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K.R., Appellant)	
)	
and)	Docket No. 21-0822
)	Issued: June 28, 2022
DEPARTMENT OF AGRICULTURE,)	
FOOD & SAFETY INSPECTION SERVICE,)	
Seguin, TX, Employer)	
)	

Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On May 7, 2021 appellant, through counsel, filed a timely appeal from an April 23, 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.

ISSUE

The issue is whether appellant met her burden of proof to establish a medical condition causally related to the accepted factors of her federal employment.

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 an 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.*

FACTUAL HISTORY

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

On May 29, 2018 appellant, then a 63-year-old supervisory public health veterinarian, filed a traumatic injury claim (Form CA-1) alleging that on May 28, 2018 she injured her left leg when an employee accidentally struck her left calf with a metal stool while in the performance of duty. She further alleged that on the next day, when she attempted to rise from her desk, her left leg cramped, and she fell. Appellant explained that she tried to brace herself, but lost her footing and fell onto her hands and the impact caused her neck to wrench backwards and both her shoulders to jam. On the reverse side of the claim form, appellant's supervisor indicated that she was injured in the performance of duty on May 28, 2018 and stopped work on May 30, 2018. OWCP assigned the claim File No. xxxxxx302.

In an attached narrative statement dated May 29, 2018, appellant related that on May 28, 2018 she experienced pain, bruising, swelling, and cramping when her leg was hit with a metal stool. Appellant also described how she injured her shoulders and neck when she fell on May 29, 2018.

OWCP received a May 30, 2018 authorization for examination and/or treatment (Form CA-16) executed by the employing establishment. In Part B of the Form CA-16, attending physician's report a nurse practitioner, Robbin Jean Koehler, noted that appellant's left leg cramped, she lost her balance, and fell forward. Ms. Koehler diagnosed neck strain and lumbar strain and noted that appellant was scheduled for left shoulder surgery on July 7, 2018. An activity restriction form indicated that appellant should not perform lifting over 10 pounds, reaching above the head, or pushing or pulling.

In a June 8, 2018 development letter, OWCP advised appellant of the deficiencies of her claim. It advised appellant of the type of factual and medical evidence needed and afforded her 30 days to respond.

OWCP subsequently received May 30, 2018 emergency room records from Dr. Curtis Carriker, Board-certified in emergency medicine, which reflected that appellant had complaints in the lower back and shoulders. Dr. Carriker noted that, at work the prior day, appellant fell, lost her balance while getting up, landed on her extended arms and hands. He further noted that appellant's fall was mechanical, caused by slipping or tripping rather than fainting or seizure. Dr. Carriker diagnosed acute neck pain associated with cervical strain and sprain, acute cervical strain, muscle strain of the low back, and sprain of the right rotator cuff and left rotator cuff. He explained that it was normal to feel sore and tight in muscles and the back the next day after a fall, as an injury causes inflammation, which then causes muscles to tighten up.

May 30, 2018 x-rays of the cervical spine, read by Dr. Douglas Scott Smith, an orthopedic surgery and orthopedic trauma surgery specialist, revealed incomplete visualization of C7 and T1, no fracture or subluxation of the visualized vertebrae, multilevel spondylosis and neural foraminal

³ Docket No. 20-0911 (issued October 30, 2020).

narrowing, and straightening of the lordosis, which may be positional or due to muscle spasm. May 30, 2018 x-rays of the lumbar spine read by Dr. Robert Gorham McAtee, Board-certified in emergency medicine, revealed osteopenia, scoliosis, and multilevel spondylosis without fracture or subluxation. May 30, 2018 x-rays of the shoulders read by Dr. Carriker revealed osteopenia with severe osteoarthritis and no fracture or dislocation.

OWCP received May 31 and June 12, 2018 duty status reports (Form CA-17) from Dr. Eloy Ochoa, a Board-certified orthopedic surgeon, relating that on May 29, 2018 appellant had a leg cramp and fell forward. Dr. Ochoa diagnosed bilateral shoulder osteoarthritis and placed appellant off work until after surgery on July 9, 2018.

