

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

V.V., Appellant	)	
	)	
and	)	Docket No. 20-0175
	)	Issued: May 22, 2020
U.S. POSTAL SERVICE, CHURCHVILLE	)	
POST OFFICE, Churchville, NY, 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  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On October 29, 2019 appellant filed a timely appeal from an August 23, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (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 November 30, 2018 employment incident.

**FACTUAL HISTORY**

On November 30, 2018 appellant, then a 54-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on that day she sustained sprains to her right wrist, shoulder, and

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

lower back when she tripped over packages while in the performance of duty. She stopped work on December 1, 2018.

In a November 30, 2018 authorization for examination and/or treatment (Form CA-16), the employing establishment authorized appellant to seek medical care at an urgent care facility.

In a December 1, 2018 medical report, Andrew K. Polla, a physician assistant, noted that appellant was treated that day and advised that she should not return to work until cleared by an orthopedic physician. In a subsequent report dated December 3, 2018, Timothy Nervina, a nurse practitioner, also noted that she was seen on December 1, 2018 and sustained an injury to her shoulder when she fell at work. He advised that appellant should not return to work until cleared by a physician.

In a December 12, 2018 letter, the employing establishment controverted appellant's claim asserting that it had witness statements from employees that were present on the date of the alleged employment incident, but they did not observe or hear her fall as alleged.

A continuation of pay nurse report dated December 20, 2018 indicated that appellant remained off work due to right wrist and shoulder sprains.

In a development letter dated December 21, 2018, OWCP informed appellant of the deficiencies in her claim. It advised her of the factual and medical evidence necessary to establish her claim and provided a factual questionnaire for completion. OWCP afforded appellant 30 days to submit the necessary evidence.

In a December 4, 2018 witness statement, T.C., appellant's coworker, stated that appellant was working all day on November 30, 2018 and did not see or hear her fall that day.

In another witness statement of even date, G.R., appellant's coworker, noted that his workstation was adjacent to appellant's workstation, and although he could hear most of the things that transpired in her work area, he did not hear or see her fall on November 30, 2018. He also noted that he observed her the following day talking on the cellphone while using her injured shoulder to hold the cellphone to her ear. G.R., asserted that appellant did not appear to be in pain and her work did not seem to be affected by her alleged injury.

In an undated statement, appellant contended that she injured herself on the morning of November 30, 2018 while working when the tip of her boot caught alongside one of the mail packages that were on the floor, causing her to fall. She explained that there was a high volume of packages that day stacked on the floor around her case and that the individuals that provided witness statements would not have been able to see her when she fell, as they would have been working in their own cases at the time of her fall. Appellant further alleged that after she stood up from her fall she saw no one in her area.

In a December 14, 2018 medical report, Dr. Michael C. Stanton, Board-certified in sports medicine, noted that appellant presented complaining of pain in the right shoulder, moderate neck pain, and occasional numbness and tingling down her right upper extremity. Appellant related that she was injured when she fell directly onto her right shoulder while at work on November 30, 2018. On physical examination of the right shoulder, Dr. Stanton noted full

strength, no tenderness on palpitation, and a positive Neer and Hawkins tests. He also reviewed appellant's right shoulder x-ray, which revealed well-preserved joint spaces throughout with no obvious fracture or dislocation. Dr. Stanton diagnosed cervical radiculopathy and opined that her current symptoms appeared to be mostly related to her cervical spine and that she might have some mild impingement in her shoulder, which was improving with conservative treatment.

In a January 7, 2019 medical report, Dr. Matthew Kruppenbacher, Board-certified in physical medicine, conducted a physical examination and opined that she could return to work as of that day with restrictions of no repetitive pulling, pushing, overhead reaching, or lifting greater than 15 pounds.

In a January 16, 2019 work status report (Form CA-3), the employing establishment advised OWCP that appellant had returned to part-time limited-duty work on January 14, 2019.

By decision dated January 24, 2019, OWCP denied appellant's claim finding that she had not established the factual component of her claim. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On July 11, 2019 appellant requested reconsideration.

In support of her request, appellant submitted a May 14, 2019 medical report from Dr. Kruppenbacher wherein he noted that she had no previous history of symptoms prior to the claimed November 30, 2018 employment incident when she fell directly onto her right shoulder after tripping over packages. Dr. Kruppenbacher indicated that she experienced an immediate onset of symptoms in her right medial upper scapular region, right deltoid, and right posterior arm. He further noted that appellant's condition had since improved and she had been working without restrictions since February 4, 2019. Dr. Kruppenbacher diagnosed cervical radiculopathy, cervicalgia, and numbness. He responded "yes" regarding whether he believed that the November 30, 2018 employment incident caused appellant's injury and that her history of the injury was consistent with his objective findings.

