United States Department of Labor
Employees' Compensation Appeals Board

B.B., Appellant	)	
	)	**Docket No. 19-1102**
and	)	**Issued: November 7, 2019**
	)	
U.S. POSTAL SERVICE, HUDSON POST OFFICE, Hudson, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On April 18, 2019 appellant filed a timely appeal from a December 10, 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 bilateral upper extremity conditions causally related to the accepted factors of her federal employment.

FACTUAL HISTORY

On January 16, 2018 appellant, then a 44-year-old rural carrier, filed an occupational disease claim (Form CA-2) alleging that she had developed shoulder pain with numbness in her shoulder and fingers due to casing and loading mail while in the performance of duty. She

[1] 5 U.S.C. § 8101 *et seq.*

indicated that she first became aware of her condition in January 2017 and first attributed it to her employment activities on January 9, 2018. In a January 16, 2018 narrative statement, appellant attributed her shoulder condition to heavy mail volume on January 9, 2018 which aggravated her shoulder and resulted in a painful tearing sensation with numbness in the last three fingers of her left hand.

In support of her claim, appellant provided a January 9, 2018 note from Thomas Heittich, a physician assistant, indicating that she was seen in the emergency department on that day and that he had diagnosed left shoulder pain. Mr. Heittich released appellant to light-duty work as a result of her left shoulder pain.

In a statement dated January 18, 2017, the employing establishment controverted appellant's claim indicating that she had a "preexisting injury."

On January 20, 2018 appellant accepted a light-duty position as a modified rural carrier associate.

In a January 29, 2018 development letter, OWCP advised appellant of the deficiencies of her claim. It requested additional factual and medical evidence from appellant, and provided a questionnaire for her completion. OWCP afforded her 30 days to respond.

On January 9, 2018 appellant underwent a left shoulder x-ray which was read as no acute fracture or dislocation. On January 12, 2018 Dr. Christopher Grayson, a Board-certified orthopedic surgeon, noted appellant's history of moving heavy mail at work when she developed significant left shoulder pain that radiated down to her three ulnar fingers. He diagnosed work-related numbness and tingling in the ulnar nerve distribution as well as left shoulder injury. On February 14, 2018 appellant underwent a left shoulder magnetic resonance imaging (MRI) scan which demonstrated distal supraspinatus tendinosis without tear and long head of the biceps tendinopathy also without tear. In a February 19, 2018 note, Dr. Grayson repeated appellant's history of injury and reviewed her diagnostic studies. He diagnosed carpal tunnel and rotator cuff tendinosis.

On February 22, 2018 appellant submitted a narrative statement responding to OWCP's questionnaire and noted that during December 2015 and January 2016 she experienced pain in her left shoulder, elbow, and wrist when she was working a heavy mail volume. She sought medical attention on March 10 and 28, 2016 receiving a diagnosis of left shoulder bursitis, and age-related osteoporosis. Appellant received left shoulder cortisone injections in March 2016, September 2016, and on March 29, 2017. She provided March 29, 2017 notes from Dolores Stefanski, a registered nurse practitioner.

By decision dated February 28, 2018, OWCP denied appellant's occupational disease claim. It accepted her duties as a rural carrier as described, but denied her claim because the medical evidence of record was insufficient to establish a valid medical diagnosis.

On May 16, 2018 appellant, through her then-representative, requested reconsideration of the February 28, 2018 decision and (submitted additional medical evidence including diagnostic studies. In a February 27, 2018 note, Dr. Ioannis Pappou, a Board-certified orthopedic surgeon, examined appellant due to her left shoulder pain. He noted that appellant was a rural mail carrier

and that she had previous left shoulder issues that had been treated with cortisone injections. Dr. Pappou reported that appellant's left shoulder pain recurred on January 9, 2018 while performing repetitive work. Appellant also experienced numbness and tingling in her left arm. Dr. Pappou diagnosed left arm pain largely from impingement and left hand numbness resulting from a combination of thoracic outlet and cubital syndromes. He found carpal tunnel syndrome on diagnostic nerve studies.

