United States Department of Labor
Employees' Compensation Appeals Board

T.M., Appellant	)	
	)	**Docket No. 19-1283**
and	)	**Issued: December 2, 2019**
	)	
DEPARTMENT OF JUSTICE, BUREAU OF PRISONS, METROPOLITAN CORRECTIONAL CENTER, 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:
CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On May 21, 2019 appellant, through counsel, filed a timely appeal from an April 24, 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 elbow condition causally related to the accepted May 8, 2018 employment incident.

FACTUAL HISTORY

On June 4, 2018 appellant, then a 50-year-old correctional officer, filed a traumatic injury claim (Form CA-1) alleging that, on May 8, 2018, she sustained an elbow contusion when she hit her arm on a concrete pillar when conducting a count on a unit while in the performance of duty. She also noted that she reinjured her arm while in the performance of duty on May 22, 2018 when she hit her arm on the corner of an elevator as she collected trays in the sally port.[3]

Appellant submitted a June 2, 2018 progress note from Dr. Jenna K. Nikolaides, a physician specializing in emergency medicine, who indicated that appellant had been seen in the emergency department that day. Dr. Nikolaides diagnosed elbow contusion.

Appellant also submitted an undated attending physician's report (Form CA-20) from Dr. Teofilo S. Vinluan, an internist. Dr. Vinluan noted that he had examined appellant on June 8, 2018. He provided a history of injury that she hit her right elbow on a pillar. Dr. Vinluan also provided an illegible diagnosis. He checked a box marked "yes" indicating that appellant's condition was caused or aggravated by the described employment activity. Dr. Vinluan advised that she could resume her regular work as of June 12, 2018. In a June 8, 2018 approval to return to work form, he reiterated that appellant could return to work on the day of his examination.

In a June 8, 2018 order form, Dr. Asrar A. Sheikh, a Board-certified internist, diagnosed right elbow injury. He requested a magnetic resonance imaging (MRI) scan.

Dr. Ian Kang, appellant's primary care physician, noted in a June 28, 2018 letter that, appellant reported a history that she sustained a right elbow injury at work. He indicated that his examination and imaging results supported evidence of a partial tendon tear. Given the extent of this injury, Dr. Kang advised that appellant was unable to safely perform her duties. He requested that she be excused from work for up to three weeks while she received treatment from an orthopedic specialist.

A July 13, 2018 medical note with an illegible signature indicated that appellant was seen on that date. The note indicated that she could return to work with restrictions on the day of her examination.

Appellant filed wage-loss compensation claims (Form CA-7) for leave buy back for the period May 27 through July 7, 2018.

OWCP, in an October 12, 2018 development letter, informed appellant that her claim initially appeared to be a minor injury that resulted in minimal or no lost time from work and that continuation of pay was not controverted by the employing establishment, and thus limited

[3] The Board notes that the alleged May 22, 2018 employment incident is not presently before the Board.

expenses had therefore been authorized. However, a formal decision was now required because a claim for wage-loss compensation had been received. OWCP requested that appellant submit a medical report from her attending physician including a diagnosis, history of injury, examination findings, and a rationalized opinion explaining how the reported employment incident caused or aggravated her medical condition. It also requested that she respond to an enclosed questionnaire by providing a more detailed description of the alleged incident, the immediate effects of her employment injury, and what she had done immediately thereafter. OWCP afforded appellant 30 days to provide the requested information.

On November 5, 2018 appellant responded to OWCP's questionnaire and reiterated the history of both the claimed May 8 and 22, 2018 incidents noted above. She noted that she was initially treated in an emergency room on June 2, 2018. Appellant was subsequently evaluated for a follow-up examination by her physician who ordered a right elbow MRI scan that showed a torn tendon in her elbow.

Appellant submitted a November 5, 2018 progress note from Dr. George M. Bridgeforth, a physician Board-certified in internal and occupational medicine. Dr. Bridgeforth noted appellant's complaint of chronic right elbow pain since May 2018. He further noted that she reported that she hit her right arm against an elevator. Dr. Bridgeforth also noted that appellant reported that in "early June 2018" she hit her right arm against a concrete pillar as she turned while performing a cell count of inmates. He discussed examination findings and diagnosed right lateral epicondylitis with a partial tear of the right lateral collateral ligament.

Appellant also submitted a November 5, 2018 progress note from Melany Benemerito, a registered nurse, who indicated that appellant was seen for a follow-up examination of her right lateral epicondylitis.

OWCP, by decision dated November 26, 2018, accepted that the May 8, 2018 employment incident occurred as alleged,[4] that a medical condition had been diagnosed, and that the employment incident was within the performance of duty. However, it denied appellant's traumatic injury claim because the medical evidence of record was insufficient to establish that an injury or medical condition was causally related to the accepted employment incident.

On December 5, 2018 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

A telephonic hearing was held on March 14, 2019. Appellant provided testimony and the hearing representative held the case record open for the submission of additional evidence. OWCP did not receive additional evidence.

By decision dated April 24, 2019, an OWCP hearing representative affirmed the November 26, 2018 decision.

[4] In its November 26, 2018 decision, OWCP recommended that appellant file a separate traumatic injury claim for her alleged May 22, 2018 right elbow work injury.

