United States Department of Labor
Employees' Compensation Appeals Board

K.C., Appellant	)	
and	)	**Docket No. 19-0834**
	)	**Issued: October 28, 2019**
FEDERAL JUDICIARY, U.S. PROBATION & PRETRIAL SERVICES OFFICE, Springfield, MO, 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
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On March 12, 2019 appellant, through counsel, filed a timely appeal from a February 20, 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.

[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 condition causally related to the accepted February 5, 2018 employment incident.

FACTUAL HISTORY

On March 6, 2018 appellant, then a 57-year-old senior probation clerk, filed a traumatic injury claim (Form CA-1) alleging that on February 5, 2018 she experienced a pinched nerve and possible herniated disc in her upper back, along with pain and numbness in her right shoulder, arm, and hand while in the performance of duty. She explained that she was moving large storage bins full of paper outside for shredding when she reached at a difficult angle to turn the bin.

In a February 7, 2018 e-mail exchange with an employing establishment human resource specialist and her supervisor, appellant explained that she had been having trouble with her right shoulder, back, arm, and hand for some time, but after pulling the shred bin the pain had increased. She also explained that she had a magnetic resonance imaging (MRI) scan performed on December 27, 2017 due to pain she was already experiencing from what she believed was a result of using her computer.

In a note dated February 7, 2018, Dr. Cory Bethmann, Board-certified in family medicine, excused appellant from work from February 7 to 9, 2018.

In a February 21, 2018 medical report, Dr. Edwin Cunningham III, a Board-certified neurosurgeon, diagnosed cubital tunnel syndrome and recommended that she receive 15 minutes of rest per hour from the computer.

In a development letter dated March 19, 2018, OWCP advised appellant of the factual and medical deficiencies of her claim. It informed her of the evidence necessary to establish her claim. OWCP specifically requested that appellant submit a narrative medical report from her treating physician which provided a diagnosis and the physician's rationalized medical explanation as to how the alleged employment incident caused the diagnosed condition. It afforded her 30 days to submit the necessary evidence.

In response, appellant submitted a February 7, 2018 medical report from Dr. Bethmann in which he noted that appellant had a history of degenerative disc disease and osteoarthritic changes in her cervical spine that caused her pain while performing her work. Dr. Bethmann further noted that she was moving papers on February 5, 2018 when the pain in her right shoulder, neck, and upper extremity worsened. He diagnosed right cervical radiculopathy and recommended that appellant not participate in sports or perform heavy lifting.

Appellant treated with Dr. Steven Pennington, Board-certified in family medicine, on March 13, 2018. Dr. Pennington noted that she presented to his office with right neck pain that radiated down her right arm which had worsened after lifting a box at work. He also noted that appellant had decreased grip in her right hand and that the pain made it difficult for her to sleep at night. Dr. Pennington assessed right cervical radiculopathy, diffused arthralgia, and pain in the right shoulder and ordered an MRI scan of her right shoulder.

A March 29, 2018 MRI scan of appellant's right shoulder verified by Dr. Kevin Baehl, a Board-certified radiologist, found a small intrasubstance insertional supraspinatus tear, mild subacromial/subdeltoid bursitis, increased moderate osteoarthritic changes of the right acromioclavicular joint, and labral degeneration in her right shoulder.

OWCP received an April 12, 2018 letter from appellant stating that her cubital tunnel syndrome was a separate issue unrelated to her case.

By decision dated May 14, 2018, OWCP denied appellant's claim. It found that the medical evidence of record was insufficient to establish a causal relationship between her diagnosed medical conditions and the accepted employment incident.

Appellant thereafter submitted the results of an April 24, 2014 electromyogram (EMG) conducted by Dr. Ted Lennard, Board-certified in physical medicine and rehabilitation. Dr. Lennard observed moderate bilateral ulnar neuropathies at appellant's elbows and mild bilateral median neuropathies at her wrists. In reports dated December 15, 2015 and January 12, 2016, he noted that she experienced worsening neck and right upper extremity pain attributed to her employment duty of 40 hours per week at the computer while at work.

