United States Department of Labor
Employees' Compensation Appeals Board

T.M., Appellant	)	
and	)	**Docket No. 20-1460**
	)	**Issued: December 20, 2022**
U.S. POSTAL SERVICE, POST OFFICE, Athens, GA, 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:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On July 30, 2020 appellant, through counsel, filed a timely appeal from an April 29, 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.

[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 upper extremity condition causally related to the accepted factors of her federal employment.

FACTUAL HISTORY

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

On December 19, 2017 appellant, then a 42-year-old city carrier, filed an occupational disease claim (Form CA-2) alleging that her repetitive motions of opening and closing the doors of her long-life vehicle (LLV) and setting her parking break hundreds of times per day caused a right rotator cuff tear and an injury to her right bicep due to factors of her federal employment. She noted that she first became aware of her condition and realized its relation to her federal employment in December 2014. Appellant stopped work on September 9, 2017.

In a September 22, 2017 medical report, Dr. Bradley Register, a Board-certified orthopedic surgeon, noted that appellant underwent a right shoulder arthroscopic-assisted rotator cuff repair and arthroscopic biceps tenodesis on September 14, 2017. He related that she was recovering well and would soon begin physical therapy treatment.

In a December 19, 2017 statement, appellant explained that she had been treating with Dr. Register for four years due to her right shoulder pain. She contended that her pain was caused by the repetitive motions of opening the door on her LLV, reaching back to close it and setting her parking break hundreds of times per day. Appellant noted that she underwent a magnetic resonance imaging (MRI) scan in October 2015 that revealed a rotator cuff tear. She underwent surgery to treat her injury on September 14, 2017.

On January 3, 2018 the employing establishment controverted appellant's claim, asserting that she did not provide medical rationale explaining how her condition was caused by her repetitive employment activities. It noted that she had previously filed a claim in June 2016 claiming that she hit her shoulder on the door.[4]

Appellant also submitted a position description of her duties as a city carrier.

In a development letter dated January 9, 2018, OWCP advised appellant of the deficiencies of her claim. It informed 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 requested information.

[3] Docket No. 19-1414 (issued February 12, 2020).

[4] Appellant previously filed a traumatic injury claim on June 2, 2016 alleging an injury to her right shoulder. That claim, assigned OWCP File No. xxxxxx244, was denied by OWCP on August 8, 2016. OWCP has not administratively combined appellant's claims.

In a February 13, 2018 medical report, Dr. Register related that he had been treating appellant for several years and performed a right shoulder arthroscopy, rotator cuff repair and biceps tenodesis to address her right shoulder condition. He noted her employment as a mail carrier and explained that, while she did not have a specific injury that led to her problems, he had observed multiple patients who were mail carriers who sustained rotator cuff tears due to the repetitive lifting required by their jobs. Dr. Register opined that appellant's injuries very well could be related to the repetitive lifting and stress on the rotator cuff which is required to be a mail carrier. He concluded that because her injury had gradually worsened over two years, it was not a preexisting injury and that the injury was likely caused or exacerbated by her federal employment.

By decision dated March 26, 2018, OWCP denied appellant's occupational disease claim finding that the evidence of record was insufficient to establish the implicated factors of her federal employment. Thus, it concluded that requirements had not been met to establish an injury as defined by FECA.

OWCP continued to receive evidence. In an October 11, 2012 medical report, Dr. Joseph Savitz, a Board-certified orthopedic surgeon, evaluated appellant after she was involved in an October 2, 2012 motor vehicle accident where her personal vehicle was rear-ended. The day after her accident appellant reported experiencing right proximal arm and shoulder pain and right shoulder pain. Dr. Savitz observed that an x-ray scan of appellant's right upper extremity revealed mild AC arthropathy and diagnosed a right elbow, forearm and shoulder contusion status post motor vehicle accident.

In a December 8, 2014 medical report, Dr. Register noted appellant's employment as a mail carrier and that she had been experiencing right shoulder pain for the past seven to eight months. He also noted that she previously underwent a subacromial decompression in 2005 to treat similar symptoms and that the procedure completely relieved her symptoms until recently. On review of an x-ray scan of appellant's shoulder and examination, Dr. Register diagnosed right shoulder pain and subacromial impingement syndrome.

