

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

_____)	
W.M., Appellant)	
)	
and)	Docket No. 19-1853
)	Issued: May 13, 2020
U.S. POSTAL SERVICE, POST OFFICE,)	
Earlimart, CA, 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
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On March 1, 2019 appellant filed a timely appeal from a December 10, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

ISSUE

The issue is whether appellant has met her burden of proof to establish a left shoulder condition causally related to the accepted February 16, 2018 employment incident.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that appellant submitted additional evidence on appeal. 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.*

FACTUAL HISTORY

On February 23, 2018 appellant, then a 64-year-old sales clerk, filed a traumatic injury claim (Form CA-1) alleging that on February 16, 2018 she experienced a sharp pain in her left arm going up into her shoulder when picking up a box for a customer while in the performance of duty. She noted that two days later, she could barely raise her left arm. Appellant stopped work on February 20, 2018.

In a February 26, 2018 letter, the employing establishment controverted appellant's claim, asserting that she delayed reporting the incident until after the weekend. It further alleged that she had been complaining of shoulder pain for weeks prior to the employment incident.

In a February 20, 2018 work excuse note, Dr. Jon Miyakawa, a Board-certified family practitioner, indicated that appellant was unable to work from February 20 through March 6, 2018. He advised that she could return to work on March 7, 2018.

In a March 8, 2018 development letter, OWCP informed appellant that the evidence of record was insufficient to establish her claim. It advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. In a separate letter of even date, OWCP notified the employing establishment of appellant's traumatic injury claim. It requested additional information regarding the employment incident. OWCP afforded both parties 30 days to submit the necessary evidence.

In a February 26, 2018 duty status report (Form CA-17), Dr. Miyakawa diagnosed a rotator cuff injury of the left shoulder. He checked a box marked "yes" to indicate that the injury was caused by appellant lifting a package. Dr. Miyakawa recommended that appellant not resume work and provided work restrictions.

In a March 6, 2018 narrative statement, appellant noted that on February 16, 2018 around 3:30 pm, she reached for a parcel and stretched her arm which caused pain in her left arm up into her shoulder. She explained that her supervisor had left for the day, so she was going to report the incident the next business day. Appellant related that she iced her shoulder and took pain medication over the weekend, but could not raise her arm to shoulder level. She indicated that, although Monday, February 19, 2018 was Presidents' Day and the employing establishment was closed, she reported the incident to her supervisor and informed him that she needed to go to the doctor on Tuesday, February 20, 2018.

In a March 6, 2018 work excuse note, Dr. Miyakawa indicated that appellant was unable to work from February 20 through March 20, 2018. He noted that she could return to work on March 21, 2018.

On March 6, 2018 Dr. Miyakawa requested an x-ray of appellant's left shoulder.

In a March 12, 2018 duty status report (Form CA-17), Dr. Miyakawa diagnosed a rotator cuff injury of the left shoulder and recommended that appellant not resume work.

In a March 20, 2018 duty status report (Form CA-17), Dr. Miyakawa diagnosed left shoulder pain. He noted that appellant sustained an acute left shoulder injury from chronic, cumulative, repetitive work. Dr. Miyakawa recommended that she not resume work.

By decision dated April 11, 2018, OWCP denied appellant's claim finding that she did not submit any medical evidence containing a medical diagnosis in connection with the accepted February 16, 2018 employment incident. It noted that "left shoulder pain" and "rotator cuff injury" were not diagnoses of a medical condition, but symptoms and descriptions of symptoms.

In an April 4, 2018 duty status report (Form CA-17), Dr. Miyakawa diagnosed left shoulder pain and recommended that appellant not resume work.

An April 8, 2018 magnetic resonance imaging (MRI) scan of appellant's left shoulder demonstrated a full-thickness near full-width tear of the supraspinatus tendon, a delaminating tear of the infraspinatus tendon, a low/mild-grade intrasubstance tear within the distal subscapularis tendon, rotator cuff tendinosis, degenerative tearing of the labrum, a probable complete tear of the long head biceps tendon, and moderate acromioclavicular osteoarthritis.

