United States Department of Labor
Employees' Compensation Appeals Board

M.H., Appellant	)	
and	)	**Docket No. 18-1737**
	)	**Issued: March 13, 2019**
DEPARTMENT OF HOMELAND SECURITY, TRANSPORTATION SECURITY ADMINISTRATION, Tulsa, OK, 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 September 18, 2018 appellant filed a timely appeal from June 21, 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.

ISSUE

The issue is whether appellant has met her burden of proof to establish a right shoulder condition causally related to the accepted December 12, 2017 employment incident.

FACTUAL HISTORY

On December 12, 2017 appellant, then a 38-year-old transportation security officer, filed a traumatic injury claim (Form CA-1) alleging that, on that day, she sustained a right shoulder strain

[1] 5 U.S.C. § 8101 *et seq.*

as a result of stepping down onto a moving conveyor belt in the baggage section while in the performance of duty. She recounted that as she was about to cross over the last conveyor belt she pushed a button to stop the conveyor belt, but did not realize it was still moving when she stepped down on the belt. Appellant stopped work on December 13, 2017.

OWCP subsequently received a chart note dated December 14, 2017 by Dr. Steven L. Nussbaum, an attending emergency medicine physician, which noted a history that appellant had moderate right shoulder (rotator cuff) pain that began two days prior.[2] Appellant's medical history and examination findings were discussed. Dr. Nussbaum diagnosed a sprain of the right rotator cuff capsule, subsequent encounter. In a work note also dated December 14, 2017, he indicated that appellant could return to work on that date with right shoulder restrictions and reiterated the diagnosis of right rotator cuff capsule, subsequent encounter.

The employing establishment issued an undated authorization for examination and/or treatment (Form CA-16), which indicated that appellant was authorized to seek medical treatment for a right shoulder injury.

In an attending physician's report dated December 12, 2017, and attached to the Form CA-16, Dr. Nussbaum noted that appellant injured her right shoulder. The history of injury is illegible. Dr. Nussbaum provided examination findings and again diagnosed right shoulder sprain. He checked a box marked "yes" indicating that the diagnosed condition was caused or aggravated by the employment activity described. Dr. Nussbaum further indicated that appellant was partially disabled from the date of his examination to an unknown date. Appellant could perform light work without the use of her right shoulder.

In a December 12, 2017 report, Dr. Glenn H. Lytle, a family practitioner, related a history of injury that appellant pulled her right shoulder at work on that day. He reported examination findings, and ordered a radiology examination of the right shoulder. Dr. Lytle diagnosed sprain of the right rotator cuff capsule, initial encounter. In a work note dated December 12, 2017, he advised that appellant could return to work on that date with right shoulder restrictions and restated the prior diagnosis.

In a right shoulder radiology report dated December 12, 2017, Dr. John M. Reiser, a Board-certified diagnostic radiologist, provided an impression of no acute bony abnormality.

Notes dated December 21 and 27, 2017 and January 3 and 11, 2018 by Dr. Nussbaum reported examination findings and reiterated the diagnosis of sprain of the right rotator cuff capsule, subsequent encounter. In work status notes dated December 21, 2017 and January 3, 2018, he advised that appellant could return to work with right shoulder restrictions. In a referral slip dated December 27, 2017, Dr. Nussbaum referred her for physical therapy, three times a week for two weeks.

In an undated statement appellant indicated that she sustained a right shoulder injury on December 12, 2017. She essentially reiterated the factual history of injury she provided on the

[2] Additional medical notes from Timothy Marlow, a certified physician assistant to Dr. Nussbaum were also submitted.

December 12, 2017 Form CA-1. Appellant also indicated that she pulled her right shoulder as she grabbed onto a rail with her right arm to keep from falling on the conveyor belt.

A report dated January 8, 2018 and follow-up notes dated January 10, 12, and 15, 2018 from appellant's physical therapist provided a diagnosis of right shoulder pain and right shoulder stiffness, not elsewhere classified.

OWCP, by development letter dated January 25, 2018, informed appellant that initially her claim appeared to be a minor injury that resulted in minimal or no lost time from work and continuation of pay was not controverted by the employing establishment. It indicated that her claim was administratively handled to allow payment of a limited amount of medical expenses. However, appellant's claim was now being reopened for adjudication because she had not yet returned to work in a full-time capacity. OWCP requested that she respond to an enclosed questionnaire by providing a more detailed description of the incident, witness statements she had regarding the incident, the immediate effects of her injury, and history of any other injury. It also requested that appellant submit a medical report from her attending physician including a diagnosis, history of injury, examination findings, and a rationalized opinion explaining how the reported work incident caused or aggravated her medical condition. OWCP afforded her 30 days to provide the requested information.

An additional follow-up visit note dated January 17 and 19, 2018 from the physical therapist again provided a diagnosis of right shoulder pain and right shoulder stiffness, not elsewhere classified.

Appellant submitted a December 15, 2017 narrative statement in response to OWCP's development letter. She essentially restated the factual history of injury she provided on the December 12, 2017 Form CA-1 and Access Medical Centers form.

Appellant also submitted a work status note and chart note dated January 25, 2018 in which Mr. Marlow indicated that she could return to regular work on that date without restrictions and reiterated his prior right shoulder diagnosis.

By decision dated March 5, 2018, OWCP denied appellant's traumatic injury claim finding that the medical evidence of record was insufficient to establish that her diagnosed medical condition was causally related to the accepted December 12, 2017 employment incident.

On March 22, 2018 appellant requested a review of the written record by an OWCP hearing representative. No additional evidence was received.

By decision dated June 21, 2018, a hearing representative affirmed the March 5, 2018 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] 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 filed within the applicable time limitation, that an injury was sustained while in the performance of duty as alleged, and that any disability or specific 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 on 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 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 and place, and in the manner alleged.

