United States Department of Labor
Employees' Compensation Appeals Board

J.E., Appellant	)	
and	)	**Docket No. 21-0956**
	)	**Issued: November 23, 2021**
U.S. POSTAL SERVICE, GREATER INDIANA PERFORMANCE CLUSTER, Indianapolis, IN, Employer	)	

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 June 9, 2021 appellant filed a timely appeal from a May 11, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (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 his burden of proof to establish a diagnosed medical condition causally related to the accepted February 6, 2021 employment incident.

FACTUAL HISTORY

On February 10, 2021 appellant, then a 53-year-old mail handler assistant, filed a traumatic injury claim (Form CA-1) alleging that on February 6, 2021 he experienced pain in the upper rib,

[1] 5 U.S.C. § 8101 *et seq*.

left pectoral, and left upper arm, from elbow to shoulder, when an all-purpose container (APC) gate hit his upper arm causing him to fall while in the performance of duty. He did not stop work.

In a statement dated February 6, 2021, appellant alleged that he was involved in a work incident on that date at 2:50 a.m. when a passing truck carrying APCs hit his upper arm, left pectoral muscle, and rib. He noted that, as the evening progressed, he began having constant pain in his upper arm to his shoulder. Appellant advised that he would continue working, using his left arm as little as possible, and if the pain persisted he would notify his supervisor.

On February 8, 2021 the employing establishment executed an authorization for examination and/or treatment (Form CA-16) authorizing treatment at an urgent care facility. T.G., the authorizing official, described appellant's alleged injury as a left upper arm and elbow to shoulder muscle spasm.

In a February 10, 2021 duty status report (Form CA-17), an unidentifiable healthcare provider diagnosed left arm muscle spasm and left shoulder inflammation and provided work restrictions.

In a February 25, 2021 development letter, OWCP informed appellant that it had received no evidence in support of his traumatic injury claim. It advised him of the type of factual and medical evidence needed to establish his claim. OWCP afforded appellant 30 days to submit the necessary evidence.

OWCP subsequently received additional evidence. In a February 6, 2021 statement from W.B., he indicated that at approximately 2:50 a.m. that day, a truck driver was pulling off with APCs when he witnessed the top APC fall down and strike appellant.

In a February 10, 2021 radiology report, Dr. Richard Rossin, a Board-certified radiologist, conducted a radiologic examination of appellant's left rib, which demonstrated mild left basilar atelectasis. Radiological examinations of the left shoulder revealed no acute or significant bone, joint, or soft tissue abnormality.

On February 16, 2021 appellant was seen by Keona Davis, a family nurse practitioner, for ongoing complaints of left arm pain.

In notes dated February 21, 2021, Viviana Carbajal, a family nurse practitioner, indicated that appellant presented for follow up of arm pain resulting from a February 6, 2021 work incident when his left upper arm was struck by a metal gate. He complained of unresolved pain and requested a work excuse note. Appellant was referred to physical therapy and for a magnetic resonance imaging (MRI) scan of the left upper extremity. In a note of even date, Ms. Carbajal held him off work beginning February 14, 2021 and noted that he needed further evaluation and imaging.

On March 24, 2021 appellant was seen by Ms. Davis, who indicated that he reported arm pain and aches for a duration of one month. He indicated that his arm had slightly improved. Ms. Davis performed a physical examination and noted pain in appellant's left upper arm. She ordered a follow-up appointment one week after an MRI scan of the left arm and physical therapy evaluation.

Appellant was seen on April 18, 2021 by Ms. Carbajal and he reported that his arm pain had improved significantly, but that he still experienced sharp shooting pain in his left arm and shoulder. Ms. Carbajal concluded that he should not be cleared for work until his MRI scan results were reviewed.

By decision dated May 11, 2021, OWCP accepted that the February 6, 2021 employment incident occurred as alleged. However, it denied appellant's claim, finding that the medical evidence of record was insufficient to establish a diagnosed medical condition causally related to the accepted employment incident. 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 FECA[2] 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,[3] 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.[4] 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.[5]

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.[6]

The evidence required to establish causal relationship is rationalized medical opinion evidence.[7] 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

[2] *Supra* note 1.

[3] *F.H.*, Docket No.18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued December 13, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

[4] *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).

[5] *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).

[6] *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).

[7] *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).

by medical rationale explaining the nature of the relationship between the diagnosed condition and specific employment incident identified by the employee.[8]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a diagnosed medical condition causally related to the accepted February 6, 2021 employment incident.

In support of his claim, appellant submitted notes dated February 16 and March 24, 2021 from Ms. Davis and notes dated February 21 and April 18, 2021 from Ms. Carbajal, both nurse practitioners. The Board has held that medical reports signed solely by a nurse practitioner are of no probative value as such providers are not considered physicians as defined under FECA.[9] This evidence is, therefore, insufficient to establish appellant's claim.

OWCP also received a February 10, 2021 Form CA-17 from an unidentifiable healthcare provider. The Board has held that reports that are unsigned or bear an illegible signature cannot be considered probative medical evidence as the author cannot be identified as a physician.[10] Therefore, this report is also of no probative value and is insufficient to establish appellant's claim.

The remaining medical evidence includes radiographic studies of appellant's left rib and shoulder. The Board has held, however, that diagnostic studies, standing alone, lack probative value and are, therefore, insufficient to establish the claim.[11]

As the medical evidence of record is insufficient to establish a medical condition causally related to the accepted February 6, 2021 employment incident, the Board finds that 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.

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[8] *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).

[9] 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* 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 also M.C.*, Docket No. 19-1074 (issued June 12, 2020); *S.L.*, Docket No. 19-0607 (issued January 28, 2020) (nurse practitioners are not considered physicians under FECA.

[10] *C.S.*, Docket No. 20-1354 (issued January 29, 2021); *D.T.*, Docket No. 20-0685 (issued October 8, 2020); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

[11] *J.K.*, Docket No. 20-0591 (issued August 12, 2020); *J.P.*, *supra* note 3; *A.B.*, Docket No. 17-0301 (issued May 19, 2017).

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a diagnosed medical condition causally related to the accepted February 6, 2021 employment incident.[12]

ORDER

IT IS HEREBY ORDERED THAT the May 11, 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

[12] 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); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).