

**United States Department of Labor
Employees' Compensation Appeals Board**

S.D., Appellant)	
)	
and)	Docket No. 20-0413
)	Issued: July 28, 2020
)	
U.S. POSTAL SERVICE, SAN DIEGO MLS)	
POST OFFICE, San Diego, CA, 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
JANICE B. ASKIN, Judge

JURISDICTION

On December 12, 2019 appellant filed a timely appeal from a July 3, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

¹ The Board notes that following the July 3, 2019 decision, OWCP received additional evidence. However, 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.*

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met his burden of proof to establish upper extremity conditions which manifested on March 27, 2019 causally related to the accepted factors of his federal employment.

FACTUAL HISTORY

On April 25, 2019 appellant, then a 63-year-old clerk, filed an occupational disease claim (Form CA-2) alleging that he developed left shoulder pain and finger numbness due to factors of his federal employment including repetitive lifting, loading and unloading of heavy boxes weighing up to 40 pounds. He indicated that he first became aware of his condition and related it to his employment on March 27, 2019. Appellant did not stop work.

In an April 14, 2019 doctor's first report of occupational injury or illness, Dr. Marife Dy Stroika, a Board-certified family practitioner, noted that she evaluated appellant for a left-sided neck and back injury which occurred at work. She recounted a history that he was lifting 40-pound boxes on March 27, 2019³ when he noticed discomfort in the left side of his upper back and shoulder. Appellant continued to work and his symptoms increased. Findings on physical examination revealed limited flexion in the neck and pain when looking to the left side. Dr. Dy Stroika diagnosed neck and back pain, and left hand numbness. She provided work restrictions.

In a May 13, 2019 development letter, OWCP notified appellant of the deficiencies in his claim and informed him of the type of factual and medical evidence to submit in support of his claim and provided a questionnaire for his completion. It requested that he clarify whether his claim was for a traumatic injury or an occupational disease. OWCP afforded appellant 30 days to respond.

In an April 2, 2019 narrative statement, appellant asserted that on March 27, 2019 he was required to move 60 boxes of labels and felt something wrong in his shoulder. The boxes weighed approximately 40 pounds each. Appellant continued to work on March 30, 2019 without a problem. He reported that his pain was present, but not an issue and he expected it to resolve.

Appellant provided notes beginning May 17 through June 4, 2019 from Hamid Sakhi, a physician assistant and Mary Duvall, a physical therapist.

In a form report dated May 17, 2019, Dr. Oluseyi Awodele, a resident physician, described appellant's history of lifting 60 boxes weighing approximately 40 pounds and developing pain in his left shoulder and arm. On May 20, 2019 he examined appellant and diagnosed degenerative arthritis of the cervical spine, left shoulder strain, and left trapezius strain. Dr. Awodele indicated that appellant had experienced right shoulder pain, as well as numbness in the left thumb, index, and middle finger for approximately three months. He recounted that appellant's left shoulder

³ The report lists the date of injury as March 28, 2019; however, this appears to be in error as appellant has consistently indicated his date of injury as March 27, 2019.

pain began after a period of prolonged repetitive lifting on March 27, 2019. Approximately two weeks later, appellant began to experience numbness in his left fingers and thumb.

On June 11 and 18, 2019 Dr. Stephen Leibham, a Board-certified internist, diagnosed left shoulder strain. He noted that appellant had a normal shoulder examination and that he experienced neck symptoms at home lying down without a pillow. In his June 18, 2019 note, Dr. Leibham diagnosed strain of the left shoulder and upper arm. He opined that appellant's left shoulder pain was secondary to lifting boxes and listed an injury date of March 27, 2019. Dr. Leibham found that his left shoulder condition had resolved. He reported that appellant's left wrist symptoms appeared to be carpal tunnel syndrome as he had a positive Tinel's sign, and as these symptoms had been present for eight months.

By decision dated July 3, 2019, OWCP found that appellant had failed to establish causal relationship between his diagnosed conditions and the accepted factors of his federal employment.