In a February 8, 2016 medical report, Dr. Cunningham noted that appellant had been experiencing pain in her right upper extremity for the past 18 months and noted right cervical radiculopathy and ulnar neuropathy of the right elbow. He also discussed the possibility of performing a right ulnar nerve decompression.

In a November 21, 2017 medical report, Dr. Steven Otto, a Board-certified neurologist, noted that appellant had been dealing with right-sided pain and numbness for several years that she believed was related to her work. Based on an EMG and a cervical spine MRI scan, Dr. Otto assessed cervical radiculopathy, sensation disturbance of the skin, and cervicalgia and noted his impression of multilevel spondylosis with moderate narrowing of the left neural foramen at C6-C7. He also referenced an April 24, 2014 MRI scan conducted by Dr. Stephen Wong, a Board-certified radiologist, in which he noted a tiny interstitial tear at the insertion of the anterior-mid supraspinatus.

In a February 21, 2018 medical report, Dr. Cunningham recommended a right ulnar nerve release procedure in order to treat the radiating pain in appellant's right arm related to her cubital tunnel syndrome, but explained that he was not confident that a cervical decompression and fusion procedure would help her symptoms.

In his March 8, 2018 medical report, Dr. Cunningham noted a lesion of the ulnar nerve in appellant's right upper limb. On March 22, 2018 appellant underwent a right cubital tunnel release procedure.

In an April 17, 2018 diagnostic report, Dr. Sarah Jost, a Board-certified neurologist, explained that the x-rays of appellant's right shoulder showed acromioclavicular arthritis, but no evidence of acute bony injury or abnormality.

In an April 17, 2018 report, Dr. David Hicks, a Board-certified orthopedic surgeon, indicated that appellant's MRI scan revealed impingement and arthritis at the acromioclavicular

joint. He also opined that some of her pain was related to a soft tissue injury and not related to the impingement in her shoulder. Dr. Hicks also provided appellant with a corticosteroid injection.

In an April 23, 2018 medical note, Joshua Barbieri, a physician assistant, noted appellant's mild improvement since her March 22, 2018 cubital tunnel release procedure.

On August 31, 2018 appellant underwent a right shoulder arthroscopy with extensive synovectomy, a debridement of the rotator cuff, and biceps tenotomy.

Appellant also submitted medical reports dated September 13 to November 8, 2018, by Erin Clayman, a physician assistant.

On November 28, 2018 appellant, through counsel, requested reconsideration of the May 14, 2018 decision. Along with her request, she submitted a November 7, 2018 narrative medical report from Dr. Pennington along with other medical notes already of record. Dr. Pennington noted that he examined appellant on March 13, 2018 after she complained of right shoulder pain that started to get worse after she had been lifting and pulling boxes at work. He explained that she was referred to Dr. Hicks, where she received a corticosteroid injection and later surgery in order to clear out the shoulder area to relieve her symptoms. Dr. Pennington referenced Dr. Hicks' August 31, 2018 operative note that showed a full-thickness supraspinatus tendon tear, arthritis, and an injury to appellant's rotator cuff. He opined that her supraspinatus tear was a direct consequence of her injury at work. Dr. Pennington also explained that the traction from the heavy boxes pulling down on her shoulder joint and rotator cuff caused the tear in the supraspinatus and aggravated her acromioclavicular joint arthritis.

In a letter received by OWCP on January 16, 2019, the employing establishment controverted appellant's claim, contending that her injuries were preexisting. It provided a copy of the February 7, 2018 e-mail exchange between appellant and a human resource specialist in which she explained that she had been having trouble with her right side for "quite a while."

By decision dated February 20, 2019, OWCP denied modification of its prior decision finding that the evidence of record did not establish a causal relationship between the diagnosed conditions and the accepted February 5, 2018 employment incident.

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

[3] *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

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 she actually experienced the 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]

To establish causal relationship between the condition claimed and the employment incident, the employee must submit rationalized medical opinion evidence.[9] 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]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a right shoulder condition causally related to the accepted February 5, 2018 employment incident.