On April 19, 2018 Dr. Mark A. Seldes, a Board-certified family practitioner, examined appellant due to pain in her left shoulder with limited range of motion as well as numbness and tingling in her left hand in the median nerve distribution. He noted that appellant sought treatment for her left shoulder in March 2016 and sustained relief through a series of three cortisone injections. Appellant reported that during December 2017 there was a significant volume increase in the volume of mail and parcels. She believed that this resulted in increased pain in her left shoulder as well as numbness and tingling in her left hand. Appellant stopped work on January 9, 2018 due to increased pain. Dr. Seldes diagnosed bilateral shoulder impingement, bilateral carpal tunnel syndrome, and thoracic outlet syndrome. He described appellant's work duties of casing, lifting, and delivering mail and parcels and opined that she had experienced a work-related injury to her bilateral shoulders, wrists, and hands as well as probable thoracic outlet syndrome due to employment-related repetitive activities. In May 7, June 25, and July 11, 2018 notes, Dr. Seldes repeated his diagnoses and noted that appellant's repetitive work duties put stress on her shoulders, wrists, and hands which led to the development of impingement of her shoulders bilaterally as well as bilateral carpal tunnel syndrome symptoms.

In a May 18, 2018 second development letter, OWCP requested that appellant provide additional information regarding her concurrent employment as a waitress. On May 25, 2018 appellant responded and noted that she worked as a waitress from September through November 2017 for three days a week, approximately three hours a day, averaging nine hours a week. Appellant also asserted that she believed her previous shoulder condition in 2015 and 2016 was employment related.

By decision dated July 17, 2018, OWCP modified its February 28, 2018 decision denying appellant's claim. It found that the medical evidence of record provided valid medical diagnoses of bilateral shoulder impingement and bilateral carpal tunnel syndrome. OWCP, however, continued to deny appellant's claim as the medical evidence submitted was insufficient to establish causal relationship between her diagnosed conditions and her employment activities.

On September 13, 2018 appellant, through counsel, requested reconsideration of the July 17, 2018 OWCP decision. In an August 14, 2018 note, Dr. Seldes reported appellant's work as a waitress for three three-hour shifts per week, for the period September through November 2017. He noted that appellant's left shoulder condition originally arose prior to her work as a waitress and that her shoulder conditions worsened again in December 2017 during the holiday season at the employing establishment after she had stopped waitressing. Dr. Seldes opined that it was possible that appellant's work as a waitress may have exacerbated her right shoulder pain as she was right-hand dominant, but was unlikely to have aggravated her left shoulder. He further opined that the waitress job contributed mildly to her bilateral shoulder conditions, but he continued to assert that the heavy volume of mail that appellant handled during the December 2017 holiday season aggravated her shoulder pain and numbness resulting in her

disability from work on January 9, 2017. On September 24, 2018 Dr. Seldes repeated his diagnoses.

By decision dated December 10, 2018, OWCP denied modification of the July 17, 2018 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[2] 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 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]

In an occupational disease claim, to establish that an injury was sustained in the performance of duty, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed;[6] (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;[7] and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.[8]

Neither the condition becoming apparent during a period of employment, nor the belief of the employee that the hearing loss was causally related to noise exposure in federal employment, is sufficient to establish causal relationship.[9] The medical evidence required to establish causal relationship is rationalized medical opinion evidence.[10] Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there

[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. Ellyett*, 41 ECAB 992 (1990).

[6] *R.A.*, Docket No. 16-1218 (issued November 10, 2016); *Michael R. Shaffer*, 55 ECAB 386 (2004).

[7] *C.C.*, Docket No. 18-1229 (issued March 8, 2019); *Marlon Vera*, 54 ECAB 834 (2003); *Roger Williams*, 52 ECAB 468 (2001).

[8] *T.J.*, Docket No. 17-1850 (issued February 14, 2018); *Beverly A. Spencer*, 55 ECAB 501 (2004).

[9] *C.C.*, *supra* note 7.

