

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

S.B., Appellant)
and) Docket No. 19-1661
DEPARTMENT OF HEALTH & HUMAN)
SERVICES, FOOD & DRUG) Issued: March 3, 2020
ADMINISTRATION, Houston, TX, 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 August 1, 2019 appellant filed a timely appeal from a July 26, 2019 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

¹ 5 U.S.C. § 8101 *et seq.*

² The record provided to the Board includes evidence received after OWCP issued its July 26, 2019 decision. 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 left elbow condition causally related to the accepted March 13, 2019 employment incident.

FACTUAL HISTORY

On March 21, 2019 appellant, then a 51-year-old consumer safety officer, filed a traumatic injury claim (Form CA-1) alleging that on March 19, 2019 when moving a total of six 40-pound boxes onto an empty pallet for examination she felt pulling and pain in the area of her left arm and elbow while in the performance of duty. She did not stop work.

Appellant submitted a March 27, 2019 duty status report (Form CA-17) from Dr. Todd Siff, a Board-certified orthopedic surgeon, which noted a diagnosis of left tennis elbow and identified March 19, 2019 as the date of injury. Dr. Siff indicated that appellant could return to work full time with restrictions.

In a March 28, 2019 medical note, Dr. Siff provided a diagnosis of left tennis elbow and referred appellant to occupational therapy for treatment.

Appellant submitted occupational therapy notes dated from April 3 to May 9, 2019 from Dr. Joseph Lao, Board-certified in occupational medicine, and Ellen Tan, an occupational therapist, detailing therapy treatments for her left elbow lateral epicondylitis.

In an April 30, 2019 medical report, Dr. Siff indicated that appellant's left elbow pain had improved 60 percent with occupational therapy and a brace. He noted that she would continue her therapy in order to treat her condition. In a Form CA-17 of even date, Dr. Siff maintained appellant's work restrictions.

In a May 1, 2019 attending physician's report (Form CA-20), Dr. Siff noted that appellant was injured on March 19, 2019 by pulling on a 40-pound object. He diagnosed her with left tennis elbow and explained that her condition could have been triggered by pulling or lifting a heavy object.

In a development letter dated June 13, 2019, OWCP informed appellant that her claim initially appeared to be a minor injury that resulted in minimal or no lost time from work and that continuation of pay was not controverted by the employing establishment, and thus, limited expenses had therefore been authorized. However, a formal decision was now required. OWCP advised appellant of the type of medical evidence required to establish her traumatic injury claim and requested a narrative medical report from her physician explaining how her diagnosed condition is causally related to the March 19, 2019 employment incident. It afforded her 30 days to respond.

Appellant submitted medical reports from Dr. Siff dated May 28 and June 25, 2019 in which he noted the pain in her left elbow had improved by 80 percent with occupational therapy and the use of a brace. Dr. Siff indicated that she was still experiencing reproducible elbow pain along the medial epicondyle and discussed additional treatment options with her. In a June 25, 2019 Form CA-17, he provided updated work restrictions for appellant.

By decision dated July 26, 2019, OWCP denied appellant's claim. It found that the medical evidence of record was insufficient to establish causal relationship between her diagnosed medical condition and the accepted March 19, 2019 work incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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,³ 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.⁴ 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.⁵

To determine whether a federal employee has sustained a traumatic injury in the performance of duty it must first be determined whether fact of injury has been established.⁶ First, the employee must submit sufficient evidence to establish that she actually experienced the employment incident at the time, place, and in the manner alleged.⁷ Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.⁸

To establish causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence sufficient to establish such causal relationship.⁹ 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 factors identified by the claimant.¹⁰

³ *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁴ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁵ *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁶ *D.B.*, Docket No. 18-1348 (issued January 4, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

⁷ *D.S.*, Docket No. 17-1422 (issued November 9, 2017); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁸ *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *John J. Caralone*, 41 ECAB 354 (1989).

⁹ *K.V.*, Docket No. 18-0723 (issued November 9, 2018).

¹⁰ *I.J.*, 59 ECAB 408 (2008).

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a left elbow condition causally related to the accepted March 13, 2019 employment incident.

In a May 1, 2019 Form CA-20, Dr. Siff diagnosed appellant with left tennis elbow as a result of the March 19, 2019 employment incident and explained that her condition “could” have been triggered by pulling or lifting a heavy object. The Board has held that opinions that are speculative or equivocal in character are of diminished probative value.¹¹ For this reason, Dr. Siff’s May 1, 2019 Form CA-20 is insufficient to meet appellant’s burden of proof.

In medical reports dated from April 30 to June 25, 2019, Dr. Siff provided follow-up evaluations for appellant’s elbow pain as it related to her left tennis elbow. However, he offered no opinion regarding the cause of her medical 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.¹² For this reason, Dr. Siff’s medical reports are of limited probative value.

Dr. Siff’s other medical evidence consists of Form CA-17s dated from March 27 to June 25, 2019 in which he provided a diagnosis of left tennis elbow and identified March 19, 2019 as the date of injury. 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.¹³ For this reason, Dr. Siff’s remaining medical evidence is of limited probative value.

The remaining medical evidence consists of occupational therapy notes from Dr. Lao and Ms. Tan, dated from April 3 to June 25, 2019, which detailed appellant’s progress through therapy to treat her left lateral epicondylitis. However, these reports also offer no opinion regarding the cause of appellant’s condition, and as such are of no probative value on the issue of causal relationship.¹⁴

As appellant has not submitted rationalized medical evidence establishing that her left elbow condition is causally related to the accepted March 19, 2019 employment incident, the Board finds that she has not met her burden of proof to establish her claim.

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.

¹¹ See *D.D.*, 57 ECAB 734 (2006).

¹² *R.Z.*, Docket No. 19-0408 (issued June 26, 2019); *P.S.*, Docket No. 18-1222 (issued January 8, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹³ *Id.*

¹⁴ *Id.*

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a left elbow condition causally related to the accepted March 13, 2019 employment incident.

ORDER

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

Issued: March 3, 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