In reports dated May 31 and June 12, 2018, Dr. Ochoa noted that appellant was seen for bilateral osteoarthritis and related shoulder pain, left greater than right, and was scheduled for surgery for the left shoulder on July 9, 2018. He indicated that appellant had a recent exacerbation of both shoulder conditions when she fell at work two days prior, on May 29, 2018. Dr. Ochoa related that appellant was up on a platform and fell, injuring both shoulders. She then fell again when getting to her desk and landed directly on her outstretched hands. He noted that she had difficulty getting up from the floor and was unable to change her shirt because of difficulty with pain in moving her arm above the level of her shoulder. Dr. Ochoa explained that this prompted an emergency visit, which revealed no evidence of new onset fractures on her x-rays, but she was given analgesics and seen for further treatment options. He diagnosed shoulder strain, bilateral, and localized primary osteoarthritis of the shoulder region, bilateral, and noted that it was recurrent. Dr. Ochoa opined that appellant had an exacerbation of her underlying osteoarthritis after a fall at work on May 29, 2018.

By decision dated August 16, 2018, OWCP denied appellant's traumatic injury claim, finding that the medical evidence of record was insufficient to establish causal relationship between appellant's diagnosed conditions and the accepted May 29, 2018 employment incident. OWCP also noted that appellant had similar problems in her shoulders for which separate claims were open for medical care, including in OWCP File No. xxxxxx090.

OWCP received illegible notes dated June 12, 2018, a copy of previously submitted May 30, 2018 work restrictions and treatment notes, and a May 31, 2018 Form CA-17.

In an August 27, 2018 report, Dr. Ochoa diagnosed localized primary osteoarthritis of the bilateral shoulder region. In an August 27, 2018 Form CA-17, he noted a May 29, 2018 date of injury and diagnosed right shoulder osteoarthritis, status-post total shoulder replacement.

On August 30, 2018 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review, which was held telephonically on January 9, 2019.

By decision dated March 8, 2019, OWCP's hearing representative converted appellant's traumatic injury claim to an occupational disease claim and denied the claim, finding that the evidence of record was insufficient to establish causal relationship between appellant's diagnosed conditions and the accepted factors of her federal employment. He related that appellant's leg was injured on May 28, 2018, when an employee hit her calf with a metal stool, which caused her leg to spasm on May 29, 2018, and caused her to fall and sustain injuries on May 29, 2018. OWCP's hearing representative explained that none of the medical evidence contained a rationalized

opinion explaining how appellant sustained an injury on May 29, 2018 “due to falling caused by a calf spasm, which was caused by being hit in the calf on May 28, 2018.” He ordered that OWCP administratively combine the current claim with appellant’s other claims involving her upper extremities to include OWCP File No. xxxxxx090, wherein OWCP accepted traumatic left shoulder and arm conditions; OWCP File No. xxxxxx976, wherein OWCP accepted traumatic right shoulder and wrist conditions; OWCP File No. xxxxxx806, wherein OWCP accepted a traumatic left shoulder condition; and OWCP File No. xxxxxx570, wherein OWCP accepted an additional traumatic left shoulder condition.

On September 24, 2019 appellant, through counsel, requested reconsideration and submitted additional medical evidence.

In a September 16, 2019 report, Dr. Ochoa noted that appellant was seen on May 31, 2018, after sustaining an injury at work on May 30, 2018, when she fell forward on a concrete floor with both arms extended in front of her and jammed both shoulders. He explained that, due to the work injury on May 29, 2018, he suggested that appellant be held off work to allow her shoulders to recover before her left shoulder replacement surgery, which had been scheduled for July 2018, under OWCP File No. xxxxxx090. Dr. Ochoa also noted that, due to the fall on May 29, 2018, and additional injury to both shoulders, her right shoulder worsened, and she underwent right shoulder replacement surgery in March 2019, under OWCP File No. File No. xxxxxx976. He opined that, “[i]t is my belief as an orthopedic surgeon, that the fall [appellant] sustained on May 29, 2018 exacerbated the bilateral shoulder damage, which was directly the cause for her being off work in May, June and July of 2018.”

