

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

_____)
J.N., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Buffalo, NY, Employer)
_____)

Docket No. 21-0606
Issued: November 23, 2021

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

Case Submitted on the Record

DECISION AND ORDER

Before:

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

JURISDICTION

On March 9, 2021 appellant filed a timely appeal from a January 12, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ 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.

ISSUE

The issue is whether appellant has met her burden of proof to establish a medical condition causally related to the accepted November 10, 2020 employment incident.

¹ The Board notes that, following the January 12, 2021 decision, OWCP received additional evidence. 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.*

² 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On November 13, 2020 appellant, then a 41-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on November 10, 2020 she strained her left shoulder when she lifted a bundle of mail from a tray, while in the performance of duty. On the reverse side of the claim form appellant's supervisor indicated that appellant returned to work on November 12, 2020 and that she was injured in the performance of duty.

The employing establishment issued an authorization for examination and/or treatment (Form CA-16) on November 10, 2020.

OWCP received a series of chart notes from Dr. Bruce Barron, a Board-certified family practitioner. In a report dated November 11, 2020, Dr. Barron noted that on November 10, 2020 appellant reached to pick up a bundle of letters and she felt pain in her left shoulder. Appellant's physical examination findings were related and a diagnosis was listed as left arm/shoulder strain. Dr. Barron also indicated that the incident appellant described was the competent cause of injury. He also provided a work status summary of even date wherein he diagnosed appellant with a sprain of the left shoulder joint and provided work restrictions.

OWCP received offers of modified assignment for limited duty dated November 12 and 25, 2020.

In a report dated November 24, 2020, Dr. Barron related appellant's diagnoses as neck, left shoulder, and left elbow strain. He again related that the incident appellant described was the competent cause of her injury. Dr. Barron also completed a physical therapy prescription.

OWCP received a physical therapy report dated November 25, 2020 from Kevin J. Walther, a physical therapist. Mr. Walther diagnosed appellant with left shoulder pain and cervicalgia as well as pain in the right elbow.

In a development letter dated December 8, 2020, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence.

In response, appellant submitted an x-ray report dated November 11, 2020 from Dr. Gregory Dieudonne, a Board-certified diagnostic radiologist. Dr. Dieudonne found no left shoulder abnormality.

Appellant submitted physical therapy reports dated November 30 and December 2, 2020 from Mr. Walther.

OWCP received a report dated December 11, 2020 from Dr. Barron, which related diagnoses of neck and left shoulder strain and which indicated that appellant's left elbow pain was improving. Dr. Barron opined that the alleged incident appellant described was the competent medical cause of the injury. He also completed a work status summary dated December 11, 2020, which listed appellant's work restrictions.

In a December 20, 2020 response to OWCP's development questionnaire, appellant stated that the pain in her shoulder radiated down to her elbow and up the side of her neck as well as numbness in her hand. She attested that she had no similar disability or symptoms before her injury on November 10, 2020.

By decision dated January 12, 2021, OWCP accepted that the November 11, 2020 employment incident occurred, as alleged, but denied appellant's claim as the medical evidence of record was insufficient to establish causal relationship between a diagnosed medical condition and the accepted employment incident.

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 FECA, that the claim was timely filed within the applicable time limitation period 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 must first be determined whether a fact of injury has been established. There are two components involved in establishing fact of injury. The first component to be established is that, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time and place and in the manner alleged. The 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

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).

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).

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 November 11, 2020 employment incident.

OWCP received a number of progress reports from November 11 through December 11, 2020 from Dr. Barron. Appellant's current complaints were noted in each report. Appellant's diagnoses were listed as neck, left shoulder, and left elbow strain. In each report, Dr. Barron opined that appellant's complaints were consistent with of the described employment injury. However, he offered no rationalized medical opinion explaining how the accepted employment incident caused appellant's diagnosed conditions.¹⁰ These reports are, therefore, of limited probative value and insufficient to establish causal relationship.

Appellant submitted an x-ray report dated November 11, 2020 from Dr. Dieudonne. The Board has held that diagnostic tests, standing alone, lack probative value on the issue of causal relationship as they do not address the relationship between the accepted employment factors and a diagnosed condition.¹¹ For this reason, Dr. Dieudonne's report is insufficient to meet appellant's burden of proof.

Appellant also submitted several reports from Mr. Walther, a physical therapist. Certain healthcare providers such as physician assistants, nurse practitioners, and physical therapists are not considered physicians as defined under FECA.¹² Consequently, Mr. Walther's reports will not suffice for purposes of establishing entitlement to FECA benefits.

As there is no medical evidence of record establishing that appellant's left shoulder, left elbow, or neck conditions were causally related to the accepted employment incident, the Board

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 *T.W.*, Docket No. 20-0767 (issued January 13, 2021); *see H.A.*, Docket No. 18-1466 (issued August 23, 2019); *L.R.*, Docket No. 16-0736 (issued September 2, 2016).

¹¹ *See W.M.*, Docket No. 19-1853 (issued May 13, 2020); *L.F.*, Docket No. 19-1905 (issued April 10, 2020).

¹² 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); *see also M.F.*, Docket No. 19-1573 (issued March 16, 2020); *N.B.*, Docket No. 19-0221 (issued July 15, 2019); *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).

finds that appellant has not met her burden of proof to establish a diagnosed medical condition causally related to the accepted November 10, 2020 employment incident.¹³

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 November 10, 2020 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the January 12, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 23, 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

¹³The Board notes that the employing establishment issued a Form CA-16, dated November 10, 2020. A completed Form CA-16 authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. *See* 20 C.F.R. § 10.300(c); *V.S.*, Docket No. 20-1034 (issued November 25, 2020); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).