

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

M.L., Appellant)	
)	
and)	Docket No. 20-0137
)	Issued: June 22, 2020
U.S. POSTAL SERVICE, POST OFFICE,)	
Greensboro, NC, Employer)	
)	

Appearances:
Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On October 22, 2019 appellant filed a timely appeal from an August 27, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). 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.³

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.*

³ The Board notes that, following the August 27, 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.*

ISSUE

The issue is whether appellant has met her burden of proof to establish a medical condition causally related to the accepted May 21, 2019 employment incident.

FACTUAL HISTORY

On May 22, 2019 appellant, then a 59-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on May 21, 2019 she experienced pain in her right arm when she stepped from the street to the sidewalk, tripped over a curb, and fell on her right shoulder while in the performance of duty. She stopped work on May 21, 2019. On the reverse side of the claim form, appellant's supervisor noted that appellant was in the performance of duty when injured.

Appellant was treated in the emergency room by Dr. Alexander T. Limkakeng, Board-certified in emergency medicine, on May 21, 2019 for a right shoulder injury. Dr. Limkakeng recommended x-rays and pain medicine. Meera Gandhi, a certified physician assistant working in the emergency room, also treated appellant on May 21, 2019 for a right shoulder injury status post mechanical fall. Appellant reported that, at 10:00 a.m., she stepped onto a curb and fell on her right shoulder with her entire body weight. X-rays of the right shoulder and right humerus revealed a small area of cortical angulation at the transition of the right humeral head which may be chronic or reflect a subtle impaction fracture. Ms. Gandhi immobilized appellant's right arm in a sling and recommended decreased activities until seen by an orthopedist.

On May 29, 2019 Dr. Tally E. Lassiter, Jr., a Board-certified orthopedist, treated appellant for acute right shoulder pain which began on May 21, 2019. Appellant reported delivering mail at work when she slipped on a curb and fell directly onto her right shoulder. Right shoulder imaging revealed cystic changes at greater tuberosity and a possible compressed fracture of greater tuberosity. Dr. Lassiter diagnosed acute pain of the right shoulder due to trauma and opined that the injury was consistent with the described mechanism at work. He recommended continued use of a sling and advised that appellant was unable to work. In separate note dated May 29, 2019, Dr. Lassiter advised that she was totally disabled from work from May 29 to June 29, 2019. In a duty status report (Form CA-17) dated June 5, 2019, he diagnosed acute pain of the right shoulder due to trauma and noted that appellant continued to be disabled.

By development letter dated June 11, 2019, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed and afforded her 30 days to submit the necessary evidence.

OWCP received a May 21, 2019 note from Ms. Gandhi who treated appellant and indicated that appellant would be disabled from work from May 22 to 24, 2019.

On May 22, 2019 the employing establishment executed an authorization for examination and/or treatment (Form CA-16) dated May 22, 2019, authorizing appellant to receive treatment from Duke Hospital for a right shoulder and arm injury.

In response to OWCP's development letter appellant submitted a note from an unidentified health care provider who reported treating appellant on May 21 and 29 2019 and diagnosed acute right shoulder pain.

By decision dated July 15, 2019, OWCP accepted that the May 21, 2019 incident occurred as alleged. However, it denied appellant's traumatic injury claim because she had not submitted any evidence containing a medical diagnosis in connection with the accepted employment incident. Consequently, OWCP found that the requirements had not been met to establish an injury as defined by FECA.

OWCP received x-rays of the right shoulder and humerus dated May 21, 2019, reports from Dr. Limkakeng and Ms. Gandhi dated May 21, 2019, and a May 29, 2019 report from Dr. Lassiter, all previously of record.

In a July 2, 2019 Form CA-16, the employing establishing authorized appellant to seek medical care at Duke Orthopedics. In the attending physician's report, Part B of the Form CA-16, Dr. Lassiter reported that appellant slipped over a curb and fell directly on her right shoulder. He noted findings of possible compressed fracture of greater tuberosity. Dr. Lassiter noted that appellant was placed in a sling and referred for a magnetic resonance imaging (MRI) scan.

An August 8, 2019 Form CA-17 from Dr. Lassiter indicated that an MRI scan revealed a rotator cuff tear of the right shoulder. He noted that appellant remained totally disabled from work. In an August 12, 2019 report, Dr. Lassiter reviewed the MRI scan of the right shoulder dated July 31, 2019 which revealed a complete insertional supraspinatus and infraspinatus tendon tear of the right shoulder, retracted to the lateral edge of the glenoid, mild-to-moderate muscle atrophy, partial tear of the intra-articular long head of biceps tendon, and asymmetric increased edema in the distal clavicle suggestive of repetitive microtrauma superimposed on mild acromioclavicular joint osteoarthritis. He diagnosed acute pain of the right shoulder, traumatic complete tear of the right rotator cuff, and biceps tendinitis of right upper extremity. Dr. Lassiter noted that appellant fell onto her right shoulder and sustained an injury to the shoulder. He opined that "the mechanism of action for the injury was the fall onto her shoulder which occurred at work." Dr. Lassiter further opined that with "[G]reater than 50 percent degree of certainty this is the cause of the patient's injury which is a rotator cuff tear of the supraspinatus infraspinatus, as well as biceps tendon." He recommended physical therapy and possible arthroscopic repair of the right rotator cuff.

