

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

C.S., Appellant)	
)	
and)	Docket No. 19-0401
)	Issued: July 23, 2019
U.S. POSTAL SERVICE, POST OFFICE,)	
Pontiac, MI, Employer)	
)	

Appearances:
Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On December 13, 2018 appellant, through counsel, filed a timely appeal from an October 16, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (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 condition causally related to the accepted May 3, 2017 employment incident.

FACTUAL HISTORY

On July 3, 2017 appellant, then a 29-year-old mail processing clerk, filed a traumatic injury claim (Form CA-1) alleging that she sustained a right shoulder/cuff injury on May 3, 2017 due to overhead lifting and pushing while in the performance of duty. She stopped work on May 3 and returned to work on June 25, 2017.

In a May 3, 2017 return to work/disability slip, Dr. Patrycia Czesnowski, a Board-certified family practitioner, placed appellant on work restrictions including no right arm work for the next three weeks.

In a May 3, 2017 statement, appellant explained that she was experiencing numbness, tingling, and sharp pains in the entire side of her right arm and shoulder. She indicated that Dr. Czesnowski diagnosed “a rotator cuff injury/right shoulder pain due to constant pushing and overhead lifting movements at work.”

Dr. Czesnowski completed a May 9, 2017 request for light duty and provided restrictions for the right arm.

On July 3, 2017 appellant’s supervisor noted that appellant had arrived at work on May 3, 2017 with her arm in a sling. She indicated that, when she questioned appellant if her injury occurred on the job, appellant replied “no” and indicated that she could not recall when the injury occurred.

In a July 6, 2017 treatment note, Dr. Czesnowski related that appellant had been her patient since July 28, 2016. She noted that appellant was diagnosed on May 3, 2017 with right shoulder pain/cuff injury which was work related. Dr. Czesnowski indicated that appellant could sustain further injury if she continued work. She recommended a return to work on July 7, 2017 with no pushing, pulling, or overhead lifting of more than 10 pounds.

OWCP also received July 17, 2017 emergency room treatment notes from Dr. Brian Tweddle, Board-certified in emergency medicine. Dr. Tweddle indicated that appellant sought treatment for a right rotator cuff injury and right shoulder pain from an injury on May 3, 2017.

In a development letter dated August 14, 2017, OWCP informed appellant that additional evidence was needed in support of her claim. It advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. OWCP also asked appellant to

clarify whether she was claiming a traumatic injury or occupational disease. It afforded her 30 days to provide the requested evidence.

OWCP received May 3 and 6, June 27, July 6, 17, and 25, and August 22, 2017 treatment notes from Dr. Czesnowski, in which she reiterated appellant's diagnosis and work restrictions.

A July 13, 2017 magnetic resonance imaging (MRI) scan read by Dr. Jeffrey S. Mitchinson, a Board-certified diagnostic radiologist, revealed multiple findings regarding appellant's right shoulder, including degeneration, ossification, an os acromiale, tears and tendinitis of the rotator cuff, and mild bursitis.

In an August 22, 2017 statement, appellant indicated that her condition developed over time. She also described her physical duties which were repetitive in nature and involved pushing, pulling, lifting, and overhead activities.

By decision dated September 28, 2017, OWCP treated the claim as one for a traumatic injury accepted that the employment events of May 3, 2017 occurred as alleged. It denied the claim finding that appellant had not met her burden of proof to establish a diagnosed medical condition 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.

On October 26, 2017 appellant, through counsel, requested a telephonic hearing before an OWCP hearing representative.

OWCP received a copy of Dr. Czesnowski's August 22, 2017 treatment notes. Dr. Czesnowski continued to treat appellant for right shoulder pain on September 19, 2017.

A telephonic hearing was held on March 16, 2018. Appellant provided testimony and the hearing representative held the case record open for 30 days for the submission of additional evidence.

OWCP received copies of previously submitted reports.

By decision dated May 30, 2018, OWCP's hearing representative affirmed the September 28, 2017 decision.

On July 6, 2018 appellant, through counsel, requested reconsideration and submitted additional medical evidence.