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,[5] 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.[6] 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.[7]

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 and place, and in the manner alleged. The second component is whether the employment incident caused a personal injury.[8]

The evidence required to establish causal relationship is rationalized medical opinion evidence. 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 factors identified by the claimant.[9] The belief of the claimant that a condition was caused or aggravated by the employment is insufficient to establish causal relationship.[10]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a right elbow condition causally related to the accepted May 8, 2018 employment incident.

In an undated Form CA-20 report, Dr. Vinluan noted a history that appellant hit her right elbow on a pillar. He provided an illegible diagnosis and checked a box marked "yes" indicating that this condition was caused or aggravated by the described employment incident. The Board

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

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

[7] *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).

[8] *John J. Carlone*, 41 ECAB 354 (1989); *see* 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(ee), 10.5(q) (traumatic injury and occupational disease defined, respectively).

[9] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 45 ECAB 345(1989).

[10] *See M.J.*, Docket No. 17-0725 (issued May 17, 2018); *see also Lee R. Haywood*, 48 ECAB 145 (1996); *Kathryn Haggerty*, 45 ECAB 383, 389 (1994)

has held that a physician's opinion on causal relationship which consists of checking "yes" to a form question, without explanation or rationale, is of diminished probative value and is insufficient to establish a claim.[11] In his June 8, 2018 return to work form, Dr. Vinluan did not provide a history of injury, a firm diagnosis of a particular medical condition, or a rationalized opinion regarding causal relationship.[12] A medical opinion should reflect a correct history and offer a medically sound explanation by the physician of how the specific employment incident physiologically caused or aggravated the diagnosed conditions.[13] For these reasons, the Board finds that Dr. Vinluan's reports are insufficient to establish appellant's claim.

Dr. Kang's June 28, 2018 report noted that appellant related a history that she sustained a work-related right elbow injury. He diagnosed partial tendon tear of the right elbow and advised that she was totally disabled from work for three weeks. Dr. Kang did not provide his own opinion on causal relationship. The Board has held that a physician's opinion must be independent from a claimant's belief regarding causal relationship.[14] The Board finds, therefore, that his report is insufficient to establish appellant's claim.

Dr. Bridgeforth, in a November 5, 2018 progress note, diagnosed right lateral epicondylitis with a partial tear of the right lateral collateral ligament. The Board finds, however, that Dr. Bridgeforth did not provide an opinion on causal relationship. 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.[15] These reports, therefore, are insufficient to establish appellant's claim.

Dr. Nikolaides' June 2, 2018 progress note, which diagnosed elbow contusion, is of no probative value on the issue of causal relationship. She did not offer an opinion on causal relationship between the accepted May 8, 2018 employment incident and appellant's right elbow condition. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.[16]

Dr. Sheikh's June 8, 2018 order form diagnosed right elbow injury, but he did not provide a history of injury, a firm diagnosis of a particular medical condition, or a rationalized opinion regarding causal relationship.[17] Thus, the Board finds that this report from Dr. Sheikh is insufficient to establish appellant's claim.

---

[11] *See J.R.*, Docket No. 18-1679 (issued May 6, 2019); *M.C.*, Docket No. 18-0361 (issued August 15, 2018); *Calvin E. King, Jr.*, 51 ECAB 394 (2000); *see also Frederick E. Howard, Jr.*, 41 ECAB 843 (1990).

[12] *I.C.*, Docket No. 19-0804 (issued August 23, 2019); *R.C.*, Docket No. 19-0376 (issued July 15, 2019); *C.B.*, Docket No. 18-0071 (issued May 13, 2019).

[13] *See J.M.*, Docket No. 17-1002 (issued August 22, 2017).

[14] *See D.B.*, Docket No. 18-1359 (issued May 14, 2019); *A.M.*, Docket No. 10-0205 (issued October 5, 2010).

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

[16] *Id.*

[17] *Supra* note 12.

The November 5, 2018 progress note from Ms. Benemerito, a registered nurse, indicated that appellant had right lateral epicondylitis. This note, however, is of no probative value because nurses and nurse practitioners are not considered physicians as defined under FECA.[18]

The July 13, 2018 return to work form from a provider with an illegible signature addressed appellant's work capacity. The Board has held that unsigned reports and reports that bear illegible signatures cannot be considered probative medical evidence because they lack proper identification.[19] Thus, this form report is of no probative value and insufficient to establish appellant's claim.

As appellant has not submitted rationalized medical evidence to establish that her right elbow condition was causally related to the accepted May 8, 2018 employment incident, the Board finds that she has not met her burden of proof to establish her claim.

On appeal counsel contends that OWCP's April 24, 2019 decision is contrary to fact and law. For the reasons set forth above, the Board finds that appellant 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 elbow condition causally related to the accepted May 8, 2018 employment incident.

[18] *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) (physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law); *G.N.*, Docket No. 19-0184 (issued May 29, 2019); *R.C.*, Docket No. 17-1314 (issued November 3, 2017).

[19] *See C.J.*, Docket No. 18-0298 (issued October 3, 2018); *R.M.*, 59 ECAB 690 (2008); *D.D.*, 57 ECAB 734 (2006); *Richard J. Charot*, 43 ECAB 357 (1991).

ORDER

IT IS HEREBY ORDERED THAT the April 24, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 2, 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