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

| | | |
|---|---|---|
| **D.C., Appellant** | ) | |
| **and** | ) | **Docket No. 21-0088** |
| | ) | **Issued: August 4, 2021** |
| **U.S. POSTAL SERVICE, POST OFFICE, Kansas City, MO, Employer** | ) | |

*Appearances:*
*Alan J. Shapiro, Esq.*, for the appellant[1]
*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 28, 2020 appellant, through counsel, filed a timely appeal from an August 31, 2020 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.

[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.*

## ***ISSUE***

The issue is whether appellant has met her burden of proof to establish a left shoulder condition causally related to the accepted December 5, 2019 employment incident.

## ***FACTUAL HISTORY***

On December 9, 2019 appellant, then a 65-year-old parcel post distribution machine operator, filed a traumatic injury claim (Form CA-1) alleging that on December 5, 2019 she injured her left shoulder and arm when pulling a cage of magazines while in the performance of duty. She explained that she heard and felt a pop in her left shoulder, but did not immediately feel pain until she continued to work. Appellant indicated that she subsequently experienced a tingling sensation and slight pain in her left arm, as well as numbness to her little finger, when scanning mail. She stopped work on December 5, 2019.

In a December 6, 2019 statement, appellant added that her pain radiated from her shoulder down to her little finger on the left side which did not subside when treating with ice on her arm.

In an undated attending physician's report, Part B of an authorization for medical examination and/or treatment (Form CA-16), Dr. Richard J. Hedden, a urology specialist, indicated that appellant had no preexisting condition, diagnosed arm strain and neuralgia, and checked a box marked "Yes," indicating that her conditions were caused or aggravated by the described employment activity.

In a December 6, 2019 medical report, Dr. Hedden noted that appellant presented with pain and numbness to her left arm after injuring it on December 5, 2019 when she was pulling and moving a metal cage full of heavy materials at work. He conducted a physical examination and diagnosed left upper extremity neuralgia and neuritis. Dr. Hedden recommended physical therapy. In a work status report of even date, he again diagnosed neuralgia and neuritis and indicated that appellant could return to work the next day with restrictions.

In a December 11, 2019 report, Harriet L. Yurkovich, a nurse practitioner, noted that appellant's injury was improving. She conducted a physical examination and diagnosed left upper extremity neuralgia and neuritis. In a work status report of even date, Ms. Yurkovich released appellant to work with restrictions.

In a December 20, 2019 report, Ms. Yurkovich reiterated her findings and diagnoses. In a duty status report (Form CA-17) of even date, she noted that appellant injured her left shoulder while pulling a cage.

In a January 3, 2020 report, Ms. Yurkovich reiterated her diagnoses and additionally diagnosed left shoulder strain. In a work status report of even date, she released appellant to work without restrictions.

OWCP, in a development letter dated January 22, 2020, informed appellant that her claim initially appeared to be a minor injury that resulted in minimal or no lost time from work, and while limited expenses had been authorized, a formal decision was now required. It advised her

of the type of medical evidence necessary to establish her claim. OWCP afforded appellant 30 days to provide the necessary evidence.

In a January 24, 2020 work status report, Ms. Yurkovich reiterated her diagnoses of neuralgia and neuritis and released appellant to work without restrictions.

In a January 24, 2020 medical report, Dr. Walter N. Porter, an emergency medicine specialist, indicated that appellant sustained a work-related left shoulder injury on December 5, 2019 while pulling a cage of heavy materials. He noted that although her pain ran down her left arm, appellant could still move her arm. Dr. Porter conducted a physical examination and diagnosed left upper extremity neuralgia and neuritis.

Dr. Dorothy S. Jennings, a family medicine specialist, in a January 31, 2020 work status report, diagnosed neuralgia and neuritis and indicated that appellant could return to work without restrictions.

By decision dated February 25, 2020, OWCP denied appellant's traumatic injury claim, finding that she had not submitted medical evidence from a physician containing a medical diagnosis in connection with the accepted December 5, 2019 employment incident. As such, it concluded that the requirements had not been met to establish an injury as defined under FECA.

In a January 31, 2020 medical report, Dr. Jennings indicated that appellant still experienced left shoulder pain and that she had not been working. She conducted a physical examination and diagnosed left upper extremity neuralgia, left shoulder strain, and left elbow medial epicondylitis.

On March 10, 2020 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review. During the telephonic hearing, held on June 23, 2020, appellant again described the accepted December 5, 2019 employment incident and noted diagnoses of left shoulder strain and neuralgia. Counsel argued that appellant offered a contemporaneous medical report which consistently showed that she sustained a left shoulder injury at work. The hearing representative held the case record open for 30 days to allow the submission of additional evidence.

In a January 31, 2020 attending physician's report (Form CA-20), Dr. Jennings again indicated that appellant injured her left shoulder while pulling "magazine/package cage" at work when her shoulder popped. She diagnosed left shoulder strain and neuralgia of the left upper extremity. Dr. Jennings checked a box marked "Yes," indicating that the diagnosed conditions were caused or aggravated by an employment activity.

