United States Department of Labor
Employees' Compensation Appeals Board

M.W., Appellant	)	
and	)	**Docket No. 19-1667**
	)	**Issued: June 29, 2020**
U.S. POSTAL SERVICE, INCOMING MAIL FACILITY, Linthicum, 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
JANICE B. ASKIN, Judge

JURISDICTION

On August 3, 2019 appellant filed a timely appeal from a June 5, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP).[1] Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.

ISSUE

The issue is whether appellant has met her burden of proof to establish a right shoulder condition causally related to the accepted November 7, 2017 employment incident.

[1] Appellant timely requested oral argument before the Board. 20 C.F.R. § 501.5(b). By order dated May 14, 2020, the Board exercised its discretion and denied the request, finding that the arguments on appeal could adequately be addressed based on the case record. *Order Denying Request for Oral Argument*, Docket No. 19-1667 (issued May 14, 2020). The Board's *Rules of Procedure* provide that an appeal in which a request for oral argument is denied by the Board will proceed to a decision based on the case record and the pleadings submitted. 20 C.F.R. § 501.5(b).

[2] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On January 13, 2017 appellant, then a 58-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that at 1:00 a.m. on November 7, 2017 she sustained a right shoulder injury when she felt a pop in her shoulder while putting a package on a priority belt while in the performance of duty.[3] She did not stop work. In an employee accident statement, appellant reiterated her history of injury on November 7, 2017.

The employing establishment properly executed an authorization for examination and/or treatment (Form CA-16) on November 13, 2017. The Form CA-16 noted appellant's history of injury that on November 7, 2017 she felt something pop in her shoulder as she put a package on the priority belt. In a November 14, 2017 attending physician's report, Part B of the Form CA-16, a certified family nurse practitioner diagnosed right shoulder strain and noted that the diagnosed condition was not caused or aggravated by the described employment activity. Appellant was released to resume light work on November 14, 2017.[4]

OWCP received medical reports dated November 14 and 17, 2017 signed by a physician assistant and certified registered nurse practitioner who diagnosed a right shoulder strain.

OWCP also received a November 18, 2017 work excuse slip, with an illegible signature, which indicated that appellant may return to light-duty work on that date. The excuse slip also noted that she required right shoulder surgery and that it would be scheduled.

In a January 25, 2018 letter, appellant requested that OWCP reopen her case because she was awaiting scheduling of her right shoulder surgery.

OWCP, in a February 22, 2018 development letter, notified appellant that when her claim was received it appeared to be a minor injury that resulted in minimal or no lost time from work, and since the employing establishment had not controverted continuation of pay or challenged the case, a limited amount of medical expenses were administratively approved and paid. It noted that it had reopened the claim for formal consideration based on her written request. OWCP informed appellant that additional factual and medical evidence was required to establish her claim. It advised her of the type of factual and medical evidence she should submit and attached a questionnaire for her completion. OWCP afforded appellant 30 days to submit the requested evidence.

OWCP subsequently received a November 18, 2017 progress note by Dr. R. Frank Henn, III, an attending Board-certified orthopedic surgeon. Dr. Henn noted a history that appellant injured her right shoulder at work as a mail sorter. He discussed his examination findings and reviewed diagnostic test results. Dr. Henn provided an impression of right retracted rotator cuff tear in a noninsulin dependent diabetic. He noted that surgical intervention was indicated.

[3] A November 13, 2017 statement by appellant's supervisor indicated that, on that day, appellant informed her about her alleged injury on November 7, 2017.

[4] On November 16, 2017 appellant accepted the employing establishment's job offer for a modified mail handler position, effective that date.

On March 9, 2018 appellant responded to OWCP's development questionnaire. She noted that her claimed injury occurred at approximately 3:45 a.m. on November 3, 2017 while she was lifting a container weighing 60 to 70 pounds. Appellant heard a loud pop in her right shoulder which caused instant pain radiating down her right arm. She immediately dropped the container and informed her supervisor about her injury. Appellant noted that she continued to work the rest of her shift with her left arm and used her right arm for gripping only. She sought medical treatment and was placed on light-duty work. Appellant noted that she had a similar injury in July 2017 as a result of lifting a container at work.

Appellant submitted witness statements from her coworkers who corroborated her account of injuring her right shoulder while lifting a heavy box onto a priority belt.

A September 1, 2017 right shoulder magnetic resonance imaging (MRI) scan by Dr. Kenneth C. Wang, a Board-certified diagnostic radiologist, provided impressions of full-thickness tear of the supraspinatus tendon measuring approximately 13 millimeters in anterior-posterior dimension and with retraction to the high point at the humeral head; possible interstitial tear of the subscapularis tendon at the lesser tuberosity; moderate heel-type subacromial spur which may be seen in association with subacromial impingement; and moderate acromioclavicular osteoarthritis.

