United States Department of Labor
Employees' Compensation Appeals Board

T.H., Appellant	)	
and	)	**Docket No. 19-1891**
	)	**Issued: April 3, 2020**
SOCIAL SECURITY ADMINISTRATION, Baltimore, MD, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
CHRISTOPHER J. GODFREY, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On September 12, 2019 appellant filed a timely appeal from an August 2, 2019 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 medical condition causally related to the accepted January 25, 2019 employment incident.

FACTUAL HISTORY

On March 14, 2019 appellant, then a 33-year-old Information Technology manager, filed a traumatic injury claim (Form CA-1) alleging that on January 25, 2019 she injured her right arm while in the performance of duty. She explained that as she was walking from her car into the

[1] 5 U.S.C. § 8101 *et seq*.

building she slipped and fell on a patch of ice on the sidewalk and injured her right arm. Appellant did not stop work.

In a March 28, 2019 medical report, Dr. Daniel Redziniak, a Board-certified orthopedic surgeon, noted that appellant presented with right shoulder pain after slipping on ice and landing on her outstretched right upper extremity. Appellant denied a history of injury to her right shoulder. Dr. Redziniak recorded an impression of a right shoulder rotator cuff pathology and diagnosed acute pain of the right shoulder. In a workers' compensation case report of even date, he referred appellant to physical therapy to treat her right shoulder pain.

Appellant submitted physical therapy notes dated from May 7 to June 6, 2019, by Daniel Sullivan and Josephine Gosnell, physical therapists, detailing treatment of her right shoulder pain.

In a development letter dated June 25, 2019, OWCP informed appellant that her claim initially appeared to be a minor injury that resulted in minimal or no lost time from work and that continuation of pay was not controverted by the employing establishment, and thus, limited expenses had therefore been authorized. However, a formal decision was now required. OWCP provided a factual questionnaire inquiring about the circumstances surrounding appellant's claimed injury for her completion and requested that she submit a narrative medical report from her physician, which contained a detailed description of findings and diagnoses, explaining how the reported incident caused or aggravated her medical condition. It afforded her 30 days to respond. In a separate development letter of even date, OWCP requested that the employing establishment provide comments from a knowledgeable supervisor regarding the accuracy of appellant's allegations.

In response, appellant submitted a January 25, 2019 medical note from the employing establishment's employee health center with an illegible signature which noted that appellant slipped on black ice and fell on her right arm. The note indicated that her arm was sore and tender to the touch and that she could hear a clicking noise when she rotated her right arm. The note further indicated that appellant was advised to use pain medication and ice to treat the pain in her right arm.

Appellant also submitted a copy of a text message conversation from the date of injury between her and L.C., a coworker, in which she informed L.C. that she fell on the ice over by the daycare.

In response to OWCP's questionnaire, appellant explained that, on January 25, 2019, she was walking from the parking lot to the building, when she slipped on a patch of ice on the sidewalk and fell on her right arm. She described experiencing soreness, tenderness, and throbbing daily in her right arm after the incident and undergoing medical treatment.

Appellant also submitted additional physical therapy notes dated from June 18 to July 23, 2019.

By decision dated August 2, 2019, OWCP denied appellant's traumatic injury claim, finding that although she established that the January 25, 2019 incident occurred as alleged, she had failed to submit medical evidence containing a medical diagnosis in connection with her

injury. It concluded, therefore, that the requirements had not been met to establish an injury as defined under FECA.

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]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the fact of injury has been established. There are two components involved in establishing the 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. Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.[6]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a medical condition causally related to the accepted January 25, 2019 employment incident.

In his March 28, 2019 medical report, Dr. Redziniak recorded an impression of a right shoulder rotator cuff pathology and diagnosed acute pain of the right shoulder due to her January 25, 2019 fall. He did not, however, provide a specific diagnosis of a medical condition of the right shoulder or right rotator cuff. The Board has held that the assessment of pain is not considered a diagnosis, as pain merely refers to a symptom of an underlying condition.[7] A medical report lacking a firm diagnosis and a rationalized medical opinion regarding causal relationship is

[2] *Id*.

[3] *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *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] *R.R.*, Docket No. 19-0048 (issued April 25, 2019); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

[6] *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *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] *M.V.*, Docket No. 18-0884 (issued December 28, 2018). The Board has consistently held that pain is a symptom, rather than a compensable medical diagnosis. *See P.S.*, Docket No. 12-1601 (issued January 2, 2013); *C.F.*, Docket No. 08-1102 (issued October 10, 2008).

of no probative value.[8] Therefore, Dr. Redziniak's report is insufficient to establish appellant's claim.

Appellant also submitted physical therapy notes dated from May 7 to July 23, 2019. The Board has held that treatment notes signed by a physical therapist[9] are not considered medical evidence as these providers are not considered "physician[s]" as defined under FECA.[10] Therefore, these notes lack probative value and are insufficient to establish appellant's claim.

A January 25, 2019 medical note with an illegible signature noted that appellant experienced pain in her right arm after slipping on black ice and landing on her right arm. The Board has held that a report that is unsigned or bears an illegible signature lacks proper identification and cannot be considered probative medical evidence. Further, as previously noted, pain is not considered a valid diagnosis, as pain merely refers to a symptom of an underlying condition.[11] For these reasons, the January 25, 2019 medical note is also insufficient to establish appellant's burden of proof.

The Board finds that appellant has not submitted rationalized, probative medical evidence sufficient to establish a medical condition causally related to the accepted January 25, 2019 employment incident.[12] Appellant, therefore, 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 diagnosed medical condition causally related to the accepted January 25, 2019 employment incident.

[8] *P.C.*, Docket No. 18-0167 (issued May 7, 2019).

[9] *V.W.*, Docket No. 16-1444 (issued March 14, 2017).

[10] *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); *see also D.J.*, Docket No. 18-0593 (issued February 24, 2020) (physical therapists are not physicians under FECA).

[11] *Supra* note 8.

[12] *See T.J.*, Docket No. 18-1500 (issued May 1, 2019); *see D.S.*, Docket No. 18-0061 (issued May 29, 2018).

ORDER

IT IS HEREBY ORDERED THAT the August 2, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 3, 2020
Washington, DC

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

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

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