

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

_____)	
T.G., Appellant)	
)	
and)	Docket No. 19-1441
)	Issued: January 28, 2020
DEPARTMENT OF VETERANS AFFAIRS,)	
H.G. HEFNER VETERANS MEDICAL)	
CENTER, Salisbury, 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:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On June 24, 2019 appellant, through counsel, filed a timely appeal from a May 24, 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.

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 left shoulder condition causally related to the accepted September 5, 2018 employment incident.

FACTUAL HISTORY

On September 10, 2018 appellant, then a 54-year-old nursing assistant, filed a traumatic injury claim (Form CA-1) alleging that on September 5, 2018 she sustained a left shoulder injury while dressing a large patient who suffered from dementia. She stopped work on September 6, 2018 and then returned to full-time regular-duty work on September 12, 2018. On the reverse side of the claim form, the employing establishment controverted appellant's claim, asserting that she had not provided medical evidence to support a work-related injury.

In support of her claim, appellant subsequently submitted a September 6, 2018 report from Sylvia D. Dickerson, a family nurse practitioner, who indicated that appellant was seen in her clinic that day and was released to work effective September 11, 2018.

In a September 18, 2018 development letter, OWCP requested that appellant provide additional factual and medical information in support of her claim, including a detailed factual statement and a report from her attending physician addressing causal relationship between any diagnosed condition(s) and the claimed September 5, 2018 work incident. Appellant was afforded 30 days to submit the necessary evidence.

In response, appellant submitted a progress report dated September 6, 2018 from Ms. Dickerson who related that appellant had acute pain of left shoulder.

OWCP also received a magnetic resonance imaging (MRI) scan of appellant's left shoulder dated September 28, 2018 which demonstrated high-grade (near complete) partial-thickness tearing of the ventral supraspinatus tendon and prominent infraspinatus tendinopathy.

By decision dated October 23, 2018, OWCP found that the factual evidence was insufficient to establish that the September 5, 2018 incident occurred at the time, place, and in the manner alleged. It also determined that the medical evidence of record was insufficient to establish that appellant sustained a diagnosed condition causally related to the alleged employment incident.

Appellant subsequently submitted a work status form dated October 23, 2018 from Dr. Thomas A. Ginn, a Board-certified orthopedic hand surgeon, who released her to work with restrictions of no use of the left hand/arm and recommended surgery.

In an October 23, 2018 narrative report, Dr. Ginn indicated that appellant was seen for left shoulder pain due to an injury in September 2018. He reviewed appellant's left shoulder MRI scan and diagnosed left rotator cuff tear. Dr. Ginn noted that he had recommended appellant only perform one-handed employment duties. He also summarized their discussion regarding the option for surgical treatment.

On November 6, 2018 appellant requested an oral hearing before a hearing representative of OWCP's Branch of Hearings and Review.

A telephonic hearing was held before an OWCP hearing representative of the Branch of Hearings and Review on March 11, 2019. Appellant provided testimony and the hearing representative held the case record open for 30 days for the submission of additional evidence.

OWCP subsequently received a report dated February 12, 2019, wherein Dr. Ginn related that appellant could return to light duty with restrictions of no lifting over 15 pounds with the left arm, and no repetitive or excessive activity.

Appellant subsequently submitted a report dated March 18, 2019 from Dr. Ginn who indicated that appellant developed shoulder pain while at work on September 5, 2018, was eventually diagnosed with a rotator cuff tear, and had undergone surgery. Dr. Ginn opined that her job placed her at a higher risk than the general population for shoulder pathology. He explained that appellant's repetitive pushing, pulling, and lifting placed her shoulder at a higher risk of developing rotator cuff disease/tearing.

In a March 26, 2019 report, Dr. Ginn asserted that appellant was progressing from left shoulder surgery and advised her to continue light duty with a 20-pound restriction on the left. He also advised that she not perform overhead work on the left side. Dr. Ginn anticipated her full release to work after two months.