In a June 5, 2018 report, Dr. Czesnowski noted that appellant had been a patient since July 28, 2016. She indicated that appellant sustained a right shoulder rotator cuff injury on May 3, 2017. Dr. Czesnowski advised that appellant was never diagnosed with a right shoulder condition prior to the accepted May 3, 2017 employment incident. She noted that she reviewed the July 12, 2017 MRI scan of the right shoulder and opined that the "injury was most likely brought on by repetitive right arm movements performed at work." Dr. Czesnowski also noted that she read appellant's August 22, 2017 statement and further opined that appellant was unable

to perform any type of work that involved her right arm and that she needed further medical treatment to improve her right shoulder function and reduce her pain.

By decision dated October 16, 2018, OWCP denied modification of the May 30, 2018 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 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. 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

Rationalized medical opinion evidence is required to establish causal relationship. 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 incident.⁸

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a right shoulder condition causally related to the accepted May 3, 2017 employment incident.

In support of her claim, appellant submitted a July 6, 2017 treatment note, in which Dr. Czesnowski opined that appellant had “right shoulder pain/cuff injury” which was work

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. Ellyett*, 41 ECAB 992 (1990).

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

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

⁸ *S.S.*, Docket No. 18-1488 (issued March 11, 2019).

related. The Board has held that under FECA the assessment of pain is not considered a diagnosis as pain merely refers to a symptom of an underlying condition.⁹ As she failed to provide a firm medical diagnosis and provided no rationalized explanation regarding causal relationship, Dr. Czesnowski's report is insufficient to establish that the employment incident physiologically caused a diagnosed condition.¹⁰

In a June 5, 2018 report, Dr. Czesnowski opined that the "injury was most likely brought on by repetitive right arm movements performed at work." This report attempts to address causal relationship, but is also of limited probative value, as it is couched in speculative terms.¹¹

OWCP received several other reports from Dr. Czesnowski, including return to work/disability slips providing work restrictions for the right arm dated May 3 and 9, 2017 and treatment notes dated August 22 and September 19, 2017. While Dr. Czesnowski provided work restrictions, she offered no description of the employment incident, no diagnosis, and no opinion regarding causal relationship. As these reports were not based on a complete factual background, and did not explain the nature of the relationship between the diagnosed condition and the specific employment incident, with supporting medical rationale, they were of limited probative value.¹²

OWCP also received July 17, 2017 emergency room treatment notes from Dr. Tweddle, who indicated that appellant sought treatment for a right rotator cuff condition and right shoulder pain from a May 3, 2017 injury. However, Dr. Tweddle did not explain how a diagnosed condition was causally related to the accepted employment incident. 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.¹³

The diagnostic report dated July 13, 2017, interpreted imaging studies and provided diagnostic findings. The Board has held, however, that diagnostic reports lack probative value as they do not address whether the employment incident caused the diagnosed conditions.¹⁴

Because the medical reports of record do not adequately address how the accepted May 3, 2017 employment incident caused a diagnosed medical condition, the reports are insufficient to

⁹ *M.V.*, Docket No. 18-0884 (issued December 28, 2018). The Board has consistently held that pain is a symptom, rather than a compensable medical diagnosis. See *P.S.*, Docket No. 12-1601 (issued January 2, 2013); *C.F.*, Docket No. 08-1102 (issued October 10, 2008).

¹⁰ *J.M.*, Docket No. 17-1002 (issued August 22, 2017).

¹¹ The Board has held that speculative and equivocal medical opinions regarding causal relationship have no probative value. *R.C.*, Docket No. 18-1695 (issued March 12, 2019); see *Ricky S. Storms*, 52 ECAB 349 (2001) (While the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty).

¹² *Supra* note 8.

¹³ See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁴ *T.C.*, Docket No. 18-1498 (issued February 13, 2019).

establish entitlement under FECA.¹⁵ Accordingly, appellant has not met her burden of proof to establish a traumatic injury 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 a right shoulder condition causally related to the accepted May 3, 2017 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the October 16, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 23, 2019
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

¹⁵ *D.H.*, Docket No. 17-1913 (issued December 13, 2018); *see Linda I. Sprague*, 48 ECAB 386 (1997).