In a January 19, 2015 medical report, Dr. Register evaluated appellant for her right shoulder pain and recounted her history of treatment. He diagnosed right shoulder pain, subacromial impingement syndrome and possible thoracic outlet syndrome *versus* cervical radiculopathy. Dr. Register administered a therapeutic injection. In a subsequent August 17, 2015 medical report, he recommended that appellant undergo a right shoulder MRI scan after the pain in her right shoulder returned following her injection.

In an August 25, 2015 diagnostic report, Dr. Val Phillips, a Board-certified diagnostic radiologist, performed an MRI scan of appellant's right shoulder, finding a small partial undersurface tear of the distal anterior supraspinatus tendon at the attachment on the greater tuberosity and mild hypertrophic AC joint arthropathy.

In a September 28, 2015 medical report, Dr. Register reviewed an MRI scan of appellant's right shoulder and diagnosed right shoulder pain, a high-grade partial thickness rotator cuff tear, possible thoracic outlet versus cervical radiculopathy and likely biceps tendinitis.

In a June 20, 2016 medical report, on review of x-ray scans of appellant's right shoulder, Dr. Register diagnosed right shoulder pain, a history of a rotator cuff tear and noted a concern for thoracic outlet syndrome.

In a July 20, 2017 medical report, Dr. Register noted that appellant was seen by a different doctor who felt her right shoulder pain and right upper extremity weakness was caused by thoracic outlet syndrome. He diagnosed right shoulder pain, a history of a rotator cuff tear, a history of carpal tunnel syndrome and possible cervical radiculopathy. Dr. Register recommended that appellant undergo MRI scans of her cervical spine and right shoulder for further evaluation.

In a July 27, 2017 diagnostic report, Dr. Jon Siegel, a Board-certified radiologist, performed an MRI scan of appellant's cervical spine, finding mild multilevel degenerative spondylosis without evidence of a significant central canal or neural foraminal stenosis. In a separate diagnostic report of even date, Dr. Christine Kang, a Board-certified diagnostic radiologist, performed an MRI scan of appellant's right shoulder. She compared the results with a previous August 25, 2015 MRI scan and found a moderate-to-high-grade partial-thickness articular undersurface tear of the anterior supraspinatus tendon at the greater tuberosity attachment, tendinosis and mild degenerative arthropathy of the acromioclavicular joint.

In an August 7, 2017 medical report, Dr. Register reviewed appellant's MRI scans and diagnosed right shoulder pain, a high-grade partial-thickness supraspinatus tear, likely biceps tendinitis, status post subacromial decompression and asymptomatic acromioclavicular joint degeneration. He recommended that she undergo a right shoulder arthroscopy, rotator cuff repair and possible biceps tenodesis.

In a September 14, 2017 medical report, Dr. Register performed a right shoulder arthroscopic-assisted rotator cuff repair and an arthroscopic biceps tenodesis to treat appellant's diagnoses of right shoulder pain, a high-grade partial-thickness supraspinatus tear and biceps tendinitis. In subsequent medical reports dated September 22 and October 30, 2017, he recommended that she begin physical therapy.

In medical reports dated January 12 and March 21, 2018, Dr. Register noted that appellant underwent a right shoulder arthroscopic rotator cuff repair and arthroscopic biceps tenodesis on September 12, 2017. He observed that she was still experiencing pain in her biceps and that she also fell on her arms while walking up some stairs about a month prior and opined that it did not seem to cause any obvious problems. Dr. Register referred appellant to another physician for an explanation as to why she was experiencing numbness and tingling shooting down into her arm.

In a March 28, 2018 medical report, Dr. William Tally, a Board-certified orthopedic surgeon, recounted appellant's history of treatment in relation to pain and tingling she experienced in her right upper extremity. He opined that her condition was likely radiculopathy versus plexopathy and recommended that she undergo a computerized tomography (CT) myelogram for further evaluation.

In an April 23, 2018 diagnostic report, Dr. Steven Bramlet, a Board-certified diagnostic radiologist, performed a CT scan of appellant's cervical spine, finding small disc protrusions at several levels, mild spondylosis and mild right foraminal narrowing.

