United States Department of Labor
Employees' Compensation Appeals Board

R.K., Appellant	)	
and	)	**Docket No. 20-0049**
	)	**Issued: April 10, 2020**
DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE, Brookhaven, NY, 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:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On October 7, 2019 appellant, through counsel, filed a timely appeal from a July 3, 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 medical condition causally related to the accepted July 31, 2018 employment incident.

FACTUAL HISTORY

On August 9, 2018 appellant, then a 56-year-old customer service representative, filed a traumatic injury claim (Form CA-1) alleging that on July 31, 2018 she fell onto her knees, wrists, shoulders, and elbows when walking down the hallway while in the performance of duty. She stopped work on July 31, 2018.

In an August 14, 2018 development letter, OWCP informed appellant that the evidence submitted was insufficient to establish her claim. It advised her of the factual and medical evidence necessary to establish her claim and also provided a questionnaire for completion. OWCP afforded appellant 30 days to provide the necessary factual information and medical evidence.

Appellant subsequently submitted a July 31, 2018 work status letter by Justin Fink, a physician assistant, who noted that she was treated in the emergency department on that date and could return to work on August 6, 2018 without restrictions. Mr. Fink also provided an emergency department after-visit summary report, which indicated that the reason for her visit was "fall, shoulder pain, wrist pain, and knee pain." He diagnosed knee contusion.

OWCP also received diagnostic examination findings dated July 31, 2018 which included a right shoulder x-ray examination report showed mild acromioclavicular and glenohumeral osteoarthritis, a right elbow x-ray examination report that also revealed mild osteoarthritis, and, a bilateral knee x-ray examination further showed mild bilateral tricompartmental osteoarthritis.

Appellant submitted an August 3, 2018 work status note by Dr. Daniel J. Laieta, an osteopathic physician Board-certified in internal medicine, who indicated that she was treated in his office and could return to work on August 13, 2018.

In an August 17, 2018 report, Dr. Richard M. Savino, a Board-certified orthopedic surgeon, recounted that on July 31, 2018 appellant fell at work and injured her right shoulder, back, elbow, and both knees. He noted that her current complaint was for her right shoulder. Dr. Savino indicated that appellant had a history of fibromyalgia, which was exacerbated with the fall. Upon examination of her right shoulder, he observed tenderness over the supraspinatus tendon and soft crepitus. Sensory examination was normal and strength was 5/5. Dr. Savino diagnosed right shoulder contusion and right shoulder impingement syndrome. He completed a work status note and work capacity evaluation (OWCP-5c), which indicated that appellant could return to work with restrictions of no lifting over 20 pounds and no prolonged use of the right shoulder.

On August 20, 2018 appellant began to undergo physical therapy treatments and submitted a series of treatment notes and billing sheets.

In an August 28, 2018 letter, D.S., a manager, indicated that appellant had been approved for Family and Medical Leave Act leave on April 10, 2018 and that the condition listed on the form was fibromyalgia and osteoarthritis. In an August 28, 2018 witness statement submitted *via*

e-mail, R.G., a management and program assistant, recounted that on July 31, 2018 at 6:00 a.m. she heard a loud thud sound and saw appellant on the floor.

In a September 5, 2018 work status note, Dr. Rasel M. Rana, an osteopathic physician Board-certified in orthopedic surgery, related that appellant experienced back and neck pain after a fall at work on July 31, 2018. Upon examination of appellant's cervical spine, he observed moderate tenderness on palpation and moderate pain with range of motion. Examination of appellant's lumbar spine revealed moderate tenderness on palpation and moderate pain with simulated truncal motion. Spurling and straight leg raise testing was positive on the right. Dr. Rana diagnosed cervical sprain, lumbar sprain, cervical spondylosis with radiculopathy, cervical disc degeneration, degenerative lumbar spinal stenosis, lumbosacral spine osteoarthritis, degenerative cervical spinal stenosis, and right lumbar and cervical radiculopathy. He completed a work status note, which indicated that appellant could return to limited-duty work for four hours per day.

In a September 10, 2018 attending physician's report (Form CA-20), Dr. Rana noted a date of injury of July 31, 2018 and clinical x-ray findings. He diagnosed cervical and lumbar sprain, cervical spondylosis and radiculopathy, right lumbar radiculopathy, cervical spinal stenosis, and degenerative lumbar spinal stenosis. Dr. Rana checked a box marked "yes" indicating that appellant's condition was caused or aggravated by an employment activity. He reported that she "fell @ work."

In a September 11, 2018 work status note, Dr. Rana indicated that appellant could return to work limited duty for four hours per day beginning on September 5, 2018.

By decision dated September 25, 2018, OWCP denied appellant's claim. It accepted that the July 31, 2018 incident occurred as alleged and that right shoulder, lumbar, and cervical conditions had been diagnosed, however, it denied her claim finding that she had failed to establish causal relationship between the accepted employment incident and the diagnosed conditions.

On September 26, 2018 appellant accepted a part-time, limited-duty job offer as a customer service representative.

On April 5, 2019 appellant requested reconsideration and submitted additional medical evidence.

