United States Department of Labor
Employees' Compensation Appeals Board

S.P., Appellant	)	
and	)	**Docket No. 19-0819**
	)	**Issued: January 10, 2020**
U.S. POSTAL SERVICE, POST OFFICE, Bend, OR, Employer	)	

Appearances:
Howard L. Graham, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On March 4, 2019 appellant, through counsel, filed a timely appeal from a December 31, 2018 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.

ISSUE

The issue is whether appellant has met her burden of proof to establish a left shoulder condition causally related to the accepted June 24, 2017 employment incident.

[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.*

FACTUAL HISTORY

On July 6, 2017 appellant, then a 59-year-old postal support employee, filed a traumatic injury claim (Form CA-1) alleging that on June 24, 2017 she injured her left shoulder while in the performance of duty. She related that she was moving three sets of hampers filled with mail that hit a pole, the force of which caused her arms and shoulders to thrust backwards. Appellant stopped work on June 26, 2017. The employing establishment indicated that she had reported a similar injury two weeks earlier. OWCP assigned OWCP File No. xxxxxx193 to the current claim.

Appellant had previously filed an occupational disease claim (Form CA-2) on June 20, 2017 alleging that she sustained pain in her left shoulder, wrist, and hands causally related to factors of her federal employment. OWCP assigned OWCP File No. xxxxxx436 and denied the claim, finding that the medical evidence of record was insufficient to establish causal relationship between the accepted employment factors and the claimed condition.

In a report dated June 10, 2017, submitted under OWCP File No. xxxxxx436, Dr. Clayton Reinhardt, an osteopath, diagnosed left shoulder pain and wrist sprain.

On June 26, 2017 Dr. Reinhardt evaluated appellant for left shoulder pain that had begun when she was pushing a cart that struck an object and abruptly stopped. He indicated that she had experienced a tearing sensation in the left shoulder at the time the incident occurred. Dr. Reinhardt diagnosed an unspecified sprain of the left shoulder joint. In a state workers' compensation form of even date, he found that appellant could perform modified work duties.

The record contains the first page of an authorization for examination and/or treatment (Form CA-16) completed by the employing establishment on July 7, 2017, which indicated that appellant was authorized to seek medical treatment.

In progress reports dated June 30 and July 7, 2017, Dr. Reinhardt discussed appellant's complaints of continued shoulder pain and diagnosed a sprain of the left shoulder joint. In return to work status forms of even dates, he provided work restrictions.

In a development letter dated July 19, 2017, OWCP advised appellant of the deficiencies of her claim. It requested that she submit additional factual and medical evidence, including a report from her physician explaining how the identified employment incident caused or aggravated a diagnosed medical condition. OWCP afforded appellant 30 days to respond.

Thereafter, OWCP received a June 10, 2017 magnetic resonance imaging (MRI) scan of appellant's left shoulder showing osteopenia.

By decision dated August 24, 2017, OWCP denied appellant's traumatic injury claim. It found that the medical evidence of record was insufficient to establish a left shoulder condition causally related to the accepted June 24, 2017 employment incident. OWCP indicated that the medical evidence from OWCP File No. xxxxxx436 supported that she had a preexisting left shoulder strain.

OWCP subsequently received an August 21, 2017 note from Dr. Reinhardt, who noted that appellant had been off work beginning July 22, 2017. He diagnosed left shoulder joint sprain and

sprain of the unspecified part of the wrist and hand. Dr. Reinhardt found that appellant could work modified duty, and referred her for an MRI scan.

In a report dated August 24, 2017, Dr. Robert Shannon, a Board-certified orthopedic surgeon, obtained a history of appellant experiencing left shoulder pain after she had pushed a cart into a pole at work jarring her shoulder. He noted that she "had immediate pain in the left shoulder and felt a tearing sensation in the shoulder." Dr. Shannon indicated that appellant had experienced prior shoulder pain and had filed a claim "for what sounds like a repetitive use injury…." Appellant related that her left shoulder condition had significantly worsened after the June 24, 2017 employment incident. Dr. Shannon diagnosed a rotator cuff tear of the left shoulder.

On August 30, 2017 appellant requested a review of the written record before a representative of OWCP's Branch of Hearings and Review.

