United States Department of Labor
Employees' Compensation Appeals Board

J.G., Appellant	)	
and	)	**Docket No. 19-1116**
	)	**Issued: November 25, 2019**
U.S. POSTAL SERVICE, POST OFFICE, Fort Mill, SC, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
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
JANICE B. ASKIN, Judge

JURISDICTION

On April 22, 2019 appellant, through counsel, filed a timely appeal from a March 28, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[3]

[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.*

[3] The Board notes that, following the March 28, 2019 decision, OWCP received additional evidence. The Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether appellant has met her burden of proof to establish a right shoulder condition causally related to the accepted June 28, 2018 employment incident.

FACTUAL HISTORY

On June 28, 2018 appellant, then a 47-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on that date she reinjured her right shoulder on the back door of a long-life vehicle (LLV) while in the performance of duty. She stopped work on the date of injury.

In a June 28, 2018 duty status report (Form CA-17), Dr. Avkash V. Daji, a family practitioner, indicated that appellant had injured her right shoulder that day due to pulling while at work. Appellant presented with decreased range of motion (ROM) and increased right shoulder pain. Dr. Daji provided work restrictions of lifting no more than five pounds and no pulling/pushing.

On the second page of an attending physician's report (Form CA-20), dated June 28, 2018, Dr. Daji reported that appellant had opened a door at work that day and it hit her right shoulder. He checked a box marked "Yes" indicating his opinion that appellant's right shoulder injury was caused or aggravated by her federal employment. Dr. Daji further indicated that appellant had chronic shoulder pain that was worsened by the June 28, 2018 employment incident.

In a July 10, 2018 development letter, OWCP requested that appellant provide additional factual and medical information in support of her claim, including a detailed factual statement and a report from her attending physician addressing causal relationship between any diagnosed condition(s) and the claimed June 28, 2018 employment incident. It afforded her 30 days to respond to its request for additional evidence.

In response, appellant submitted a narrative statement dated July 21, 2018 indicating that on June 10, 2017 she was on her route delivering mail when she reached back to close the LLV door. When she pulled the door, she felt a tear sensation followed by a sharp pain in her right shoulder. Appellant went on to complete her route and then on her next stop to get out of the LLV, upon opening the door, she tried to use caution because at that time her shoulder was throbbing. While pulling the door to open it, she felt the same tearing feeling in her shoulder. When she returned to her duty station, appellant reported the incident to her supervisor, but did not go to urgent care due to her fear that they might put her off work.

On June 28, 2018 Dr. Daji diagnosed "injury of shoulder region" and referred appellant to an orthopedist.

In a November 20, 2017 work status note, Dr. David DuPuy, a Board-certified orthopedic surgeon, diagnosed right shoulder and arm pain and advised that appellant was able to return to work without restrictions that day.

In a report dated July 24, 2018, Dr. DuPuy diagnosed right shoulder pain and carpal tunnel syndrome of the right hand. He noted that appellant was quite angry with him as soon as he walked in the door and contended that he had misrepresented what she said when she first treated with him for an earlier right shoulder injury sustained on June 10, 2017. Appellant alleged that he had not reported the injury and then he reviewed his statement with her that she worked as a postal

worker and repetitively had to open and close the door to her mail truck. Dr. DuPuy explained that he saw her in November 2017 and explained to her that she had a bursitis-type inflammation in the shoulder as well as carpal tunnel syndrome. Appellant continued working until, what she described as an injury, on June 28, 2018. She stated that at that time she was closing the door to her truck and "something about a latch that either did not click or fell off or something that caused pain." Appellant went to the emergency room and was evaluated as having a shoulder injury and was kept off work.

By decision dated August 13, 2018, OWCP found that the factual evidence was sufficient to establish that the June 28, 2018 employment incident occurred as alleged, but it denied the claim as the medical evidence of record was insufficient to establish a medical diagnosis in connection with the employment incident. Thus, it found that appellant had not established the medical component of fact of injury.

On September 5, 2018 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

Appellant further submitted a magnetic resonance imaging (MRI) scan of the right shoulder dated August 22, 2018 which demonstrated mild acromioclavicular (AC) joint degenerative change, but no labral or rotator cuff tear.

In two reports dated August 27, 2018, Dr. Scott B. O'Neal, a Board-certified orthopedic surgeon, diagnosed impingement syndrome of the right shoulder and referred appellant to physical therapy.[4] He also provided work restrictions of no pushing or pulling greater than 5 to 10 pounds effective August 29, 2018.

In a November 10, 2017 report, Dr. Daniel Lee Kelly, a Board-certified family practitioner, diagnosed "injury of right shoulder and upper arm."

A telephonic hearing was held before an OWCP hearing representative on January 22, 2019. Appellant provided testimony and the hearing representative held the case record open for 30 days for the submission of additional evidence.

Appellant submitted a note dated December 3, 2018 from Dr. Larry F. Berman, an internist, who advised that appellant had recovered sufficiently to return to work on December 4, 2018 with restrictions of no lifting over 25 pounds.

In a February 13, 2019 report, Dr. Glen Feltham, a Board-certified orthopedic surgeon, diagnosed strain of the rotator cuff and subsequent shoulder bursitis, which he opined was created through a one-time over-stressing of the rotator cuff, or with repetitive use and overuse of the rotator cuff. He opined that both explanations could easily be attributable to her occupation. Dr. Feltham further indicated that on June 28, 2018 appellant injured her shoulder trying to open a roller door when the roller was found to be missing and the door had jammed. He opined that the described mechanism of injury was consistent with a rotator cuff strain and, therefore, appellant's conditions were work related.

