United States Department of Labor
Employees' Compensation Appeals Board

L.C., Appellant	)	
and	)	**Docket No. 18-0933**
	)	**Issued: March 13, 2020**
U.S. POSTAL SERVICE, POST OFFICE, Yorktown Heights, NY, Employer	)	

Appearances:
Paul Kalker, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Deputy Chief Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On April 2, 2018 appellant, through counsel, filed a timely appeal from a March 8, 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.[3]

[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.*

[3] The Board notes that, following the March 8, 2018 decision, OWCP received additional evidence. 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*.

ISSUE

The issue is whether appellant has met her burden of proof to establish a right shoulder condition causally related to the accepted January 27, 2017 employment incident.

FACTUAL HISTORY

On January 27, 2017 appellant, then a 52-year-old distribution window and mark up clerk, filed a traumatic injury claim (Form CA-1) alleging that on that day she heard a pop in her right shoulder and experienced pain which spread from her neck down to the fingers on her right side when she was taking a small package from the top of a cage while in the performance of duty. She stopped work on that day.

In a January 27, 2017 narrative statement, appellant indicated that, earlier that day, she was taking a small, one-pound package from the top of a cage when she heard a pop in her right shoulder. She indicated that it resulted in excruciating pain from the right side of her neck down to her arm and fingertips. Appellant indicated that she stopped work immediately due to the pain. She explained that she left a note with her coworker to inform the postmaster of her injury.

OWCP received a January 27, 2017 statement from Postmaster J.H.[4] J.H. confirmed that appellant had reported that she injured her shoulder earlier that day at 4:00 a.m.

On January 27, 2017 the employing establishment issued an authorization for examination and/or treatment (Form CA-16) for medical care at Care Mount Medical.

OWCP received a January 27, 2017 attending physician's report (Part B of a Form CA-16) with an illegible signature. The form noted appellant's diagnosis as possible tendinitis.

In a development letter dated February 13, 2017, OWCP informed appellant that the evidence submitted was insufficient to establish her claim and advised that additional medical evidence was needed to support her claim. It requested that she submit a rationalized medical report which explained that a diagnosed condition was causally related to the alleged incident. OWCP afforded appellant 30 days to submit the necessary evidence.

OWCP received a January 27, 2017 report from a nurse practitioner who treated appellant on that date for complaints of a right shoulder injury sustained earlier that morning at work. The nurse practitioner indicated that appellant explained that she was at work throwing her "usual 100+ parcels and developed sudden right shoulder pain." She assessed a right shoulder injury and indicated that it could be tendinitis.

In a report dated February 8, 2017, Dr. Stacy Gross, Board-certified in physical medicine and rehabilitation, noted that appellant was seen for evaluation of right shoulder pain. She indicated that she last saw appellant in July 2015, for left shoulder pain, which was also a work injury. Dr. Gross explained that appellant related that she was favoring the left shoulder, and using her right side more. As a result, she began having pain on January 27, 2017, and was off work since then. Dr. Gross explained that appellant was "going through a lot of packages over the

[4] The Board notes that the statement was dated February 27, 2017, but this appears to be a typographical error as it was received by OWCP on January 31, 2017.

holidays and sorts mail all day, every day with her right arm." She noted that appellant engaged in a lot of repetitive activities working in the employing establishment and her pain was worse when she raised her right arm. Dr. Gross diagnosed right shoulder rotator cuff impingement and tendinitis/tendinopathy and placed appellant off work.

In a February 8, 2017 Form CA 17 report, Dr. Gross indicated that appellant was injured on January 27, 2017 and noted that appellant claimed that she heard a "pop in the right shoulder while taking a small parcel from a cage." She diagnosed rotator cuff and impingement. Dr. Gross indicated that appellant was unable to work.

In a February 9, 2017 attending physician's report (Form CA-20), Dr. Gross noted that appellant had pain in her right shoulder after a lot of lifting and sorting packages and mail. She responded "yes" regarding whether appellant had any preexisting conditions and noted "previous shoulder injury from work." Dr. Gross diagnosed rotator cuff impingement and tendinitis. She responded "yes" with regard to whether she believed the condition found was caused or aggravated by an employment activity. Dr. Gross indicated that appellant was unable to work.

OWCP received physical therapy reports dated February 14, 17, and 23 and March 8, 20, and 28, 2017.

By decision dated April 4, 2017, OWCP denied appellant's claim finding that the medical evidence of record was insufficient to establish causal relationship between the diagnosed conditions and the accepted January 27, 2017 employment incident of lifting a small package from the top of a cage. It concluded that the requirements had not been met to establish an injury and/or medical condition.

