

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

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| C.S., Appellant |) | |
| |) | |
| and |) | Docket No. 20-1354 |
| |) | Issued: January 29, 2021 |
| U.S. POSTAL SERVICE, POST OFFICE, |) | |
| Chicago, IL, Employer |) | |
| |) | |

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On June 29, 2020 appellant filed a timely appeal from a May 15, 2020 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

ISSUE

The issue is whether appellant has met her burden of proof to establish a medical condition causally related to the accepted March 19, 2020 employment incident.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that appellant submitted additional evidence on appeal. 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.*

FACTUAL HISTORY

On March 23, 2020 appellant, then a 48-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on March 20, 2020³ she sustained a right shoulder injury due to lifting while in the performance of duty. She stopped work on that date.

In a statement dated March 20, 2020, appellant indicated that on March 19, 2020 at approximately 12:30 p.m., while delivering on her route, she began to experience right shoulder pain. She explained that she had to load and unload her cart throughout the day, lifting it in and out of her work vehicle, and believed this is what caused her right shoulder injury.

In support of her claim, appellant submitted a March 20, 2020 medical report from Dr. Afiz Taiwo, an internist, noting that she had reported pain in the right shoulder, radiating to her neck and head, after lifting a heavy mail cart into her van. Dr. Taiwo provided a date of injury of March 19, 2020. He noted examination findings and diagnosed injury to the muscle or tendon of the right rotator cuff. Dr. Taiwo further indicated that appellant underwent an x-ray of her right shoulder.

A duty status report (Form CA-17) dated March 20, 2020, from an unidentifiable healthcare provider, noted a diagnosis of right rotator cuff strain and included work restrictions for no use of the right arm. In a medical note of even date, Dr. Taiwo noted a diagnosis of unspecified injury of the right rotator cuff and provided work restrictions for no reaching above shoulders and no use of the right upper extremity.

A March 26, 2020 medical note from Dr. Taiwo reiterated his diagnosis and work restrictions. A Form CA-17 of even date, with an illegible signature, provided a diagnosis of right rotator cuff injury and restrictions of no use of the right arm and shoulder.

OWCP also received physical therapy notes dated March 23, 26, 27, and 30, 2020, which provided a diagnosis of unspecified injury of the right rotator cuff.

In an April 7, 2020 development letter, OWCP informed appellant that the evidence of record was insufficient to establish her claim. It advised appellant of the type of factual and medical evidence needed to establish her claim, including a narrative medical report from a treating physician, containing a detailed description of findings and a diagnosis, explaining how her work activities caused, contributed to, or aggravated her medical conditions. It afforded her 30 days to submit the necessary evidence.

Thereafter, OWCP received a medical note dated April 2, 2020 from Dr. Taiwo, reiterating his diagnosis of an unspecified injury to the muscle or tendon of the right rotator cuff. Dr. Taiwo released appellant from his care and noted that she could return to full-duty work that day.

³ The Board notes that, although appellant provided a date of injury of March 20, 2020 on the Form CA-1, it appears that this was a typographical error as all medical records and appellant's subsequent statement indicate a date of injury of March 19, 2020.

By decision dated May 15, 2020, OWCP accepted that the March 19, 2020 employment incident occurred. However, it denied appellant's traumatic injury claim, finding that she had not submitted evidence containing a medical diagnosis in connection with the injury and/or events. Consequently, OWCP found that appellant had not met the requirements to establish an injury as defined by FECA.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ 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,⁵ 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.⁶ 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.⁷

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. The second component is whether the employment incident caused a personal injury.⁸

The medical evidence required to establish a causal relationship between a claimed specific condition and an employment incident is 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 specific employment factors identified by the employee.¹⁰

⁴ *Supra* note 1.

⁵ *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).

⁶ *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).

⁷ *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).

⁸ *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).

⁹ *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).

¹⁰ *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 medical condition causally related to the accepted March 19, 2020 employment incident.

In support of her claim, appellant submitted reports of Dr. Taiwo dated March 20 and 26 and April 2, 2020 documenting right shoulder pain and containing assessments of unspecified injuries to the rotator cuff. The Board has held that pain is a description of a symptom, not a clear diagnosis of a medical condition.¹¹ Moreover, Dr. Taiwo's classification of the injuries as unspecified is not a firm diagnosis. A medical report lacking a firm diagnosis is of no probative value.¹² As such, Dr. Taiwo's reports are insufficient to meet appellant's burden of proof.

OWCP also received CA-17 forms dated March 23 and 26, 2020 bearing illegible signatures.¹³ Reports that are unsigned or that bear illegible signatures cannot be considered probative medical evidence because they lack proper identification¹⁴ as the author cannot be identified as a physician.¹⁵

The remaining records are reports from physical therapists dated March 23 through 30, 2020. These reports have no probative value, however, because physical therapists are not considered physicians as defined under FECA.¹⁶

The Board finds that there is no evidence of record that establishes a valid medical diagnosis from a qualified physician in connection with the accepted employment incident. Consequently, appellant has not established that she sustained a medical condition causally related to the accepted employment incident.

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 10.607.15.

¹¹ *D.R.*, Docket No. 18-1408 (issued March 1, 2019); *D.A.*, Docket No. 18-0783 (issued November 8, 2018).

¹² *J.P.*, Docket No. 20-0381 (issued July 28, 2020); *R.L.*, Docket No. 20-0284 (issued June 30, 2020).

¹³ 20 C.F.R. § 10.331(a) provides that use of medical report forms is not required; however, the report should bear the physician's signature or signature stamp.

¹⁴ *W.L.*, Docket No. 19-1581 (issued August 5, 2020).

¹⁵ *D.T.*, Docket No. 20-0685 (issued October 8, 2020); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

¹⁶ 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); *Jane White*, 34 ECAB 515, 518 (1983) (physical therapists are not considered physicians under FECA).

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a medical condition causally related to the accepted March 19, 2020 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the May 15, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 29, 2021
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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