

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

R.W., Appellant

and

U.S. POSTAL SERVICE, MARKET STREET
POST OFFICE, St. Louis, MO, Employer

)
)
)
)
)
)
)
)
)
)
)

**Docket No. 22-0554
Issued: November 18, 2022**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On March 4, 2022 appellant filed a timely appeal from a January 13, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (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 her burden of proof to establish a right shoulder condition causally related to the accepted April 30, 2020 employment incident.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case has previously been before the Board.² The facts and circumstances as set forth in the Board's prior order are incorporated herein by reference. The relevant facts are as follows.

On May 14, 2020 appellant, then a 57-year-old distribution clerk, filed a traumatic injury claim (Form CA-1) alleging that on April 30, 2020 she sustained a right shoulder injury when she tripped over a container latch and fell while in the performance of duty.³ She stopped work on June 13, 2020.

In a clinical summary report dated May 27, 2020, Dr. Thomas Spiro, a Board-certified internist, noted that appellant had a current health issue of right shoulder contusion.

In letters dated June 10, 2020, Dr. Katherine A. Burns, a Board-certified orthopedic surgeon, advised appellant that a recent right shoulder magnetic resonance imaging (MRI) scan revealed a substantial partial rotator cuff tear. She included a copy of the MRI scan. Dr. Burns advised that appellant could return to work on June 11, 2020 with restrictions. She also recommended that appellant be excused from work from June 18 through September 18, 2020.

On June 18, 2020 appellant underwent right shoulder arthroscopic surgery. The operative report noted a preoperative diagnosis of right shoulder rotator cuff tear.

In a July 28, 2020 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence necessary to establish her claim. OWCP afforded appellant 30 days to respond.

Appellant submitted a May 11, 2020 right shoulder x-ray scan, which revealed high-grade articular-sided partial tear posterior fibers of the supraspinatus tendon along the footplate, moderate-grade intrasubstance partial tear of the distal myotendinous junction of the infraspinatus, and small moderate-grade articular-sided partial tear of the mid-fibers subscapularis tendon at the lesser tuberosity attachment site.

OWCP also received a June 10, 2020 progress note by Dr. Burns who reported appellant's complaints of chronic right shoulder pain. Dr. Burns indicated that appellant previously had a left shoulder rotator cuff tear, which required surgery in June 2016, and noted that appellant had informed her that her right shoulder now felt the same way.

In a July 8, 2020 report, Lynn Robbins, a physician assistant, evaluated appellant for continued right shoulder pain. She examined appellant and noted her right shoulder subacromial tenderness and limited range of motion. Mrs. Robbins diagnosed status post right shoulder arthroscopy, rotator cuff repair and biceps tenodesis.

² *Order Remanding Case*, Docket No. 21-0618 (issued September 27, 2021).

³ OWCP assigned File No. xxxxxx711 to this claim. Appellant previously filed another Form CA-1 on April 2, 2020 alleging that on March 27, 2020 she sustained contusions and bruises on her hands while in the performance of duty, to which OWCP assigned File No. xxxxxx252.

In a progress note dated August 24, 2020, Dr. Burns indicated that appellant was doing well following right shoulder arthroscopic surgery on June 18, 2020. She indicated that appellant fell twice at work and landed on her outstretched right arm. Dr. Burns reported that appellant believed this was very likely what injured her right shoulder. She opined that appellant was doing well status post right shoulder arthroscopy.

By decision dated August 31, 2020, OWCP accepted that the April 30, 2020 employment incident occurred as alleged, but denied appellant's traumatic injury claim finding that the medical evidence of record did not contain a medical diagnosis in connection with the accepted employment incident. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On September 6, 2020 appellant requested a hearing before a representative of OWCP's Branch of Hearings and Review, which was held on November 30, 2020.

By decision dated January 29, 2021, OWCP's hearing representative modified the August 31, 2020 decision to find that appellant had established a medical diagnosis in connection with the accepted April 30, 2020 employment incident, but denied the claim finding that the medical evidence of record was insufficient to establish causal relationship between the diagnosed condition and the accepted April 30, 2020 employment incident.

