

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

_____)	
R.W., Appellant)	
)	
and)	Docket No. 19-0010
)	Issued: June 18, 2019
U.S. POSTAL SERVICE, POST OFFICE,)	
Cape Canaveral, FL, 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
JANICE B. ASKIN, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On October 1, 2018 appellant filed a timely appeal from a September 13, 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 to consider the merits of this case.

ISSUE

The issue is whether appellant has met her burden of proof to establish that her diagnosed left shoulder conditions are causally related to the accepted factors of her federal employment.

FACTUAL HISTORY

On February 5, 2018 appellant, then a 46-year-old city carrier, filed an occupational disease claim (Form CA-2) alleging that she developed left shoulder pain overexerting her body

¹ 5 U.S.C. § 8101 *et seq.*

performing her federal employment duties. She first became aware of her condition on December 28, 2017 and attributed it to her employment on that date.

In a development letter dated February 21, 2018, OWCP informed appellant that additional factual and medical evidence was needed to establish her occupational disease claim. It advised her of the type of evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit additional evidence. Appellant did not respond.

By decision dated March 28, 2018, OWCP denied appellant's claim finding that she had not provided a description of the claimed work activities she believed caused her condition.

On April 18, 2018 OWCP received a March 19, 2018 response to the factual questionnaire from appellant in which she described her employment activities. Appellant alleged that maneuvering boxes from her mail vehicle, pulling the parking brake, pushing carts of parcels, as well as continually turning and reaching while processing mail for eight hours a day for 13 years had caused or contributed to her left shoulder condition. She also implicated repetitive movements, constant lifting, and constantly sitting in an upright position as contributing to her daily left shoulder pain.

On March 7, 2018 appellant underwent a left shoulder magnetic resonance imaging scan which demonstrated a full-thickness tear of the anterior supraspinatus tendon with joint effusion.

On April 19, 2018 appellant provided a limited portion of an appeals form with a checkmark indicating that she was requesting reconsideration.² She also provided additional medical evidence. On April 13, 2018 Dr. Ramsey C. Kinney, an orthopedic surgeon, recommended a left shoulder diagnostic arthroscopy for rotator cuff repair and subacromial decompression. Appellant also provided April 9, 2017 physical therapy notes. On April 25, 2018 Dr. Kinney completed a form report and diagnosed left shoulder chronic degeneration of the rotator cuff. He noted that appellant's left shoulder condition had existed for years, but worsened in the last five months.

On June 22, 2018 appellant requested reconsideration of the March 27, 2018 OWCP decision. She resubmitted medical evidence previously of record.

By decision dated September 13, 2018, OWCP modified the March 28, 2018 decision to reflect that appellant had established the factual components of her claim. However, it further found that she had not submitted sufficient medical evidence to establish causal relationship between the accepted factors of her federal employment and her diagnosed conditions.

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

² In a letter dated June 12, 2018, OWCP informed appellant that as the portion of the appeals form was not signed or dated no further action would be taken.

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 OWCP's regulations define an occupational disease as "a condition produced by the work environment over a period longer than a single workday or shift."⁶ To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the diagnosed condition is causally related to the identified employment factors.

Causal relationship is a medical question, which requires rationalized medical opinion evidence to resolve the issue.⁷ A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factors must be based upon a complete factual and medical background.⁸ Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and the claimant's specific employment factors.⁹ The belief of a claimant that a condition was caused or aggravated by the employment is not sufficient to establish causal relation.¹⁰

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish that her diagnosed left shoulder conditions are causally related to the accepted factors of her federal employment.

Appellant submitted April 13, and 25, 2018 reports from Dr. Kinney diagnosing left shoulder chronic degeneration of the rotator cuff. Dr. Kinney failed to offer an opinion on the

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 20 C.F.R. § 10.5(q).

⁷ *E.V.*, Docket No. 18-1617 (issued February 26, 2019).

⁸ *Id.*

⁹ *Id.*; *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

¹⁰ *Lourdes Harris*, 45 ECAB 545, 547 (1994).

cause of appellant's diagnosed conditions. 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.¹¹ These reports, therefore, are insufficient to establish appellant's claim.

Appellant submitted March 7, 2018 left shoulder diagnostic test results in support of her claim. The Board has held, however, that diagnostic studies are of limited probative value as they do not address whether the employment activities caused any of the diagnosed conditions.¹² Such diagnostic reports are therefore insufficient to establish appellant's claim.

Appellant also provided April 9, 2017 physical therapy notes. The Board has held that medical reports signed solely by a physical therapist are of no probative value as these health care providers are not considered physicians as defined under FECA and are therefore not competent to provide medical opinions.¹³ Consequently, this evidence is also insufficient to establish appellant's claim.

As noted above, appellant bears the burden of proof to establish the essential elements of her claim. The Board finds that she has not met her burden of proof to establish that her diagnosed conditions were causally related to the accepted factors of her federal employment.

Appellant may submit new evidence or argument as part of 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 diagnosed left shoulder conditions are causally related to the accepted factors of her federal employment.

¹¹ *Supra* note 7; *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹² *Supra* note 7; *J.S.*, Docket No. 17-1039 (issued October 6, 2017).

¹³ *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). *T.R.*, Docket No. 18-1272 (issued February 15, 2019); *J.M.*, 58 ECAB 448 (2007) (physical therapists are not considered physicians under FECA).

ORDER

IT IS HEREBY ORDERED THAT the September 13, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 18, 2019
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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