United States Department of Labor
Employees' Compensation Appeals Board

B.C., Appellant	)	
and	)	**Docket No. 19-1112**
	)	**Issued: December 16, 2019**
DEPARTMENT OF THE NAVY, COMMANDER, NAVY INSTALLATIONS COMMAND, San Diego, CA, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On April 16, 2019 appellant filed a timely appeal from a March 20, 2019 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 over the merits of this case.[2]

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that appellant submitted additional evidence on appeal. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether appellant has met her burden of proof to establish a condition causally related to the accepted August 28, 2018 employment incident.

FACTUAL HISTORY

On September 6, 2018 appellant, then a 67-year-old contract liaison officer, filed a traumatic injury claim (Form CA-1) alleging that on August 28, 2018 she slipped and fell on water and soap in the employing establishment restroom while in the performance of duty. She asserted that her left leg slid and, as she fell she attempted to grab the sink, hitting her forearm, and wrenching her shoulder. Appellant landed on her left hip and thigh. She alleged that her shoulder was swollen, that it was painful to lift her arm, and that pain radiated to her back and neck.

On August 29, 2018 Dr. Paul Ephron, a family practitioner, examined appellant and released her to return to work on September 1, 2018.

In an August 30, 2018 narrative statement, appellant alleged that she sought medical treatment in the emergency room on August 29, 2018. She noted that the physician recommended x-rays for her shoulder and left thigh. Appellant waited for two hours and was not x-rayed during that time, so she asked to be discharged.

In a September 6, 2018 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of additional medical evidence needed and afforded her 30 days to respond.

OWCP subsequently received a September 6, 2018 form report wherein Dr. Ephron noted appellant's history of slipping and falling at work on August 28, 2018. Dr. Ephron reported that she injured her "left neck, shoulder, and low back areas and left hip area." He found that x-rays demonstrated worsening of preexisting acromioclavicular (AC) joint degenerative disease, but no fracture. Dr. Ephron further found degenerative changes in appellant's left hip. He noted that she had previously undergone left rotator cuff repair. Dr. Ephron reported paresthesias in the left hip and back with normal muscle strength and gait. He provided provisional diagnoses of left shoulder and neck strain and left low back strain.

In a follow-up note dated September 18, 2018, Dr. Ephron noted that appellant continued to have significant pain in the left shoulder and back with radiculopathy into her left leg. He further noted that she had prior surgery to her left shoulder with hardware placement and recommended a magnetic resonance imaging (MRI) scan of the lumbar spine. In a separate note of even date, Dr. Ephron restricted appellant to only working half days with limited use of her left arm and shoulder. He indicated that she would follow up with a private physician and would only see him again if necessary.

In a note dated October 3, 2018, Dr. Roger V. Ostrander, a Board-certified orthopedic surgeon, reported that appellant fell on August 28, 2018. He examined appellant's left shoulder and found that her AC joint was tender to palpation with limited range of motion and loss of muscle

strength. Dr. Ostrander diagnosed possible recurrent rotator cuff tear of the left shoulder and mild left shoulder glenohumeral osteoarthritis.

By decision dated October 9, 2018, OWCP denied appellant's claim finding that the medical evidence of record was insufficient to establish a diagnosed condition in connection with the accepted August 28, 2018 employment incident. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On December 7, 2018 appellant requested reconsideration of the October 9, 2018 decision and submitted additional evidence. She resubmitted Dr. Ostrander's October 3, 2018 note. Appellant also provided an October 22, 2018 report in which he reviewed her October 16, 2018 MRI scan which demonstrated recurrent full-thickness, complete supraspinatus tendon tear with retraction and atrophy, partial tear of the infraspinatus, partial tear of the long head of the biceps with degenerated glenoid labrum, and glenohumeral chondrosis and arthrosis. Dr. Ostrander diagnosed possible recurrent rotator cuff tear of the left shoulder, possible left shoulder partial proximal biceps tendon tear, and mild left shoulder glenohumeral osteoarthritis. He further diagnosed rotator cuff tendinitis.

On November 16, 2018 Jennifer M. Little, a physical therapist, treated appellant's left shoulder.

In November 30, 2018 statement, appellant reported that she had scheduled rotator cuff surgery with Dr. Ostrander on January 17, 2019. She further noted that she was experiencing back pain and that her left thigh continued to be tender with burning and tingling. Appellant provided an additional factual description and timeline of her claimed August 28, 2018 injury, medical treatment, and OWCP's development of her claim. She also provided e-mails and letters from the employing establishment addressing her claim and her requests for aid in establishing her claim. Appellant resubmitted her claim form, her August 30, 2018 statement, and OWCP's development letter. She also provided an incident report regarding the accepted August 28, 2018 employment incident.

