United States Department of Labor
Employees' Compensation Appeals Board

M.G., Appellant	)	
and	)	**Docket No. 19-1199**
	)	**Issued: December 19, 2019**
U.S. POSTAL SERVICE, INTERNATIONAL SERVICE CENTER, Chicago, IL, 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
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On May 9, 2019 appellant filed a timely appeal from a February 15, 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]

ISSUE

The issue is whether appellant has met his burden of proof to establish upper extremity conditions causally related to the accepted August 2, 2018 employment incident.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that following the February 15, 2019 decision, OWCP received additional evidence. 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.*

FACTUAL HISTORY

On August 3, 2018 appellant, then a 41-year-old mail processing clerk, filed a traumatic injury claim (Form CA-1) alleging that on August 2, 2018, he sustained an injury to his lower arms and symptoms of tingling when using an automated parcel and bundle sorter (APBS) machine while in the performance of duty. On the reverse side of the claim form, a supervisor checked a box marked "yes" indicating that her knowledge of the facts about the claimed injury did not agree with statements of appellant or witnesses. She explained that appellant "was upset" and decided to file a claim. Appellant stopped work on August 3, 2018.

In a development letter dated August 20, 2018, OWCP informed appellant that he had not submitted sufficient factual or medical evidence to establish his claim. It advised him of the type of evidence needed and provided a questionnaire for his completion. OWCP afforded appellant 30 days to respond.

On August 16, 2018 Dr. Gary A. Kronen, a Board-certified hand surgeon, examined appellant for complaints of neck, left elbow, and wrist pain. He noted that appellant had reported an injury approximately three weeks prior to the left upper extremity. Dr. Kronen reviewed x-rays of the left hand and wrist, which revealed no evidence of bone pathology, and a magnetic resonance imaging (MRI) scan of the cervical spine, which demonstrated significant disc bulging. On examination of the bilateral upper extremities, he noted tenderness at the biceps insertion and tenderness overlying the first dorsal compartment with a positive Finkelstein's test. Dr. Kronen diagnosed cervical disc disease, a left biceps tear, and left de Quervain's tendinitis. He administered a corticosteroid injection to the wrist and provided appellant a splint.

In a report dated August 20, 2018, Dr. Gurpal Pannu, who specializes in orthopedic surgery, noted that appellant presented with an approximate three-month history of discomfort in the bilateral upper extremities, worse in the left arm. Appellant stated that he worked as a clerk, which involved lifting his left arm to grab objects throughout the day, aggravating symptoms of his left upper extremity. An MRI scan demonstrated diffuse disc desiccation from C2 to C7 with mild bulging, and patent central canal and neural foramina at all levels with the exception of C5-6, which had mild neural foraminal narrowing on the right and left secondary to hypertrophy and disc bulging. On examination of the bilateral upper extremities, Dr. Pannu noted full motor strength, intact sensation to light touch, a negative Hoffmann's test, and 2+ brachioradialis and biceps reflexes. He recommended that appellant stay off work until further notice and undergo physical therapy treatment.

In a note dated August 20, 2018, Dr. Anton J. Fakhouri, a Board-certified orthopedic surgeon, prescribed physical therapy for a diagnosis of cervical radiculopathy.

In a medical excuse note dated August 16, 2018, Dr. Kronen stated that appellant was unable to work at that time due to pain management.

In an August 2, 2018 statement, appellant indicated that he was told that day by a supervisor to work on an APBS machine. He responded that he had used the machine the previous day, and stated that he would work in another area. The supervisor told him that he had to work on the APBS machine. Appellant proceeded to use the machine and scanned pieces of mail until his arms

began to feel tight, after which he stopped immediately. He stated that he felt his arms had been overworked the past year from constantly keying mail.

In an undated attending physician's report received on September 20, 2018, Dr. Pannu diagnosed cervical radiculopathy. He checked a box marked "yes" indicating that he believed appellant's condition was caused or aggravated by employment activity, explaining that appellant was unable to carry, push, or pull. Dr. Pannu noted that appellant was not advised to return to work.

By decision dated October 1, 2018, OWCP denied appellant's claim, finding that he had not submitted sufficient evidence to meet his burden of proof to establish causal relationship between his diagnosed conditions and the accepted August 2, 2018 employment incident.

In a report dated September 14, 2018, Dr. Pannu noted that appellant attributed his left upper extremity conditions to reaching many times with his left arm to grab objects at work, which caused irritation. On examination, he observed full strength of the bilateral upper extremities, intact sensation to light touch, and no upper motor neuron signs. Dr. Pannu recommended that appellant complete physical therapy and return in six to eight weeks. In an accompanying work status update of the same date, he recommended that appellant return to modified duty on September 24, 2018 with restrictions of no overhead work, use of tools/equipment, or use of vibrating tool, and occasional lifting, carrying, pulling, and pushing of 5 to 10 pounds. Dr. Pannu also recommended that appellant be allowed 15-minute breaks every 3 hours.

