

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

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| V.W., Appellant |) | |
| |) | |
| and |) | Docket No. 21-0745 |
| |) | Issued: October 22, 2021 |
| DEPARTMENT OF VETERANS AFFAIRS, |) | |
| TUSCALOOSA VETERANS |) | |
| ADMINISTRATION MEDICAL CENTER, |) | |
| Tuscaloosa, AL, Employer |) | |

Appearances:
Alan J. Shapiro, Esq., for the appellant¹
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 April 21, 2021 appellant filed a timely appeal from a March 5, 2021 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 right shoulder or neck condition causally related to the accepted August 31, 2018 employment incident.

FACTUAL HISTORY

This case has been previously before the Board. The facts and circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference.³ The relevant facts are as follows.

On September 4, 2018 appellant, then a 56-year-old security clerk, filed a traumatic injury claim (Form CA-1) alleging that on August 31, 2018 she injured her right arm while in the performance of duty. She alleged that she was in a verbal altercation with her coworker, L.M., when Chief W. grabbed and jerked her right arm, pulling her backward and then released her arm as he slipped and fell backward. Appellant did not stop work.

In an August 20, 2018 medical report, Dr. Eugene Mangieri, a Board-certified anesthesiologist, indicated that appellant was following up for left shoulder and right wrist pain and that she had a history of bilateral rotator cuff repair in 2006. He conducted a physical examination, which revealed normal results except pulse deficits. Dr. Mangieri diagnosed joint pain of the shoulder region, carpal tunnel syndrome, malaise and fatigue, chronic postoperative pain, and complex regional pain syndrome.

In a September 17, 2018 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed to establish her claim and requested a narrative medical report from her treating physician containing a detailed description of findings and a diagnosis, explaining how her work incident caused or aggravated a medical condition. OWCP afforded appellant 30 days to submit the necessary evidence.

In September 1, 2018 emergency room reports, Dr. Inkil Hwangpo, an internist, indicated that appellant presented with pain in her right arm and right side of her neck, which she attributed to an incident where a coworker pulled her right arm and shoulder. He noted that her pain had worsened since the incident and that she had a history of right shoulder surgery several years ago. Dr. Hwangpo conducted a physical examination and documented tenderness in the neck and limited range of motion in the right shoulder due to pain. He reviewed x-rays of the right shoulder and cervical spine and noted a progression of degenerative disease at C6-7 when compared with a prior study dated February 19, 2009.

In a note dated September 4, 2018, Cynthia Buford, a licensed practical nurse at the employing establishment's health outpatient center, indicated that appellant described an incident on August 31, 2018 where she was in an altercation with a coworker when Chief W. grabbed her arm and then let go. Appellant's arm did not hurt immediately after the incident, but she went to the emergency room the following day due to pain. Ms. Buford noted that appellant presented a

³ Docket No. 19-1537 (issued on May 13, 2020).

return-to-work excuse note indicating that she could return to light-duty work on September 3, 2018.

A September 4, 2018 magnetic resonance imaging (MRI) scan of appellant's right shoulder without contrast revealed edema and arthropathy in the acromioclavicular (AC) joint and suggestion of a partial tear of the rotator cuff; however, large amount of metallic artifact from a previous surgery significantly compromised the detail of the scan. A cervical MRI scan of even date revealed mild cervical spondylosis.

In a September 25, 2018 medical report, Dr. Mangieri indicated that appellant was following up with regard to bilateral shoulder pain. He recounted the August 31, 2018 employment incident and the medical care she received after the incident. Dr. Mangieri noted that appellant's September 4, 2018 right shoulder MRI scan revealed a rotator cuff tear with an effusion. He also again noted that her past medical history included right rotator cuff surgery in 2006. Dr. Mangieri performed a physical examination, which revealed normal results aside from pulse deficits.

In a medical report of even date, Dr. Bryan King, an orthopedic surgeon, indicated that appellant complained of worsening right shoulder and right upper arm pain and weakness. He noted that her surgical history included bilateral shoulder arthroscopies and rotator cuff repairs. Dr. King conducted a physical examination of appellant's right shoulder, which revealed limited range of motion, a positive impingement sign at 90 degrees, and tenderness to palpation. He opined that her MRI scan was of poor quality, but likely showed a new rotator cuff tear. Dr. King diagnosed an unspecified rotator cuff tear or rupture of the right shoulder, right shoulder impingement syndrome, and other injury of muscles and tendons of the rotator cuff of an unspecified shoulder. He opined that the altercation at work stressed appellant's previous rotator cuff repair, and that her condition was likely a recurrent rotator cuff pathology.

An October 4, 2018 MRI scan of with contrast of the right shoulder revealed a tear of the infraspinatus at the 12:00 position and mild hypertrophic changes of the AC joint.

In an October 11, 2018 medical report, Dr. King noted that appellant's symptoms had not improved since her prior visit. He conducted a right shoulder examination, which revealed decreased range of motion, and he indicated that her MRI scan likely indicated a partial tear.