In a November 19, 2018 note, Dr. Ostrander diagnosed left shoulder AC joint osteoarthritis, and glenohumeral osteoarthritis, as well as possible left shoulder partial proximal biceps tendon tear, and left shoulder possible recurrent rotator cuff tear. He explained that he was not sure if appellant's rotator cuff was acutely injured, as it was hard to tell if she had a recurrent tear or postoperative changes.

On January 14, 2019 appellant resubmitted her reconsideration request of the October 9, 2018 decision. She also resubmitted Dr. Ephron's September 6 and 18, 2018 notes, a duplicate copy of her November 30, 2018 statement and timeline of events, the August 29, 2018 safety report, her October 16, 2018 left shoulder MRI scan, and her claim form, as well as a copy of a January 2, 2019 letter to her congressman. Appellant also submitted additional physical therapy notes.

On January 17, 2019 Dr. John P. Hammerstein, a Board-certified orthopedic surgeon, performed a left shoulder arthroscopy with extensive debridement, chondroplasty, subacromial

decompression, and distal clavicle excision. He diagnosed moderate glenohumeral arthritis, and AC joint osteoarthritis.

By decision dated March 20, 2019, OWCP modified the October 9, 2018 decision, finding that appellant had established the diagnosis of mild left shoulder glenohumeral osteoarthritis and left shoulder AC joint osteoarthritis. However, it denied the claim finding that the medical evidence of record was insufficient to establish causal relationship between the diagnosed conditions and the accepted August 28, 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]

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 nature of the relationship between the diagnosed condition and the specific employment incident.[8] Neither the mere fact that, a disease or condition manifests itself during a period of employment,

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

nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[9]

In any case where a preexisting condition involving the same part of the body is present and the issue of causal relationship therefore involves aggravation, acceleration, or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.[10]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a condition causally related to the accepted August 28, 2018 employment incident.

In support of her claim, appellant submitted a series of medical reports from Dr. Ostrander noting previous left shoulder rotator cuff tear and surgical repair, as well as diagnosing mild left shoulder glenohumeral osteoarthritis, AC joint osteoarthritis, and rotator cuff tendinitis. Dr. Ostrander did not provide an opinion that her diagnosed conditions were related to her August 28, 2018 employment injury. Instead, he explained that he was unable to discern whether appellant's left shoulder conditions were the result of an acute injury and recurrent tear or postoperative changes due to her previous left shoulder surgery.

Similarly, in his January 17, 2019 operative report, Dr. Hammerstein diagnosed moderate glenohumeral arthritis, and AC joint osteoarthritis, but did not provide an opinion regarding the cause of appellant's diagnosed left shoulder conditions nor did he mention her August 28, 2018 employment incident.

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.[11] Thus, the Board finds that neither Dr. Hammerstein nor Dr. Ostrander offered the necessary medical opinion evidence to meet appellant's burden of proof to establish her left shoulder traumatic injury claim.

Appellant also submitted reports from Dr. Ephron providing provisional diagnoses including left shoulder and neck strain and left low back strain. Dr. Ostrander, in his October 3 and November 19, 2018 reports, also diagnosed several possible rotator cuff injuries including possible recurrent rotator cuff tear of the left shoulder and possible left shoulder partial proximal biceps tendon tear. As these reports do not contain a valid medical diagnosis, but instead possible

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

[10] *M.O.*, Docket No. 18-0229 (issued September 23, 2019); *J.F.*, Docket No. 19-0456 (issued July 12, 2019); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013).

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

or provisional diagnoses which are speculative, the reports are of diminished probative value and, thus, insufficient to establish appellant's claim.[12]

Appellant also submitted a cervical MRI scan. 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.[13]

Additionally, appellant submitted a series of notes signed by a physical therapist. Certain healthcare providers such as physical therapists and social workers are not considered physicians as defined under FECA.[14] Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.[15]

As the record lacks rationalized medical evidence establishing causal relationship between appellant's claimed conditions and the August 28, 2018 accepted employment incident, the Board finds that 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 condition causally related to the accepted August 28, 2018 employment incident.

[12] *M.C.*, Docket No. 19-0744 (issued September 23, 2019); *V.D.*, Docket No. 16-1345 (issued September 27, 2017); *Ricky S. Storms*, 52 ECAB 349 (2001).

[13] *G.S.*, Docket No. 19-0996 (issued September 23, 2019); *N.B.*, Docket No. 19-0221 (issued July 15, 2019).

[14] *See* 5 U.S.C. § 8101(2) (this subsection defines a physician as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law); *E.W.*, Docket No. 16-1729 (issued May 12, 2017) (physical therapists are not considered physicians under FECA); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006). *See also Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (medical opinions, in general, can only be given by a qualified physician). 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).

[15] *M.F.*, Docket No. 17-1973 (issued December 31, 2018); *K.W.*, 59 ECAB 271, 279 (2007).

ORDER

IT IS HEREBY ORDERED THAT the March 20, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 16, 2019
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board