In a report dated September 18, 2017, Dr. Aaron Hoblet, a Board-certified orthopedic surgeon, evaluated appellant for left wrist pain that had begun in April 2017. He noted that she repetitively lifted heavy trays at work. Dr. Hoblet indicated that appellant had sustained an employment injury on July 24, 2017 when she "was pushing a heavy cart and it jammed against a pole causing an abrupt stop. The primary pain at that time was in her shoulder." Dr. Hoblet diagnosed left first dorsal compartment tenosynovitis.

On October 9, 2017 Dr. Reinhardt evaluated appellant for pain in her left shoulder, left wrist, and right hand. He advised that she related that her pain worsened when she performed lifting, pushing, and pulling while at work. Dr. Reinhardt diagnosed a sprain of the left and right wrist.[3]

In an October 9, 2017 letter, appellant requested that OWCP combine OWCP File Nos. xxxxxx436 and xxxxxx193. She advised that her claim began as a repetitive motion injury that had increased due to an equipment malfunction.

A physician assistant evaluated appellant on November 10, 2017 for left shoulder pain.

By decision dated January 19, 2018, OWCP's hearing representative affirmed the August 24, 2017 decision.

In a January 24, 2018 progress report, Dr. Shannon indicated that appellant had a possible left rotator cuff tear as a result of a June 24, 2017 employment injury that had occurred when she pushed a cart. He diagnosed a left rotator cuff tear and questioned why he had not received authorization for an MRI scan. Dr. Shannon related, "I can say with a medical degree of certainty that [appellant's] shoulder injury is due to her job duties and specifically to the event on June 24, 2017."

An April 4, 2018 MRI scan of the left shoulder revealed large "full-thickness tears of the supraspinatus and infraspinatus with muscular tendinous junction retraction…."

[3] In a handwritten note on the form, appellant related that she had experienced left rather than right wrist pain.

In a report dated April 10, 2018, Dr. Shannon indicated that appellant had first injured her shoulder in June 2017. He diagnosed a large left shoulder rotator cuff tear.

On December 2, 2018 appellant, through counsel, requested reconsideration. Counsel contended that OWCP should have doubled her claims assigned OWCP File No. xxxxxx436 and OWCP File No. xxxxxx193. He asserted that the June 10, 2017 report under OWCP File No. xxxxxx193 attributed her shoulder pain to her work duties and that the medical evidence from Dr. Reinhardt described her subsequent shoulder injury pushing a cart.

By decision dated December 31, 2018, OWCP denied modification of its January 19, 2018 decision. It advised that it had reviewed the medical evidence from both OWCP File Nos. xxxxxx436 and xxxxxx193.[4]

LEGAL PRECEDENT

An employee seeking benefits under FECA[5] 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 filed within the applicable time limitation, that an injury was sustained while in the performance of duty as alleged; and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.[6] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[7]

In an occupational disease claim, appellant's burden of proof requires submission of 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.[8]

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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 factors identified by the claimant.[9]

[4] The Board notes that OWCP ultimately combined File No. xxxxxx193 and File No. xxxxxx436, with the latter serving as the master file.

[5] 5 U.S.C. § 8101 *et seq.*

[6] *See R.B.*, Docket No. 18-1327 (issued December 31, 2018).

[7] *See Y.K.*, Docket No. 18-0806 (issued December 19, 2018).

[8] *T.H.*, Docket No. 18-1585 (issued March 22, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

[9] *H.B.*, Docket No. 18-0781 (issued September 5, 2018).

In any case where a preexisting condition involving the same part of the body is present and the issue of causal relationship therefore involves aggravation, acceleration, or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.[10]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a left shoulder condition causally related to the accepted June 24, 2017 employment incident.

