United States Department of Labor
Employees' Compensation Appeals Board

N.R., Appellant	)	
	)	
and	)	**Docket No. 19-1366**
	)	**Issued: December 6, 2019**
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Louisville, KY, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On June 8, 2019 appellant filed a timely appeal from a December 19, 2018 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, following the issuance of the December 19, 2018 merit 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.*

ISSUE

The issue is whether appellant has met her burden of proof to establish a left elbow condition causally related to the accepted November 2, 2018 employment incident.

FACTUAL HISTORY

On November 5, 2018 appellant, then a 35-year-old mail processing clerk, filed a traumatic injury claim (Form CA-1) alleging that on November 2, 2018 she experienced soreness and tightness in her left elbow while in the performance of duty. It was noted on the form that the cause of her injury was unknown. On the reverse side of the claim form the employing establishment challenged the claim, contending that the cause of appellant's claimed injury was unknown and she had not reported the injury for three days nor stopped work when she noticed the injury.

In a November 5, 2018 narrative statement, appellant described the circumstances surrounding the claimed November 2, 2018 employment incident. She noted that after returning from lunch at 9:00 p.m. her left elbow began to "hurt and tighten up. Appellant further noted that as she continued to work through the night, her elbow stiffened and she could no longer move it. She related that she used her right arm to move packages throughout the rest of her shift.

OWCP received an attending physician's report (Form CA-20) and excuse from work note dated November 5, 2018 from Kristen Wheeler, a certified physician assistant. Ms. Wheeler diagnosed left elbow effusion and pain and opined that appellant's conditions were caused or aggravated by moving boxes/mail at work on November 2, 2018. She advised that appellant could return to work on November 7, 2018, after being cleared by a physician.[3]

OWCP also received a properly executed authorization for examination and/or treatment form (Form CA-16) authorizing appellant's medical treatment for her left elbow.

In a development letter dated November 9, 2018, OWCP informed appellant of the deficiencies of her claim and requested additional medical evidence, including a well-rationalized medical report from a physician which provided an opinion as to how the alleged incident caused or aggravated a diagnosed medical condition. It afforded her 30 days to submit the necessary evidence.

OWCP thereafter received a form report and a medical report, both dated November 6, 2018, from Melissa Edds, a certified physician assistant. Ms. Edds diagnosed left lateral epicondylitis and released appellant to return to work with restrictions on November 7, 2018.

OWCP also received hospital records, including a November 5, 2018 medical report from Dr. James Chung, a Board-certified internist. Dr. Chung noted a history that appellant had worked at the employing establishment and that she had presented with left elbow pain with swelling down

[3] On November 7, 2018 the employing establishment offered appellant a full-time modified position which she accepted on that date.

the left forearm into the hand which started the previous Friday. He discussed examination findings and diagnosed effusion of the left elbow joint and pain/swelling in the left elbow.

In a November 15, 2018 left elbow x-ray report, Dr. Todd Blodgett, a Board-certified diagnostic radiologist, provided an impression of moderate-size joint effusion without a clear fracture. He recommended further evaluation by computerized tomography scan to determine whether appellant had an occult fracture.

Dr. Thomas Loeb, a Board-certified orthopedic surgeon, noted in a November 21, 2018 report that appellant was last seen by Ms. Edds approximately two weeks prior and was diagnosed with left elbow lateral epicondylitis and was placed in a tennis elbow cuff. He reported findings on physical examination of the left elbow and also provided an assessment of lateral epicondylitis. Dr. Loeb recommended that appellant continue to wear the tennis elbow cuff.

By decision dated December 19, 2018, OWCP accepted that the November 2, 2018 employment incident occurred in the performance of duty as alleged. However, it denied appellant's traumatic injury claim finding that the medical evidence of record was insufficient to establish that her medical condition was causally related to the accepted employment incident. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

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,[4] 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.[5] 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.[6]

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. The second component is whether the employment incident caused a personal injury.[7]

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

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

[6] *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).

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

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.[8] The belief of the claimant that a condition was caused or aggravated by the employment is insufficient to establish causal relationship.[9]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a left elbow condition causally related to the accepted November 2, 2018 employment incident.

In a report dated November 5, 2018, Dr. Chung noted appellant's history of injury, discussed examination findings, and diagnosed effusion of the left elbow joint and pain/swelling in the left elbow. However, he did not offer a rationalized medical opinion indicating that her left elbow conditions were causally related to the November 2, 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.[10] This report, therefore, is insufficient to establish appellant's claim.

Similarly, Dr. Loeb in his November 21, 2018 report diagnosed left elbow lateral epicondylitis, but he did not provide an opinion addressing causal relationship. His report is therefore of no probative value on causal relationship.[11]

Appellant also submitted Dr. Blodgett's November 15, 2018 left elbow x-ray report in support of her claim. The Board has held that diagnostic studies lack probative value as they do not address whether the employment incident caused a diagnosed condition.[12] Such reports are therefore insufficient to establish appellant's claim.

The reports from Ms. Wheeler and Ms. Edds, physician assistants, have no probative medical value on the issue of causal relationship as physician assistants are not considered physicians as defined under FECA.[13] Consequently, the medical findings and/or opinions of a

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

[9] *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).

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

[11] *Id*.

[12] *B.C.*, Docket No. 18-1735 (issued April 23, 2019); *J.S.*, Docket No. 17-1039 (issued October 6, 2017).

[13] 5 U.S.C. § 8101(2). *See also B.K.*, Docket No. 19-0829 (issued September 25, 2019); *T.C.*, Docket No. 19-0227 (issued July 11, 2019); *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (Under FECA the term physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by the applicable state law). Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013).

physician assistant are of no probative value for purposes of establishing entitlement to compensation benefits.[14]

As there is no well-reasoned medical opinion establishing appellant's claim for compensation the Board finds that she has not met her burden of proof.[15]

On appeal appellant contends that Dr. Loeb's reports establish her claim for a work-related left elbow condition because he would not have completed the workers' compensation documentation if he did not believe her condition was work related. However, as explained above, Dr. Loeb did not provide an opinion on causal relationship supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and accepted November 2, 2018 employment incident. Without a rationalized medical report submitted by appellant, she has not met her burden of proof to establish her claim.

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 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 left elbow condition causally related to the accepted November 2, 2018 employment incident.[16]

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

[15] *D.N.*, Docket No. 19-0070 (issued May 10, 2019); *R.B.*, Docket No. 18-1327 (issued December 31, 2018).

[16] The record contains a Form CA-16 signed by an employing establishment official. When the employing establishment properly executes a Form CA-16 which authorizes medical treatment as a result of an employee's claim for an employment-related injury, the Form CA-16 creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination/treatment regardless of the action taken on the claim. *C.W.*, Docket No. 17-1293 (issued February 12, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003). The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP. *See* 20 C.F.R. § 10.300(c).

ORDER

IT IS HEREBY ORDERED THAT the December 19, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 6, 2019
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

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

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