

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

R.Z., Appellant)	
)	
and)	Docket No. 19-0408
)	Issued: June 26, 2019
U.S. POSTAL SERVICE, LEXINGTON POST OFFICE, Lexington, SC, Employer)	
)	

Appearances:
Wayne Johnson, 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
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On December 17, 2018 appellant, through counsel, filed a timely appeal from an August 28, 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 injury causally related to the accepted April 25, 2017 employment incident.

FACTUAL HISTORY

On April 26, 2017 appellant, then a 45-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on April 25, 2017 she injured her right upper extremity, from her shoulder to her elbow, when delivering a heavy parcel while in the performance of duty. She submitted an April 27, 2017 duty status report (Form CA-17) from Dr. Billy Lance, a family practitioner, diagnosing right shoulder pain.

In a May 3, 2017 development letter, OWCP advised appellant of the deficiencies of her claim. It requested additional factual and medical evidence from her and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond.

In reports dated April 25 to May 2, 2017, Dr. Lance examined appellant due to right shoulder pain which occurred after exertion and trauma. He diagnosed a right shoulder sprain. On April 25, 2017 appellant underwent right shoulder x-rays which demonstrated a bony fragment at the superior aspect of the glenoid and modest acromioclavicular (AC) degenerative joint disease. On May 8, 2017 Dr. Lance completed an attending physician's report (Form CA-20) and diagnosed right shoulder sprain and described appellant's history of lifting at work and indicated by checking a box marked "yes" that he believed that her condition was caused or aggravated by her employment activity.

On September 26, 2014 Dr. Lance examined appellant due to right shoulder joint pain which occurred after exertion and trauma, and noted while lifting at work she heard a popping in her left shoulder. In a September 30, 2014 note, he reported that appellant sustained a right shoulder injury on September 26, 2014 and was experiencing left shoulder pain. On October 8, 2014 Dr. Lance reported that her right shoulder pain was improving.

On May 22, 2017 appellant submitted a narrative statement alleging that, as she delivered a package, she experienced a burning pain in her right arm and shoulder. She asserted that her route had an excessive number of large and heavy packages. Appellant finished her work shift on April 25, 2017, but sought medical treatment after work on that date. She noted that she had been diagnosed with a right shoulder strain. Appellant noted that she had received a similar work-related diagnosis in 2014.

By decision dated June 6, 2017, OWCP denied appellant's claim finding that she had not submitted rationalized medical evidence establishing causal relationship between her diagnosed right shoulder sprain and her accepted April 25, 2017 employment incident.

On June 13, 2017 appellant underwent a right shoulder magnetic resonance imaging (MRI) scan which demonstrated a proximal humeral cyst, fluid in the subacromial bursa, and a tear of the anterior supraspinatus.

In a June 14, 2017 note, Dr. Lance reported that as appellant was performing light duty she heard a pop and felt sudden pain in her right shoulder.

On November 27, 2017 appellant provided hospital notes dated February 9, 2015 as well as notes from Dr. Michael Cale Davis, an internist, dated February 12, 2015, addressing a February 9, 2015 fall which resulted in injuries to her head, face, right knee, and left arm.

On June 6, 2018 appellant, through counsel, requested reconsideration of the June 6, 2017 decision.

In an August 16, 2017 note, Dr. Guillaume Dumont, a Board-certified orthopedic surgeon, reported appellant's history of injury on April 25, 2017. He noted that she was a postal worker and while she was delivering a package she felt a "pop" while standing up. Appellant experienced a burning pain in her right shoulder. Dr. Dumont noted that she had a previous right shoulder arthroscopy with debridement, but no repair. He diagnosed right shoulder impingement, rotator cuff tendinopathy, partial thickness tearing, acromioclavicular joint pain, and bicep tendinitis. On October 6, 2017 Dr. Dumont repeated his diagnoses. He examined appellant again on January 22, 2018 and found improvement in her symptoms.