On August 14, 2019 appellant requested reconsideration.

By decision dated August 27, 2019, OWCP denied modification of the July 15, 2019 decision, finding that, although appellant had established a medical diagnosis, she had not established that it was causally related to the accepted May 21, 2019 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ 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,⁵ 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

⁴ *Id.*

⁵ *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).

employment injury.⁶ 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.⁷

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 can be established only by medical evidence.⁸

The medical evidence required to establish a causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.⁹ 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.¹⁰

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a medical condition causally related to the accepted May 21, 2019 employment incident.

In an August 12, 2019 report, Dr. Lassiter diagnosed acute pain of the right shoulder, traumatic complete tear of the right rotator cuff, and biceps tendinitis of right upper extremity. He related that appellant sustained an injury to the shoulder and “the mechanism of action for the injury was the fall onto [appellant’s] shoulder which occurred at work.” Dr. Lassiter opined that with “[G]reater than 50 percent degree of certainty this is the cause of [appellant’s] injury which is a rotator cuff tear of the supraspinatus infraspinatus, as well as biceps tendon.” While he indicated that appellant’s right shoulder condition was work related, he failed to provide medical rationale explaining the basis of his opinion. Without explaining, physiologically, how the specific employment incident or employment factors caused or aggravated the diagnosed condition, Dr. Lassiter’s opinion on causal relationship is of limited probative value and insufficient to establish appellant’s claim.¹¹

⁶ *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).

⁷ *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).

⁸ *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).

⁹ *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).

¹⁰ *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).

¹¹ *Id.*; *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

In his May 29, 2019 report, Dr. Lassiter noted treating appellant for acute right shoulder pain which began on May 21, 2019 after she slipped on a curb and fell directly onto her right shoulder. He diagnosed acute pain of the right shoulder due to trauma. The Board has held that pain is a symptom and not a compensable medical diagnosis.¹² Accordingly, Dr. Lassiter's May 29, 2019 report is insufficient to satisfy appellant's burden of proof.

In a separate note dated May 29, 2019, Dr. Lassiter found that appellant was disabled from work from May 29 to June 29, 2019. However, he provided no medical diagnosis in connection with accepted employment incident and offered no opinion regarding the cause of the disability. Medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value on the issue of causal relationship.¹³

In Form CA-17s dated June 5 and August 8, 2019, Dr. Lassiter diagnosed acute pain of the right shoulder due to trauma and noted that appellant continued to be disabled. As noted previously, pain is a symptom, not a specific medical diagnosis.¹⁴ Therefore, these reports are insufficient to meet appellant's burden of proof.

Appellant also submitted a May 21, 2019 emergency room note from Dr. Limkakeng who treated her for a right shoulder injury. Lacking a firm diagnosis and rationalized medical opinion regarding causal relationship, this report is of no probative value.¹⁵ Accordingly, this report is insufficient to satisfy appellant's burden of proof to establish her claim.¹⁶

OWCP received medical evidence from Ms. Gandhi, a certified physician assistant, dated May 21, 2019. Certain healthcare providers such as physician assistants are not considered "physician[s]" as defined under FECA.¹⁷ Consequently, this report will not suffice for purposes of establishing entitlement to FECA benefits.¹⁸

Finally, appellant submitted x-rays of the right shoulder and right humerus and an MRI scan of the right shoulder dated July 31, 2019. However, diagnostic studies standing alone lack

¹² *G.L.*, Docket No. 18-1057 (issued April 14, 2020); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, *id.*

¹³ *A.S.*, Docket No. 19-0915 (issued November 22, 2019); *see L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁴ *Supra* note 11. Findings of pain or discomfort alone do not satisfy the medical aspect of the fact of injury medical determination. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.4a(6) (August 2012).

¹⁵ *P.C.*, Docket No. 18-0167 (issued May 7, 2019).

¹⁶ *T.G.*, Docket No. 19-0904 (issued November 25, 2019); *L.D.*, Docket No. 17-1581 (issued January 23, 2018); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

¹⁷ 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).

¹⁸ 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 supra* note 14 at 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.J.*, Docket No. 19-0179 (issued May 26, 2020) (a physician assistant is not a physician as defined under FECA); *K.W.*, 59 ECAB 271, 279 (2007).

probative value as they do not address whether an employment incident caused the diagnosed condition.¹⁹

OWCP received a note from an unidentified health care provider indicating that appellant received treatment on May 21 and 29, 2019. A report that is unsigned or bears an illegible signature, however, lacks proper identification and cannot be considered probative medical evidence as the author cannot be identified as a physician.²⁰

There is no rationalized medical evidence of record that establishes a medical condition causally related to the accepted May 21, 2019 employment incident. Consequently, appellant has failed to meet 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 medical condition causally related to the accepted May 21, 2019 employment incident.²¹

¹⁹ *F.S.*, Docket No. 19-0205 (issued June 19, 2019).

²⁰ *See I.M.*, Docket No. 19-1038 (issued January 23, 2020); *Thomas L. Agee*, 56 ECAB 465, 468 (2005).

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 August 27, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 22, 2020
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

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