United States Department of Labor
Employees' Compensation Appeals Board

N.C., Appellant	)	
and	)	**Docket No. 19-1191**
	)	**Issued: December 19, 2019**
DEPARTMENT OF HOMELAND SECURITY, TRANSPORTATION SECURITY ADMINISTRATION, Chicago, IL, 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
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On May 7, 2019 appellant, through counsel, filed a timely appeal from an April 4, 2019 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 a right shoulder and neck condition causally related to the accepted June 1, 2018 employment incident.

FACTUAL HISTORY

On June 22, 2018 appellant, then a 32-year-old transportation security officer (screener), filed a traumatic injury claim (Form CA-1) alleging that she sustained a right shoulder and neck condition on June 1, 2018 after K.M., a supervisory transportation security officer (STSO), pulled her right shoulder injuring her neck while she was in the performance of duty. She stated that she was told to report to another checkpoint and when she told K.M. "no" that is when she pulled her right arm hurting her neck and shoulder. Appellant stopped working on the date of injury.

Appellant has two prior accepted claims. She sustained a temporary aggravation of a right shoulder strain and a temporary aggravation of right shoulder impingement on January 24, 2018 when she pulled a bag from the x-ray belt and felt a popping sensation in her right shoulder (File No. xxxxxx950). Appellant also sustained a sprain of her right shoulder and upper arm on August 4, 2010 when she was lifting the seat of a wheelchair while checking the wheelchair at work (File No. xxxxxx622). She was released to work with restrictions under File No. xxxxxx950.

In support of the instant claim, appellant submitted an undated duty status report (Form CA-17) from Dr. G. Ozin Irowa, a chiropractor, who indicated that appellant was still undergoing therapy.

In an attending physician's report (Form CA-20) dated June 30, 2018, Dr. Irowa diagnosed right shoulder pain and right upper pain due to an injury on June 1, 2018 when a supervisor pulled appellant's right arm. He also noted appellant's prior history of right shoulder injury on January 24, 2018. Dr. Irowa checked a box marked "no" indicating that the condition was not caused or aggravated by the employment incident and checked another box marked "no" indicating that appellant had not been advised that she could not return to work.

On June 23, 2018 Dr. Irowa advised that appellant should be held off work until approximately August 13, 2018 due to her June 1, 2018 neck and right shoulder injury.

In a July 31, 2018 development letter, OWCP requested that appellant provide additional factual and medical information in support of her claim, including a detailed factual statement and a report from her attending physician addressing the causal relationship between any diagnosed condition(s) and the claimed June 1, 2018 work incident. It afforded her 30 days to respond to its request for additional evidence.

In response, appellant submitted an August 18, 2018 report from Dr. Irowa who released her to light-duty work on August 13, 2018 with the restriction of lifting approximately five pounds. Dr. Irowa further noted that appellant would continue therapy once a week for her right shoulder.

On August 20, 2018 the employing establishment offered appellant a limited-duty assignment as a transportation security officer (TSO), which appellant accepted on that date.

Appellant subsequently filed a claim for wage-loss compensation (Form CA-7) for the period August 5 to 18, 2018.

By decision dated September 4, 2018, OWCP found that the medical evidence of record was insufficient to establish a diagnosis in connection with the accepted June 1, 2018 employment incident. Thus, it found that appellant failed to establish the medical component of fact of injury.

On September 14, 2018 counsel requested an oral hearing before a hearing representative of OWCP's Branch of Hearings and Review.

Appellant submitted an original case incident report dated June 7, 2018, indicating that she related that on June 1, 2018 her supervisor had instructed her to relocate to another terminal checkpoint and when she informed her that she was not able to work at that post due to light-duty restrictions of her injured right arm/shoulder, the supervisor grabbed her injured arm causing her pain and reaggravating the prior injury.

A telephonic hearing was held before a hearing representative on January 24, 2019. Appellant provided testimony and the hearing representative held the case record open for 30 days for the submission of additional evidence.

Appellant subsequently submitted a report dated February 21, 2019 from Dr. Irowa who indicated that she was seen with complaints of pain in her right shoulder and the right side of her neck due to a June 1, 2018 injury at work. Dr. Irowa reiterated that appellant sustained the injury when her supervisor pulled her previously injured arm and reaggravated her shoulder, causing a neck sprain. He noted that appellant had suffered prior work-related injuries to her right shoulder in 2010 and 2018 and was previously diagnosed with temporary aggravation of right shoulder strain, temporary aggravation of right shoulder impingement, right upper arm myalgia, and cervicalgia. Dr. Irowa diagnosed impingement syndrome and rotator cuff tendinitis in the right shoulder and strain to the right side of the neck and opined that appellant had reaggravated her right shoulder and cervical spine by the assault from her supervisor.

By decision dated April 4, 2019, OWCP's hearing representative affirmed, as modified, the prior decision, finding that appellant had established a medical diagnosis in connection with the accepted June 1, 2018 employment incident. He determined, however, that the medical evidence of record was insufficient to establish that her diagnosed conditions were causally related to the accepted work incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence, 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, that an injury was sustained 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

[3] *Id.*

injury.[4] These are the essential elements of every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[5]

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.[6] Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.[7]

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.[8] 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.[9] 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).[10]

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.[11]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a right shoulder and neck condition causally related to the accepted June 1, 2018 employment incident.

The record contains reports from Dr. Irowa, appellant's treating chiropractor. Under FECA the term physician includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as

[4] *K.V.*, Docket No. 18-0947 (issued March 4, 2019); *M.E.*, Docket No. 18-1135 (issued January 4, 2019); *Kathryn Haggerty*, 45 ECAB 383, 388 (1994).

[5] *K.V.* and *M.E.*, *id.*; *Elaine Pendleton*, 40 ECAB 1143 (1989).

[6] *G.C.*, Docket No. 18-0506 (issued August 15, 2018).

[7] *Id.*

[8] *T.H.*, 59 ECAB 388, 393 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

[9] *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

[10] *Id.*; *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[11] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013). *See R.D.*, Docket No. 18-1551 (issued March 1, 2019).

demonstrated by x-ray to exist.[12] If the diagnosis of a subluxation as demonstrated by x-ray is not established, the chiropractor is not a physician as defined under FECA and his or her report is of no probative value to the medical issue presented.[13] As Dr. Irowa did not diagnose a subluxation in this case, he is not considered a physician under FECA and his opinions are of no probative medical value.[14]

As appellant has not submitted rationalized medical evidence sufficient to establish an injury causally related to the accepted employment incident, 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 right shoulder and neck condition causally related to the accepted June 1, 2018 employment incident.

[12] Section 8101(3) of FECA, which defines services and supplies, limits reimbursable chiropractic services to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulation by the Secretary. 5 U.S.C. § 8101(3). *See K.J.*, Docket No. 18-1520 (issued June 13, 2019).

[13] *Id.*

[14] *T.T.*, Docket No. 18-0838 (issued September 19, 2019).

ORDER

IT IS HEREBY ORDERED THAT the April 4, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 19, 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