Appellant appealed to the Board. By order dated September 27, 2021, the Board set aside the August 31, 2020 and January 29, 2021 OWCP decisions and remanded the case for OWCP to combine the present case with OWCP File No. xxxxxx252 and issue a *de novo* decision on appellant's traumatic injury claim.⁴

On January 13, 2022 OWCP administratively combined the current case with OWCP File No. xxxxxx252 with the current claim serving as the master file.

By *de novo* decision dated January 13, 2022, OWCP accepted that the April 30, 2020 incident occurred as alleged and that a medical condition was diagnosed; however it denied her claim, finding that the medical evidence of record was insufficient to establish causal relationship between her diagnosed condition and the accepted employment incident. It concluded, therefore, that the requirements had not been met to establish an injury or medical condition causally related to the employment incident.

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

⁴ *Supra* note 2.

⁵ *Supra* note 1.

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 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.⁹ 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 and place, and in the manner alleged. Second, the employee must submit probative medical evidence to establish that the employment incident caused a personal injury.¹⁰

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.¹¹ 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 incident identified by the employee.¹²

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a right shoulder condition causally related to the accepted April 30, 2020 employment incident.

Appellant submitted reports dated June 10 through August 24, 2020 by Dr. Burns, who provided examination findings and noted that a right shoulder MRI scan revealed a partial-thickness rotator cuff tear. She indicated that appellant fell down twice at work and reported that appellant believed this was very likely what injured her right shoulder. Dr. Burns diagnosed right shoulder rotator cuff tendinitis *versus* tear. She, however, did not provide her own opinion addressing the cause of appellant's right shoulder condition. Rather, Dr. Burns merely reiterated

⁶ *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁷ *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *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); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁹ *D.B.*, Docket No. 18-1348 (issued January 4, 2019); *S.P.*, 59 ECAB 184 (2007).

¹⁰ *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *David Apgar*, 57 ECAB 137 (2005); *John J. Carlone*, 41 ECAB 354 (1989).

¹¹ *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *S.A.*, Docket No. 18-0399 (issued October 16, 2018); *see also Robert G. Morris*, 48 ECAB 238 (1996).

¹² *C.F.*, Docket No. 18-0791 (issued February 26, 2019); *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

appellant's belief regarding causal relationship.¹³ The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value on the issue of causal relationship.¹⁴ Therefore, these reports are insufficient to establish appellant's burden of proof.

Appellant also submitted a May 27, 2020 clinical summary report by Dr. Spiro and a June 18, 2020 operative report. However, these reports did not offer an opinion on causal relationship. 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

Appellant also submitted a July 8, 2020 report from a physician assistant. The Board has held that certain healthcare providers such as physician assistants are not considered physicians as defined under FECA.¹⁶ Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.

The remaining evidence of record consists of diagnostic reports dated May 11 and June 10, 2020. The Board has held that reports of diagnostic tests, standing alone, lack probative value as they do not provide an opinion as to whether the accepted employment factors caused the diagnosed condition. For this reason, this evidence is not sufficient to meet his burden of proof.¹⁷

As appellant has not submitted rationalized medical evidence establishing that her right shoulder condition is causally related to the accepted April 30, 2020 employment incident, the Board finds that appellant has not met her burden of proof to establish her claim.

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.

¹³ See *C.M.*, Docket No. 21-0435 (issued October 22, 2021).

¹⁴ *R.O.*, Docket No. 20-1243 (issued May 28, 2021); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁵ *Id.*; see also *K.R.*, Docket No. 21-0822 (issued June 28, 2022); *M.G.*, Docket No. 19-1863 (issued December 15, 2020).

¹⁶ Section 8102(2) of FECA provides as follows: (2) 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. § 8102(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 *S.S.*, Docket No. 21-1140 (issued June 29, 2022) (physician assistants are not considered physicians under FECA and are not competent to provide medical opinions); *George H. Clark*, 56 ECAB 162 (2004) (physician assistants are not considered physicians under FECA).

¹⁷ *V.Y.*, Docket No. 18-0610 (issued March 6, 2020); *G.S.*, Docket No. 18-1696 (issued March 26, 2019); *A.B.*, Docket No. 17-0301 (issued May 19, 2017).

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a right shoulder condition causally related to the accepted April 30, 2020 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the January 13, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 18, 2022
Washington, DC

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

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

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