United States Department of Labor
Employees' Compensation Appeals Board

J.T., Appellant	)	
and	)	**Docket No. 20-1486**
	)	**Issued: March 16, 2021**
U.S. POSTAL SERVICE, MILWAUKEE VEHICLE MAINTENANCE FACILITY, Milwaukee, WI, 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:
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 6, 2020 appellant, through counsel, filed a timely appeal from a May 6, 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.[3]

[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.*

[3] The Board notes that, following the May 6, 2020 decision, appellant submitted additional evidence to OWCP. 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.*

ISSUE

The issue is whether appellant has met his burden of proof to establish medical conditions causally related to the accepted July 9, 2019 employment incident.

FACTUAL HISTORY

On July 10, 2019 appellant, then a 56-year-old body repairman, filed a traumatic injury claim (Form CA-1) alleging that on July 9, 2019 he pinched a nerve in his left shoulder when he lifted a long life vehicle (LLV) door while in the performance of duty. He stopped work on that date and returned to modified duty on July 10, 2019.

In a July 12, 2019 duty status form report (Form CA-17), Dr. Cindy Catania, an osteopath Board-certified in family medicine, noted a July 9, 2019 date of injury. She reported clinical findings of left shoulder impingement syndrome and left upper back muscle spasm.

In a July 17, 2019 work excuse note, Cathleen Baumeister, a medical assistant, indicated that appellant had been treated in the office by Dr. Jonathan E. Campbell, a Board-certified orthopedic surgeon, and that she could return to work on July 18, 2019 with no restrictions.

In an October 17, 2019 development letter, OWCP informed appellant that, it had reopened his claim for consideration of the merits because he had filed a notice of recurrence (Form CA-2a),[4] and that his claim would now be formally adjudicated. It advised him of the deficiencies of his claim, requested additional factual and medical evidence, and provided a questionnaire for his completion. OWCP afforded him 30 days to provide the necessary factual information and medical evidence.

In an October 23, 2019 note, Dr. Cameron Best, a Board-certified orthopedic surgeon, indicated that appellant was unable to work until his electromyography (EMG) study.

By decision dated November 27, 2019, OWCP denied appellant's claim. It accepted that the July 9, 2019 incident occurred as alleged and that left shoulder and cervical conditions had been diagnosed; however, it denied his claim, finding that he had failed to establish causal relationship between the accepted employment incident and the diagnosed conditions.

Appellant subsequently submitted diagnostic testing reports. A July 12, 2019 left shoulder magnetic resonance imaging (MRI) scan revealed focal cortical irregularity of the acromion. A July 17, 2019 left shoulder x-ray examination report showed normal shoulder alignment and mild acromioclavicular degenerative changes. An October 17, 2019 cervical spine MRI scan demonstrated no critical spinal canal stenosis and severe left foraminal stenosis at the C4-5 and C5-6 levels. An October 17, 2019 left shoulder MRI scan revealed marked supraspinatus and infraspinatus tendinosis with superimposed undersurface, multifocal labral tearing, focal delaminating cartilage disease in the anterior labrum, moderate acromioclavicular (AC) joint degenerative change with ganglion cyst formation, and mild teres minor atrophy.

[4] On October 10, 2019 appellant filed a recurrence claim for disability from work commencing October 9, 2019 due to his July 9, 2019 employment injury.

In a July 9, 2019 report, Dr. Catania indicated that appellant was treated for complaints of left shoulder and arm pain. She reported that the injury occurred when appellant lifted a sliding door off of an LLV to place it on the stand. Dr. Catania reported left shoulder examination findings of tenderness, pain, spasm, and decreased strength. Range of motion was full with hesitation. Dr. Catania diagnosed left shoulder strain.

Dr. Catania noted in a July 12, 2019 report that appellant was reevaluated for his injuries of left shoulder strain and left thoracic muscle spasm. She conducted an examination and noted diagnoses of left shoulder impingement syndrome, left shoulder muscle spasm, left shoulder acute pain, paresthesia and pain of the left extremity, and peripheral muscle fatigue.