By decision dated December 20, 2019, OWCP denied modification of the March 8, 2019 hearing decision.

On March 23, 2020 appellant, through counsel, filed a timely appeal with the Board from the December 20, 2019 OWCP merit decision.

By order dated October 30, 2020, the Board found that the case was not in posture for decision.⁴ The Board explained that all of appellant’s claims involving her upper extremities, to include the claims in OWCP File Nos. xxxxxx302, xxxxxx090, xxxxxx976, xxxxxx806, xxxxxx570, and xxxxxx078, must be administratively combined for a full and fair adjudication. Accordingly, it set aside the December 20, 2019 OWCP decision and remanded the case for other such further development as deemed necessary, to be followed by the issuance of a *de novo* decision.

On December 15, 2020 OWCP administratively combined the above-noted files, with OWCP File No. xxxxxx570 serving as the master file.

Dr. Ochao continued to treat appellant and submitted reports dating from June 12, 2018 to January 4, 2021. He provided examination findings, reviewed diagnostic tests, and diagnosed osteoarthritis of the left shoulder, osteoarthritis of the right shoulder with partial rotator cuff tearing, bilateral total shoulder replacement, adhesive capsulitis of the left shoulder, bilateral shoulder strains, and right bicipital tenosynovitis. Dr. Ochao opined that appellant had recurrent

⁴ *Id.*

osteoarthritic-related right shoulder pain, recently aggravated by shoulder strain following a fall at work. In his January 4, 2021 report, he noted that appellant was doing well, post bilateral total shoulder replacements.

OWCP also received hospital records, operative reports, and diagnostic testing reports from May 30, 2018 to March 4, 2019.

OWCP received physical therapy notes from July 11, 2018 through August 29, 2019.

In reports dated May 30 and December 12, 2019, Dr. Stephen Josh Bell, Board-certified in orthopedic surgery and orthopedic sports medicine, provided a permanent impairment rating of 25 percent for the bilateral upper extremities

By decision dated April 23, 2021, OWCP denied modification of the March 8, 2019 decision.

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 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: (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

⁵ *Supra* note 2.

⁶ *S.M.*, Docket No. 21-0937 (issued December 21, 2021); *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).

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).

compensation is claimed; and (3) rationalized 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 The opinion of the physician must be based upon a complete factual and medical background, 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 factors.¹¹

In any case where a preexisting condition involving the same part of the body is present and the issue of causal relationship, therefore, involves aggravation, acceleration, or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.¹²

ANALYSIS

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

In reports dated May 31 and June 12, 2018, he related that on May 29, 2018 appellant had a leg cramp and fell forward. Dr. Ochoa diagnosed bilateral shoulder osteoarthritis. In reports dated May 31, June 12, and August 27, 2018, he noted that appellant was treated for bilateral shoulder osteoarthritis and related shoulder pain. Dr. Ochoa explained that on May 29, 2018 appellant was up on a platform and fell, injuring both shoulders, and then fell again getting to her desk, and landed on her outstretched hands. He diagnosed neck strain, lumbar and shoulder strain/sprain, and localized primary osteoarthritis of the shoulder region, bilateral. While his diagnoses included lumbar strain/sprain, Dr. Ochoa did not provide an opinion that the accepted employment factors caused or contributed to appellant's diagnosed conditions. 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.¹³

In a September 16, 2019 report, Dr. Ochoa reiterated that appellant was seen on May 31, 2018 for bilateral shoulder osteoarthritis, after a work injury. He opined that "[i]t is my belief as an orthopedic surgeon, that the fall [appellant] sustained on May 29, 2018 exacerbated the bilateral shoulder damage, which was directly the cause for her being off work in May, June and July of

⁹ *T.W.*, Docket No. 20-0767 (issued January 13, 2021); *L.D.*, Docket No. 19-1301 (issued January 29, 2020); *S.C.*, Docket No. 18-1242 (issued March 13, 2019).

¹⁰ *I.J.*, Docket No. 19-1343 (issued February 26, 2020); *T.H.*, 59 ECAB 388 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

¹¹ *D.C.*, Docket No. 19-1093 (issued June 25, 2020).