By decision dated March 26, 2018, OWCP denied appellant's traumatic injury claim finding that evidence she submitted was insufficient to establish the factual component of fact of injury. It explained that there were conflicting statements as to when she notified her supervisor about the claimed injury and there were inconsistencies as to the date and time of the injury. OWCP concluded therefore that the requirements had not been met to establish an injury as defined under FECA.

On April 16, 2018 appellant requested reconsideration and submitted additional evidence. In an accompanying April 7, 2019 statement, she maintained that she informed her supervisor about her claimed November 7, 2017 injury on that day. Appellant noted that, when her supervisor did not get back to her about filling out a report for her injury, she again informed her about the injury on November 10, 2017. Additionally, she explained the discrepancies with the date of her claimed injury she provided to her witnesses and noted on her January 13, 2017 Form CA-1 and response to OWCP's development questionnaire.

A March 12, 2018 duty status report (Form CA-17) by Dr. Henn noted a history of injury that on November 7, 2017 appellant was putting a package on a priority belt when she felt a pop in her right shoulder. He diagnosed rotator cuff tear and checked a box marked "Yes" to indicate that the injury was caused by her placing packages on a priority belt at work. Dr. Henn found that appellant was unable to resume work and provided work restrictions.

A December 6, 2017 letter of warning issued by the employing establishment charged appellant with an unsafe work practice because she failed to immediately report her November 7, 2017 accident and/or injuries to her supervisor.

By decision dated July 13, 2018, OWCP affirmed the March 26, 2018 decision, as modified, finding that the evidence of record established that the November 7, 2017 employment

incident occurred as alleged. It denied the claim, however, finding that appellant had not submitted a rationalized medical opinion relating her diagnosed condition to the accepted employment incident.

Appellant requested reconsideration on October 26, 2018.

In a September 25, 2018 progress note, Dr. Arun R. Hariharan, Board-certified in critical care, internal medicine, and infectious diseases, noted that appellant sustained an injury in November 2017 while lifting a heavy box at work. He reported his physical examination findings and reviewed diagnostic test results. Dr. Hariharan provided an impression of tear of the right rotator cuff, unspecified tear extent. He noted appellant's need for surgery.

In a progress note also dated September 25, 2018, Dr. Henn indicated that he had reviewed Dr. Hariharan's report and concurred with his findings and plan.

A September 25, 2018 right shoulder x-ray report by Dr. Edward B. Mishner, a Board-certified diagnostic radiologist, provided an impression of degenerative changes of the glenohumeral and acromioclavicular joints.

In a partial progress note dated October 17, 2017, Dr. Neven A. Popovic, an orthopedic hand surgeon, indicated an examination of appellant's right shoulder, but provided no findings.

OWCP, by decision dated January 23, 2019, denied modification of its July 13, 2018 decision.

Dr. Henn, in a January 29, 2019 progress note, indicated that he examined appellant on that date. He reviewed a resident physician's note and concurred with the findings. In a February 5, 2019 progress note, Dr. Henn reiterated his diagnosis of right shoulder rotator cuff tear. He also diagnosed biceps partial tear.

On March 8, 2019 appellant requested reconsideration regarding the January 23, 2019 decision and submitted additional evidence from Dr. Henn. In a January 28, 2019 work slip, Dr. Henn noted that she could return to full-duty work on February 4, 2019.

In a letter dated January 29, 2019, Dr. Henn advised that appellant's right shoulder rotator cuff tear was causally related to her November 7, 2017 work injury. In a February 5, 2019 letter, he indicated that she would be undergoing right rotator cuff repair and would be out of work for six months following the surgery. In an April 23, 2019 progress note, Dr. Henn indicated that appellant presented for a postoperative visit.[5] He provided a diagnosis of status post February 27, 2019 right shoulder arthroscopy, rotator cuff repair, and biceps tenodesis.

By decision dated June 5, 2019, OWCP denied modification of its January 23, 2019 decision.

[5] The record indicates that on February 27, 2019 appellant underwent a right shoulder arthroscopy with rotator cuff repair, subacromial decompression, biceps tenodesis, and debridement, which was performed by Dr. Henn.

LEGAL PRECEDENT

An employee seeking benefits under FECA[6] has the burden of proof to establish the essential elements of his or her claim, including 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,[7] 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.[8] 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.[9]

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 time, place, and in the manner alleged. The second component is whether the employment incident caused a personal injury and that component can only be established by medical evidence.[10]

The medical evidence required to establish a causal relationship between a claimed condition and an employment incident is rationalized medical opinion evidence.[11] 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 specific employment factors identified by the employee.[12]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a right shoulder condition causally related to the accepted November 7, 2017 employment incident.

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[6] *Supra* note 2.