In a July 17, 2019 report Dr. Campbell recounted appellant's complaints of left shoulder pain and numbness that started on July 8, 2019. Upon physical examination of appellant's left upper extremity, he observed negative "Hawkins Neer's impingement test," and negative O'Brien's, speeds, and cross body adduction tests. Dr. Campbell diagnosed left forearm and hand numbness with possible ulnar neuritis.

In reports dated October 14 and 21, 2019, Dr. David K. DeDianous, Board-certified in physical medicine and rehabilitation, recounted appellant's symptoms of middle back and left shoulder pain that began about one week ago. Upon examination of appellant's cervical spine, he observed tenderness of right trapezius muscles. Cervical and bilateral shoulder range of motion were full. Dr. DeDianous assessed shoulder pain, left arm paresthesia, tendinitis, and cervical pain and radiculopathy.

In a November 11, 2019 letter, Dr. R.J. Hammett, a chiropractor, indicated that he was treating appellant for injuries sustained at work and that appellant remained off work. Appellant submitted chiropractic treatment notes dated October 29 through November 14, 2019.

A February 3, 2020 EMG and nerve conduction velocity (NCV) study were normal and the EMG revealed no signs of cervical radiculopathy.

On February 18, 2020 appellant requested reconsideration and submitted additional letters from Dr. Hammett.

In a December 3, 2019 letter, Dr. Hammett recounted that appellant was seen on October 20, 2019 for complaints of neck pain radiating into his arm and hand. He described that appellant was pushing a loaded mail container up a small incline when the container started to slip. Dr. Hammett discussed appellant's examination findings and noted that a cervical spine x-ray evaluation showed demonstrated loss of cervical lordosis, degenerative disc spaces at C5-6 with osteophytic spurring, and flexion malposition at C5 and C6. He diagnosed vertebral subluxation complexes of C-1, C-5 with a loss of cervical lordosis, and cervical degenerative changes. In an undated addendum letter, Dr. Hammett noted that the injury was initially caused on July 9, 2019 when lifting an LLV door onto sawhorses and flipping them over.

By decision dated May 6, 2020, OWCP denied modification of the November 27, 2019 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[5] 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, OWCP must first determine whether fact of injury has been established.[9] 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.[10] Second, the employee must submit evidence, in the form of probative medical evidence, to establish that the employment incident caused a personal injury.[11]

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.[12] 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.[13] 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.[14]

---

[5] *Supra* note 2.

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

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

[8] *R.R.*, Docket No. 19-0048 (issued April 25, 2019); *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).

[9] *D.B.*, Docket No. 18-1348 (issued January 4, 2019); *S.P.*, 59 ECAB 184 (2007).

[10] *D.S.*, Docket No. 17-1422 (issued November 9, 2017); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

[11] *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *David Apgar*, 57 ECAB 137 (2005); *John J. Carlone*, 41 ECAB 354 (1989).

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

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

[14] *James Mack*, 43 ECAB 321 (1991).

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish medical conditions causally related to the accepted July 9, 2019 employment incident.

Appellant submitted reports dated July 9 and 12, 2019 from Dr. Catania, who described the July 9, 2019 history of injury and provided examination findings. Dr. Catania diagnosed left shoulder impingement syndrome, left shoulder muscle spasm, left shoulder acute pain, paresthesia and pain of the left extremity, and peripheral muscle fatigue. She reported that the injury occurred when appellant lifted a sliding door off of an LLV to place it on the stand. The Board finds that, although Dr. Catania provided an opinion supporting causal relationship, she did not proffer sufficient medical rationale explaining how lifting an LLV door caused or contributed to appellant's left shoulder condition. A medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale.[15] Dr. Catania's opinion is therefore insufficient to establish the claim.

