United States Department of Labor
Employees' Compensation Appeals Board

S.J., Appellant	)	
and	)	**Docket No. 20-0896**
	)	**Issued: January 11, 2021**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS CANTEEN SERVICE, Chicago, IL, 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
CHRISTOPHER J. GODFREY, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On March 18, 2020 appellant, through counsel, filed a timely appeal from a February 27, 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 medical condition causally related to the accepted June 25, 2018 employment incident.

FACTUAL HISTORY

This case has previously been before the Board.[3] The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On July 25, 2018 appellant, then a 53-year-old food service worker, filed a traumatic injury claim (Form CA-1) alleging that on June 25, 2018 she injured her left shoulder, arm, and hand as well as her back and shoulder blade, when a coworker released a door which hit her on the left shoulder while in the performance of duty.

In an August 9, 2018 development letter, OWCP advised appellant of the deficiencies of her claim. It requested additional factual and medical evidence and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond.

On September 7, 2018 appellant completed the development questionnaire, alleging that on June 25, 2018 a coworker released an open safe room door which struck her on her left shoulder.

By decision dated September 13, 2018, OWCP denied appellant's claim finding that she failed to submit medical evidence establishing a diagnosed condition in connection with her accepted June 25, 2018 employment incident. It concluded, therefore, that she had not met the requirements to establish an injury as defined by FECA.

On October 4, 2018 appellant requested reconsideration and submitted additional medical evidence.

In an August 31, 2018 note, Dr. Damien J. McKnight, a Board-certified family practitioner, noted her history of injury to her neck and left shoulder and diagnosed neck pain and fibromyalgia. He further noted that he suspected that appellant had sustained a musculoskeletal strain complicated by a preexisting fibromyalgia condition. On September 10, 2018 Dr. McKnight reported that given her history of severe fibromyalgia, her injury at work on June 25, 2018 "likely exacerbated" her fibromyalgia which had delayed her healing and resolution of symptoms.

By decision dated January 3, 2019, OWCP affirmed, as modified, the September 13, 2018 decision finding that the medical evidence submitted was sufficient to establish a diagnosis and the medical component of fact of injury. However, the claim remained denied as appellant had not established a causal relationship between her diagnosed condition and the accepted June 25, 2018 employment incident.

[3] Docket No. 19-0693 (issued August 23, 2019).

On February 12, 2019 appellant appealed to the Board. By decision dated August 23, 2019, the Board affirmed the January 3, 2019 decision finding that the record lacked rationalized medical evidence to establish a causal relationship between the accepted June 25, 2018 employment incident and her diagnosed conditions.

On December 13, 2019 appellant, through counsel, requested reconsideration and submitted a December 6, 2019 report from Dr. McKnight who described appellant's June 25, 2018 employment incident and diagnosed preexisting fibromyalgia and cervical radiculopathy. Dr. McKnight opined that patients with fibromyalgia, like appellant experienced pain differently, more severely, and for a much longer duration than those without this condition. He asserted that when the safe room door came down on appellant's left shoulder her "whole system was affected, not just the areas injured." Dr. McKnight found that the level of tissue injury was of greater degree, severity, and intensity than if she did not have fibromyalgia. He also found that appellant's fibromyalgia had caused reduction of the gray matter of her brain, suggesting premature aging of the brain area that controlled pain such that she experienced pain "like someone in her eighties." Dr. McKnight provided citations to medical literature in support of his opinion.

By decision dated February 27, 2020, OWCP denied modification of its prior decisions.

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,[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 if an employee has sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. 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.[7] The second component is whether the employment incident caused a personal injury.[8]

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

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

[6] *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).

[7] *T.M.*, Docket No. 19-0380 (issued June 26, 2019); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[8] *M.H.*, Docket No. 18-1737 (issued March 13, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

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.[9] 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 the specific employment factor(s) identified by the employee.[10] The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.[11]

In a case in which a preexisting condition involving the same part of the body is present and the issue of causal relationship, therefore, involves aggravation, acceleration, or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.[12]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a medical condition causally related to the accepted June 25, 2018 employment incident.

Preliminarily, the Board notes that it is unnecessary for the Board to consider the evidence appellant submitted prior to the issuance of OWCP's January 3, 2019 merit decision because the Board considered that evidence in its August 23, 2019 decision. Findings made in prior Board decisions are *res judicata* absent further review by OWCP under section 8128 of FECA.[13]

In support of her request for reconsideration, appellant submitted a December 6, 2019 report from Dr. McKnight in which he opined that patients with fibromyalgia, like the appellant, experienced pain differently, more severely, and for much longer duration, than those without this condition. He explained that when the safe room door came down on her left shoulder her "whole system was affected, not just the areas injured." Dr. McKnight found that the level of tissue injury was of greater degree, severity, and intensity than if appellant did not have fibromyalgia. He provided citations to medical literature in support of his opinion.

As to Dr. McKnight's reliance on medical publications, the Board has long held that excerpts from publications have little probative value in resolving medical questions unless a physician shows the applicability of the general medical principles discussed in the articles to the

[9] *S.A.*, Docket No. 18-0399 (issued October 16, 2018); *Robert G. Morris*, 48 ECAB 238 (1996).

[10] *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

[11] *D.R.*, Docket No. 19-0954 (issued October 25, 2019); *James Mack*, 43 ECAB 321 (1991).

[12] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013). *R.G.*, Docket No. 18-0917 (issued March 9, 2020); *R.D.*, Docket No. 18-1551 (issued March 1, 2019).

[13] *C.D.*, Docket No. 19-1973 (issued May 21, 2020); *M.D.*, Docket No. 20-0007 (issued May 13, 2020).

specific factual situation at issue in the case.[14] While Dr. McKnight attempted to explain that fibromyalgia was a systemic condition changing pain perception, he did not explain how the accepted employment incident of June 25, 2018 actually physiologically caused any diagnosed condition or how his citations to medical literature supported causal relationship in this matter.[15] The Board, therefore, finds that his statement on causation failed to provide a sufficient explanation as to the mechanism of injury pertaining to this traumatic injury claim, namely, how appellant's employment incident on June 25, 2018 would have aggravated or accelerated her diagnosed conditions of preexisting fibromyalgia and cervical radiculopathy. Further, the Board has held that medical rationale is particularly necessary where, as here, there are preexisting conditions involving some of the same body parts.[16] In such cases, the Board has required medical rationale differentiating between the effects of the work-related injury and the preexisting condition.[17] As Dr. McKnight failed to provide this rationale, his opinion is insufficient to meet appellant's burden of proof.[18]

As the record lacks rationalized medical evidence establishing causal relationship between the June 25, 2018 employment incident and appellant's diagnosed conditions, she has not met her burden of proof.

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 that a medical condition was causally related to the accepted June 25, 2018 employment incident.

[14] *R.G., supra* note 12; *T.S.*, Docket No. 18-1518 (issued April 17, 2019); *W.C. (R.C.)*, Docket No. 18-0531 (issued November 1, 2018); *K.U.*, Docket No. 15-1771 (issued August 26, 2016); *Roger D. Payne*, 55 ECAB 535 (2004).

[15] *A.H.*, Docket No. 19-0270 (issued June 25, 2019); *M.W.*, Docket No. 18-1624 (issued April 3, 2019).

[16] *R.W.*, Docket No. 19-0844 (issued May 29, 2020); *A.M.*, Docket No. 19-1138 (issued February 18, 2020); *A.J.*, Docket No. 18-1116 (issued January 23, 2019).

[17] *Id.*

[18] *Id.*

ORDER

IT IS HEREBY ORDERED THAT the February 27, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 11, 2021
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

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

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