

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

F.F., Appellant)	
)	
and)	Docket No. 22-1122
)	Issued: November 22, 2022
DEPARTMENT OF VETERANS AFFAIRS,)	
EDWARD HINES VA MEDICAL CENTER,)	
HINES, IL, Employer)	
)	

Appearances: *Case Submitted on the Record*
Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On July 26, 2022 appellant, through counsel, filed a timely appeal from a July 7, 2022 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.³

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.*

³ The Board notes that, following the July 7, 2022 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* 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 evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether appellant has met her burden of proof to establish left shoulder and arm conditions causally related to the accepted January 15, 2022 employment incident.

FACTUAL HISTORY

On January 18, 2022 appellant, then a 50-year-old nurse, filed a traumatic injury claim (Form CA-1) alleging that she injured her left shoulder and arm in the performance of duty on January 15, 2022. She indicated that she was assisting with moving a patient up in bed and felt muscle soreness in her left shoulder and arm. On the reverse side of the claim form appellant's supervisor acknowledged that appellant was injured in the performance of duty. The form indicated that appellant stopped work on January 15, 2022.

By development letter dated January 21, 2022, OWCP informed appellant that medical evidence was necessary to establish her claim. Appellant was requested to provide a narrative report from a physician containing a detailed description of findings and a diagnosis, as well as a medical explanation from a physician as to how the work incident caused or aggravated a medical condition. OWCP afforded appellant 30 days to respond.

On January 17, 2022 appellant was seen by Kathleen McGovern, a certified physician assistant. She related shoulder pain and was diagnosed with acute left shoulder pain. A return-to-work date of January 20, 2022 was provided.

OWCP received a form report dated January 18, 2022 reiterating appellant's allegations that she injured her left shoulder and arm while assisting her patient with moving up in bed on January 15, 2022.

OWCP also received a work status note dated January 25, 2022 from Dr. Chandrasekhar Sompalli, an orthopedic surgery specialist. Appellant was given a return-to-work date of January 26, 2022 with no restrictions.

On February 8 and 9, 2022 appellant underwent a left shoulder magnetic resonance imaging (MRI) arthrogram procedure performed by Dr. David Saldanha, a Board-certified radiologist. Dr. Saldanha noted that appellant had a high-grade partial thickness tear of the supraspinatus, acromioclavicular arthropathy with mild subacromial/subdeltoid bursitis, and mild tendinosis of the intracapsular long head biceps tendon.

A work status note from Dr. Sompalli dated February 11, 2022 cleared appellant again to return to work on February 12, 2022.

In an attending physician's report (Form CA-20) dated February 11, 2022, Dr. Sompalli diagnosed high grade supraspinatus tear, bursitis, and biceps tendinopathy. He also marked "Yes" regarding the question of whether he believed appellant's condition was caused or aggravated by an employment activity. Dr. Sompalli further explained that the alleged injury was "not a chronic tear due to no atrophy of RC muscles." He referred appellant to physical therapy and indicated a return-to-work date of February 11, 2022.

By decision dated March 7, 2022, OWCP accepted that the January 15, 2022 employment incident occurred as alleged and that a medical condition was diagnosed in connection with the incident. However, it denied appellant's claim, finding that the medical evidence of record was insufficient to establish causal relationship between her diagnosed conditions and the accepted January 15, 2022 employment incident.

OWCP continued to receive evidence. On February 17, 2022 appellant was seen by Kerri Wirth, a certified physical therapist, for an initial physical therapy evaluation. She related soreness and aching in her left shoulder after lifting her patient at work and indicated that a lump appeared on top of her shoulder. Appellant was scheduled for eight weeks of physical therapy at three times a week.

OWCP received an x-ray report dated January 17, 2022 from Dr. John Meyer, a diagnostic radiology specialist. No displaced fractures or dislocations were noted.

On January 25, 2022 appellant was seen by Dr. Sompalli. She related left shoulder pain after helping her patient pull up in bed. Appellant further related that the pain became severe over time and that she had never experienced left shoulder pain prior to the alleged work incident. Dr. Sompalli assessed that appellant had sustained severe left shoulder pain and impingement due to a work-related injury that occurred on January 15, 2022.

On February 11, 2022 appellant was seen for a follow-up appointment with Dr. Sompalli. Dr. Sompalli reviewed appellant's MRI arthrogram and diagnosed pain in left shoulder, impingement syndrome of left shoulder, bursitis of left shoulder, and primary osteoarthritis in left shoulder. He assessed severe left shoulder pain and impingement due to the alleged incident. Dr. Sompalli also ordered physical therapy.

On March 2, 2022 appellant was seen by Andrew Moy, a certified physical therapist, for continued physical therapy.

On March 11, 2022 appellant returned for another follow up with Dr. Sompalli and related that she had not completed physical therapy. Dr. Sompalli continued to order physical therapy and continued to allow appellant to work with no restrictions.

On March 16, 2022 appellant was seen by Dr. Brian Barbas, a Board-certified emergency medicine physician, for shoulder pain. Dr. Barbas diagnosed shortness of breath, neck swelling, and pain in joint of left shoulder.

Appellant requested a review of the written record by the Branch of Hearings and Review on March 23, 2022.

On April 8, 2022 appellant was seen by Dr. Sompalli for continued left shoulder pain. Dr. Sompalli noted appellant's history of injury and assessed high-grade supraspinatus tear of the left shoulder, AC joint arthritis, bursitis, and biceps tendinopathy. He continued to order physical therapy and allow appellant to work with no restrictions. On May 12, 2022 appellant was seen by Dr. Sompalli. She related no pain in her left shoulder and noted improvement after three months of physical therapy. Dr. Sompalli indicated that appellant was doing well and continued to allow work with no restrictions. He also indicated that, prior to this work-related injury, appellant had never experienced left shoulder pain.

