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

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| **P.G., Appellant** | ) | |
| **and** | ) | **Docket No. 19-1827** |
| | ) | **Issued: May 15, 2020** |
| **U.S. POSTAL SERVICE, MADISON POST OFFICE, Madison, TN, Employer** | ) | |

*Appearances:*
*Alan J. Shapiro, Esq.*, for the appellant[1]
*Office of Solicitor*, for the Director

*Case Submitted on the Record*

## DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

### ***JURISDICTION***

On August 29, 2019 appellant, through counsel, filed a timely appeal from a June 26, 2019 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 medical condition causally related to the accepted September 8, 2018 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 September 8, 2018 appellant, then a 60-year-old clerk, filed a traumatic injury claim (Form CA-1) alleging that on that date she injured her left arm when a magazine binder wrapped around her feet and caused her to fall while in the performance of duty. On the reverse side of the claim form, the employing establishment indicated that she was injured in the performance of duty and stopped work on September 8, 2018.

On September 17, 2018 Dr. Brent Frisbie, a Board-certified radiologist, indicated that an x-ray of appellant's left elbow revealed no acute fracture, dislocation, or boney abnormality.

A September 17, 2018 "referral order" from Dr. Clayton MacConnell, Board-certified in family medicine, diagnosed left elbow joint pain and referred appellant to an orthopedist.

In a September 26, 2018 development letter, OWCP indicated that when appellant's claim was received it appeared to be a minor injury that resulted in minimal or no lost time from work and, based on these criteria and because the employing establishment did not controvert continuation of pay or challenge the case, payment of a limited amount of medical expenses was administratively approved. It explained that it reopened the claim for consideration because it received indication that she did not return to work in a full-time capacity. OWCP related that additional evidence was required in support of appellant's claim for benefits. It advised her of the type of medical evidence necessary to establish her claim. OWCP afforded appellant 30 days to submit the necessary evidence.

A September 10, 2018 medical report by Dr. MacConnell indicated that appellant complained of pain upon moving her left elbow and shoulder and presented with her left arm in a sling. He noted that she fell on her flexed left elbow at work, and that medical records and imaging indicated that she sustained a left arm contusion and did not have any broken bones. Dr. MacConnell conducted a physical examination which revealed a reduced range of motion (ROM) and pain with movement in general and with abduction in particular in appellant's left shoulder. He also found posterior tenderness, pain on palpation and extension, and a reduced ROM in her left elbow. Dr. MacConnell diagnosed an unspecified elbow injury and left shoulder pain and recommended specific shoulder exercises and advised that appellant stay off work and continue wearing the sling.

September 17, 2018 medical records signed by Dr. MacConnell indicated that appellant continued to complain of left elbow pain. He conducted a physical examination which revealed an improved ROM in her left shoulder and swelling, tenderness over the olecranon process, pain on palpation, and a reduced ROM in her left elbow. Dr. MacConnell noted that appellant was unable to fully extend or flex her elbow without pain and that there was evidence of a resolving bruise in the posterior aspect of her elbow. He diagnosed left shoulder pain and advised that she remain off work until cleared by an orthopedist.

On October 3, 2018 the employing establishment executed an authorization for examination and/or treatment (Form CA-16) for appellant's elbow and arm by Dr. MacConnell.

By decision dated November 1, 2018, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish a diagnosed condition in

connection with her September 8, 2018 accepted employment incident. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

OWCP continued to receive medical evidence. September 8, 2018 emergency room notes signed by Dr. Heather Barnett, Board-certified in emergency medicine, indicated that appellant presented with left forearm pain. Dr. Barnett noted pain in appellant's left elbow with ROM, and left wrist pain upon rotation. Appellant stated that she stumbled and fell on her left forearm and right hand, and she noted that she had no history of trauma to her left elbow. Her physical examination revealed left elbow and left dorsal tenderness and a full ROM of the left arm with stiffness. Dr. Barnett diagnosed a left forearm contusion.

A September 8, 2018 x-ray of appellant's left elbow interpreted by Dr. Stuart Caplan, a Board-certified radiologist, revealed no acute radiographic abnormalities.