By decision dated October 26, 2018, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish that her diagnosed conditions were causally related to the accepted August 31, 2018 employment incident.

On November 19, 2018 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

OWCP thereafter received a November 13, 2018 medical report by Dr. Mangieri noting that appellant had bilateral rotator cuff repairs which prevented her from engaging in any prolonged activity, including typing, due to bilateral pain radiating into her upper extremities. Dr. Mangieri indicated that these limitations were a direct result of the work-related reinjures she sustained during the course of her occupational duties.

A January 9, 2019 medical report, from Dr. Mangieri noted that appellant experienced right lumbar radicular pain with some edema in November 2018. Results from a physical examination were normal aside from pulse defects. Dr. Mangieri further noted that appellant had returned to full duty.

A hearing was conducted on March 21, 2019 and appellant testified to the details of the incident, her subsequent medical care, and her ongoing symptoms.

By decision dated June 5, 2019, OWCP's hearing representative affirmed OWCP's October 26, 2018 decision.

OWCP continued to receive evidence. In a letter dated April 8, 2019 from A.R., an employing establishment compensation coordinator, indicating that she had reviewed the transcript of appellant's March 21, 2019 testimony. She outlined several points of clarification regarding the claimed dates of continuation of pay and the date Dr. King released appellant to return to work. OWCP also received an additional statement from appellant dated May 16, 2019 in response to the employing establishment's April 8, 2019 letter.

On July 11, 2019 appellant, through counsel, appealed to the Board. By decision dated May 13, 2020, the Board affirmed OWCP's June 5, 2019 decision.⁴

In a January 14, 2020 medical note, Dr. Mangieri noted that appellant reported pain in both of her shoulders, which was well controlled with medication. He performed a physical examination and diagnosed pain in joint involving shoulder region.

On December 11, 2020 appellant, through counsel, submitted a letter requesting reconsideration and attached a November 24, 2020 narrative medical report by Dr. Mangieri. In the report, Dr. Mangieri described the accepted August 31, 2018 employment incident and outlined his review of treatment records of Dr. King and the September 4, 2018 MRI scan results. He noted Dr. King's opinion that appellant had recurrent right rotator cuff pathology as a consequence of the work incident and indicated that he agreed with that opinion to a reasonable degree of medical certainty.

By decision dated March 5, 2021, OWCP denied modification.

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

⁴ *Id.*

⁵ *Id.*

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).

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. There are two components involved in establishing fact of injury. The first component 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.⁹

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.¹⁰ A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment incident must be based on a complete factual and medical background.¹¹ Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment incident.¹²

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a right shoulder or neck condition causally related to the accepted August 31, 2018 employment incident.

Initially, the Board notes that it is unnecessary to consider the evidence appellant submitted prior to the issuance of OWCP's June 5, 2019 decision, which was considered by the Board in its May 13, 2020 decision. Findings made in prior Board decisions are *res judicata* absent further merit review by OWCP under section 8128 of FECA.¹³

Dr. Mangieri, in his November 24, 2020 narrative report, reiterated appellant's history related to the accepted August 31, 2018 employment incident where another employee grabbed

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.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).

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 *C.F.*, Docket No. 18-0791 (issued February 26, 2019); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

¹² *Id.*

¹³ *A.A.*, Docket No. 20-1399 (issued March 10, 2021); *M.F.*, Docket No. 21-0390 (issued August 23, 2021).

her right arm abruptly and pulled her right arm and shoulder, which caused him to fall backwards before releasing her arm. He outlined his review of Dr. King's treatment records and concurred with his finding that she had recurrent right rotator cuff pathology as a consequence of the work incident. However, Dr. Mangieri failed to explain, with adequate rationale, how the accepted employment incident either caused or contributed to appellant's right shoulder condition. The Board has held that a medical opinion should reflect a correct history and offer a medically-sound and rationalized explanation by the physician of how the specific employment incident physiologically caused or aggravated the diagnosed conditions.¹⁴ Thus, the Board finds that the November 24, 2020 narrative report from Dr. Mangieri is insufficient to establish causal relationship.

In his January 14, 2020 medical report, Dr. Mangieri noted appellant's right rotator cuff tear diagnosis and her 2006 right rotator cuff surgery. However, the report does not contain an opinion on causation. 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.¹⁵ Therefore, Dr. Mangieri's January 14, 2020 report is also insufficient to establish appellant's claim.

As the medical evidence of record is insufficient to establish causal relationship between appellant's right shoulder and neck conditions and the accepted August 31, 2018 employment incident, 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 right shoulder or neck condition causally related to the accepted August 31, 2018 employment incident.

¹⁴ *T.G.*, Docket No. 21-0175 (issued June 23, 2021); *J.D.*, Docket No. 19-1953 (issued January 11, 2021); *see K.W.*, Docket No. 19-1906 (issued April 1, 2020).

¹⁵ *See 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 March 5, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 22, 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