By decision dated August 28, 2018, OWCP denied modification of its June 6, 2017 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 whether a federal employee has sustained a traumatic injury in the performance of duty it must first be determined whether fact of injury has been established.⁶ First, the employee must submit sufficient evidence to establish that he or she actually experienced the

³ *C.B.*, Docket No. 18-0071 (issued May 13, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁴ *C.B.*, *id.*; *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 *C.B.*, *supra* note 3; *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 *C.B.*, *supra* note 3; *D.B.*, Docket No. 18-1348 (issued January 4, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

employment incident at the time, place, and in the manner alleged.⁷ Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.⁸

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical opinion evidence.⁹ Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is causal relationship between the employee's diagnosed condition and the accepted employment incident.¹⁰ The opinion of the physician must be based on a complete factual and medical background of the employee, 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 identified by the employee.¹¹

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a right shoulder injury causally related to the accepted April 25, 2017 employment incident.

Dr. Lance provided a series notes dated April 25 through June 14, 2017 diagnosing right shoulder sprain. He noted appellant's right shoulder condition occurred after exertion and trauma. Dr. Lance did not further describe the April 25, 2017 employment incident or offer an opinion as to how the appellant's right shoulder condition was employment related. 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

On May 8, 2017 Dr. Lance completed a form report and diagnosed right shoulder sprain. He described appellant's history of lifting at work and indicated by checking a box marked "yes" that he believed that appellant's condition was caused or aggravated by her employment activity. While Dr. Lance checked a box marked "yes," that the diagnosed condition was caused or aggravated by the April 25, 2017 employment incident, he failed to offer medical rationale explaining how her diagnosed right shoulder conditions were caused or aggravated by lifting in

⁷ *C.B.*, *supra* note 3; *D.S.*, Docket No. 17-1422 (issued November 9, 2017); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁸ *C.B.*, *supra* note 3; *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *John J. Carlone*, 41 ECAB 354 (1989).

⁹ *C.B.*, *supra* note 3; *Y.J.*, Docket No. 08-1167 (issued October 7, 2008); *A.D.*, 58 ECAB 149, 155-56 (2006); *D'Wayne Avila*, 57 ECAB 642, 649 (2006).

¹⁰ *C.B.*, *supra* note 3; *J.J.*, Docket No. 09-0027 (issued February 10, 2009); *Michael S. Mina*, 57 ECAB 379, 384 (2006).

¹¹ *C.B.*, *supra* note 3; *I.J.*, 59 ECAB 408, 415 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

¹² *P.S.*, Docket No. 18-1222 (issued January 8, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

the performance of duty.¹³ Thus, the Board finds that his report is insufficient to establish appellant's burden of proof.

In his August 16 and October 6, 2017, and January 22, 2018 notes, Dr. Dumont reported appellant's history of injury on April 25, 2017 as delivering a package and feeling a "pop" in her right shoulder. He diagnosed right shoulder impingement, rotator cuff tendinopathy, partial thickness tearing, acromioclavicular joint pain, and bicep tendinitis. While Dr. Dumont described appellant's employment incident, he did not offer an opinion as to how the accepted employment incident had caused or contributed to appellant's diagnosed right shoulder conditions. As noted above, 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.¹⁴

Appellant submitted a series of hospital reports dated February 9, 2015 as well as notes from Dr. Davis dated February 12, 2015 detailing her conditions resulting from a fall on February 9, 2015. These notes predate the claimed injury in this case. The Board has held that medical evidence which predates the date of a traumatic injury has no probative value on the issue of causal relationship of a current medical condition.¹⁵

Finally, appellant has submitted diagnostic testing reports in support of her claim. The Board has explained that diagnostic studies lack probative value as they do not address whether the employment incident caused any of the diagnosed conditions.¹⁶ These reports are therefore also insufficient to establish appellant's claim.

As appellant has not submitted reasoned medical evidence explaining how her diagnosed right shoulder conditions are causally related to her accepted April 25, 2017 employment incident, she has not met her burden of proof.¹⁷

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 injury causally related to the accepted April 25, 2017 employment incident.

¹³ *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).

¹⁴ *Supra* note 13.

¹⁵ *C.B.*, *supra* note 3; *V.N.*, Docket No. 16-1427 (issued December 13, 2016).

¹⁶ *J.S.*, Docket No. 17-1039 (issued October 6, 2017).

¹⁷ *D.B.*, Docket No. 18-1359 (issued May 14, 2019).

ORDER

IT IS HEREBY ORDERED THAT the August 28, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 26, 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