

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

N.B., Appellant	)	
	)	
and	)	Docket No. 20-0794
	)	Issued: July 29, 2022
DISTRICT OF COLUMBIA SUPERIOR	)	
COURT, Washington, DC, 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, Deputy Chief Judge  
JANICE B. ASKIN, Judge

**JURISDICTION**

On February 18, 2020 appellant filed a timely appeal from a December 23, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

**ISSUE**

The issue is whether appellant has met her burden of proof to establish a right shoulder condition causally related to her August 15, 2017 accepted employment incident.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that, following the December 23, 2019 decision and also on appeal, appellant submitted additional evidence. However, the Board's *Rules of Procedures* 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.*

## **FACTUAL HISTORY**

On August 22, 2017 appellant, then a 60-year-old court clerk/supervisor, filed a traumatic injury claim (Form CA-1) alleging that on August 15, 2017 she slipped on the floor and injured her right hip and shoulder while in the performance of duty.

On August 15, 2017 Dr. Ijeamaka K. Ofofdile, an osteopath, examined appellant following a slip and fall on a wet floor in her office building earlier that day. He diagnosed right shoulder contusion and right shoulder joint pain. Appellant underwent right shoulder x-rays which revealed no evidence of acute fracture of dislocation and stable postsurgical changes from a distal clavicular resection and acromioplasty.

On August 22, 2017 Dr. Taemin Hwang, Board-certified in emergency medicine, examined appellant due to right shoulder pain. He noted that she fell on her shoulder approximately a week earlier.

In notes dated August 23, 2017, Dr. Mychelle Shegog, an orthopedic surgeon, noted appellant's reports of right shoulder pain after falling on her shoulder when she slipped on a wet floor at work. Appellant related that she experienced immediate pain and delayed swelling. She complained that her shoulder pain radiated down to her hand. Dr. Shegog diagnosed shoulder impingement and noted that appellant had previously undergone subacromial decompression.

OWCP also received notes from Jason Friedman, a physical therapist, beginning on August 24, 2017.

On September 20, 2017 appellant underwent a right shoulder magnetic resonance imaging (MRI) scan which demonstrated mild undersurface fraying of the anterior fibers of the supraspinatus tendon, mild thickening of the long head of the biceps tendon suggesting tendinopathy, and mild subacromial subdeltoid bursitis, and a possible distal clavicle resection.

In a November 6, 2017 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of additional factual and medical evidence needed and afforded her 30 days to respond.

In a November 19, 2017 response to OWCP's development questionnaire, appellant recounted that she slipped and fell on a wet floor inside the entrance of the employing establishment and landed on her right shoulder. She also described her medical treatment.

By decision dated December 7, 2017, OWCP denied appellant's traumatic injury claim. It accepted that the August 15, 2017 employment incident occurred, as alleged, but denied the claim finding that the medical evidence did not establish causal relationship between the accepted August 15, 2017 employment incident and her diagnosed right shoulder conditions.

On June 19, 2018 appellant requested reconsideration of the December 7, 2017 decision and submitted additional evidence.

In a November 28, 2017 note, Dr. Shegog provided work restrictions. In a December 14, 2017 note, she diagnosed impingement syndrome of the right shoulder and history of shoulder surgery.

On January 11, 2018 Dr. James R. Kunec, a Board-certified orthopedic surgeon, noted the August 15, 2017 employment incident and reviewed appellant's diagnostic studies. He diagnosed bicipital tendinitis, right shoulder. Dr. Kunec treated appellant on February 5 and 19, March 12, and April 3, 2018 and noted that her shoulder discomfort had improved after physical therapy. On May 4, 2018 he noted her history of injury and prior right shoulder surgery. Dr. Kunec related that appellant sustained an injury at work as the result of a fall on August 15, 2017. He diagnosed bicipital tendinitis of the right shoulder. Dr. Kunec noted that appellant had retired.

By decision dated June 28, 2018, OWCP denied modification of its prior decision.