In his November 7, 2018 report, Dr. Pennington opined that appellant's supraspinatus tear was a direct consequence of her injury at work. He explained that the traction from the heavy boxes pulling down on her shoulder joint and rotator cuff caused the tear in the supraspinatus and aggravated her acromioclavicular joint arthritis. Although Dr. Pennington's report contains an affirmative opinion on causal relationship, it is not sufficiently rationalized as it does not provide a detailed opinion explaining how her preexisting shoulder condition had been aggravated beyond what was expected with normal degeneration. As the physician failed to discuss whether appellant's preexisting injury had progressed beyond what might be expected from the natural progression of that condition, the opinion is insufficient to establish the claim.[11]

[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] *D.B.*, Docket No. 18-1348 (issued January 4, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

[7] *D.S.*, Docket No. 17-1422 (issued November 9, 2017); *Elaine Pendleton*, 40 ECAB 1143 (1989).

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

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

[10] *I.J.*, 59 ECAB 408 (2008).

[11] *R.E.*, Docket No. 14-0868 (issued September 24, 2014).

Dr. Pennington's March 13, 2018 report noted appellant's diagnoses of right cervical radiculopathy, arthralgia, and that she was experiencing right neck pain that radiated down her right arm which had worsened after lifting a box at work. While it does discuss the employment incident as a contributing factor to appellant's conditions, the Board finds that the March 13, 2018 report is insufficient because it does not explain the pathophysiologic mechanism by which the accepted employment injury caused, aggravated or accelerated appellant's injuries.[12] Because Dr. Pennington's report does not explain how appellant's lifting of a box caused or contributed to her injuries, it is of limited probative value.

Similarly, Dr. Bethmann's February 7, 2018 medical report also attributed appellant's right cervical radiculopathy and worsening pain in her right shoulder, neck, and upper extremity to the February 5, 2018 employment incident. However, his report also does not explain the pathophysiological mechanism by which the accepted employment injury caused, aggravated, or accelerated appellant's injuries.[13] Accordingly, Dr. Bethmann's medical report is of little probative value.

Appellant also submitted medical reports dated April 17 and August 23, 2018 from Dr. Hicks. In his reports Dr. Hicks opined that some of her pain was related to a soft tissue injury, but did not provide an opinion as to whether the injury was work 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.[14] Therefore, Dr. Hicks' reports are of no probative value.

In medical reports dated from February 21 to March 22, 2018, Dr. Cunningham addressed a right cubital tunnel release procedure in order to address pain appellant was experiencing. However, appellant provided an April 12, 2018 letter in which she explained that her cubital tunnel syndrome was an issue unrelated to this present case. Consequently, Dr. Cunningham's reports are insufficient to establish the claim as he did not specifically address whether appellant's employment activities on February 5, 2018 had caused or aggravated a diagnosed medical condition.[15] Rather, the evidence pertained to an unrelated condition and surgery. For these reasons, Dr. Cunningham's reports are insufficient to satisfy appellant's burden of proof.

[12] *See A.P.*, Docket No. 19-0224 (issued July 11, 2019).

[13] *Id*.

[14] *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 any opinion regarding the cause of an employee's condition or disability is of no probative value on the issue of causal relationship).

[15] *See id*.

OWCP also received medical reports from a physician assistant. These reports, however, are of no probative value as physician assistants are not considered physicians as defined under FECA.[16] Consequently, these reports are also insufficient to establish appellant's claim.

As appellant has not submitted rationalized medical evidence establishing that her condition is causally related to the accepted February 5, 2018 employment incident, the Board finds that she has not met her burden of proof to establish her 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 a condition causally related to the accepted February 5, 2018 employment incident.

[16] 5 U.S.C. § 8102(2) of FECA provides that 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. *M.M.*, Docket No. 18-1096 (issued December 14, 2018); *E.T.*, Docket No. 17-0265 (issued May 25, 2018) (physician assistants are not considered physicians under FECA).

ORDER

IT IS HEREBY ORDERED THAT the February 20, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 28, 2019
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board