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.[6] The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing a causal relationship between the claimed condition and the identified factors.[7] The belief of the claimant that a condition was caused or aggravated by the employment is insufficient to establish a causal relationship.[8]

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 sufficient to establish such causal relationship.[9] Rationalized medical opinion evidence is generally 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 factors identified by the claimant.[10]

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[3] *Supra* note 1.

[4] *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[5] *S.P.*, 59 ECAB 184 (2007); *Victor J. Woodhams*, 41 ECAB 345 (1989); *Joe D. Cameron*, 41 ECAB 153 (1989).

[6] *John J. Carlone*, 41 ECAB 354 (1989); *see* 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(ee), 10.5(q) (traumatic injury and occupational disease defined, respectively).

[7] *Lourdes Harris*, 45 ECAB 545 (1994); *see Walter D. Morehead*, 31 ECAB 188 (1979).

[8] *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).

[9] *K.V.*, Docket No. 18-0723 (issued November 9, 2018).

[10] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, *supra* note 5.

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a right shoulder condition causally related to the accepted December 12, 2017 employment incident.

In support of her claim, appellant submitted a series of reports from her attending physician, Dr. Nussbaum. In a Form CA-16 attending physician's report dated December 12, 2017, Dr. Nussbaum reported that he examined her on that date for a right shoulder injury. He provided an illegible history of injury and diagnosed right shoulder sprain. Dr. Nussbaum checked a box marked "yes" indicating that the diagnosed condition was caused or aggravated by the employment activity described. He advised that appellant was partially disabled from the date of his examination to an unknown date. Dr. Nussbaum related that she could perform light work without the use of her right shoulder. The Board has held that a report that addresses causal relationship with a checkmark, without medical rationale explaining how the employment incident caused or aggravated the diagnosed condition, is of diminished probative value and insufficient to establish causal relationship.[11] Although Dr. Nussbaum's history of the December 12, 2017 employment incident is illegible, he failed to offer medical rationale explaining how appellant's diagnosed right shoulder condition and work restriction were caused or aggravated by falling onto a moving conveyor belt on that date. Thus, the Board finds that his report is insufficient to establish her burden of proof.[12]

Dr. Nussbaum's remaining chart notes, work notes, and referral slip are also insufficient to meet appellant's burden of proof. Within these additional reports, he diagnosed sprain of the right rotator cuff capsule, and addressed her work restrictions and medical treatment. Dr. Nussbaum failed to provide an opinion concluding that the accepted December 12, 2017 employment incident caused or aggravated appellant's diagnosed right shoulder condition, work restrictions, and medical treatment.[13]

Likewise, Dr. Lytle's December 12, 2017 report and work note also fail to establish appellant's claim as he diagnosed sprain of the right rotator cuff capsule, initial encounter, and noted her work restrictions, but did not provide an opinion concluding that the December 12, 2017 employment incident caused or aggravated her diagnosed condition and work restrictions.[14]

Dr. Reiser's diagnostic test report failed to provide a firm right shoulder diagnosis resulting from the December 12, 2017 employment incident.[15] Diagnostic studies are of limited probative

[11] *See S.G.*, Docket No. 18-0209 (issued October 4, 2018); *R.A.*, Docket No. 17-1472 (issued December 6, 2017); *Sedi L. Graham*, 57 ECAB 494 (2006); *Deborah L. Beatty*, 54 ECAB 340 (2003).

[12] *Id.*

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

[15] *See M.D.*, Docket No. 18-0709 (issued September 4, 2018); *T.O.*, Docket No. 18-0139 (issued May 24, 2018).

value as they do not address whether the employment incident caused any of the diagnosed conditions.[16]

The notes and discharge instructions signed solely by Mr. Marlow, a certified physician assistant, and report and notes signed by appellant's physical therapist have no probative medical value. Neither physician assistants nor physical therapists are considered physicians as defined under FECA.[17] As such, this evidence is also insufficient to meet appellant's burden of proof.

The fact that a condition manifests itself during a period of employment is insufficient to establish causal relationship.[18] Temporal relationship alone will not suffice. Entitlement to FECA benefits may not be based on surmise, conjecture, speculation, or on the employee's own belief of a causal relationship.[19] Herein, the record lacks rationalized medical evidence establishing causal relationship between the December 12, 2017 employment incident and her diagnosed right shoulder conditions.[20] Thus, appellant has not met her burden of proof.[21]

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 December 12, 2017 employment incident.

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

[17] The term physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law. *See* 5 U.S.C. § 8102(2); *M.M.*, Docket No. 16-1617 (issued January 24, 2017) (lay individuals such as physician assistants and physical therapists are not competent to render a medical opinion under FECA). *See also Gloria J. McPherson*, 51 ECAB 441 (2000); *Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (a medical issue such as causal relationship can only be resolved through the submission of probative medical evidence from a physician).

[18] *Daniel O. Vasquez*, 57 ECAB 559 (2006).

[19] *D.D.*, 57 ECAB 734 (2006).

[20] *See J.S.*, Docket No. 17-0507 (issued August 11, 2017).

[21] The Board notes that the employing establishment issued appellant a signed Form CA-16 authorizing treatment for her December 12, 2017 right shoulder injury. The Board has held that where an employing establishment properly executes a CA-16 form, which authorizes medical treatment as a result of an employee's claim for an employment-related injury, it creates a contractual obligation which does not involve the employee directly to pay the cost of the examination or treatment regardless of the action taken on the claim. *See* 20 C.F.R. §§ 10.300, 10.304; *R.W.*, Docket No. 18-0894 (issued December 4, 2018).

ORDER

IT IS HEREBY ORDERED THAT the June 21, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 13, 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