In an April 11, 2018 duty status report (Form CA-17), Dr. Miyakawa diagnosed multiple tears of the tendon around the left shoulder including tears of the supraspinatus, infraspinatus, subscapularis, labrum, and bicep tendon. He also diagnosed arthrosis of the acromioclavicular joint. Dr. Miyakawa recommended that appellant not resume work.

In an April 12, 2018 work excuse note, Dr. Miyakawa indicated that appellant was unable to work. He noted that appellant was awaiting appointment from a specialist regarding possible surgery and thus could not give an exact return date.

In an April 18, 2018 medical note, Dr. Miyakawa reported that appellant had a history of right shoulder surgery that was work related from 2004, 2005, and 2014. He noted that she had compensated for this with her left shoulder. Dr. Miyakawa indicated that appellant may have needed surgery for her left shoulder injury.

In an April 24, 2018 narrative statement, appellant indicated that she had worked for the U.S. Postal Service since November 1984. She noted that she had three surgeries on her right shoulder in 2004, 2005, and 2007. Appellant reported that after the surgeries, she became a full-time clerk in 2007. She related that she worked from 7:30 a.m. to 4:30 p.m., five days per week. Appellant explained that she often complained about left shoulder pain, but on February 16, 2018 when picking up a package at work, she felt her left shoulder snap.

On April 27, 2018 appellant requested an oral hearing before an OWCP hearing representative.

In a June 7, 2018 duty status report (Form CA-17), Dr. Miyakawa diagnosed a supraspinatus tear, labrum tear/degeneration, and acromioclavicular degeneration. He recommended that appellant not resume work.

In an August 14, 2018 medical note, Dr. Julia Lee, a Board-certified orthopedic surgeon, diagnosed a rotator cuff tear. She opined that the injury was "likely a result of continuous repetitive

motion and heavy lifting likely associated with [appellant's] job.” Dr. Lee noted that appellant had a left shoulder arthroscopic rotator cuff repair with extensive debridement and subacromial decompression on June 28, 2018.

On October 16, 2018 appellant missed her scheduled oral hearing because of time zone confusion. On October 17, 2018 she requested a review of the written record by an OWCP hearing representative in lieu of an oral hearing.

In an October 23, 2018 medical note, Dr. Lee related that appellant injured her left shoulder at work on February 16, 2018. She indicated that appellant had significant difficulty with forward flexion or abduction of her arm following the work incident. Dr. Lee reported that appellant had a rotator cuff tear which required surgical fixation of the shoulder on June 28, 2018. She opined that “the repetitive nature of [appellant's] occupation likely contributed to her original injury.”

In an October 23, 2018 medical note, Dr. Miyakawa related that appellant had acute pain in her left shoulder due to chronic, cumulative injury due to her work duties. He reported that she was in severe pain with limited range of motion. Dr. Miyakawa noted that appellant was unable to work due to pain, tenderness, and restricted use of her left arm. He indicated that she had recovered from surgery, but was forced to retire from her position due to the potential of reinjury. Dr. Miyakawa opined that appellant's injury “was from the duties of her employment.”

In an undated letter received by OWCP on October 30, 2018, appellant explained that she did physical therapy treatment at home. She noted that she was instructed by Dr. Lee on what activities to perform from visit to visit.

By decision dated December 10, 2018, an OWCP hearing representative affirmed the April 11, 2018 decision finding that, although appellant has established a medical diagnosis, she has not established that it was causally related to the accepted February 16, 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, 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,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

³ *Supra* note 1.

⁴ *G.L.*, Docket No. 18-1057 (issued April 14, 2020); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

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 has sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.⁷ The second component is whether the employment incident caused a personal injury.⁸

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁹ 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 incident identified by the claimant.¹⁰ Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents, is sufficient to establish causal relationship.¹¹

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a left shoulder condition causally related to the accepted February 16, 2018 employment incident.