On January 24, 2018 Dr. Shannon advised that appellant had possibly torn her left rotator cuff due to an employment injury on June 24, 2017 that had occurred while she was pushing a cart. He diagnosed a left rotator cuff tear. Dr. Shannon found that appellant's shoulder injury was causally related to her work duties and the June 24, 2017 employment incident. His report, however, is of limited probative value as it does not contain any explanation of how the employment incident would physiologically cause the diagnosed condition.[11] Medical opinions which contain no supporting rationale are of little probative value.[12]

In a report dated August 24, 2017, Dr. Shannon discussed appellant's complaints of left shoulder pain after she jarred her shoulder when a cart she was pushing hit a pole. He noted that she had previously filed a claim for a repetitive use injury of the shoulder and that she related that her condition had worsened due to the June 24, 2017 employment injury. Dr. Shannon diagnosed a left rotator cuff tear. While he reviewed appellant's history of injury and her complaints of worsening left shoulder pain, he failed to provide an opinion on causation. 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.[13] These reports, therefore, are insufficient to establish appellant's claim.

In a report dated September 18, 2017, Dr. Hoblet indicated that appellant had sustained shoulder pain due to an employment injury on July 24, 2017 when she was pushing a cart, struck a pole, and stopped suddenly. He diagnosed left first dorsal compartment tenosynovitis. However, Dr. Hoblet did not relate the diagnosed condition of tenosynovitis to the June 24, 2017 employment incident. As he failed to offer an opinion on causal relationship between the diagnosed condition and the June 24, 2017 employment incident, his report is of no probative value.[14]

On June 26, 2017 Dr. Reinhardt noted that appellant had experienced pain in her left shoulder when a cart she was pushing stopped suddenly after it struck an object. He diagnosed an unspecified sprain of the left shoulder joint. In reports dated June 30, July 7, August 21, and

[10] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013).

[11] *D.J.*, Docket No. 17-0364 (issued April 13, 2018).

[12] *Id*.

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

[14] *Id.*

October 9, 2017, Dr. Reinhardt diagnosed a sprain of the left shoulder joint. He did not, however, relate the diagnosed left shoulder joint sprain to the accepted employment incident. As discussed, 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]

On April 10, 2018 Dr. Shannon related that appellant had initially injured her shoulder in June 2017 and diagnosed a large left shoulder rotator cuff tear. Again, however, he failed to address causation and thus his report is of no probative value and insufficient to meet her burden of proof.[16]

On November 10, 2017 a physician assistant evaluated appellant for left shoulder pain. Physician assistants, however, are not considered physicians as defined under FECA and are incompetent to render a medical opinion. Therefore, this report is also of no probative value.[17]

MRI scans of her left shoulder dated June 10, 2017 and April 4, 2018 were also received. Diagnostic studies, however, lack probative value on the issue of causal relationship as they do not address whether the employment incident caused any of the diagnosed conditions.[18]

As the medical evidence of record does not contain a rationalized opinion on causal relationship between appellant's diagnosed condition and the accepted June 24, 2017 employment incident, the Board finds that she has not met her burden of proof.

On appeal counsel asserts that OWCP disregarded the findings of appellant's attending physicians and failed to consider all of the medical evidence. As discussed, however, appellant has the burden of proof to submit rationalized medical evidence establishing an injury causally related to the accepted June 24, 2017 employment incident.[19] She failed to submit such evidence and thus has not met her burden of proof.[20] Counsel further argues on appeal that appellant's claims assigned OWCP File No. xxxxxx193 and OWCP File No. xxxxxx436 should be administratively combined. However, in reaching its December 31, 2018 decision, OWCP reviewed the relevant medical evidence found in both claims. Additionally, appellant's claims have now been administratively combined.

[15] *Supra* note 12.

[16] *Id*.

[17] 5 U.S.C. § 8101(2) provides that a physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law. *See id.* at § 8102(2); 20 C.F.R. § 10.5(t); *T.W.*, Docket No. 19-0677 (issued August 16, 2019). Lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA. *A.A.*, Docket No. 19-0957 (issued October 22, 2019).

[18] *See C.D.*, Docket No. 17-2011 (issued November 6, 2018).

[19] *See D.T.*, Docket No. 17-1734 (issued January 18, 2018).

[20] *See D.S.*, Docket No. 18-0061 (issued May 29, 2018).

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.[21]

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a left shoulder condition causally related to the accepted June 24, 2017 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the December 31, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 10, 2020
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

[21] The Board notes that the employing establishment issued a Form CA-16. A properly completed CA-16 form 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); *M.C.*, Docket No. 18-0951, n.20 (issued January 7, 2019); *Tracy P. Spillane*, 54 ECAB 608 (2003).