

**United States Department of Labor
Employees' Compensation Appeals Board**

J.M., Appellant)
and) Docket No. 19-0300
DEFENSE COMMISSARY AGENCY, JOINT)
BASE LEWIS-McCHORD, WA, Employer)
Issued: July 5, 2019

)

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 November 20, 2018 appellant filed a timely appeal from an October 29, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has met her burden of proof to establish that her right elbow conditions were causally related to the accepted May 20, 2018 employment incident.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On June 8, 2018 appellant, then a 39-year-old sales store checker, filed a traumatic injury claim (Form CA-1) alleging that on May 20, 2018 she injured her right arm and hand due to continuously scanning groceries in the performance of duty.

In duty status reports (Form CA-17) dated June 5, 19, and 28, 2018, and an attending physician's report (Form CA-20) dated June 5, 2018, Dr. Mark Mariani, a Board-certified family practitioner, diagnosed right elbow tendinitis and right lateral epicondylitis. He noted that appellant was injured, while scanning groceries, and that she was able to resume modified duty with restrictions. In his June 5, 2018 attending physician's report, Dr. Mariani checked the box marked "yes" when asked whether he believed appellant's conditions were caused or aggravated by her May 20, 2018 employment activities.

In reports dated June 5, 12, 19, and 28, 2018, Daniel L. Stamper, a physician assistant, also diagnosed right elbow lateral epicondylitis. In these reports, he noted that her mechanism of injury was scanning grocery items at work. In his June 5, 2018 report, Mr. Stamper referred appellant for physical therapy. In his June 28, 2018 report, he indicated that appellant's condition was improving.

In support of her claim, appellant also submitted physical therapy notes dated June 6, 12, 14, 19, 21, 26, and 28, and July 3 and 5, 2018.

In a development letter dated August 16, 2018, OWCP informed appellant that it initially, paid a limited amount of medical expenses in her claim as it appeared to be for a minor injury that resulted in minimal or no lost time from work. However, appellant's claim was now being reopened. OWCP advised appellant that the evidence submitted was insufficient to establish her claim. It provided a factual questionnaire for her completion and requested medical evidence in support of her claim. OWCP afforded appellant 30 days to submit the necessary evidence.

In response, appellant resubmitted Mr. Stamper's June 5, 12, 19, and 28, 2018 reports.

OWCP also received a Form CA-17 dated June 12, 2018, wherein Dr. Mariani diagnosed right elbow tendinitis and indicated that appellant was able to resume modified duty with restrictions. Appellant also resubmitted Dr. Mariani's June 5, 2018 completed Form CA-20, as well as his June 28, 2018 Form CA-17.

Appellant completed the questionnaire on August 24, 2018 and related that on the date of injury she had worked her full shift without a break. She related that she could not grip without feeling numbness, pain, soreness, and tingling along her arm and hand.

By decision dated October 29, 2018, OWCP denied appellant's traumatic injury claim, finding that the evidence submitted was insufficient to establish that her medical conditions were causally related to the accepted May 20, 2018 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA² 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

To establish causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence supporting such causal relationship.⁸ Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical evidence.⁹ The opinion of the physician must be based on a complete factual and medical background of the claimant, 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 employee.¹⁰ Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was

² *Id.*

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. Elyett*, 41 ECAB 992 (1990).

⁶ *Elaine Pendleton*, 40 ECAB 1143 (1989).

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

⁸ *J.L.*, Docket No. 18-0698 (issued November 5, 2018); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

⁹ *L.D.*, Docket No. 17-1581 (issued January 23, 2018); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

¹⁰ *L.D.*, *id.*; see also *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.¹¹

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish that her right elbow conditions were causally related to the accepted May 20, 2018 employment incident.

Appellant submitted a number of form reports dated June 5 to 28, 2018 from Dr. Mariani. Dr. Mariani diagnosed right elbow tendinitis and right lateral epicondylitis, but he offered no opinion regarding 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.¹² These reports are, therefore, insufficient to establish appellant's claim.

In his June 5, 2018 attending physician's report, Dr. Mariani checked the box marked "yes" when asked whether he believed appellant's conditions were caused or aggravated by her employment activities. However, the Board has held that an opinion consisting only of a checkmark notation supporting causation, without supporting medical rationale, is of limited probative value and insufficient to establish causal relationship.¹³ This report is, therefore, also insufficient to establish appellant's claim.

OWCP also received a series of medical reports dated June 5, 12, 19, and 28, 2018 from Mr. Stamper, a physician assistant, and a number of physical therapy reports. These reports do not constitute competent medical evidence because physician assistants and physical therapists are not considered "physicians" as defined under FECA.¹⁴ Therefore, their reports will be considered medical evidence only if countersigned by a qualified physician.¹⁵ As these reports were not countersigned by a qualified physician, this evidence is insufficient to meet appellant's burden of proof.¹⁶

¹¹ *T.H.*, Docket No. 18-1736 (issued March 13, 2019); *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

¹² *D.B.*, Docket No. 18-1359 (issued May 14, 2019); *K.K.*, Docket No. 18-1209 (issued March 7, 2019).

¹³ *J.R.*, Docket No. 18-1609 (issued March 7, 2019); see *K.R.*, Docket No. 18-1388 (issued January 9, 2019).

¹⁴ *G.S.*, Docket No. 18-1696 (issued March 26, 2019); see *M.M.*, Docket No. 17-1641 (issued February 15, 2018); *K.J.*, Docket No. 16-1805 (issued February 23, 2018); *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).

¹⁵ *L.T.*, Docket No. 18-1603 (issued February 21, 2019) (a report from a physician assistant must be countersigned by a physician to be of probative medical value); *P.G.*, Docket No. 18-0524 (issued April 18, 2019) (a report from a physical therapist must be countersigned by a physician to be of probative medical value).

¹⁶ *Id.*

As appellant has not submitted rationalized medical evidence to establish that her right elbow conditions were causally related to the accepted May 20, 2018 employment incident, the Board finds that 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(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 that her right elbow conditions were causally related to the accepted May 20, 2018 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the October 29, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 5, 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