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,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

To establish that an injury was sustained in the performance of duty in an occupational disease claim, an employee must submit the following: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.⁷

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

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 *L.S.*, Docket No. 19-1769 (issued July 10, 2020); *R.G.*, Docket No. 19-0233 (issued July 16, 2019). See also *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

opinion evidence.⁸ 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 factor(s) identified by the employee.⁹ The weight of the medical 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.¹⁰

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish upper extremity conditions which manifested on March 27, 2019 causally related to the accepted factors of his federal employment.

It is undisputed that on March 27, 2019 appellant moved approximately 60 boxes weighing 40 pounds and experienced left shoulder pain. However, the Board finds that he failed to submit sufficient rationalized medical evidence to establish that his diagnosed conditions were causally related to the accepted March 27, 2019 employment incident.

In support of his traumatic injury claim, appellant provided a June 18, 2019 note from Dr. Leibham diagnosing strain of the left shoulder and upper arm. He opined that appellant's left shoulder pain was secondary to lifting boxes and provided an injury date of March 27, 2019. Although Dr. Leibham supported causal relationship, he failed to provide medical rationale explaining the basis of his conclusory opinion. Without explaining physiologically how the accepted employment incident caused or aggravated the diagnosed conditions, this report is of limited probative value and insufficient to establish appellant's claim.¹¹

In reports dated May 17 and 20, 2019, Dr. Awodele described appellant's history of lifting 60 boxes weighing approximately 40 pounds and developing pain in his left shoulder and arm. He diagnosed degenerative arthritis of the cervical spine, left shoulder strain, and left trapezius strain. Dr. Awodele did not offer a medical opinion as to whether appellant's diagnosed conditions were causally related to the accepted employment incident. The Board has held that medical evidence that does not provide an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.¹²

On April 14, 2019 Dr. Dy Stroika described the March 27, 2019 work incident and diagnosed neck and back pain, and left hand numbness. The Board has consistently held that pain

⁸ S.A., Docket No. 18-0399 (issued October 16, 2018); *Robert G. Morris*, 48 ECAB 238 (1996).

⁹ M.V., Docket No. 18-0884 (issued December 28, 2018); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

¹⁰ D.R., Docket No. 19-0954 (issued October 25, 2019); *James Mack*, 43 ECAB 321 (1991).

¹¹ S.K., Docket No. 20-0102 (issued June 12, 2020); *M.M.*, Docket No. 20-0019 (issued May 6, 2020).

¹² *Id.*

is a symptom, not a specific medical diagnosis. As Dr. Dy Stroika did not provide a specific medical diagnosis, her assessment of pain was insufficient to establish appellant's claim.¹³

Appellant provided a series of notes from Ms. Duvall, a physical therapist and Mr. Sakhi, a physician assistant. The Board has held that reports signed solely by physician assistants and physical therapists are of no probative value as neither considered physicians as defined under FECA.¹⁴ These reports are therefore insufficient to establish appellant's claim.

The Board finds that appellant has not submitted rationalized, probative medical evidence sufficient to establish upper extremity conditions which manifested on March 27, 2019 causally related to the accepted factors of his federal employment when lifting boxes.¹⁵ Appellant therefore has not met his 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 his burden of proof to establish upper extremity conditions which manifested on March 27, 2019 causally related to the accepted factors of his federal employment.

¹³ *M.V.*, Docket No. 19-1515 (issued January 2, 2020); *M.M.*, Docket No. 16-1617 (issued January 24, 2017); *K.B.*, Docket No. 16-0122 (issued April 19, 2016); *Robert Broome*, 55 ECAB 339 (2004).

¹⁴ Section 8101(2) of FECA provides that physician "includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law." 5 U.S.C. § 8101(2). 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); *D.H.*, Docket No. 18-0072 (issued January 21, 2020) (physical therapists are not considered physicians under FECA); *M.C.*, Docket No. 19-1074 (issued June 12, 2020) (physician assistants are not considered physicians under FECA).

¹⁵ *T.J.*, Docket No. 18-1500 (issued May 1, 2019); *D.S.*, Docket No. 18-0061 (issued May 29, 2018).

ORDER

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

Issued: July 28, 2020
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board