By decision dated July 7, 2022, OWCP's hearing representative affirmed the March 7, 2022 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ 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, 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.⁵ 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.⁶

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁷ A physician's opinion on whether there is a causal relationship between the diagnosed condition and the employment injury must be based on a complete factual and medical background.⁸ 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 employment injury.⁹ Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.¹⁰

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish left shoulder and arm conditions causally related to the accepted January 15, 2022 employment incident.

In support of her claim, appellant also submitted reports from Dr. Sompalli dated January 25, February 11, March 11, April 8, and May 12, 2022. Dr. Sompalli diagnosed left shoulder pain, impingement syndrome of left shoulder, bursitis of left shoulder, and primary osteoarthritis in left shoulder. While he opined that appellant's diagnosed conditions were the

⁴ *Id.*

⁵ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *B.H.*, Docket No. 20-0777 (issued October 21, 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).

⁷ *R.P.*, Docket No. 21-1189 (issued July 29, 2022); *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

⁸ *R.P., id.; F.A.*, Docket No. 20-1652 (issued May 21, 2021); *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁹ *Id.*

¹⁰ *T.M.*, Docket No. 22-0220 (issued July 29, 2022); *S.S.*, Docket No. 18-1488 (issued March 11, 2019); *see also J.L.*, Docket No. 18-1804 (issued April 12, 2019).

result of the accepted incident, he did not offer a rationalized medical opinion as to how the incident caused or contributed to the diagnosed conditions. Dr. Sompalli related that appellant had never experienced left shoulder pain prior to the January 15, 2022 employment incident. However, the Board has held that an opinion that a condition is causally related to an employment incident simply because the employee was asymptomatic before the injury, is insufficient, without adequate rationale, to establish causal relationship.¹¹ Medical opinion evidence must offer a rationalized explanation of how the specific employment incident or work factors, physiologically caused injury.¹² The Board finds that these reports are, therefore, insufficient to establish causal relationship.

Appellant additionally submitted work status notes dated January 25 and February 11, 2022 from Dr. Sompalli. These notes did not offer an opinion regarding 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.¹³

OWCP received an attending physician's report (Form CA-20) dated February 11, 2022 signed by Dr. Sompalli. Dr. Sompalli marked "Yes" on the question of whether he believed appellant's condition was caused or aggravated by an employment activity. He further explained that the alleged injury was "not a chronic tear due to no atrophy of RC muscles." However, as noted previously, Dr. Sompalli again did not offer a rationalized medical opinion explaining how the accepted incident caused or contributed to the diagnosed conditions. This report is of no probative value and is, therefore, insufficient to establish causal relationship.¹⁴

Dr. Barbas' medical note dated March 16, 2022 diagnosed shortness of breath, neck swelling, and pain in joint of left shoulder. He also did not offer an opinion regarding causal relationship. Therefore, this report is also of no probative value.¹⁵

OWCP received an MRI arthrogram report dated February 9, 2022 from Dr. Saldanha. Dr. Saldanha diagnosed a high-grade partial thickness tear of the supraspinatus, acromioclavicular arthropathy with mild subacromial/subdeltoid bursitis, and mild tendinosis of the intracapsular long head biceps tendon. It additionally received an x-ray report dated January 17, 2022 from Dr. Meyer. However, diagnostic studies standing alone lack probative value, as they do not address whether the employment incident caused a diagnosed condition.¹⁶ These reports are, therefore, insufficient to establish appellant's claim.

¹¹ See *D.V.*, Docket No. 21-1259 (issued March 15, 2022); *S.D.*, Docket No. 20-1255 (issued February 3, 2021); *F.H.*, Docket No. 18-1238 (issued January 18, 2019).

¹² See *G.R.*, Docket No. 21-1196 (issued March 16, 2022); *K.J.*, Docket No. 21-0020 (issued October 22, 2021); *L.R.*, Docket No. 16-0736 (issued September 2, 2016); *J.R.*, Docket No. 12-1099 (issued November 7, 2012); *Douglas M. McQuaid*, 52 ECAB 382 (2001).

¹³ *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *A.O.*, Docket No. 21-0968 (issued March 18, 2022). See *M.S.*, Docket No. 19-0587 (issued July 22, 2019).

Appellant submitted evidence from a certified physician assistant and physical therapists. However, certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered “physician[s]” as defined under FECA and their reports do not constitute competent medical evidence.¹⁷ This evidence is, therefore, of no probative value and is insufficient to establish appellant’s claim.

OWCP also received a form report dated January 18, 2022 reiterating that appellant allegedly injured her left shoulder and arm while assisting her patient with moving up in bed, but this report did not include a rationalized medical opinion from a physician.

As the medical evidence of record is insufficient to establish causal relationship between her diagnosed medical conditions and the accepted January 15, 2022 employment incident, the Board finds that 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 left shoulder and arm conditions causally related to the accepted January 15, 2022 employment incident.

¹⁷ *H.S.*, Docket No. 20-0939 (issued February 12, 2021). 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 also* 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); *R.L.*, Docket No. 19-0440 (issued July 8, 2019) (physical therapists are not considered physicians under FECA).

ORDER

IT IS HEREBY ORDERED THAT the July 7, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 22, 2022
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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