In support of her claim, appellant submitted medical notes from Dr. Lee dated August 14 and October 23, 2018 who diagnosed a left rotator cuff tear and opined that the injury was “likely a result of continuous repetitive motion and heavy lifting likely associated with [appellant’s] job.” She further noted that “the repetitive nature of [appellant’s] occupation likely contributed to her original injury.” The Board has held that the mere fact that symptoms arise during a period of employment or produce symptoms revelatory of an underlying condition does not establish a causal relationship between a diagnosed condition and employment factors.¹² A medical opinion must provide an explanation of how the specific employment incident or employment factors

⁵ *M.G.*, Docket No. 18-1616 (issued April 9, 2020); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ 20 C.F.R. § 10.115; *A.S.*, Docket No. 19-1955 (issued April 9, 2020); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁷ *R.K.*, Docket No. 19-0904 (issued April 10, 2020); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁸ *Y.D.*, Docket No. 19-1200 (issued April 6, 2020); *John J. Carlone*, 41 ECAB 354 (1989).

⁹ *L.F.*, Docket No. 19-1905 (issued April 10, 2020); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

¹⁰ *G.L.*, *supra* note 4; *Leslie C. Moore*, 52 ECAB 132 (2000).

¹¹ *A.S.*, *supra* note 6.

¹² *Id.*

physiologically caused or aggravated the diagnosed conditions.¹³ Further, the Board has held that medical opinions that suggest that a condition was “likely” caused by work activities are speculative or equivocal in character and have limited probative value.¹⁴ As such, these medical notes by Dr. Lee that do not offer a rationalized medical opinion explaining causal relationship are insufficient to establish appellant’s claim.

Appellant also submitted medical notes from Dr. Miyakawa dated April 18 and October 23, 2018 who noted that she had three previous right shoulder surgeries and had to compensate by using her left shoulder. He diagnosed rotator cuff tear and opined that her left shoulder condition was due to her cumulative work-related activities. While Dr. Miyakawa indicated that appellant’s left shoulder condition was work related, he failed to provide medical rationale explaining the basis of his opinion. As explained above, without explaining, physiologically, how the specific employment incident or employment factors caused or aggravated the diagnosed condition, Dr. Miyakawa’s opinion on causal relationship is of limited probative value and insufficient to establish appellant’s claim.¹⁵

In Form CA-7 duty status reports dated February 26 through June 7, 2018, Dr. Miyakawa diagnosed rotator cuff injury, left shoulder pain, multiple tears of the tendon around the left shoulder, and arthrosis of the acromioclavicular joint. In these reports, he checked a box marked “yes” to indicate that appellant’s conditions were caused by her lifting a package at work. The Board has held that pain is a symptom and not a compensable medical diagnosis.¹⁶ Additionally, the Board has held that when a physician’s opinion on causal relationship consists only of checking “yes” to a form question, without explanation or rationale, that opinion is of diminished probative value.¹⁷ Accordingly, these duty status reports from Dr. Miyakawa are also insufficient to establish appellant’s claim.

In work excuse notes dated February 20 through April 12, 2018, Dr. Miyakawa indicated that appellant was unable to return to work. In these notes he did not offer a medical diagnosis or provide an opinion as to whether a diagnosed condition was causally related to the accepted employment incident. The Board has held that medical evidence that does not include an opinion regarding the cause of an employee’s condition is of no probative value on the issue of causal relationship. These notes from Dr. Miyakawa are therefore insufficient to establish appellant’s claim.

Appellant also submitted an April 8, 2018 MRI scan report which revealed multiple tears around the left shoulder and moderate acromioclavicular osteoarthritis. The Board has held,

¹³ *G.L.*, *supra* note 4.

¹⁴ *J.W.*, Docket No. 18-0678 (issued March 3, 2020).

¹⁵ *G.L.*, *supra* note 4.

¹⁶ *Id.*

¹⁷ *M.G.*, *supra* note 5.

however, that diagnostic test reports lack probative value as they do not provide an opinion on causal relationship between an employment incident and a diagnosed condition.¹⁸

As appellant has not submitted rationalized medical evidence explaining the causal relationship between her diagnosed left shoulder conditions and the accepted February 16, 2018 employment incident, the Board finds that 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 February 16, 2018 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the December 10, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 13, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

¹⁸ *L.F., supra* note 9.