OWCP continued to receive additional physical therapy reports dated through April 4, 2017.

In a March 27, 2017 report, Dr. Gross noted that appellant was seen for follow up. She diagnosed right shoulder rotator cuff tendinitis and impingement. In her June 12, 2017 report, Dr. Gross diagnosed right shoulder impingement and osteoarthritis. In a July 11, 2017 report, she diagnosed impingement of the right shoulder and rotator cuff tendinopathy.

In a July 31, 2017 report, Dr. Gross indicated that appellant was seen on February 8, 2017 for continued right shoulder pain. She noted that appellant had worked at the employing establishment for many years and suffered an injury to her left shoulder in 2015. Dr. Gross indicated that appellant was subsequently overusing her right shoulder and injured it due to repetitive work activities. She noted that appellant was off work from the time she first saw her on February 8, 2017 until the last visit on July 11, 2017. Dr. Gross opined that, given the repetitive activities required at her job, "it is reasonable that there is a causal link to the patient's shoulder pain and a repetitive overuse injury sustained at work." She explained that appellant was seen by her years earlier for similar complaints to the left shoulder and at that time her symptoms were deemed to be related to an overuse injury at work. Dr. Gross also indicated that appellant had underlying arthritis of the right shoulder. She explained that a recent magnetic resonance imaging scan revealed supraspinatus tendinosis, "but definition is a degenerative injury to the tendon secondary to repetitive stress upon the tendon." Dr. Gross opined that appellant's job produced a "repetitive stress upon her shoulders" and was "more likely the precipitating factor for her current right shoulder pain and disability."

On August 17, 2017 appellant, through counsel, requested reconsideration. Counsel noted that appellant had a previous injury to her left shoulder on October 31, 2014 under OWCP File No. xxxxxx606. He explained that, at the time of appellant's January 27, 2017 injury, she was provided with a Form CA-1, but a Form CA-2 for an occupational disease would have been more appropriate, as her claim was primarily an occupational disease claim. Counsel indicated that she had last worked on January 27, 2017. He further argued that the medical evidence supported appellant's claim and that OWCP conducted the claim in an adversarial posture.

Dr. Gross continued to treat appellant and saw her on August 21, 2017. She advised that appellant had persistent right shoulder pain secondary to repetitive activities at the job in the employing establishment.

In an October 19, 2017 report, Dr. Gross diagnosed subacromial impingement of the right shoulder.

By decision dated November 21, 2017, OWCP denied modification of its prior decision.

In a November 20, 2017 report, Dr. Gross saw appellant for follow up and diagnosed chronic right shoulder pain, and other chronic pain.

On December 11, 2017 appellant, through counsel, requested reconsideration.

In a January 18, 2018 report, Dr. Gross noted that appellant was seen for follow up and her claim remained denied. She diagnosed rotator cuff tear arthropathy of the right shoulder and advised that she was 100 percent disabled.

By decision dated March 8, 2018, OWCP denied modification of the prior decision.[5]

LEGAL PRECEDENT

An employee seeking benefits under FECA[6] 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 of FECA,[7] 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

[5] OWCP's claims examiner specifically noted that appellant's description of the alleged incident on the claim form supported a traumatic injury, which occurred during a single work shift at a given time and place, and under given circumstances, and with an injury to a specific body part. OWCP explained that insofar as it appeared that appellant might be claiming a consequential injury stemming from a previously accepted injury or a new occupational disease as a result of events longer than one day or work shift she may file a consequential injury claim to the previously accepted claim or Form CA-2 for an occupational disease claim.

[6] *Supra* note 1.

[7] *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

the employment injury.[8] 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.[9]

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.[10] 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.[11] The second component is whether the employment incident caused a personal injury.[12]

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 incident.[13]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a right shoulder condition causally related to the accepted January 27, 2017 employment incident.

In support of her claim, appellant submitted multiple reports from Dr. Gross, her treating physician. In a narrative report dated February 8, 2017, Dr. Gross explained that appellant had a prior left shoulder employment injury in July 2015, which caused her to favor her right side, and that as a result appellant began having pain on January 27, 2017, and had been off work since that time. She noted that appellant was "going through a lot of packages over the holidays and sorts mail all day, every day with her right arm," and she also noted that appellant engaged in a lot of repetitive work activities. Dr. Gross, however, did not relate a history of the specific January 27, 2017 employment incident alleged by appellant. The Board has held that medical opinions based on an incomplete or inaccurate history are of limited probative value.[14] Similarly, in the February 9, 2017 Form CA-20 report, Dr. Gross related that appellant experienced shoulder pain after performing a lot of lifting and sorting packages and mail. A physician must provide a narrative description of the identified employment incident and a reasoned opinion on whether the described incident caused or contributed to a diagnosed medical condition.[15] Dr. Gross'

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[8] *T.H.*, Docket No. 18-1736 (issued March 13, 2019); *R.C.*, 59 ECAB 427 (2008).

