

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

B.C., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Las Vegas, NV, Employer**

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**Docket No. 22-0143
Issued: October 25, 2022**

Appearances:
*Alan J. Shapiro, Esq., for the appellant*¹
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 November 5, 2021 appellant, through counsel, filed a timely appeal from a September 27, 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.

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 an upper extremity condition causally related to the accepted January 25, 2021 employment incident.

FACTUAL HISTORY

On January 26, 2021, appellant, then a 62-year-old custodian, filed a traumatic injury claim (Form CA-1) alleging that on January 25, 2021 she injured her shoulders and wrists while in the performance of duty. She noted that she felt pain in her shoulders while reaching up high to clean mirrors and in her wrists while wringing out mops. Appellant did not stop work.

In a report dated January 25, 2021, Maangelica Goodstein, a physician assistant, noted that appellant related complaints of bilateral wrist and shoulder pain, which she attributed to wringing out a mop, reaching up to clean mirrors, and using a grabber to pick up trash for approximately 1.5 hours that day. She performed a physical examination, which revealed tenderness and reduced range of motion in the shoulders and wrists. X-rays of the wrists and shoulders were read as normal. Ms. Goodstein diagnosed bilateral shoulder strains and bilateral wrist sprains.

In a work activity status report of even date, Ms. Goodstein released appellant to return to work full time, with occasional lifting no more than 10 pounds, occasional gripping and pinching with the hands, and no reaching above shoulder height.

On January 26, 2021 appellant accepted an offer of a modified limited-duty assignment based upon Ms. Goodstein's release.

In a report dated January 28, 2021, Dr. Gregory Hoversten, an osteopath specializing in emergency medicine, noted that appellant related ongoing complaints of bilateral wrist and shoulder pain which she attributed to repetitive work activities on January 25, 2021. He performed a physical examination and noted tenderness and reduced range of motion in the shoulders and wrists. Dr. Hoversten diagnosed bilateral shoulder strains and bilateral wrist sprains and continued appellant's work restrictions.

OWCP also received an initial evaluation report dated January 29, 2021 by Jedd Cuaresma, a physical therapist.

In a February 10, 2021 development letter, OWCP informed appellant of the deficiencies of her claim. It advised 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 necessary evidence.

OWCP thereafter received a follow-up report by Dr. Hoversten dated February 2, 2021, which indicated that appellant's complaints had not improved with therapy and that she was working modified duty.

In a statement dated February 18, 2021, appellant indicated that she worked as a custodian for the employing establishment for 14 years. She noted that her work duties were repetitive in nature and included sweeping, wet mopping, wringing out mops, emptying trash bins, scrubbing

the inside and outside of toilets and sinks, changing toilet paper and towel dispensers, emptying out sanitary napkin boxes, wiping down break room and cafeteria tables, and picking up trash. Appellant related that it was difficult for her to clean bathroom mirrors, because she is 5'4" and the mirrors are 6' in height. As she reached to clean the top of a mirror, she felt sharp pains in her arms and shoulders. Appellant also noted that repetitive wringing of wet mops caused pain in her hands and wrists.

In a report dated February 23, 2021, Dr. Ran Jia, an internal medicine specialist, noted appellant's ongoing complaints of pain in the shoulders and wrists. He performed a physical examination and diagnosed sprains of the shoulders and wrists. Dr. Jia recommended that appellant undergo magnetic resonance arthrograms of the shoulders and an evaluation of her wrists by an occupational medicine specialist.

In a follow-up report dated March 2, 2021, Dr. Hoversten referred appellant for an evaluation by a physiatrist.

OWCP received additional physical therapy records for dates of service from February 23 through March 2, 2021.

By decision dated March 15, 2021, OWCP denied appellant's traumatic injury claim, finding that the medical evidence of record was insufficient to establish causal relationship between the accepted January 25, 2021 employment incident and her diagnosed shoulder and wrist conditions.

On March 23, 2021 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

OWCP continued to receive medical evidence, including follow-up reports by Dr. Hoversten dated March 9 and 16, 2021.

