

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

N.D., Appellant)

and)

U.S. POSTAL SERVICE, BALDWIN POST)
OFFICE, Baldwin, LA, Employer)

**Docket No. 20-0991
Issued: January 12, 2021**

Appearances:

Alan J. Shapiro, Esq., for the appellant¹

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
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On April 9, 2020 appellant, through counsel, filed a timely appeal from a January 30, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (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 October 24, 2018 employment incident.

FACTUAL HISTORY

On January 4, 2019 appellant, then a 35-year-old part-time flexible clerk, filed a traumatic injury claim (Form CA-1) alleging that on October 24, 2018 she injured her right shoulder when she was lifting a heavy package from a customer while in the performance of duty. She indicated that she felt a sharp pain in her right shoulder, radiating down into her right hand. Appellant stopped work on October 26, 2018.

In a development letter dated January 17, 2019, OWCP informed appellant of the deficiencies of her claim. It requested that she submit additional medical evidence, including evidence report from a physician containing a diagnosis of a medical condition, and afforded her 30 days to respond.

In an October 26, 2018 progress note, Dr. Eric J. Teschke, an emergency medicine specialist, noted that appellant presented with shoulder and neck pain that radiated down to her right hand, which started at work. He further noted that appellant had been working a lot, but could not recall a single occurrence of injury. Dr. Teschke diagnosed acute right shoulder pain and right shoulder muscle strain. In a medical note of even date, April Jacobs, a nurse practitioner, indicated that appellant could return to work on October 31, 2018.

An October 26, 2018 x-ray of the right shoulder revealed no bone, joint, or soft tissue abnormalities.

In an October 30, 2018 progress note, Ms. Jacobs conducted a physical examination and diagnosed acute right shoulder and neck pain. In a medical note of even date, she indicated that appellant could return to work on November 5, 2018.

In a November 2, 2018 prescription slip, containing an illegible signature from an unidentifiable healthcare provider diagnosed right shoulder rotator cuff tendinitis and impingement and cervical degenerative disc disease.

A December 10, 2018 magnetic resonance imaging (MRI) scan of the cervical spine demonstrated congenitally small spinal canal, mild annular disc bulges at C3-4 and C6-7, and a mild ventral sac and cord impression at C3-4 with mild central stenosis.

In a January 18, 2019 work restrictions note, Dr. John J. Braswell, Board-certified in pain medicine, excused appellant from work for the period December 28, 2018 through January 24, 2019, noting that she had trouble tolerating prolonged sitting and standing. In a January 24, 2019 work restrictions note, he recommended that appellant should remain off of work until further treatment.

By decision dated February 21, 2019, OWCP denied appellant's traumatic injury claim, finding that she had not established causal relationship between her diagnosed condition and the accepted October 24, 2018 employment incident.

In a November 2, 2018 return to work note, Dr. Chad Loup, a Board-certified orthopedic surgeon, indicated that appellant was able to return to work with restrictions of no lifting over five pounds and no overhead activities.

In a January 24, 2019 medical report, Dr. Braswell noted that appellant presented for follow up of her neck pain. He indicated that she had undergone a cervical epidural steroid injection on January 17, 2019. Appellant reported that she was also experiencing numbness and weakness in her leg. Dr. Braswell conducted a physical examination, reviewed the MRI scan of the cervical spine, and diagnosed cervical radiculitis, bulge of cervical disc without myelopathy, cervical spinal stenosis, and lumbar radicular pain. He referred appellant to a spinal surgeon.

On March 1, 2019 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review. During the hearing, held on June 25, 2019, appellant reiterated her account of the accepted October 24, 2018 employment incident. Counsel noted that they were acquiring additional medical evidence from Dr. Braswell and another physician. The hearing representative held the record open for 30 days for the submission of additional evidence. No further evidence was submitted.

By decision dated August 29, 2019, OWCP's hearing representative affirmed the February 21, 2019 decision, finding that the medical evidence of record was insufficient to establish that the accepted October 24, 2018 employment incident caused or aggravated appellant's diagnosed medical conditions.

In an August 12, 2019 duty status report (Form CA-17), Dr. Loup noted that appellant felt a sharp pain in the right shoulder and hand while lifting a package. He diagnosed right shoulder rotator cuff tendinitis and impingement, joint osteoarthritis, and C6-7 radiculopathy.

In a November 14, 2019 medical report, Dr. Loup noted that appellant's right shoulder pain began after trying to pick up a heavy box at work at the end of October 2018. He indicated that appellant had no preexisting condition. Dr. Loup observed tenderness over the anterolateral acromion and acromioclavicular joint. He diagnosed rotator cuff tendinitis and cervical radiculopathy. Dr. Loup concluded that appellant's right shoulder was injured after lifting the box at work, which caused pain leading to her diagnosed conditions.

On December 9, 2019 appellant, through counsel, requested reconsideration.

By decision dated January 30, 2020, OWCP denied modification of the August 29, 2019 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a medical condition causally related to the accepted October 24, 2018 employment incident.

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).