In an October 15, 2018 medical report, Dr. MacConnell indicated that appellant complained of pain along the ulnar side of her left elbow and of the inability to straighten her elbow. He conducted a physical examination, diagnosed an elbow injury, and indicated that she should continue to work with restrictions.

In an October 17, 2018 report, Dr. Robert Landsberg, a Board-certified orthopedic surgeon, indicated that appellant presented with aching pain in her left shoulder and elbow. Appellant related that on September 8, 2018 while at work she fell on her left elbow and shoulder. She was taken to the emergency room where it was determined that she sustained left forearm and elbow bruising. Appellant stated that she originally found it uncomfortable to use her left upper extremity, including overhead activities, reaching, pushing, and pulling, and though her pain had slightly improved, she still struggled with these functions. She also stated that using her elbow exacerbated her pain and that she could not extend it fully. Appellant noted that she had no previous trauma to her left upper extremity. A physical examination revealed bilateral shoulder protraction with forward head posture, left elbow extension limited by five degrees with a semi-rigid endpoint at full extension, full flexion, supination, and pronation, soreness and apprehension through the entire left elbow arc, and tenderness over the medial epicondyle and olecranon fossa. Dr. Landsberg diagnosed left elbow pain, stiffness of the left elbow joint, and medial epicondylitis of the left elbow. He opined that appellant likely had a left shoulder resolving strain and was concerned that her inability to fully extend her elbow was due to a loose chondral body.

A November 7, 2018 medical report by Dr. Landsberg, reviewed appellant's history of injury and indicated that she complained of continuing stiffness, pain, and dysfunction in her left elbow. He conducted a physical examination and diagnosed her with left elbow pain and stiffness.

On November 12, 2018 appellant, through counsel, requested a telephonic hearing before an OWCP hearing representative.

In a December 12, 2018 report, Dr. Landsberg reviewed appellant's history of injury and noted that she continued to experience discomfort at the terminal ranges of extension of her left elbow and still was unable to fully extend her elbow. He conducted a physical examination and diagnosed left elbow pain and stiffness.

A December 14, 2018 magnetic resonance imaging (MRI) scan of appellant's left elbow interpreted by Dr. Jeffrey Huggett, a Board-certified radiologist, revealed a chronic appearing defect in the capitellar articular surface, likely reflecting an osteochondral abnormality. It additionally revealed associated radiocapitellar osteoarthritis with an elbow joint effusion and filling defects in the joint posteriorly favored to reflect loose bodies, though synovial thickening/synovitis were also in the differential.

A January 18, 2019 medical report by Dr. Jason Haslam, Board-certified in orthopedic surgery, reviewed appellant's history of injury and noted that she presented with episodic left elbow pain with certain movements, such as lifting, twisting, and pushing. He conducted a physical examination, reviewed her left elbow MRI scan, and diagnosed left elbow post-traumatic osteoarthritis. Dr. Haslam indicated that appellant's chronic left elbow osteoarthritis was aggravated by her workplace fall. He further opined that her left elbow osteoarthritis was less than 50 percent related to her work injury.

On April 12, 2019 an OWCP hearing representative conducted an oral hearing. By decision dated June 26, 2019, the hearing representative modified the November 1, 2018 OWCP decision, finding that the evidence of record was sufficient to establish a medical diagnosis. However, OWCP's hearing representative denied the claim as the evidence of record was insufficient to establish causal relationship between the diagnosed conditions and the accepted September 8, 2018 employment incident.

## ***LEGAL PRECEDENT***

An employee seeking benefits under FECA[3] 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 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 determine if an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established.[7] Fact of injury consists of two components that must be considered in conjunction with one another. The first

[3] *Id*.

[4] *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *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] *R.R.*, Docket No. 19-0048 (issued April 25, 2019); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

[7] *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

component is whether the employee actually experienced the employment incident that allegedly occurred.[8] The second component is whether the employment incident caused a personal injury.[9]

Rationalized medical opinion evidence is required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, 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 incident.[10]

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.[11]

## ***ANALYSIS***

The Board finds that appellant has not met her burden of proof to establish a medical condition causally related to the accepted September 8, 2018 employment incident.