Appellant submitted copies of medical reports that were previously of record, including Dr. Hedden's December 6, 2019 medical report, Ms. Yurkovich's December 11 and 20, 2019 and January 2, 2020 reports, Dr. Porter's January 24, 2020 report, and Dr. Jennings' January 31, 2020 medical report. She also submitted copies of physical therapy reports dated December 6 through 20, 2019.

By decision dated August 31, 2020, OWCP's hearing representative affirmed, as modified, the February 25, 2020 decision, finding that the medical evidence of record was sufficient to establish a diagnosed condition of left shoulder strain. He further found that the claim remained

denied, however, appellant failed to submit a rationalized opinion from her treating physician explaining how her diagnosed left shoulder strain was causally related to the accepted December 5, 2019 employment incident.

## ***LEGAL PRECEDENT***

An employee seeking benefits under FECA[3] 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,[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 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 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. Second component is whether the employment incident caused a personal injury and can be established only by medical evidence.[7]

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.[8] 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.[9]

[3] *Supra* note 2.

[4] *F.H.*, Docket No.18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

[5] *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).

[6] *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).

[7] *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).

[8] *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).

[9] *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).

## ***ANALYSIS***

The Board finds that appellant has not met her burden of proof to establish a left shoulder condition causally related to the accepted December 5, 2019 employment incident.

In a Form CA-20 report dated January 31, 2020, Dr. Jennings diagnosed left shoulder strain and neuralgia of the left upper extremity and checked a box marked "Yes" indicating that appellant's conditions had been caused or aggravated by an employment activity. Likewise, in an undated Form CA-16 report, Dr. Hedden checked a box marked "Yes" indicating that appellant's conditions were caused or aggravated by the described employment activity. The Board, however, has held that an opinion on causal relationship with an affirmative check mark, without more by way of medical rationale, is insufficient to establish the claim.[10] As such, these reports are insufficient to establish appellant's claim.

In a January 31, 2020 medical report, Dr. Jennings diagnosed left upper extremity neuralgia, left shoulder strain, and left elbow medial epicondylitis. However, she did not offer any opinion regarding the cause of appellant's diagnosed conditions. 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.[11] Thus, this report is insufficient to establish causal relationship.

In his reports dated December 6, 2019, Dr. Hedden diagnosed left upper extremity neuralgia and neuritis. Likewise, Dr. Porter, in his January 24, 2020 medical report, and Dr. Jennings, in her January 31, 2020 work status report, diagnosed left upper extremity neuralgia and neuritis. The Board notes that the assessments of neuralgia and neuritis are not considered valid diagnoses as they refer to symptoms of an underlying condition.[12] Furthermore, although they noted that appellant was pulling a cage at work, Drs. Hedden, Porter, and Jennings did not offer any opinion on causal relationship in connection with the accepted December 5, 2019 employment incident. The Board has long held that medical reports which do not provide a firm diagnosis or fail to render an opinion on causal relationship are of no probative value and are insufficient to establish the claim.[13] As Drs. Hedden, Porter, and Jennings failed to explain how the December 5, 2019 incident caused a diagnosed injury to appellant, these reports are also insufficient to establish appellant's claim.

The record contains reports from a nurse practitioner and physical therapists. The Board has held that certain healthcare providers such as physician assistants, nurses, nurse practitioners,

[10] *See C.S.*, Docket No. 18-1633 (issued December 30, 2019); *D.S.*, Docket No. 17-1566 (issued December 31, 2018).

[11] *D.C.*, Docket No. 19-1093 (issued June 25, 2020); *see L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[12] *See M.V.*, Docket No. 18-0884 (issued December 28, 2018) (neuritis is not a valid medical diagnosis). *See also C.W.*, Docket No. 20-0965 (issued February 5, 2021); *S.L.*, Docket No. 19-1536 (issued June 26, 2020); *D.Y.*, Docket No. 20-0112 (issued June 25, 2020) (pain is a symptom and not a compensable medical diagnosis).

[13] *C.D.*, Docket No. 20-0858 (issued November 30, 2020); *A.K.*, Docket No. 20-0003 (issued June 2, 2020).

physical therapists, and social workers are not considered "physician[s]" as defined under FECA.[14] Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.

As appellant has not submitted rationalized medical evidence to establish a left shoulder condition causally related to the accepted December 5, 2019 employment incident, the Board finds that she has not met her burden of proof.[15]

On appeal counsel argues that medical evidence should be read as a whole and that it established causation. However, as explained above, the evidence of record lacks adequate medical rationale on causal relationship and is, therefore, insufficient to meet appellant's 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.

## ***CONCLUSION***

The Board finds that appellant has not met her burden of proof to establish a left shoulder condition causally related to the accepted December 5, 2019 employment incident.

[14] Section 8102(2) of FECA provides as follows: (2) 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); 20 C.F.R. § 10.5(t). *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); *E.W.*, Docket No. 20-0338 (issued October 9, 2020); *S.L.*, Docket No. 19-0603 (issued January 28, 2020) (nurse practitioners are not considered physicians as defined under FECA); *Jane White*, 34 ECAB 515, 518 (1983) (physical therapists are not considered physicians under FECA).

[15] 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 August 31, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 4, 2021
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