By decision dated May 24, 2019, OWCP's hearing representative affirmed, as modified, the prior decision. He found that appellant had established that the September 5, 2018 incident occurred as alleged, but that the medical evidence of record was insufficient to establish that her diagnosed left shoulder condition(s) were causally related to the accepted September 5, 2018 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence, 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, that an injury was sustained 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.⁴ These are the essential elements of every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁵

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

³ *Id.*

⁴ *K.V.*, Docket No. 18-0947 (issued March 4, 2019); *M.E.*, Docket No. 18-1135 (issued January 4, 2019); *Kathryn Haggerty*, 45 ECAB 383, 388 (1994).

⁵ *K.V.* and *M.E.*, *id.*; *Elaine Pendleton*, 40 ECAB 1143 (1989).

time, place, and in the manner alleged.⁶ Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.⁷

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁸ A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.⁹ Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s).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 September 5, 2018 employment incident.

OWCP received a number of reports from Dr. Ginn in support of appellant's claim. In several work status reports dated October 23, 2018, February 12, and March 26, 2019, Dr. Ginn noted appellant's work restrictions, but offered no history of injury, diagnosis or opinion regarding causal relationship.¹¹ The Board has held that a medical opinion should reflect a correct history and offer a medically sound explanation by the physician of how the specific employment incident caused or aggravated the diagnosed conditions.¹² Lacking these elements, these reports are insufficient to establish appellant's claim.

In a narrative report dated October 23, 2018, Dr. Ginn noted that appellant had experienced left shoulder pain after an injury on September 15, 2018 and he diagnosed left rotator cuff tear. The Board finds, however, that Dr. Ginn did not provide an opinion on causal relationship between the specific alleged employment incident and the diagnosed left shoulder 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.¹³

While, in his March 18, 2019 report, Dr. Ginn attempted to further explain causal relationship, his opinion was still insufficient to establish appellant's claim. He related that appellant was diagnosed with left shoulder rotator cuff tear, that her job placed her at higher risk

⁶ *G.C.*, Docket No. 18-0506 (issued August 15, 2018).

⁷ *Id.*

⁸ *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *T.H.*, 59 ECAB 388, 393 (2008).

⁹ *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

¹⁰ *Id.*; *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

¹¹ *T.M.*, Docket No. 19-1283 (issued December 2, 2019).

¹² *Id.*, see also *J.M.*, Docket No. 17-1002 (issued August 22, 2017).

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

than the general population for shoulder pathology, and that appellant's repetitive pushing, pulling and lifting place her at a higher risk for developing rotator cuff disease/tearing. Dr. Ginn did not, however, identify the specific September 5, 2018 employment incident, and he did not provide a pathophysiological explanation as to what accepted incident caused or contributed to the diagnosed conditions therefore this opinion lacks the specificity and detail needed to establish appellant's claim. Thus, his reports are insufficient to meet appellant's burden of proof.¹⁴

Appellant further submitted reports from a family nurse practitioner. The Board has held that medical reports signed solely by a nurse practitioner are of no probative value as such health care providers are not considered physicians as defined under FECA and are therefore not competent to provide medical opinions.¹⁵ Consequently, this evidence is also insufficient to establish appellant's claim.

Appellant also submitted a September 28, 2018 MRI scan in support of her claim. The Board has held that diagnostic studies lack probative value as they do not provide an opinion on causal relationship between the employment incident and appellant's diagnosed conditions.¹⁶ This report is therefore also insufficient to establish appellant's claim.

As appellant has not submitted rationalized medical evidence sufficient to establish that her left shoulder condition was causally related to the accepted employment incident, she has not met 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 left shoulder condition causally related to the accepted September 5, 2018 employment incident.

¹⁴ See *T.R.*, Docket No. 18-1272 (issued February 15, 2019).

¹⁵ See *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) (this subsection defines a physician as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law); *T.A.*, Docket No. 19-1030 (issued November 22, 2019) (nurse practitioners are not considered physicians under FECA).

¹⁶ *I.C.*, Docket No. 19-0804 (issued August 23, 2019).

ORDER

IT IS HEREBY ORDERED THAT the May 24, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 28, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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