United States Department of Labor
Employees' Compensation Appeals Board

T.T., Appellant	)	
and	)	**Docket No. 19-1121**
	)	**Issued: November 18, 2019**
DEPARTMENT OF HOMELAND SECURITY, TRANSPORTATION SECURITY ADMINISTRATION, Houston, TX, 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:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On April 22, 2019 appellant, through counsel, filed a timely appeal from a March 13, 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.

ISSUE

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

[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.*

FACTUAL HISTORY

On March 28, 2018 appellant, then a 54-year-old transportation security officer, filed a traumatic injury claim (Form CA-1) alleging that on March 28, 2018 she sustained a left shoulder strain when pulling and lifting passenger bags while in the performance of duty. She stopped work on that date.

In an April 17, 2018 report, Dr. Richard Trifiro, a family medicine specialist, noted that appellant presented for a follow-up evaluation of the left shoulder injury sustained on March 28, 2018. He indicated that she continued to complain of pain, but that she was improving. Dr. Trifiro diagnosed strain of left trapezius muscle and strain of left shoulder and provided work restrictions of lifting 15 pounds constantly, pushing and pulling 25 pounds constantly, and no reaching above shoulders.

In an April 30, 2018 development letter, OWCP requested that appellant provide additional factual and medical evidence in support of her claim, including a detailed factual statement and a report from her attending physician addressing the causal relationship between any diagnosed condition(s) and the claimed March 28, 2018 work incident. It afforded her 30 days to provide additional evidence.

In response, appellant submitted two narrative statements dated May 17, 2018 indicating that she was pulling passenger bags up to the conveyor belt and lifting them with the handle onto the belt to be x-rayed. She stated that the bags weighed as much as 50 to 100 pounds and she was alternating, using both arms. At approximately 8:00 a.m., appellant felt a pop in her left shoulder and when she continued to experience pain she informed her supervisor.

Appellant also submitted progress reports dated March 28, April 24, May 1 and 22, 2018 from Dr. Trifiro, who asserted that appellant injured her left shoulder on March 28, 2018 while lifting heavy baggage at work, felt a shooting pain, and could not lift her arm fully. Dr. Trifiro diagnosed adhesive capsulitis of the left shoulder and continued his previously provided work restriction.

On May 8, 2018 Dr. John Dang, a Board-certified orthopedic surgeon, diagnosed strain of left shoulder and adhesive capsulitis of the left shoulder and provided work restrictions of lifting up to 20 pounds constantly, pushing and pulling up to 25 pounds constantly, and no overhead lifting.

In a letter dated May 29, 2018, the employing establishment controverted appellant's claim and argued that video footage confirmed that she did not utilize her left arm/hand/shoulder for the entire period of time she was working prior to reporting the alleged injury on March 28, 2018. It also noted that she was under administrative review for disciplinary action resulting in proposed suspension due to inappropriate behavior while in the performance of duty. The employing establishment enclosed a compact disc (CD) file of the surveillance footage.

Appellant subsequently submitted physical therapy treatment notes dated March 30, 2018 in support of her claim.

In progress reports dated April 3 and 10, May 29, and June 8, 2018, Dr. Trifiro reiterated his diagnoses and work restrictions.

By decision dated August 3, 2018, OWCP found that the factual evidence of record was insufficient to establish that the March 28, 2018 incident occurred at the time, place, and in the manner alleged.

On August 23, 2018 appellant, through counsel, requested a hearing before a representative of OWCP's Branch of Hearings and Review. Counsel also submitted chart notes dated June 18 to July 13, 2018 from appellant's chiropractor, Dr. Paul M. Raymond, who observed edema/swelling, tenderness, and muscle weakness in the left anterior shoulder region. He also submitted a July 25, 2018 report from Dr. Raymond regarding his examination of appellant's right shoulder.

In a July 17, 2018 report, Dr. Dominic G. Sreshta, a Board-certified internist and hospice care and palliative medicine specialist, diagnosed strain of unspecific muscle, fascia and tendon at shoulder and upper arm level, left arm and adhesive capsulitis of the left shoulder. He reported that appellant recounted that she was injured while performing her normal work duties at her normal capacity.

A telephonic hearing was held before an OWCP hearing representative of the Branch of Hearings and Review on January 3, 2019.

By decision dated March 13, 2019, OWCP's hearing representative affirmed, as modified, the prior decision. OWCP accepted that she was lifting and sliding bags on March 28, 2018 and although she predominately used her right arm, she also used her left arm in the performance of duty. It determined, however, that the medical evidence of record was insufficient to establish that she sustained a diagnosed condition causally related to the accepted work incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] 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.[4] These are the essential elements of 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

[3] *Id.*

[4] *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).

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

time, place, and in the manner alleged.[6] Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.[7]

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.[8] A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.[9] 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 factor(s).[10]

ANALYSIS

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

In support of her claim, appellant submitted a series of notes from Dr. Trifiro and a report by Dr. Sreshta. Dr. Trifiro and Dr. Sreshta diagnosed left shoulder conditions and indicated that appellant recounted that she was injured while performing her normal work duties. These reports, however, do not provide an opinion as to causal relationship between the accepted March 28, 2018 employment incident and the 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.

Likewise, appellant also submitted evidence from Dr. Dang, who diagnosed strain and adhesive capsulitis of the left shoulder on May 8, 2018, and Dr. Raymond, who observed edema/swelling, tenderness, and muscle weakness in the left anterior shoulder region and previously examined appellant for a right shoulder condition. The Board further finds that neither of these physicians addressed causal relationship and thus their reports are of no probative value and insufficient to meet appellant's burden of proof.[12]

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

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

[7] *Id.*

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

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

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

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

[12] *Id*.

to provide medical opinions.[13] Consequently, this evidence is also insufficient to establish appellant's claim.

As appellant has not submitted rationalized medical evidence sufficient to establish an injury causally related to the accepted employment incident, the Board finds that she has not met her burden of proof.

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 left shoulder condition causally related to the accepted March 28, 2018 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the March 13, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 18, 2019
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

[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). *E.T.*, Docket No. 17-0265 (issued May 25, 2018) (physician assistants are not considered physicians under FECA); *J.M.*, 58 ECAB 448 (2007) (physical therapists are not considered physicians under FECA).