In a report dated March 17, 2021, Dr. Eric Wolfson, a Board-certified internal medicine specialist, noted that appellant related a history of shoulder pain that radiated down her arms which she attributed to cleaning. He diagnosed shoulder tendinitis and cervical radiculopathy and recommended magnetic resonance imaging (MRI) scan of her shoulders and spine and consultations with an orthopedist and neurologist.

In a consultation report dated April 14, 2021, Dr. Arlyn Valencia, a Board-certified neurologist, noted that appellant related a history of bilateral shoulder pain, right greater than left, which she attributed to reaching to clean mirrors on January 25, 2021. She noted that she also related bilateral wrist pain with numbness and weakness in her hands. Dr. Valencia performed physical and neurological examinations and noted weakness and tenderness and areas of atrophy and hypersensitivity to touch. She opined that appellant very likely sustained a brachial plexus stretch injury when she "stretched out" to clean high mirrors. Dr. Valencia recommended MRI scans of the right brachial plexus, bilateral shoulders, and cervical spine.

An MRI scan of the left shoulder dated April 16, 2021 revealed moderate rotator cuff tendinopathy with a partial undersurface tendon tear, mild subacromial impingement, and mild acromioclavicular (AC) degenerative joint disease. A right shoulder MRI scan of even date

revealed severe AC degenerative joint disease and moderate rotator cuff tendinopathy with an area of severe focal tendinosis.

An MRI scan of the cervical spine dated April 19, 2021 revealed a left paracentral/foraminal disc osteophyte at C5-6 resulting in mild spinal canal stenosis with exiting left C6 neural impingement and a diffuse bulge at C6-7 with mild bilateral neural foraminal narrowing.

On April 29, 2021 Dr. Valencia conducted electromyogram and nerve conduction velocity (EMG/NCV) studies of the upper extremities and noted that the findings were indicative of bilateral cervical radiculopathy from C3 through C7, left greater than right, and mild bilateral median nerve sensory and motor neuropathies, right greater than left.

In a follow-up report dated April 30, 2021, Dr. Wolfson reviewed appellant's MRI scan results and diagnosed bilateral shoulder tendinitis and carpal tunnel syndrome (CTS). He noted that she indicated that her shoulder pain was work related.

In a follow-up report dated May 17, 2021, Dr. Valencia reviewed the results of the EMG/NCV studies and MRI scan. She performed physical and neurological examinations and diagnosed cervical stenosis of the spinal canal, cervical dystonia, cervical pain, and myalgia. Dr. Valencia referred appellant for a surgical consultation and recommended injections to the wrists and cervical spine.

A hearing was held on July 15, 2021. During the hearing, appellant testified that on January 25, 2021 she reached up with her right arm to wipe a mirror in a circular motion and felt sudden and sharp pain. She related that it felt as if her arm locked up, so she attempted to reach with her left arm, and experienced similar pain on the left side. Appellant indicated that she attempted to wring out the mop using her bucket and her wrists locked up. She denied any shoulder or CTS symptoms prior to January 25, 2021.

In a narrative report dated September 10, 2021, Dr. Wolfson indicated that appellant had been under his care since January 17, 2018. He noted that her job duties were repetitive in nature and included wringing out mops, sweeping, emptying trash, and cleaning bathrooms. Dr. Wolfson diagnosed bilateral rotator cuff tendinopathy with a mild undersurface tear and bilateral CTS. He noted that appellant related that she had difficulty cleaning mirrors and that she felt her shoulder and wrist pain was due to reaching to clean mirrors and repetitively wringing out mops.

By decision dated September 27, 2021, the hearing representative affirmed OWCP's March 5, 2021 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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

³ *Id.*

limitation of FECA,⁴ 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

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. The first component is whether the claimant experienced the employment incident at the time and place, and in the manner alleged. The second component is whether the employment incident caused a personal injury and can be established only by medical evidence.⁷

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.⁸ 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 claimant.⁹

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.¹⁰

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish an upper extremity condition causally related to the accepted January 25, 2021 employment incident.