By decision dated August 23, 2019, OWCP modified its prior decision finding that appellant had established both the factual and medical components of fact of injury. However, appellant's claim remained denied because the medical evidence of record was insufficient to establish that her diagnosed cervical radiculopathy was causally related to the accepted November 30, 2018 employment incident.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>2</sup> 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,<sup>3</sup> that an injury was sustained in the performance of duty as alleged, and that

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<sup>2</sup> *Id.*

<sup>3</sup> *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *F.H.*, Docket No.18-0869 (issued January 29, 2020); *Joe D. Cameron*, 41 ECAB 153 (1989).

any disability or medical condition for which compensation is claimed is causally related to the employment injury.<sup>4</sup> 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.<sup>5</sup>

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.<sup>6</sup>

The medical evidence required to establish a causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.<sup>7</sup> 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.<sup>8</sup>

### ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a medical condition causally related to the accepted November 30, 2018 employment incident.

In a December 14, 2018 medical report, Dr. Stanton noted that appellant reported experiencing right shoulder pain after directly falling onto her right shoulder at work on November 30, 2018. He diagnosed cervical radiculopathy. However, Dr. Stanton did not provide an opinion on the cause of appellant's diagnosed condition. Similarly, in his January 7, 2019 medical report, Dr. Kruppenbacher opined that she could return to work with restrictions. However, he did not provide a diagnosis or offer an opinion regarding the cause of appellant's condition. The Board has long 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.<sup>9</sup> Thus, Dr. Stanton's December 14, 2018 report and Dr. Kruppenbacher's January 7, 2019 report,

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<sup>4</sup> *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).

<sup>5</sup> *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).

<sup>6</sup> *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).

<sup>7</sup> *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).

<sup>8</sup> *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).

<sup>9</sup> See *G.L.*, Docket No. 18-1057 (issued April 14, 2020); *J.M.*, Docket No. 18-0853 (issued March 9, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018).

lack probative value on the issue of causal relationship and therefore is insufficient to establish appellant's claim.

In his May 14, 2019 medical report, Dr. Kruppenbacher noted that appellant injured her right shoulder after tripping over packages at work on November 30, 2018. He diagnosed cervical radiculopathy, cervicgia, and numbness. Dr. Kruppenbacher responded "yes" to whether he believed that the accepted November 30, 2018 employment incident was the competent medical cause of appellant's injury, and that her history of the injury was consistent with his objective findings. While his medical opinion is generally supportive of causal relationship, he did not offer medical rationale sufficient to explain how and why he believes that the accepted November 30, 2018 employment incident could have resulted in or contributed to the diagnosed condition. Moreover, the Board has held that a physician's opinion on causal relationship which consists of responding "yes" to a form question, without explanation or rationale, is of diminished probative value and is insufficient to establish a claim.<sup>10</sup> The Board also notes that Dr. Kruppenbacher indicated that appellant had no previous history of symptoms prior to the November 30, 2018 employment incident, further suggesting that the accepted employment incident caused her diagnosed conditions because she was not symptomatic until after the fall. The Board has held that an opinion finding causal relationship because an employee was asymptomatic before the injury, but symptomatic after it is insufficient, without supporting medical rationale, to establish causal relationship.<sup>11</sup> As Dr. Kruppenbacher did not provide a reasoned explanation of how tripping and falling caused or contributed to appellant's injury, his May 14, 2019 report is also of limited probative value, and therefore is insufficient to meet her burden of proof.<sup>12</sup>

Finally, the record also contains reports from a physician assistant and a nurse practitioner. Certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered "physician[s]" as defined under FECA.<sup>13</sup> Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.<sup>14</sup>

As none of the medical evidence appellant submitted constitutes rationalized medical evidence sufficient to establish causal relationship between the accepted November 30, 2018

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<sup>10</sup> See *J.R.*, Docket No. 18-1679 (issued May 6, 2019); *M.C.*, Docket No. 18-0361 (issued August 15, 2018); *Calvin E. King, Jr.*, 51 ECAB 394 (2000); see also *Frederick E. Howard, Jr.*, 41 ECAB 843 (1990).

<sup>11</sup> See *J.F.*, Docket No. 19-1694 (issued March 18, 2020); *M.B.*, Docket No. 19-0840 (issued October 2, 2019); *C.C.*, Docket No. 17-1841 (issued December 6, 2018); *John F. Glynn*, 53 ECAB 562 (2002); *Thomas Petrylak*, 39 ECAB 276, 281 (1987).

<sup>12</sup> See *A.P.*, Docket No. 19-0224 (issued July 11, 2019).

<sup>13</sup> 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).

<sup>14</sup> Section 8101(2) of FECA provides that medical opinions can only be given by a qualified physician. This section 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. *H.K.*, Docket No. 19-0429 (issued September 18, 2019); *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006); see also *S.L.*, Docket No. 19-0603 (issued January 28, 2020) (nurse practitioners are not considered physicians as defined under FECA).

employment incident and her diagnosed conditions, the Board finds that she has not met her burden of proof.<sup>15</sup>

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 November 30, 2018 employment incident.<sup>16</sup>

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 23, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 22, 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

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<sup>15</sup> *R.G.*, Docket No. 18-0792 (issued March 11, 2020).

<sup>16</sup> 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).