Docket No. 16-1617 (issued January 24, 2017) (lay individuals such as 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).

¹⁴ *J.P.*, Docket No. 19-0197 (issued June 21, 2019); *D.B.*, Docket No. 18-1359 (issued May 14, 2019); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013).

¹⁵ *D.F.*, Docket No. 19-0108 (issued April 16, 2019); *see also T.H.*, Docket No. 18-1736 (issued March 13, 2019).

ORDER

IT IS HEREBY ORDERED THAT the January 3, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 23, 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