[4] Appellant also submitted two physical therapy treatment notes dated August 30, 2018 through January 10, 2019.

Dr. Feltham later submitted a note dated March 19, 2019 that provided work restrictions of no lifting, carrying, pulling, or pushing more than 35 pounds and no reaching above the shoulder.

By decision dated March 28, 2019, the hearing representative affirmed the prior decision, as modified, finding appellant had established a diagnosed medical condition. She determined, however, that the medical evidence of record was insufficient to establish that appellant's diagnosed right shoulder conditions were causally related to the accepted June 28, 2018 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA[5] has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence, 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, that an injury was sustained 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.[6] These are the essential elements of every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[7]

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, place, and in the manner alleged.[8] Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.[9]

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.[10] A physician's opinion on whether there is causal relationship between the diagnosed condition and an employment incident must be based on a complete factual and medical background.[11] 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 appellant's specific employment incident.[12]

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[5] *Supra* note 2.

[6] *K.V.*, Docket No. 18-0947 (issued March 4, 2019); *M.E.*, Docket No. 18-1135 (issued January 4, 2019); *Kathryn Haggerty*, 45 ECAB 383, 388 (1994).

[7] *K.V.* and *M.E.*, *id.*; *Elaine Pendleton*, 40 ECAB 1143 (1989).

[8] *G.C.*, Docket No. 18-0506 (issued August 15, 2018).

[9] *Id.*

[10] *T.H.*, 59 ECAB 388, 393 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

[11] *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

[12] *Id.*; *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a right shoulder condition causally related to the accepted June 28, 2018 employment incident.

In his June 28, 2018 duty status report, Dr. Daji indicated that appellant presented with decreased ROM and increased pain of the right shoulder. However, he merely repeated the history of injury as reported by appellant, who alleged injuring her right shoulder while pulling at work, without providing his own opinion regarding whether appellant's condition was work related. The mere recitation of patient history does not suffice for purposes of establishing causal relationship between a diagnosed condition and the employment incident.[13] Without explaining physiologically how the accepted employment incident caused or contributed to the diagnosed conditions, the physician's reports are of limited probative value.[14] Therefore, this report is insufficient to establish appellant's claim.

In his attending physician's report of event date, Dr. Daji checked a box marked "yes" opining that appellant's right shoulder injury was caused by her federal employment. The Board has held that when a physician's opinion on causal relationship consists of checking "yes" to a form question, without adequate explanation or rationale, that opinion is of diminished probative value and is insufficient to establish a claim.[15] Therefore, this report is also insufficient to meet appellant's burden.

In his November 20, 2017 and July 24, 2018 reports, Dr. DuPuy diagnosed right shoulder pain and carpal tunnel syndrome of the right hand. He explained that he had seen appellant in November 2017 for a bursitis-type inflammation in the shoulder and carpal tunnel syndrome prior to her June 28, 2018 employment incident. The Board finds that while Dr. DuPuy attributed appellant's conditions to a "November 2017" incident, he has not provided an opinion on causal relationship between the diagnosed conditions and the accepted June 28, 2018 employment incident. 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.[16] Thus, Dr. DuPuy's reports are insufficient to meet appellant's burden of proof[17] to establish the claim.[18]

In his February 13, 2019 report, Dr. Feltham diagnosed strain of the rotator cuff and subsequent shoulder bursitis, which he opined was created through a one-time over-stressing of the rotator cuff, or with repetitive use and overuse of the rotator cuff. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical

[13] *See J.G.*, Docket No. 17-1382 (issued October 18, 2017).

[14] *See A.B.*, Docket No. 16-1163 (issued September 8, 2017).

[15] *See M.O.*, Docket No. 18-1056 (issued November 6, 2018); *Deborah L. Beatty,* 54 ECAB 340 (2003).

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

[17] *T.R.*, Docket No. 18-1272 (issued February 15, 2019).

[18] *D.H.*, Docket No. 17-1913 (issued December 13, 2018).

rationale explaining how a given medical condition/disability was related to employment factors.[19] As Dr. Feltham's opinions are conclusory, they are insufficient to establish causal relationship.

Appellant also submitted evidence from Drs. O'Neal, Kelly, and Berman, but they did not address causal relationship. As explained above, 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.[20] These reports, therefore, are insufficient to establish appellant's claim.

Appellant further submitted physical therapy treatment notes. The Board has held that medical reports signed solely by a physical therapist are of no probative value as such health care providers are not considered physicians as defined under FECA and are therefore not competent to provide medical opinions.[21] Consequently, this evidence is also insufficient to establish appellant's claim.

On appeal counsel contends that appellant has met her burden of proof to establish causal relationship based upon the medical report of Dr. Feltham. As explained above, however, the evidence of record is insufficient to establish appellant's claim as it fails to include a rationalized medical opinion regarding the issue of causal relationship.

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 June 28, 2018 employment incident.

[19] *See Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

[20] *Supra* note 19.

[21] *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); *J.M.*, 58 ECAB 448 (2007) (physical therapists are not considered physicians under FECA).

ORDER

IT IS HEREBY ORDERED THAT the March 28, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 25, 2019
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board