In reports dated October 14 and 21, 2019, Dr. DeDianous noted cervical and bilateral shoulder examination findings. He assessed shoulder pain, tendinitis, and cervical pain and radiculopathy. Dr. DeDianous did not, however, offer an opinion on causal relationship. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value on the issue of causal relationship.[16] As such, the Board finds that these reports are insufficient to establish appellant's claim. Likewise, Dr. Campbell's July 17, 2019 report and Dr. Best's October 23, 2019 work status note are insufficient to establish appellant's claim as neither physician provided an opinion on the cause of appellant's diagnosed conditions.[17]

The record also contains treatment notes and letters dated November 11 through December 3, 2019 from Dr. Hammett, a chiropractor, who provided an opinion on causal relationship. Under FECA the term physician includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist.[18] OWCP's regulations have defined subluxation as an incomplete dislocation, off-centering, misalignment, fixation or abnormal spacing of the vertebrae, which must be demonstrable on an x-ray film to an individual trained in the reading of x-rays.[19] If the diagnosis of subluxation as demonstrated by x-ray is not established, the chiropractor is not a physician as defined under FECA and his or her report is of no probative

[15] *J.W.*, Docket No. 18-0678 (issued March 3, 2020); *V.T.*, Docket No. 18-0881 (issued November 19, 2018); *T.M.*, Docket No. 08-0975 (February 6, 2009); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

[16] *E.R.*, Docket No. 20-0880 (issued December 2, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[17] *Id.* 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. *See J.H.*, Docket No. 19-0838 (issued October 1, 2019); *S.G.*, Docket No. 19-0041 (issued May 2, 2019).

[18] 5 U.S.C. § 8101(2). *See J.D.*, Docket No. 19-1953 (issued January 11, 2021); *T.T.*, Docket No. 18-0838 (issued September 19, 2019); *Thomas W. Stevens*, 50 ECAB 288 (1999).

[19] 20 C.F.R. § 10.5(bb).

value to the medical issue presented.[20] While Dr. Hammett noted his review of a cervical spine x-ray evaluation, the diagnosis of subluxation is not established by an x-ray examination. As such, Dr. Hammett is not considered a physician under FECA and his medical opinion does not constitute probative medical evidence.[21]

Appellant also submitted diagnostic testing reports, including the July 12, 2019 left shoulder MRI scan report, July 17, 2019 left shoulder x-ray scan report, October 17, 2019 cervical spine and left shoulder MRI scan reports, and February 3, 2020 EMG study. The Board has held that reports of diagnostic tests, standing alone, lack probative value as they do not provide an opinion as to whether the accepted employment factors caused the diagnosed condition.[22] For this reason, this evidence is not sufficient to meet his burden of proof.

Additionally, OWCP received a July 17, 2019 work excuse note by Ms. Baumeister. The Board has held that a medical report may not be considered probative medical evidence if there is no indication that the person completing the report qualifies as a physician as defined in 5 U.S.C. § 8101(2).[23] Therefore, this report does not establish appellant's claim.

As the medical evidence of record does not contain rationalized medical evidence establishing causal relationship between appellant's diagnosed medical conditions and the accepted July 9, 2019 employment incident, the Board finds that appellant has not met his burden of proof.

On appeal counsel argues that OWCP's decision was contrary to law and fact. As explained above, however, the medical evidence of record does not contain rationalized medical evidence establishing causal relationship. Accordingly, appellant has not met his 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 his burden of proof to establish medical conditions causally related to the accepted July 9, 2019 employment incident.

[20] *A.C.*, Docket No. 19-1950 (issued May 27, 2020); *R.P.*, Docket No. 18-0860 (issued December 4, 2018); *Mary A. Ceglia*, 55 ECAB 626 (2004); *Jack B. Wood*, 40 ECAB 95, 109 (1988).

[21] *L.G.*, Docket No. 19-1616 (issued March 10, 2020); *R.D.*, Docket No. 19-1528 (issued January 17, 2020); *see Jay K. Tomokiyo*, 51 ECAB 361 (2000).

[22] *G.S.*, Docket No. 18-1696 (issued March 26, 2019); *A.B.*, Docket No. 17-0301 (issued May 19, 2017).

[23] Section 8101(2) of FECA provides that 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); *see C.B.*, Docket No. 09-2027 (issued May 12, 2010).

ORDER

IT IS HEREBY ORDERED THAT the May 6, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 16, 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