¹² Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); *G.T.*, Docket No. 21-0170 (issued September 29, 2021); *D.W.*, Docket No. 20-0674 (issued September 29, 2020); *V.W.*, Docket No. 19-1537 (issued May 13, 2020); *N.C.*, Docket No. 19-1191 (issued December 19, 2019); *R.D.*, Docket No. 18-1551 (issued March 1, 2019).

¹³ *R.O.*, Docket No. 20-1243 (issued May 28, 2021); *P.B.*, Docket No. 20-1602 (issued May 26, 2021); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

2018.” Although Dr. Ochoa opined that the May 29, 2018 work injury exacerbated appellant’s bilateral shoulder osteoarthritis, he did not explain how the accepted factors in the present claim physiologically caused or aggravated appellant’s diagnosed conditions. Medical reports that lack a rationalized medical opinion regarding causal relationship are of diminished probative value.¹⁴ Therefore, the reports from Dr. Ochoa are insufficient to meet appellant’s burden of proof.¹⁵

In the May 30, 2018 emergency room records, Dr. Carriker referenced a “fall on the same level by stumbling” on May 29, 2018. He further explained that an injury could cause inflammation which would result in muscle pain and soreness. Dr. Carriker diagnosed acute neck pain associated with cervical strain and cervical sprain, acute cervical strain, muscle strain of the low back, and sprain of the right rotator cuff and left rotator cuff. However, he did not address appellant’s preexisting conditions and he did not explain with medical rationale how appellant’s accepted employment factors caused the diagnosed conditions. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how an employment activity could have caused or aggravated a medical condition.¹⁶ This report is, therefore, insufficient to establish causal relationship.

Dr. Bell provided an impairment rating in May 30 and December 12, 2019 reports. However, his reports did not offer an opinion on causal relationship. 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.¹⁷ Therefore, Dr. Bell’s reports are insufficient to establish appellant’s claim.

The remaining evidence of record consists of diagnostic reports and notes from physical therapists and Ms. Koehler, a nurse practitioner. The Board has held that diagnostic studies, standing alone, lack probative value and are insufficient to establish the claim.¹⁸ In addition, certain healthcare providers such as physician assistants, nurse practitioners, and physical therapists are not considered physicians as defined under FECA.¹⁹ Their medical findings, reports and/or opinions, unless cosigned by a qualified physician, will not suffice for purposes of

¹⁴ See *A.C.*, Docket No. 20-1510 (issued April 23, 2021); *J.P.*, Docket No. 20-0381 (issued July 28, 2020); *R.L.*, Docket No. 20-0284 (issued June 30, 2020).

¹⁵ See *J.P.*, Docket No. 18-0349 (issued December 30, 2019); *D.D.*, 57 ECAB 734 (2006).

¹⁶ See *A.M.*, Docket No. 19-1394 (issued February 23, 2021); *V.D.*, Docket No. 20-0884 (issued February 12, 2021); *Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

¹⁷ *Supra* note 13.

¹⁸ See *B.R.*, Docket No. 21-1109 (issued December 28, 2021); *J.K.*, Docket No. 20-0591 (issued August 12, 2020); *A.B.*, Docket No. 17-0301 (issued May 19, 2017).

¹⁹ 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); *A.Z.*, Docket No. 21-1355 (issued May 19, 2022) (nurse practitioners are not physicians under FECA); *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).

establishing entitlement to FECA benefits.²⁰ Consequently, this additional evidence is insufficient to meet appellant's burden of proof.

As the medical evidence of record is insufficient to establish causal relationship, 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 medical condition causally related to the accepted factors of her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the April 23, 2021 decision of the Office of Workers' Compensation Programs is affirmed.²¹

Issued: June 28, 2022
Washington, DC

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

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

A handwritten signature in cursive script, appearing to read 'J. D. McGinley', written in dark ink.

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board

²⁰ *Id.*

²¹ The Board notes that the employing establishment issued a Form CA-16, dated May 30, 2018. 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).