United States Department of Labor
Employees' Compensation Appeals Board

S.W., Appellant	)	
and	)	**Docket No. 20-0387**
	)	**Issued: September 11, 2020**
U.S. POSTAL SERVICE, POST OFFICE, Shreveport, LA, 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 December 10, 2019 appellant filed a timely appeal from a November 22, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (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 factors of her federal employment.

FACTUAL HISTORY

On September 12, 2019 appellant, then a 54-year-old mail processing clerk, filed an occupational disease claim (Form CA-2) alleging that she developed a left shoulder rotator cuff tear, superior labral tears from anterior to posterior (SLAP tears), and fluid in the left shoulder due

[1] 5 U.S.C. § 8101 *et seq.*

to factors of her federal employment. She indicated that she first became aware of her condition on June 25, 2019 and first realized its relationship to factors of her federal employment on August 22, 2019. Appellant stopped work on August 14, 2019.

In an accompanying narrative statement, appellant noted that on June 3, 2019 she experienced pain in her neck radiating down her left arm when she turned her neck. She noted visiting her primary physician on June 25, 2019, by which point she was also experiencing back pain. Appellant reported that she received steroidal injections on June 25 and August 7, 2019, but continued to experience pain in her shoulder and arm. She related that she worked intermittently in August 2019 due to ongoing shoulder pain and numbness and that, when she returned to light-duty work on August 27, 2019, she was only able to work for 35 minutes before her arm went numb again. Appellant noted that she had surgery scheduled for September 18, 2019 and expected to miss work for six to eight weeks. She alleged that her conditions were caused by her repetitive work activities.

In a development letter dated September 25, 2019, 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 development letter of even date, OWCP requested that the employing establishment provide additional information regarding appellant's occupational disease claim from a knowledgeable supervisor. It afforded both parties 30 days to submit the necessary evidence.

OWCP subsequently received an x-ray report of appellant's cervical spine, dated July 26, 2019, which revealed degenerative disc and facet disease in the lower cervical spine.

A magnetic resonance imaging (MRI) scan report of appellant's left shoulder, dated August 29, 2019, revealed partial-thickness articular surface infraspinatus tear, moderate tendinosis of the supraspinatus and infraspinatus, moderate volume fluid in the subcoracoid bursa, SLAP tear, mild acromioclavicular joint degenerative change, and mild glenohumeral joint degenerative change.

In a September 5, 2019 work excuse note, Mary K. Green, a physician assistant, indicated that appellant was excused from work from September 8 to October 8, 2019.

In a September 26, 2019 work excuse note, Dr. Carlton Houtz, a Board-certified orthopedic surgeon, indicated that appellant could return to work in four weeks pending her approval.

In an October 4, 2019 letter, Dr. Houtz indicated that appellant "did not have any work-related injury." He opined, however, that her repetitive lifting and carrying most likely contributed to her shoulder conditions, based upon her job description.

In letters dated October 1 and 7, 2019, appellant responded to OWCP's development questionnaire. She noted that the employment-related activities which she believed contributed to her condition included lifting, bending, stooping, kneeling, pushing, pulling, reaching, loading, sweeping mail, picking up, and walking. Appellant asserted that her mail processing duties were supposed to require two people, but due to a decrease in mail volume, they were shifted to a one-person operation. She alleged that she had been performing repetitive motion activities for over

three years, six days per week, 10 to 12 hours per day. Appellant revealed that she did not engage in any hobbies or outside activities except for occasional computer use for 30 minutes per day.

In a letter dated October 7, 2019, appellant noted that she did not report her work activities to Dr. Houtz at her initial visit and that may have been why he reported that she did "not" have a work-related injury. She further explained that she did not want to file a claim until she knew what was causing her symptoms.

By decision dated November 22, 2019, OWCP denied appellant's occupational disease claim, finding that the medical evidence of record was insufficient to establish a diagnosed medical condition causally related to the accepted factors of her federal employment.

LEGAL PRECEDENT

An employee seeking benefits under FECA[2] 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 establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the identified employment factors.[6]

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.[7] 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

[2] *Supra* note 1.

[3] *S.S.*, Docket No. 19-1815 (issued June 26, 2020); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989).

[4] *M.H.*, Docket No. 19-0930 (issued June 17, 2020); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[5] *S.A.*, Docket No. 19-1221 (issued June 9, 2020); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

[6] *R.G.*, Docket No. 19-0233 (issued July 16, 2019). *See also Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Victor J. Woodhams*, 41 ECAB 345 (1989).

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

be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[8]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a medical condition causally related to the accepted factors of her federal employment.

The record contains an x-ray report of appellant's cervical spine, dated July 26, 2019, which revealed degenerative disc and facet disease in the lower cervical spine. OWCP also received an MRI scan report of appellant's left shoulder, dated August 29, 2019, which demonstrated partial-thickness articular surface infraspinatus tear, moderate tendinosis of the supraspinatus and infraspinatus, moderate volume fluid in the subcoracoid bursa, SLAP tear, mild acromioclavicular joint degenerative change, and mild glenohumeral joint degenerative change. The Board has explained that diagnostic test reports, standing alone, lack probative value as they do not provide an opinion on whether there is causal relationship between an employment incident and a diagnosed condition.[9] These diagnostic reports are therefore insufficient to establish that appellant's diagnosed cervical and left shoulder conditions were causally related to her accepted employment factors.

OWCP also received September 26 and October 4, 2019 notes from Dr. Houtz. In his September 26, 2019 note, Dr. Houtz excused appellant from work for four weeks pending his approval. 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.[10] In his October 4, 2019 note, Dr. Houtz opined that, based on her job description, her repetitive lifting and carrying most likely contributed to her shoulder conditions. However, the Board has long held that medical opinions that are speculative or equivocal in character are of diminished probative value.[11] Furthermore, Dr. Houtz failed to explain with rationale how appellant's specific repetitive lifting and carrying activities caused a diagnosed medical condition. The Board has held that a medical report lacking a firm diagnosis and a rationalized medical opinion regarding causal relationship is of no probative value.[12] As such, Dr. Houtz' notes are insufficient to meet appellant's burden of proof.

Appellant also submitted a September 5, 2019 work excuse note from a physician assistant. The Board has held, however, that medical reports signed solely by a physician assistant are of no

[8] *A.S.*, Docket No. 19-1955 (issued April 9, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

[9] *J.P.*, Docket No. 20-0381 (issued July 28, 2020).

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

[11] *T.M.*, Docket No. 08-975, (issued February 6, 2009).

[12] *D.R.*, Docket No. 16-0528 (issued August 24, 2016).

probative value as physician assistants are not considered physicians as defined under FECA.[13] As such, this evidence is of no probative value and is insufficient to establish appellant's claim.

As there is no medical opinion evidence establishing a diagnosed medical condition causally related to the accepted factors of her federal employment, the Board finds that appellant 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 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 factors of her federal employment.

[13] 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 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); *M.W.*, Docket No. 19-1667 (issued June 29, 2020) (physician assistants are not considered physicians under FECA).

ORDER

IT IS HEREBY ORDERED THAT the November 22, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 11, 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