United States Department of Labor
Employees' Compensation Appeals Board

B.S., Appellant	)	
and	)	**Docket No. 20-0895**
	)	**Issued: June 15, 2021**
DEPARTMENT OF THE NAVY, NAVAL FACILITIES ENGINEERING COMMAND, Great Lakes, 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
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On March 18, 2020 appellant, through counsel, filed a timely appeal from a January 21, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] 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 27, 2019 employment incident.

FACTUAL HISTORY

On March 5, 2019 appellant, then a 52-year-old painter, filed a traumatic injury claim (Form CA-1) alleging that on February 27, 2019 she sustained injuries to her head, right hip, right knee, and right shoulder when she slipped and fell on ice while in the performance of duty.

In a form report dated February 27, 2019, Dr. Scott J. Carlson, an employing establishment physician specializing in family medicine, checked boxes indicating that appellant had sustained an occupational injury and should not work until a follow-up the next day. On February 28, 2019 Dr. Carlson indicated that appellant had sustained an occupational injury the previous day and should remain off work until March 4, 2019.

On March 4, 2019 Dr. Harold Chin, Board-certified in occupational and emergency medicine, indicated that appellant should return to work with temporary restrictions of seated desk duty, ambulation as tolerated, no lifting with the right hand, no overhead motion, no stairs or ladder climbing, no kneeling, and no squatting.

On March 8, 2019 Sandra Mikolas, nurse practitioner, diagnosed intractable chronic post-traumatic headache and acute pain of the right shoulder. On March 15, 2019 she recommended no work until a follow-up appointment on March 22, 2019 due to sedating medication from an injury resulting from a fall at work.

In a development letter dated May 14, 2019, OWCP informed appellant that she had submitted insufficient medical evidence to establish her claim. It advised her of the type of evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond.

In an after visit summary dated March 8, 2019, Ms. Mikolas afforded appellant instructions for care of a closed-head injury, right shoulder contusion, and right hip contusion. She advised appellant that a computerized tomography (CT) scan of her head was within normal limits. Appellant submitted after visit summaries from Ms. Mikolas through March 29, 2019.

An x-ray of appellant's thoracic spine dated March 15, 2019 demonstrated osteophytosis at multiple levels without significant disc height loss, no acute fracture, no acute subluxation, and no endplate depression. An x-ray of the cervical spine on the same date demonstrated no acute findings and moderate degenerative disc height loss at C4-5 and C5-6 with mild degeneration at C3-4 and C6-7 with gentle, presumably degenerative kyphosis. A magnetic resonance imaging (MRI) scan of the cervical spine dated April 2, 2019 demonstrated mild reversal of usual cervical lordosis, no abnormal subluxation, unremarkable spinal soft tissues, minimal intermittent prominence of the central spinal canal without syrinx, and multilevel degenerative changes.

In undated form reports, Dr. Chin noted a date of injury of February 27, 2019 and recommended work restrictions of no overhead work, limited forward reaching with right arm to

less than four hours per day, and lifting no more than 10 pounds with the right arm. In a form report dated April 15, 2019, he recommended that appellant return to work with restrictions of no lifting over 10 pounds with the right arm and no over-the-shoulder or overhead motion.

In progress notes dated from March 6 to April 24, 2019, Ms. Mikolas noted that appellant had fallen at work in February 2019. She diagnosed trapezius/upper back, neck, and right upper extremity strain status post fall.

An MRI scan of appellant's right shoulder joint dated May 9, 2019 demonstrated a full-thickness tear and retraction of the distal supraspinatus, moderate-to-marked tendinopathy and partial-thickness tears in the distal infraspinatus and subscapularis, mild fatty atrophy of the subscapularis muscle belly, acromioclavicular (AC) arthropathy with associated mild narrowing of the subacromial outlet, likely degenerative labral tears and fraying, glenohumeral joint effusion with synovitis, and subacromial/subdeltoid bursal effusion related to the full-thickness rotator cuff defect.

By decision dated June 25, 2019, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish causal relationship between her diagnosed conditions and the accepted employment incident of February 27, 2019. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On July 16, 2019 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

An x-ray of the right hip dated February 27, 2019 revealed no acute fracture or dislocation, no lytic or blastic bone lesions, preserved joint spaces, and soft tissues within normal limits. An x-ray of the right shoulder of the same date revealed findings suspicious for intra-articular humeral head fracture. An x-ray of the right knee of the same date demonstrated tricompartmental osteoarthritis with no acute fracture. A CT scan of the right shoulder and proximal humerus dated March 1, 2019 demonstrated no acute fractures of dislocations, glenohumeral and acromioclavicular degenerative joint changes, likely remote nonunion fracture fragments from the posterior superior glenoid, loose bodies in the sub-coracoid base, mild subacromial spurring, and superior migration of the humeral head, suggesting chronic rotator cuff disease.