Medical records signed by Dr. MacConnell indicated that appellant complained of left elbow pain. He noted that she fell on her flexed left elbow while at work. Dr. MacConnell reviewed appellant's previous medical records, conducted physical examinations, and diagnosed left shoulder pain and an elbow injury. The Board has held that a medical report is of no probative value if it does not provide a firm diagnosis of a particular medical condition.[12] The Board has also explained that pain is a symptom and not a compensable medical diagnosis.[13] Likewise the term injury does not constitute a firm diagnosis.[14] Dr. MacConnell did not provide a specific diagnosis of a medical condition of the left shoulder or the left elbow.[15] His reports are therefore insufficient to establish appellant's claim.

Dr. Barnett's emergency room notes indicated that appellant presented with pain in her left forearm, left elbow, and left wrist. She noted that appellant stated that appellant stumbled and fell on her left forearm and right hand, and that she had no history of trauma to her left elbow. Dr. Barnett conducted a physical examination and diagnosed a left forearm contusion. While she discussed the September 8, 2018 employment incident, she did not specifically address the cause

[8] *L.T.*, Docket No. 18-1603 (issued February 21, 2019); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[9] *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *John J. Carlone*, 41 ECAB 354 (1989).

[10] *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

[11] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); *see A.S.*, Docket No. 19-1955 (issued April 9, 2020).

[12] *See A.R.*, Docket No. 19-1560 (issued March 2, 2020).

[13] *T.G.*, Docket No. 19-0904 (issued November 25, 2019).

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

[15] *See T.H.*, Docket No. 19-1891 (issued April 3, 2020).

of the diagnosed condition.[16] 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.[17] Thus, these notes are insufficient to establish appellant's claim.

Dr. Landsberg's medical reports indicated that appellant complained of left shoulder pain and left elbow stiffness, pain, and dysfunction. He reviewed her medical records and noted that she fell on her left elbow and shoulder while at work. Dr. Landsberg conducted physical examinations and diagnosed left elbow pain, left elbow stiffness, and left elbow medial epicondylitis. He opined that appellant likely had a left shoulder resolving strain and was concerned that her inability to fully extend her elbow was due to a loose chondral body. Dr. Landsberg failed to address the cause of her left elbow medial epicondylitis. As stated above, 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.[18]

Dr. Haslam reviewed appellant's history of injury and noted that she presented with left elbow pain. He conducted a physical examination, reviewed her left elbow MRI scan, and diagnosed left elbow post-traumatic osteoarthritis. Dr. Haslam indicated that appellant's diagnosis was a chronic problem that was aggravated by her workplace fall. He further opined that her left elbow osteoarthritis was less than 50 percent related to her work injury. An employee is not required to prove that occupational factors are the sole cause of appellant's claimed condition.[19] If work-related exposures caused, aggravated, or accelerated her condition, appellant is entitled to compensation.[20] While Dr. Haslam suggested that her left elbow osteoarthritis might have been partially work related, he failed to explain how her work injury aggravated her preexisting left elbow osteoarthritis. Without explaining physiologically how the accepted employment incident caused or contributed to the diagnosed condition, Dr. Haslam's report is of limited probative value.[21]

OWCP also received x-rays and an MRI scan of appellant's left elbow. The Board has held, however, that reports of diagnostic tests standing alone lack probative value as they do not provide an opinion on causal relationship between an employment incident and a diagnosed condition.[22]

[16] *See R.K.*, Docket No. 20-0049 (issued April 10, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018).

[17] *Id*.

[18] *Supra* note 15.

[19] *See S.T.*, Docket No. 18-1119 (issued March 6, 2019); *S.S.*, Docket No. 08-2386 (issued June 5, 2008). *See also Willie J. Clements*, 43 ECAB 244 (1991).

[20] *S.T., id.*; *see also Beth P. Chaput*, 37 ECAB 158, 161 (1985).

[21] *See A.S.*, Docket No. 19-1955 (issued April 9, 2020).

[22] *L.F.*, Docket No. 19-1905 (issued April 10, 2020).

As appellant has not submitted rationalized medical evidence establishing causal relationship between a medical condition and the accepted September 8, 2018 employment incident, the Board finds that she has not met his burden of proof to establish her claim.[23]

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 September 8, 2018 employment incident.

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the June 26, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 15, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

[23] 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).