

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

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M.B., Appellant))
))
and)	Docket No. 21-0019
)	Issued: July 15, 2021
DEPARTMENT OF VETERANS AFFAIRS,)	
DORN VA MEDICAL CENTER, Columbia, SC,)	
Employer)	
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Appearances: *Case Submitted on the Record*
Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On October 7, 2020 appellant, through counsel, filed a timely appeal from an August 21, 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 February 11, 2019 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 February 11, 2019 appellant, then a 44-year-old social worker, filed a traumatic injury claim (Form CA-1) alleging that on that date she injured her left shoulder, wrist, ankle, and arm when she slipped and fell on spilled coffee while in the performance of duty. She stopped work that day.

On February 11, 2019 appellant was treated by Samuel Wachter, a nurse practitioner, who noted the history of injury as a trip and fall at work. Mr. Wachter noted diagnoses of left shoulder, left wrist, right knee, and left ankle sprains.

X-rays of appellant's left ankle obtained on February 11, 2019 revealed degenerative changes and some diffuse swelling of the soft tissue. X-rays of the right knee revealed mild degenerative changes, and x-rays of the left wrist and left shoulder were unremarkable.

In an unsigned note dated February 13, 2019, Dr. Cassandra Patterson, a Board-certified internist, indicated that appellant had been seen in her clinic and requested that she be excused from work from February 11 through 17, 2019. On February 15, 2019 she requested that appellant be excused from work from February 15 through 24, 2019.

In a development letter dated March 8, 2019, OWCP advised appellant of the factual and medical evidence needed to establish her claim and provided her with a questionnaire to complete. It allotted her 30 days to submit a response. No response was received.

By decision dated April 10, 2019, OWCP denied appellant's traumatic injury claim finding that she had not submitted medical evidence containing a diagnosis in connection with the accepted February 11, 2019 employment incident and, thus, had not met the requirements to establish an injury as defined by FECA.

On April 17, 2019 appellant requested reconsideration. She indicated that she received the March 8, 2019 development letter from OWCP and submitted medical evidence that she believed cured the deficiencies in her claim.

³ Docket No. 19-1638 (issued July 17, 2020).

Appellant submitted a February 11, 2019 note from Mr. Wachter, x-rays dated February 11, 2019, and the February 13 and 15, 2019 notes from Dr. Patterson, all previously of record.

OWCP received after visit summaries from Dr. Patterson dated February 13 and 15, 2019 who treated appellant in follow-up following a fall. Other visit summaries from Dr. Patterson dated February 22 and March 7, 2019 evaluated appellant for left shoulder pain. In a February 22, 2019 note, Dr. Patterson excused appellant from work from February 15 through March 10, 2019. In a note dated March 7, 2019, she excused appellant from work from March 7 through 12, 2019.

Dr. Kevin K. Nahigian, a Board-certified orthopedist, provided an after-visit summary dated March 12, 2019, and noted diagnoses of chronic left shoulder pain, subacromial impingement of the left shoulder, and chronic frozen shoulder for which he administered an injection and prescribed medication. In another note dated March 12, 2019, he advised that appellant should remain off work until March 28, 2019.

By decision dated April 22, 2019, OWCP denied appellant's request for reconsideration of the merits of her claim under 5 U.S.C. § 8128(a).

OWCP received additional evidence, including evidence previously of record. Appellant submitted an e-mail dated February 11, 2019 to her supervisor informing her that she slipped and fell downstairs injuring her ankle, wrist, and shoulder and was going to the employee health unit. She submitted an incident report. Appellant also submitted an "incident timeline" documenting her injury and medical treatment from February 11 through May 1, 2019. She provided a March 8, 2019 e-mail to the employing establishment payroll finance department regarding her pay status.

In a March 12, 2019 note, Dr. Nahigian treated appellant and indicated that she remained off work until March 28, 2019.

On April 30, 2019 Dr. Patterson treated appellant for left shoulder pain and diagnosed subacromial impingement of the left shoulder and adhesive capsulitis. She noted treating appellant on February 15, 26, and March 7, 2019.