In his November 14, 2019 medical report, Dr. Loup diagnosed rotator cuff tendinitis and cervical radiculopathy and concluded that appellant's right shoulder was injured after lifting a box at work on October 24, 2018. He did not, however, explain with sufficient rationale how lifting a box would cause or result in the diagnosed conditions. The Board has held that a medical opinion is of limited value if it is conclusory in nature.¹⁰ A medical opinion must explain how the implicated employment factors physiologically caused, contributed to, or aggravated the specific diagnosed conditions.¹¹ Thus, without this explanation, Dr. Loup did not provide a sufficient basis for his opinion and, therefore, the report is insufficient to meet appellant's burden of proof.

In an October 26, 2018 progress note, Dr. Teschke noted that appellant experienced shoulder and neck pain, which started at work, but he also noted that appellant could not recall a single occurrence of injury. He diagnosed acute right shoulder pain and right shoulder muscle strain, but did not provide an opinion on a 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.¹² Furthermore, the Board has also held that pain is a symptom and not a compensable medical diagnosis.¹³ As Dr. Teschke has not offered an opinion as to whether appellant's right shoulder muscle strain is causally related to the accepted October 24, 2018 employment incident, his progress note is insufficient to meet her burden of proof.

In January 18 and 24, 2019 medical notes, Dr. Braswell provided multiple diagnoses and excused appellant from work. Likewise, Dr. Loup, in his November 2, 2018 note and August 12, 2019 Form CA-17 report, conducted a physical examination, reviewed the MRI scan of the cervical spine, and provided multiple diagnoses. However, neither physician specifically related the diagnosed conditions to the accepted October 24, 2018 employment incident. As noted above, the Board has held that medical evidence that does not offer an opinion regarding the cause of a diagnosed condition is of no probative value on the issue of causal relationship.¹⁴ The Board finds, therefore, the reports of Drs. Braswell and Loup are insufficient to establish appellant's burden of proof.

The record also contains reports from a nurse practitioner that were not countersigned by Dr. Teschke. Medical reports signed solely by a nurse practitioner are of no probative value, as a nurse practitioner is not considered a physician as defined under FECA and, therefore, is not

¹⁰ *C.M.*, Docket No. 19-0360 (issued February 25, 2020); *C.D.*, Docket No. 17-0292 (issued June 19, 2008); *Mary A. Ceglia*, 55 ECAB 626 (2004).

¹¹ *R.S.*, Docket No. 19-1774 (issued April 3, 2020); *K.G.*, Docket No. 18-1598 (issued January 7, 2020).

¹² *L.G.*, Docket No. 20-0433 (issued August 6, 2020); *S.D.*, Docket No. 20-0413 (issued July 28, 2020); *S.K.*, Docket No. 20-0102 (issued June 12, 2020).

¹³ *See S.L.*, Docket No. 19-1536 (issued June 26, 2020); *D.Y.*, Docket No. 20-0112 (issued June 25, 2020).

¹⁴ *Id.*

competent to provide a medical opinion.¹⁵ Consequently, these reports will not suffice for purposes of establishing entitlement to FECA benefits.¹⁶

OWCP also received a November 2, 2018 prescription slip. However, this document contained an illegible signature from an unidentifiable healthcare provider. The Board has held that reports that bear illegible signatures cannot be considered probative medical evidence because they lack proper identification that the author is a physician.¹⁷ Accordingly, this document is insufficient to satisfy appellant's burden of proof to establish her claim.

Finally, appellant also submitted October 26, 2018 x-rays of the right shoulder and a December 10, 2018 MRI scan of the cervical spine. The Board has held, however, that diagnostic studies, standing alone, lack probative value on the issue of causal relationship as they do not address whether the employment incident caused any of the diagnosed conditions.¹⁸ These reports are, therefore, insufficient to establish the claim.

As the medical evidence does not include a rationalized opinion explaining that appellant's accepted October 24, 2018 employment incident caused her diagnosed conditions, the Board finds that she has not met her burden of proof.¹⁹

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 medical condition causally related to the accepted October 24, 2018 employment incident.

¹⁵ Section 8101(2) of FECA provides that medical opinions can only be given by a qualified physician. This section defines a physician as 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 M.M.*, Docket No. 20-0019 (issued May 6, 2020); *K.W.*, 59 ECAB 271, 279 (2007); *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); *see also S.L.*, Docket No. 19-0603 (issued January 28, 2020) (nurse practitioners are not considered physicians as defined under FECA).

¹⁶ *Id.*

¹⁷ *J.P.*, Docket No. 19-0197 (issued June 21, 2019).

¹⁸ *K.S.*, Docket No. 19-1623 (issued March 19, 2020); *M.J.*, Docket No. 19-1287 (issued January 13, 2020).

¹⁹ *See T.J.*, Docket No. 19-1339 (issued March 4, 2020); *F.D.*, Docket No. 19-0932 (issued October 3, 2019); *D.N.*, Docket No. 19-0070 (issued May 10, 2019); *R.B.*, Docket No. 18-1327 (issued December 31, 2018).

ORDER

IT IS HEREBY ORDERED THAT the January 30, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 12, 2021
Washington, DC

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

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

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