[10] *M.B.*, Docket No. 17-1999 (issued November 13, 2018).

is causal relationship between the claimant's diagnosed condition and the implicated employment factors. 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 claimant.[11]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish bilateral upper extremity conditions causally related to the accepted factors of her federal employment.

Appellant submitted several reports from Dr. Seldes. Beginning on April 19, 2018 and continuing through August 14, 2018, Dr. Seldes opined that appellant's bilateral shoulder conditions were causally related to her work duties. He diagnosed bilateral shoulder impingement, bilateral carpal tunnel syndrome, and thoracic outlet syndrome. Dr. Seldes described appellant's daily work duties including casing, lifting, and delivering mail and parcels. He opined that appellant sustained an occupational injury to her shoulders, wrists, and hands as a direct result of her normal work duties as a rural carrier.

The Board notes that Dr. Seldes accurately described appellant's rural carrier employment duties and provided an affirmative opinion relative to causal relationship. However, Dr. Seldes had not provided sufficient explanation, based on medical rationale, of how appellant's duties caused or contributed to her bilateral shoulder impingement, bilateral carpal tunnel syndrome, and thoracic outlet syndrome. He did not explain the mechanism of how casing, lifting, and delivering mail and parcels repetitively caused or contributed to appellant's various medical conditions.[12] Medical statements merely asserting causal relationship cannot discharge appellant's burden of proof.[13] The medical evidence must also include rationale explaining how the physician reached the conclusion he or she is supporting.[14]

In a February 19, 2018 note, Dr. Grayson repeated appellant's history of injury diagnosed carpal tunnel and rotator cuff tendinosis. On February 27, 2018 Dr. Pappou diagnosed left arm pain largely from impingement and left hand numbness resulting from a combination of thoracic outlet and cubital syndromes. These reports, however, did not offer an opinion on the causal relationship between appellant's diagnosed conditions and her federal employment duties. 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.[15]

[11] *T.K.*, Docket No. 19-0074 (issued May 15, 2019); *M.L.*, Docket No. 18-1605 (issued February 26, 2019).

[12] *H.A.*, Docket No. 18-1466 (issued August 23, 2019); *M.M.*, Docket No. 15-0607 (issued May 15, 2015); *M.W.*, Docket No. 14-1664 (issued December 5, 2014).

[13] *H.A., id.*; *Sedi L. Graham*, 57 ECAB 494 (2006).

[14] *H.A., id.*; *Beverly A. Spencer*, 55 ECAB 501 (2004).

[15] *K.L.*, Docket No. 19-0580 (issued August 23, 2019); *see L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

OWCP also received a number of diagnostic studies. However, the Board has explained that diagnostic studies lack probative value as they do not address whether the accepted employment incident caused any of the diagnosed conditions.[16]

In support of his January 9, 2018 occupational disease claim, appellant also provided a March 29, 2017 note from a registered nurse practitioner and a January 9, 2018 note from a physician assistant. These notes are of no probative medical value in establishing appellant's claim. Certain healthcare providers such as physician assistants, nurses, nurse practitioners, physical therapists, and social workers are not considered "physician[s]" as defined under FECA.[17] Consequently, their medical findings and/or opinions do not suffice for purposes of establishing entitlement to FECA benefits.[18] As such the March 29, 2017 and January 9, 2018 notes are insufficient to satisfy appellant's burden of proof.

As appellant has not provided sufficiently rationalized medical evidence to establish that bilateral upper extremity conditions were causally related to the accepted factors of her federal employment, the Board finds that she has not met her burden of proof to establish her occupational disease 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 bilateral upper extremity conditions causally related to the accepted factors of her federal employment.

[16] *N.P.*, Docket No. 18-0173 (issued August 21, 2019); *M.S.*, Docket No. 19-0587 (issued July 22, 2019).

[17] 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).

[18] *S.J.*, Docket No. 17-0783, n.2 (issued April 9, 2018) (a nurse practitioner is not considered a physician under FECA); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as nurses, physician assistants, and physical therapists are not competent to render a medical opinion under FECA). Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013).

ORDER

IT IS HEREBY ORDERED THAT the December 10, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 7, 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