Appellant requested reconsideration and submitted additional medical evidence. In a March 22, 2019 note, Dr. Kunec reiterated that she experienced a right shoulder injury on August 15, 2017 as a result of a fall at work. He explained that it was his belief that appellant had developed tendinitis in the right shoulder, as a result of the injury she sustained on August 15, 2017 which was chronic at the time he first examined her on January 11, 2018. Dr. Kunec opined that she was temporarily totally disabled due to this condition, which he attributed to the accepted employment incident.

Appellant also provided additional physical therapy notes dated December 10, 2018 through January 31, 2019, February 1 through 27, March 1 through 27, and April 3 through 10, 2019.

By decision dated December 23, 2019, OWCP denied modification of the June 28, 2018 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</sup> has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence, including the fact that the individual is an "employee of the United States" within the meaning of FECA and that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.<sup>4</sup> 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.<sup>5</sup>

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<sup>3</sup> *Supra* note 1.

<sup>4</sup> *J.C.*, Docket No. 16-1724 (issued April 20, 2017); *Kathryn Haggerty*, 45 ECAB 383, 388 (1994); *Elaine Pendleton*, 41 ECAB 1143 (1989).

<sup>5</sup> *J.C., id.*; *Victor J. Woodhams*, 41 ECAB 345 (1989).

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.<sup>6</sup> There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that she actually experienced the employment incident at the time, place, and in the manner alleged.<sup>7</sup> Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.<sup>8</sup>

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.<sup>9</sup> 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.<sup>10</sup> 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.<sup>11</sup>

Pursuant to OWCP's procedures, no development of a claim is necessary where the condition reported is a minor one which can be identified on visual inspection by a lay person (*e.g.*, burn, laceration, insect sting or animal bite), where the injury was witnessed or reported promptly and no dispute exists, and when no time was lost from work due to disability. In cases where there is a serious injury (motor vehicle accidents, stabbings, shootings, etc.), the employing establishment does not dispute the facts of the case, and there are no questionable circumstances, the case may be accepted for a minor condition (such as a laceration in a stabbing case) without a medical report, while simultaneously developing the case for other more serious conditions. This is true even if there is lost time due to such a serious injury.<sup>12</sup>

### ANALYSIS

The Board finds that appellant has met her burden of proof to establish right shoulder contusion causally related to the accepted August 15, 2017 employment incident.

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<sup>6</sup> *D.B.*, Docket No. 18-1348 (issued January 4, 2019); *S.P.*, 59 ECAB 184 (2007).

<sup>7</sup> *T.M.*, Docket No. 19-0380 (issued June 26, 2019); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>8</sup> *M.H.*, Docket No. 18-1737 (issued March 13, 2019); *T.H.*, 59 ECAB 388 (2008); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

<sup>9</sup> *S.A.*, Docket No. 18-0399 (issued October 16, 2018); *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>10</sup> *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>11</sup> *D.R.*, Docket No. 19-0954 (issued October 25, 2019); *James Mack*, 43 ECAB 321 (1991).

<sup>12</sup> See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.6(a) (June 2011); *id.* at *Causal Relationship*, Chapter 2.805.3(c) (January 2013). See also *R.H.*, Docket No. 20-1684 (issued August 27, 2021); *A.J.*, Docket No. 20-0484 (issued September 2, 2020).

On August 15, 2017 Dr. Ofofdile examined appellant due to a slip and fall at work earlier that day and diagnosed right shoulder contusion. The Board thus finds that the evidence of record establishes that the accepted August 15, 2017 employment incident resulted in a visible injury of right shoulder contusion.<sup>13</sup> The Board will, therefore, reverse the decision in part and remand the case for payment of medical expenses and wage-loss compensation for appellant's accepted contusion.<sup>14</sup>

The Board further finds, however, that appellant has not established additional conditions as causally related to the accepted August 15, 2017 employment injury.