⁴ *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).

⁵ *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).

⁶ *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).

⁷ *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

⁸ *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

⁹ *A.S.*, Docket No. 19-1955 (issued April 9, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

¹⁰ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); *M.B.*, Docket No. 20-1275 (issued January 29, 2021); *see R.D.*, Docket No. 18-1551 (issued March 1, 2019).

In his September 10, 2021 narrative report, Dr. Wolfson noted that appellant felt her bilateral wrist and shoulder pain was due to reaching to clean mirrors and repetitively wringing out mops on January 25, 2021. In his earlier reports dated March 17 and April 30, 2021, he diagnosed bilateral shoulder tendinitis, cervical radiculopathy, and bilateral CTS, and again indicated that she felt her pain was work related. While he noted appellant's belief that her shoulder and wrist pain was caused by various employment duties on January 25, 2021 Dr. Wolfson did not provide his own 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.¹¹ In addition, a physician's report is of little probative value when it is based on a claimant's belief rather than the physician's independent judgment.¹² Therefore, Dr. Wolfson's reports are insufficient to establish appellant's burden of proof.

In her April 14, 2021 neurological consultation report, Dr. Valencia opined that appellant very likely sustained a brachial plexus stretch injury when she "stretched out" to clean high mirrors. In a follow-up report dated May 17, 2021, she reviewed the results of EMG/NCV and MRI scan studies and diagnosed cervical stenosis of the spinal canal, cervical dystonia, cervical pain and myalgia. Dr. Valencia did not, however, provide a pathophysiological explanation as to how the accepted incident either caused or contributed to appellant's diagnosed conditions.¹³ As noted above, 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 employment incident and the diagnosed conditions.¹⁴ Therefore, Dr. Valencia's reports are also insufficient to establish appellant's burden of proof.

In their respective reports, Drs. Hoversten and Jia diagnosed bilateral shoulder strains and bilateral wrist sprains, but did not offer an opinion as to the cause of the 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.¹⁵ Therefore, these reports are also insufficient to establish appellant's claim.

The remaining evidence of record consists of notes from a physical therapist and a physician assistant and diagnostic study reports. The Board has held that certain healthcare providers such as physician assistants, nurse practitioners, and physical therapists are not

¹¹ See *S.S.*, Docket No. 21-0837 (issued November 23, 2021); *J.M.*, Docket No. 19-1926 (issued March 19, 2021); *L.D.*, Docket No. 20-0894 (issued January 26, 2021); *T.F.*, Docket No. 18-0447 (issued February 5, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹² See *M.C.*, Docket No. 18-0919 (issued October 18, 2018); *Earl David Seale*, 49 ECAB 152 (1997).

¹³ *Supra* note 9; see also *M.S.*, Docket No. 21-0711 (issued December 7, 2021); *J.G.*, Docket No. 20-0009 (issued September 28, 2020).

¹⁴ *Supra* note 9.

¹⁵ *Supra* note 11.

considered physicians as defined under FECA.¹⁶ Their medical findings, reports and/or opinions, unless cosigned by a qualified physician, will not suffice for purposes of establishing entitlement to FECA benefits.¹⁷ In addition, diagnostic studies, standing alone, lack probative value and are insufficient to establish the claim.¹⁸ 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 between appellant's diagnosed conditions and the accepted January 25, 2021 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 an upper extremity condition causally related to the accepted January 25, 2021 employment incident.

¹⁶ 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 supra* note 10 at Chapter 2.805.3a(1) (January 2013); *C.G.*, Docket No. 20-0957 (issued January 27, 2021); *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). *K.A.*, Docket No. 18-0999 (issued October 4, 2019).

¹⁷ *K.A., id.*; *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk, id.*

¹⁸ *J.K.*, Docket No. 20-0591 (issued August 12, 2020); *A.B.*, Docket No. 17-0301 (issued May 19, 2017).

ORDER

IT IS HEREBY ORDERED THAT the September 27, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 25, 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