[7] *F.H.*, Docket No.18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

[8] *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[9] *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

[10] *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

[11] *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

[12] *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

In a series of progress notes and reports from November 18, 2017 through April 23, 2019, Dr. Henn, appellant's attending physician, diagnosed right rotator cuff tear. He noted that appellant felt a pop in her right shoulder on November 7, 2017 while putting a package on a priority belt at work. Dr. Henn opined that her injury for which she underwent right rotator cuff repair was employment related. While his report supports causal relationship, he did not offer medical rationale to explain how and why he believed that the November 7, 2017 employment incident could have resulted in or contributed to the diagnosed condition. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how a given medical condition/disability was related to employment factors.[13] Therefore, this report is insufficient to establish appellant's claim.

In his March 12, 2018 Form CA-7 report, Dr. Henn diagnosed rotator cuff tear and checked a box marked "Yes" to indicate that appellant's condition was caused by placing packages on a priority belt at work on November 7, 2017. When a physician's opinion on causal relationship consists only of checking a box marked "Yes" in response to a form question, without explanation or rationale, that opinion has limited probative value and is insufficient to establish a claim.[14]

On September 25, 2018 Dr. Hariharan examined appellant for a right shoulder injury that occurred when she was lifting a heavy box at work in November 2017. He provided an impression of tear of the right rotator cuff, unspecified tear extent, and noted her need for surgery. However, Dr. Hariharan did not offer an opinion as to the cause of appellant's condition. 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.[15] Consequently, Dr. Hariharan report is insufficient to meet appellant's burden of proof.

Dr. Popovic's October 17, 2017 partial progress note did not provide a specific diagnosis of an injury or medical condition or an opinion on causation. The Board has held that a medical report lacking a firm diagnosis and a rationalized medical opinion regarding causal relationship is of no probative value.[16] Thus, this evidence is insufficient to satisfy appellant's burden of proof.

Appellant submitted Dr. Wang's September 1, 2017 MRI scan report and Dr. Mishner's September 25, 2018 x-ray report which addressed her right shoulder conditions. The Board has held, however, that diagnostic test reports standing alone lack probative value as they do not provide an opinion on whether there is a causal relationship between an employment incident and a diagnosed condition.[17]

[13] *D.L.*, Docket No. 19-0900 (issued October 28, 2019); *Y.D.*, Docket No. 16-1896 (issued February 10, 2017); *C.M.*, Docket No. 14-0088 (issued April 18, 2014).

[14] *V.W.*, Docket No. 19-1537 (issued May 13, 2020); *K.R.*, Docket No. 19-0375 (issued July 3, 2019).

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

[16] *L.P.*, Docket No. 19-1812 (issued April 16, 2020); *S.J.*, Docket No. 20-0157 (issued April 1, 2020); *P.C.*, Docket No. 18-0167 (issued May 7, 2019).

[17] *W.M.*, Docket No. 19-1853 (issued May 13, 2020); *L.F.*, Docket No. 19-1905 (issued April 10, 2020).

Appellant also submitted a November 18, 2017 work excuse slip with an illegible signature and reports signed solely by a physician assistant and a nurse practitioner. The Board has held, however, that a report that is unsigned or bears an illegible signature lacks proper identification that the author is a physician and therefore cannot be considered probative medical evidence.[18] Furthermore, medical reports signed solely by a physician assistant or a nurse practitioner are of no probative value as neither a physician assistant nor a nurse practitioner is considered a physician as defined under FECA.[19] Thus, this evidence is of no probative value and is insufficient to establish appellant's claim.

As there is no well-reasoned medical opinion establishing appellant's claim for compensation the Board finds that she has not met her burden of proof to establish her claim.[20]

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 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 right shoulder condition causally related to the accepted November 7, 2017 employment incident.[21]

[18] *See K.R.*, Docket No. 19-1382 (issued January 6, 2020); *L.M.*, Docket No. 18-0473 (issued October 22, 2018); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

[19] Section 8101(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." 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). *See also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *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); *R.K.*, Docket No. 20-0049 (issued April 10, 2020) (a physician assistant is not considered a "physician" as defined under FECA); *R.K.*, Docket No. 20-0049 (issued April 10, 2020) (physician assistant); *T.J.*, Docket No. 19-1339 (issued March 4, 2020) (nurse practitioner).

[20] *T.J., id.*; *F.D.*, Docket No. 19-0932 (issued October 3, 2019); *D.N.*, Docket No. 19-0070 (issued May 10, 2019); *R.B.*, Docket No. 18-1327 (issued December 31, 2018).

[21] The Board notes that the employing establishment issued a Form CA-16. A completed Form CA-16 authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. *See* 20 C.F.R. § 10.300(c); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).

ORDER

IT IS HEREBY ORDERED THAT the June 5, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 29, 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