Appellant submitted July 31, 2018 emergency department hospital records by Mr. Fink, who recounted her complaints of shoulder, wrist, and knee pain after a fall at work. Mr. Fink provided physical examination and diagnostic testing findings and diagnosed knee contusion.

In a September 25, 2018 report, Dr. Savino noted that appellant's right shoulder symptoms were improving. He reported right shoulder examination findings of tenderness over the supraspinatus tendon and soft crepitus with no swelling, erythema, or deformities. Dr. Savino diagnosed right shoulder impingement syndrome and right shoulder contusion.

In a March 14, 2019 examination report, Dr. Laieta noted appellant's complaints of severe low back pain. He reported lumbar examination findings of moderate tenderness of the right paravertebral muscles and diagnosed lumbar strain and fibromyalgia.

By decision dated July 3, 2019, OWCP denied modification of the September 25, 2018 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] 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,[4] 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.[5] 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.[6]

In order to determine whether a federal employee has sustained a traumatic injury in the performance of duty, OWCP must first determine whether fact of injury has been established.[7] 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 evidence, in the form of probative medical evidence, to establish that the employment incident caused a personal injury.[9]

To establish causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence.[10] The opinion of the physician must be based on a complete factual and medical background of the employee, 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 incident identified by the employee.[11] The weight of the medical

[3] *Id*.

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

[5] *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[6] *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).

[7] *D.B.*, Docket No. 18-1348 (issued January 4, 2019); *S.P.*, 59 ECAB 184 (2007).

[8] *D.S.*, Docket No. 17-1422 (issued November 9, 2017); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

[9] *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *David Apgar*, 57 ECAB 137 (2005); *John J. Carlone*, 41 ECAB 354 (1989).

[10] *See S.A.*, Docket No. 18-0399 (issued October 16, 2018); *see also Robert G. Morris*, 48 ECAB 238 (1996).

[11] *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.[12]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a medical condition causally related to the accepted July 31, 2018 employment incident.

In support of her claim, appellant submitted reports from Dr. Rana dated September 5 to 11, 2018. In his initial report, Dr. Rana accurately described the July 31, 2018 employment incident and related her complaints of neck and back pain. He reported examination findings of moderate tenderness on palpation of the cervical and lumbar spines. Dr. Rana diagnosed cervical sprain, lumbar sprain, cervical spondylosis with radiculopathy, cervical disc degeneration, degenerative lumbar spinal stenosis, lumbosacral spine osteoarthritis, degenerative cervical spinal stenosis, and right lumbar and cervical radiculopathy. In a September 10, 2018 Form CA-20, he checked a box marked "yes" indicating that appellant's condition was caused or aggravated by an employment activity. Dr. Rana noted that she "fell @ work." Without explaining physiologically how the accepted employment incident caused or contributed to the diagnosed conditions, the physician's report is of limited probative value.[13] Dr. Rana's opinion is therefore insufficient to establish the claim.[14]

In reports dated August 17 and September 25, 2018, Dr. Savino described the July 31, 2018 employment injury and provided examination findings. He diagnosed right shoulder contusion and right shoulder impingement. While Dr. Savino discussed the July 31, 2018 employment incident, he did not specifically address the cause of the diagnosed conditions. 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] Likewise, in reports dated August 3, 2018 and March 14, 2019, Dr. Laieta also reported a diagnosis of lumbar strain, but did not opine as to the cause of the diagnosed condition.[16]

The July 31, 2018 right shoulder, right elbow, and bilateral knee x-ray examination reports are also insufficient to establish appellant's claim. The Board has held that reports of diagnostic tests lack probative value as they do not provide an opinion on causal relationship between her employment duties and the diagnosed conditions.[17]

[12] *James Mack*, 43 ECAB 321 (1991).

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

[14] *See E.H.*, Docket No. 19-1282 (issued December 23, 2019).

[15] *See B.P.*, Docket No. 19-0777 (issued October 8, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018).

[16] *See J.H.*, Docket No. 19-0838 (issued October 1, 2019); *S.G.*, Docket No. 19-0041 (issued May 2, 2019).

[17] *G.S.*, Docket No. 18-1696 (issued March 26, 2019); *A.B.*, Docket No. 17-0301 (issued May 19, 2017).

Appellant also submitted July 31, 2018 hospital records from Mr. Fink who treated her in the emergency department for a knee contusion. A physician assistant, however, is not considered a "physician" as defined under FECA, and thus the records are of no probative value.[18]

On appeal counsel argues that OWCP had accepted that an injury occurred and that the claimant did not have to prove a causal connection when there is an obvious fall and injury. However, as set forth above appellant has not submitted rationalized medical evidence establishing that her medical condition is causally related to the accepted July 31, 2018 employment incident, the Board finds that she has not met her burden of proof.[19]

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 medical condition causally related to the accepted July 31, 2018 employment incident.

[18] 5 U.S.C. § 8102(2) of FECA provides as follows: physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. *See also 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); 20 C.F.R. § 10.5(t). *George H. Clark*, 56 ECAB 162 (2004) (physician assistant is not a physician under FECA).

[19] *See K.K.*, Docket No. 19-1193 (issued October 21, 2019).

ORDER

IT IS HEREBY ORDERED THAT the July 3, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 10, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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