In a report dated March 1, 2019, Dr. Carlson followed up with appellant for injuries related to a fall onto her right side after slipping on ice. On physical examination he observed a slight tender small raised area on the right side of the head with no laceration, right neck tenderness, tenderness to palpation of the right shoulder and AC joint, tenderness and swelling of the right buttock, tenderness to palpation of the right hip, and tenderness to palpation of the right knee. Dr. Carlson diagnosed scalp contusion, right hip contusion, right shoulder contusion, headache, and right knee sprain.

In a report dated March 4, 2019, Dr. Chin followed up with appellant for a fall on ice the previous week at work. He stated that she landed on her right side with impact to the right hip and right shoulder with associated injuries to the right knee and posterior scalp. Dr. Chin related appellant's physical examination findings and reviewed the March 1, 2019 CT scan of her right upper extremity that found no fracture or dislocation. He diagnosed right hip contusion, right

shoulder joint sprain, and right knee sprain. In a report dated March 26, 2019, Dr. Chin followed up with appellant for a fall in February 2019 with ongoing right shoulder, neck, and upper back pain, as well as headaches. On physical examination he noted neck tenderness, tenderness to palpation of the back and shoulders, and mild soreness on palpation of the right hip. Dr. Chin diagnosed right rotator cuff capsule sprain, strain of the muscle and tendon of the back wall of the thorax, headache, and right hip contusion. On April 16, 2019 he examined appellant, observing tenderness to palpation of the back and right shoulder, as well as limited internal and external rotation with pain of the right shoulder. On April 24, 2019 Dr. Chin diagnosed right shoulder pain. On May 2, 2019 he recommended work restrictions of no overhead motion and limited forward arm motion no more than four hours per day with limited lifting. On May 15, 2019 Dr. Chin noted that a recent MRI scan demonstrated a right shoulder rotator cuff tear and recommended work restrictions of limited use of right arm with lifting reduced to four pounds and no overhead motion with limited pushing and pulling. On June 25, 2019 he noted that appellant was awaiting approval for repair of a rotator cuff tear and complained of right elbow medial and right hand pain. Dr. Chin indicated that there was no history of any trauma to the elbow. He diagnosed right arm ulnar nerve injury and right shoulder pain. In a medical referral form of the same date, Dr. Chin recommended work restrictions of avoiding pressure applied to the right elbow and light duty.

Appellant resubmitted the reports of Ms. Mikolas dated March 8 and 15, and April 15, 2019 with a counter-signature from Dr. Scott Feldy, a Board-certified internist. In a report dated March 22, 2019, Dr. Feldy counter-signed a report authored by Ms. Mikolas. He noted appellant's physical examination findings and diagnosed right neck strain status post fall. In a report dated March 29, 2019, Dr. Feldy counter-signed a report authored by Ms. Mikolas. He noted that appellant experienced cervicothoracic strain with radiculopathy status post a fall. On physical examination Dr. Feldy observed a guarded neck and improved right upper extremity. He diagnosed neck pain with cervical radiculopathy status post fall. On April 23, 2019 Dr. Feldy counter-signed a report authored by Ms. Mikolas. He noted that appellant experienced thoracic/cervical spine strain status post a fall in February 2019. On physical examination Dr. Feldy observed tenderness to the right lower deltoid and right trapezius on palpation. He diagnosed trapezius/upper back, neck, and right upper extremity strain status post fall. Appellant stated that she felt 100 percent improved with regard to her upper back, neck, and trapezius. She continued to have pain and limited range of motion of the right shoulder, as demonstrated on physical examination. Dr. Feldy diagnosed pain and limitation to the right deltoid status post fall. On June 3, 2019 Dr. Feldy noted that appellant was to undergo right shoulder arthroscopy and rotator cuff repair on June 12, 2019. Appellant stated that on February 27, 2019 she fell on ice onto her right side and experienced pain to the right shoulder with reduced range of motion. Dr. Feldy stated that an MRI scan imaging confirmed a complete rotator cuff tear. He diagnosed a full thickness tear of the right rotator cuff and acknowledged that appellant was cleared for surgery.