Dr. Kunec, in a series of reports dated January 11 through May 4, 2018, noted that appellant sustained an injury at work as a result of a fall on August 15, 2017 and diagnosed bicipital tendinitis, right shoulder. Similarly, in notes dated August 23 and December 14, 2017, Dr. Shegog noted that appellant injured her shoulder at work when appellant slipped and fell on a wet floor and diagnosed right shoulder impingement. While Drs. Kunec and Shegog attributed the diagnosed right shoulder conditions to the accepted August 15, 2017 employment incident, neither physician provided medical reasoning explaining how the fall caused the additional diagnosed conditions. These reports are, therefore, of limited probative value and insufficient to establish causal relationship between the accepted August 15, 2017 employment incident and the additionally diagnosed right shoulder conditions.<sup>15</sup>

In his March 22, 2019 note, Dr. Kunec explained that appellant had developed tendinitis in the right shoulder following her injury at work on August 15, 2017 which was chronic by the time he first examined her on January 11, 2018. He opined that her right shoulder injury was a result of the August 15, 2017 employment incident and due to this injury, she had been temporarily totally disabled from work. As noted above, without adequate medical rationale explaining how the accepted employment incident caused the diagnosed condition, a report is of limited probative value to establish causal relationship. Thus, Dr. Kunec's March 22, 2019 note is also insufficient to establish appellant's claim for additional right shoulder conditions.

On August 22, 2017 Dr. Hwang examined appellant in the emergency room and diagnosed right shoulder pain related to a fall a week prior. The Board has consistently held that pain is a symptom and not a specific medical diagnosis.<sup>16</sup> Additionally, a medical report lacking a firm

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<sup>13</sup> See *B.W.*, Docket No. 22-0134 (issued May 24, 2022) (the Board accepted a visible injury of lower back/buttocks contusion as causally related to the accepted employment incident); *S.K.*, Docket No. 18-1411 (issued July 22, 2020) (the Board accepted visible injuries including bruises as causally related to the accepted employment incident).

<sup>14</sup> See *W.R.*, Docket No. 20-1101 (issued January 26, 2021); *A.J.*, Docket No. 20-0484 (issued September 2, 2020).

<sup>15</sup> *J.N.*, Docket No. 21-0606 (issued November 23, 2021); *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).

<sup>16</sup> *M.V.*, Docket No. 19-1515 (issued January 2, 2020); *Robert Broome*, 55 ECAB 339 (2004); *supra* note 12 at Chapter 2.803.4(a)(6) (August 2012).

diagnosis is of no probative value.<sup>17</sup> Therefore, this report is insufficient to establish appellant's claim for additional right shoulder conditions.

The record also contains an August 15, 2017 x-rays and a September 20, 2017 right shoulder MRI scan. The Board has held, however, that diagnostic studies standing alone lack probative value on the issue of causal relationship as they do not provide an opinion on causal relationship between an employment incident and a diagnosed condition.<sup>18</sup>

Appellant also provided treatment notes from a physical therapist. The Board has held that medical reports signed solely by a physical therapist are of no probative value as they are not considered physicians as defined under FECA and, therefore, are not competent to provide a medical opinion.<sup>19</sup>

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 and 20 C.F.R. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds that appellant has met her burden of proof to establish a right shoulder contusion causally related to the accepted August 15, 2017 employment incident. The Board further finds, however, that she has not met her burden of proof to establish additional right shoulder conditions causally related to the accepted August 15, 2017 employment injury.

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<sup>17</sup> *L.T.*, Docket No. 20-0582 (issued November 15, 2021); *J.P.*, Docket No. 20-0381 (issued July 28, 2020); *R.L.*, Docket No. 20-0284 (issued June 30, 2020).

<sup>18</sup> *C.F.*, Docket No. 19-1748 (issued March 27, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

<sup>19</sup> See *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); 5 U.S.C. § 8101(2) (this subsection defines a physician as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law).

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 23, 2019 decision of the Office of Workers' Compensation Programs is reversed in part and affirmed in part.

Issued: July 29, 2022  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board