Appellant submitted notes signed by physical therapists dated August 31 through October 12, 2018.

On November 9, 2018 appellant requested reconsideration.

OWCP received progress notes dated August 2 through 10, 2018, containing illegible signatures and partially illegible content, detailing appellant's continued treatment for a left arm condition.

By decision dated February 15, 2019, OWCP denied modification of the prior decision.

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 of FECA, 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.[3] 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.[4]

To determine if an employee 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.[5] The second component is whether the employment incident caused a personal injury.[6]

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue. A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment incident must be based on a complete factual and medical background. Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale that explains the nature of the relationship between the diagnosed condition and appellant's employment incident.[7]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish upper extremity conditions causally related to the accepted August 2, 2018 employment incident.

In an undated attending physician's report received on September 20, 2018, Dr. Pannu diagnosed cervical radiculopathy and checked a box marked "yes" indicating that he believed appellant's conditions were caused or aggravated by employment activity, explaining that appellant was unable to carry, push, or pull. The Board has held that a report that addresses causal relationship with a checkmark, without medical rationale explaining how the employment incident caused or aggravated the diagnosed condition, is of diminished probative value and insufficient to establish causal relationship.[8] Dr. Pannu did not provide rationale for his opinion, but rather listed physical restrictions related to appellant's diagnosed condition. As such, the attending physician's report of Dr. Pannu is insufficient to satisfy appellant's burden of proof with respect to causal relationship.

On August 16, 2018 Dr. Kronen noted that appellant reported an injury approximately three weeks prior to the left upper extremity. He examined appellant, and diagnosed cervical disc

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

[4] *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).

[5] *Elaine Pendleton*, 40 ECAB 1143 (1989).

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

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

[8] *See S.G.*, Docket No. 18-0209 (issued October 4, 2018); *R.A.*, Docket No. 17-1472 (issued December 6, 2017); *Sedi L. Graham*, 57 ECAB 494 (2006); *Deborah L. Beatty*, 54 ECAB 340 (2003).

disease, a left biceps tear, and left de Quervain's tendinitis. On August 20, 2018 Dr. Pannu noted that appellant presented with an approximate three-month history of discomfort in the bilateral upper extremities, worse in the left arm, and that he worked as a clerk, which involved lifting his left arm to grab objects throughout the day, aggravating symptoms of his left upper extremity condition. In a report dated September 14, 2018, he noted that appellant attributed his left upper extremity conditions to reaching many times with his left arm to grab objects at work, which caused irritation. 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.[9] Drs. Kronen and Pannu did not provide an opinion on causal relationship, but rather repeated the history of injury as related to them by appellant. Such generalized statements do not establish causal relationship because they merely repeat appellant's allegations and are unsupported by adequate medical rationale explaining how the incident of August 2, 2018 actually caused the diagnosed conditions.[10]

In a medical excuse note dated August 16, 2018, Dr. Kronen stated that appellant was unable to work at that time. In a note dated August 20, 2018, Dr. Fakhouri prescribed physical therapy treatment for a diagnosis of cervical radiculopathy. In a work status update of September 14, 2018, Dr. Pannu recommended that appellant return to modified-duty work on September 24, 2018 with restrictions. As noted above, 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] These documents, which do not contain opinions on causal relationship between appellant's upper extremity conditions and the incident of August 2, 2018, are therefore insufficient to establish appellant's claim.

OWCP received progress notes dated August 2 through 10, 2018 with illegible signatures. Reports that are unsigned or that bear illegible signatures cannot be considered as probative medical evidence because they lack proper identification.[12]

OWCP also received notes signed by physical therapists dated from August 31 through October 12, 2018. The Board has held that medical reports signed solely by a physical therapist are of no probative value, as a physical therapist is not considered a physician as defined under FECA, and therefore, is not competent to provide a medical opinion.[13] Consequently, the notes signed by physical therapists are of no probative value in establishing appellant's claim.

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

[10] *See J.B.*, Docket No. 18-1006 (issued May 3, 2019); *K.W.*, 59 ECAB 271, 279 (2007).

[11] *Supra* note 9.

[12] *T.C.*, Docket No. 18-1351 (issued May 9, 2019); *Thomas L. Agee*, 56 ECAB 465 (2005); *Richard F. Williams*, 55 ECAB 343 (2004).

[13] *L.T.*, Docket No. 19-0145 (issued June 3, 2019); *T.H.*, Docket No. 18-1736 (issued March 13, 2019); *see David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses and physical therapists are not competent to render a medical opinion under FECA); 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). *See also M.O.*, Docket No. 18-0229 (issued September 23, 2019) (physical therapists are not considered physicians under FECA).

As such, the record lacks rationalized medical evidence establishing a causal relationship between the accepted August 2, 2018 employment incident and appellant's diagnosed upper extremity conditions. Thus, the Board finds that appellant has not met his 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 his burden of proof to establish upper extremity conditions causally related to the accepted August 2, 2018 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the February 15, 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

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board