[9] *T.E.*, Docket No. 18-1595 (issued March 13, 2019); *Delores C. Ellyett*, 41 ECAB 992 (1990).

[10] *S.S.*, Docket No. 18-1488 (issued March 11, 2019); *T.H.*, 59 ECAB 388 (2008).

[11] *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

[12] *Id*.

[13] *See S.S.*, *supra* note 10; *H.B.*, Docket No. 18-0781 (issued September 5, 2018).

[14] *G.E.*, Docket No. 19-1190 (issued November 26, 2019); *T.O.*, Docket No. 17-0093 (issued March 22, 2018).

[15] *K.B.*, Docket No. 19-0398 (issued December 18, 2019).

February 8, 2017 narrative report and February 9, 2017 Form CA-20 are therefore insufficient to establish appellant's claim.[16]

In a February 8, 2017 Form CA-17, Dr. Gross indicated that appellant was injured on January 27, 2017 when she heard a "pop in the right shoulder while taking a small parcel from a cage." The Board notes that she accurately described the employment incident and provided a diagnosis of rotator cuff and impingement. Additionally, Dr. Gross responded "yes" regarding whether the history of injury corresponded to that shown by the employee. However, the Board has long held that the checking of a box "yes" in a form report, without additional explanation or rationale, is insufficient to establish causal relationship.[17]

In a July 31, 2017 narrative report, Dr. Gross noted that appellant was overusing her right shoulder and injured it due to repetitive work activities. She opined that given the repetitive activities required at her job, "it is reasonable that there is a causal link to the patient's shoulder pain and a repetitive overuse injury sustained at work." Dr. Gross saw appellant on August 21, 2017 and noted that appellant had persistent right shoulder pain secondary to repetitive activities at work. In these reports Dr. Gross again did not offer an opinion regarding the employment incident which occurred on January 27, 2017. As previously noted, reports that are based on an incomplete history of injury and do not provide an opinion on causal relationship, are insufficient to establish the claim.[18]

Dr. Gross also submitted additional reports dated March 27, June 12, July 11, and October 19, 2017 and January 18, 2018. In those reports she provided diagnoses, but no opinion regarding causal relationship. 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.[19] Consequently, the Board finds that these reports are also insufficient to establish appellant's claim.

OWCP also received a January 27, 2017 report from a nurse practitioner who assessed a right shoulder injury and indicated that it could be tendinitis and OWCP received physical therapy reports dating from February 14 to April 4, 2017. Certain healthcare providers such as nurse practitioners and physical therapists are not considered "physician[s]" as defined under FECA.[20] Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.[21]

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[16] *Id.*

[17] *L.S.,* Docket No. 18-0264 (issued January 29, 2020); *see Barbara J. Williams*, 40 ECAB 649, 656 (1989).

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

[19] *See J.H.*, Docket No. 19-0838 (issued October 1, 2019); *S.G.,* Docket No. 19-0041 (issued May 2, 2019); *L.B.,* Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[20] 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).

[21] Section 8101(2) of FECA provides that physician "includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law." 5 U.S.C. § 8101(2). *See also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *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); *R.L.,* Docket No. 19-0440 (issued July 8, 2019) (nurse practitioners and physical therapists are not considered physicians under FECA); *K.W.*, 59 ECAB 271, 279 (2007).

On January 27, 2017 OWCP also received an illegibly signed Form CA-16 report. A report that is unsigned or bears an illegible signature lacks proper identification and cannot be considered probative medical evidence as the author cannot be identified as a physician.[22]

As appellant has not submitted a rationalized medical opinion supporting that she sustained a right shoulder condition causally related to the accepted January 27, 2017 employment incident, she has not met her burden of proof to establish an employment-related traumatic injury.

On appeal counsel asserts that OWCP unjustifiably denied appellant's claim by taking an adversarial posture and placing an unreasonable burden upon appellant. However, the Board notes that in the present claim, appellant has not submitted medical evidence containing a rationalized medical opinion supporting that she sustained an injury causally related to the accepted January 27, 2017 employment incident.[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 right shoulder condition causally related to the accepted January 27, 2017 employment incident.

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[22] *K.L.*, Docket No. 18-1029 (issued January 9, 2019).

[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).

ORDER

IT IS HEREBY ORDERED THAT the March 8, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 13, 2020
Washington, DC

Christopher J. Godfrey, Deputy Chief Judge
Employees' Compensation Appeals Board

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

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