In a report dated May 20, 2019, Dr. Navjot S. Kohli, a Board-certified orthopedic surgeon, examined appellant for complaints of right shoulder pain after falling on ice on February 27, 2019. Appellant denied any problems with her shoulder prior to the fall at work on that date. On physical examination Dr. Kohli noted appellant's physical examination findings and diagnosed right shoulder pain secondary to rotator cuff tear. He explained that it was a permanent exacerbation of a preexisting condition.

On May 20, 2019 appellant responded to OWCP's development questionnaire. She stated that she did not have a history of migraines or headaches prior to February 27, 2019 and that she hurt her hip, knee, shoulder, and head and immediately sought medical attention on that date, first consulting with Dr. Carlson. In a statement dated June 15, 2019, appellant explained that on February 27, 2019 she fell on ice and snow outside the employing establishment, hitting her head, hip, shoulder, and knee. She was unsure if she lost consciousness. Appellant limped into an employing establishment building and found coworkers, who took her to a medical building.

The oral hearing before a representative of OWCP's Branch of Hearings and Review was held on November 12, 2019. The hearing representative held the case record open for 30 days for the submission of additional evidence. No additional evidence was received.

By decision dated January 21, 2020, the hearing representative affirmed OWCP's June 25, 2019 decision with modification, accepting that appellant had submitted sufficient medical evidence to establish the presence or existence of the condition for which compensation was claimed, and that she was within the performance of duty, but affirming denial of the claim on the basis that appellant had not submitted sufficient medical evidence to establish a causal relationship between the accepted February 27, 2019 employment incident and her diagnosed conditions.

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

[3] *Id*.

[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).

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 a 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 February 27, 2019 employment incident.

In support of her traumatic injury claim of February 27, 2019, appellant submitted reports from Drs. Carlson, Chin, Feldy, and Kohli. In a series of reports dated February 27 through March 1, 2019, Dr. Carlson offered work status restrictions and diagnosed scalp contusion, right hip contusion, right shoulder contusion, headache, and right knee sprain. In a series of reports from dated March 4 through June 25, 2019, Dr. Chin offered work status restrictions and diagnosed right hip contusion, right shoulder joint sprain, right knee sprain, right rotator cuff capsule sprain, strain of the muscle and tendon of the back wall of the thorax, headache, right arm ulnar nerve injury and right shoulder pain. In a series of reports signed and dated March 8 through June 3, 2019, Dr. Feldy diagnosed intractable chronic post-traumatic headache, acute pain of the right shoulder, shoulder, head, neck, and upper back pain, right neck strain, cervical radiculopathy, trapezius/upper back, neck, and right upper extremity strain, and a full thickness tear of the right rotator cuff. In a report dated May 20, 2019, Dr. Kohli diagnosed right shoulder pain secondary to rotator cuff tear. While these reports reviewed appellant's history of injury and contained medical diagnoses, they did not offer any medical 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.[10]

Appellant also submitted reports and medical certificates signed solely by a nurse practitioner. The Board has held that medical reports signed solely by a nurse practitioner or solely by a physical therapist are of no probative value, as a nurse practitioner is not considered a

[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).

[10] *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).

physician as defined under FECA and, therefore, is not competent to provide a medical opinion.[11] As such, these reports are of no probative value.

The x-rays dated February 27 and March 15, 2019, along with April 2 and May 9, 2019 MRI scans, also do not constitute probative medical evidence. The Board has held that diagnostic tests, standing alone, lack probative value on the issue of causal relationship as they do not provide an opinion on the relationship between the employment incident and a claimant's diagnosed condition.[12]

As appellant has not submitted rationalized medical evidence establishing that her diagnosed medical conditions were causally related to the accepted employment incident of February 27, 2019, 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 27, 2019 employment incident.

[11] 5 U.S.C. § 8101(2) provides that a physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law. *See* § 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);*M.J.*, Docket No. 19-1287 (issued January 13, 2020); *P.H.*, Docket No. 19-0119 (issued July 5, 2019); *T.K.*, Docket No. 19-0055 (issued May 2, 2019); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as nurses, physician assistants, and physical therapists are not competent to render a medical opinion under FECA).

[12] *See C.F.*, Docket No. 18-1156 (issued January 22, 2019); *T.M.*, Docket No. 08-0975 (issued February 6, 2009).

ORDER

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

Issued: June 15, 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