On July 30, 2019 appellant appealed the April 10 and 22, 2019 OWCP decisions to the Board.⁴ By decision dated July 17, 2020, the Board affirmed in part and set aside in part the decisions dated April 10 and 22, 2019. The Board found that appellant had not met her burden of proof to establish a medical condition causally related to the February 11, 2019 employment incident. The Board further found that OWCP improperly denied her request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a) and remanded the case for an appropriate merit decision on her claim for disability.

Upon return of the case record, by decision dated August 21, 2020, OWCP modified the April 10, 2019 decision, finding that appellant had established medical diagnoses. However, the claim remained denied as the medical evidence of record was insufficient to establish causal

⁴ *Supra* note 4.

relationship between appellant's diagnosed conditions and the accepted February 11, 2019 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁵ 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,⁶ 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.⁷ 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.⁸

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. 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, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.⁹

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.¹⁰ 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.¹¹

⁵ *Supra* note 2.

⁶ *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).

⁷ *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).

⁸ *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).

⁹ *T.J.*, Docket No. 19-0461 (issued August 11, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

¹⁰ *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).

¹¹ *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 February 11, 2019 employment incident.

By decision dated July 17, 2020, the Board affirmed OWCP's denial of her claim, finding that appellant had not met her burden of proof to establish a medical condition causally related to the February 11, 2019 employment incident. The Board further found that OWCP improperly denied her request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a). Findings made in prior Board decisions are *res judicata* absent any further review by OWCP under section 8128 of FECA.¹² The Board will, therefore, not review the medical evidence addressed in the prior appeal.

In a note dated April 30, 2019, Dr. Patterson treated appellant for injuries sustained from a fall at work. She diagnosed subacromial impingement of the left shoulder and adhesive capsulitis. Dr. Patterson further noted treating appellant on February 15, 26, and March 7, 2019. However, she did not provide medical rationale regarding causal relationship. As Dr. Patterson failed to explain how the accepted employment factors physiologically caused or contributed to the diagnosed conditions, her reports are of limited probative value.¹³

In a February 22, 2019 note, Dr. Patterson evaluated appellant for left shoulder pain and excused her from work from February 15 through March 10, 2019. In a note dated March 7, 2019, she excused appellant from work from March 7 through 12, 2019. Similarly, in an after visit summary dated March 7, 2019, Dr. Patterson treated appellant for left shoulder pain. 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.¹⁴ Accordingly, these medical notes are insufficient to establish appellant's claim.

In an after-visit summary dated March 12, 2019, Dr. Nahigian, diagnosed chronic left shoulder pain, subacromial impingement of the left shoulder, and chronic frozen shoulder for which he administered an injection and prescribed medication. He advised that appellant should remain off work until March 28, 2019. Similarly, in a March 12, 2019 note, Dr. Nahigian treated appellant and indicated that she remain off work until March 28, 2019. However, he provided no opinion regarding whether appellant sustained an injury causally related to her accepted employment incident. As stated above, medical evidence that does not offer an opinion regarding

¹² See *M.M.*, Docket No. 18-1366 (issued February 27, 2019); *E.L.*, Docket No. 16-0635 (issued November 7, 2016); *R.L.*, Docket No. 15-1010 (issued July 21, 2015). See also *A.P.*, Docket No. 14-1228 (issued October 15, 2014); *Clinton E. Anthony, Jr.*, 49 ECAB 476 (1998).

¹³ *M.M.*, Docket No. 19-1580 (issued February 19, 2020); *K.G.*, Docket No. 18-1598 (issued January 7, 2020); *A.B.*, Docket No. 16-1163 (issued September 8, 2017).

¹⁴ *C.F.*, Docket No. 19-1748 (issued March 27, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

the cause of an employee's condition or disability is of no probative value on the issue of causal relationship.¹⁵ Therefore, these reports are insufficient to establish appellant's claim.

As appellant has not submitted rationalized medical evidence establishing causal relationship between her diagnosed left shoulder, wrist, ankle, and arm conditions and the accepted February 11, 2019 employment incident, the Board finds that 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 a medical condition causally related to the accepted February 11, 2019 employment incident.

¹⁵ See *A.S.*, Docket No. 19-0915 (issued November 22, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

ORDER

IT IS HEREBY ORDERED THAT the August 21, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 15, 2021
Washington, DC

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

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

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