In a May 9, 2018 medical report, Dr. Tally observed the results of appellant's CT and x-ray scans. He opined that because she had not found relief for her right upper extremity symptoms that the best course of action was for her to undergo an anterior cervical discectomy and fusion (ACDF) procedure.

In a May 23, 2018 medical report, appellant informed Dr. Register that her right shoulder pain was beginning to feel the same as it did before her September 12, 2017 surgery. He noted that she would be undergoing surgery with Dr. Tally in June and recommended that she continue her physical therapy up until her surgery.

In a June 4, 2018 medical report, Dr. Tally performed an ACDF surgical procedure to treat appellant's diagnoses of spondylolisthesis, stenosis and radiculopathy. In a July 9, 2018 medical report, he noted that her right arm symptoms had been greatly reduced following the ACDF surgical procedure.

On October 16, 2018 appellant, through counsel, requested reconsideration of OWCP's March 26, 2018 decision.

By decision dated April 17, 2019, OWCP affirmed, as modified, its March 26, 2018 decision. It found that appellant had established the factual component of her claim; however, the claim remained denied as she had not provided medical evidence establishing that her diagnosed right upper extremity conditions were causally related to the accepted factors of her federal employment.

On June 17, 2019 appellant, through counsel, appealed to the Board. By decision dated February 12, 2020, the Board affirmed OWCP's the April 17, 2019 decision, finding that the evidence of record was insufficient to establish causal relationship between appellant's right upper extremity conditions and the accepted factors of her federal employment.[5]

On February 28, 2020 appellant, through counsel, requested reconsideration.

In an attached November 20, 2018 narrative medical report, Dr. Register recounted his history of treatment of appellant's right rotator cuff tear and subsequent surgical procedures. He opined that her right shoulder conditions were exacerbated by the nature of her federal employment. Dr. Register explained that working as a mail carrier required frequent use of the arms and lifting which could aggravate appellant's conditions. He also opined that it was likely that the June 20, 2016 incident where she hit her shoulder on the door exacerbated her symptoms at well.

By decision dated April 29, 2020 OWCP denied modification.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the

[5] *Supra* note 3.

United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period 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 establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the identified employment factors.[9]

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.[10] A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factor(s) 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 factors.[12]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a right upper extremity condition causally related to the accepted factors of her federal employment.

Preliminarily, the Board notes that it is unnecessary for the Board to consider the evidence appellant submitted prior to the issuance of OWCP's April 17, 2019 merit decision because the

[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] *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] *R.G.*, Docket No. 19-0233 (issued July 16, 2019). *See also Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

[10] *T.H.*, 59 ECAB 388, 393 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

[11] *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

[12] *Id.*; *Victor J. Woodhams, supra* note 9.

Board considered that evidence in its February 12, 2020 decision. Findings made in prior Board decisions are *res judicata* absent any further review by OWCP, under section 8128 of FECA.[13]

In support of her February 28, 2020 request for reconsideration, appellant submitted Dr. Register's November 20, 2018 narrative report wherein he opined that her right shoulder conditions were exacerbated by the frequent use of her arms and lifting which could have aggravated her conditions. Dr. Register further opined that it was likely that the June 20, 2016 incident where appellant hit her shoulder on the door exacerbated her symptoms as well. While he provided an affirmative opinion on causal relationship, he did not offer medical rationale sufficient to explain why he believed appellant's employment duties under her current occupational disease claim could have resulted in or contributed to her diagnosed condition. Without explaining how the frequent use of her arms and lifting caused or aggravated her right rotator cuff tear, Dr. Register's November 20, 2018 narrative report is of limited probative value.[14] Dr. Register's November 20, 2018 report is therefore insufficient to meet appellant's burden of proof.

As the medical evidence of record is insufficient to establish a right rotator cuff tear causally related to the accepted factors of federal employment, the Board finds that appellant 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 upper extremity condition causally related to the accepted factors of her federal employment.

[13] *J.T.*, Docket No. 18-1757 (issued April 19, 2019); *Clinton E. Anthony, Jr.*, 49 ECAB 476 (1998).

[14] *See A.P.*, Docket No. 19-0224 (issued July 11, 2019).

ORDER

IT IS HEREBY ORDERED THAT the April 29, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 20, 2022
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board