

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

W.B., Appellant)

and)

DEPARTMENT OF HOMELAND SECURITY,)
TRANSPORTATION SECURITY)
ADMINISTRATION, Moline, IL, Employer)
_____)

Docket No. 22-0163
Issued: September 16, 2022

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

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On November 15, 2021 appellant filed a timely appeal from an October 15, 2021 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 diagnosed medical condition causally related to the accepted August 26, 2021 employment incident.

FACTUAL HISTORY

On August 27, 2021 appellant, then a 67-year-old transportation industry analyst, filed a traumatic injury claim (Form CA-1) alleging that on August 26, 2021 she cracked her ribs,

¹ 5 U.S.C. § 8101 *et seq.*

dislocated her right shoulder, and sustained a rotator cuff tear as a result of falling while in the performance of duty. She stopped work on the date of injury.

In a report dated August 26, 2021, David Kieser, a certified nurse practitioner, noted that appellant complained of right shoulder and lateral rib pain, which she attributed to falling at work that day. He further indicated that x-rays of her right shoulder and chest revealed a shoulder sprain. Mr. Keiser ordered magnetic resonance imaging (MRI) scans of appellant's right shoulder and recommended that she remain out of work until September 10, 2021.

In an August 30, 2021 report of MRI scan, Dr. David Griffith, a Board-certified radiologist, noted a history that appellant fell at her workplace on August 26, 2021. He indicated that the study revealed cuff tendinosis, moderate acromioclavicular (AC) joint arthrosis, a small effusion and capsulitis, and labral fraying with a nondisplaced anterior-inferior labral tear.

On September 10, 2021 Dr. Edward Kolb, a Board-certified orthopedic surgeon, noted that appellant related ongoing complaints of right shoulder and rib pain. He performed a physical examination, which revealed pain with palpation of the lateral aspect of the right ribs and positive impingement, Speed's, and Yergason's signs in the right shoulder. Dr. Kolb reviewed the MRI scan results and diagnosed a dislocation of the right shoulder, right rib fractures, and a sprain of the shoulder girdle.

By development letter dated September 14, 2021, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence required and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence.

On September 14, 2021 appellant accepted a temporary limited-duty assignment including intermittent sitting, walking, and standing.

In a medical report dated September 24, 2021, Dr. Kolb noted that appellant related ongoing shoulder pain, which she attributed to an injury four weeks prior. He further noted that she indicated her symptoms had improved with modified work duties and medical treatment. Dr. Kolb performed a physical examination and diagnosed closed fracture of multiple ribs, dislocation of the right shoulder, and a sprain of the right shoulder girdle. He recommended restrictions of sitting down as needed, no overhead work, and no lifting over 10 pounds.

By decision dated October 15, 2021, OWCP accepted that the August 26, 2021 employment incident occurred in the performance of duty, as alleged. However, it denied appellant's claim, finding that the medical evidence of record was insufficient to establish a diagnosed medical condition in connection with the accepted employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA² 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

² *Id.*

limitation of FECA,³ 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.⁴ 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.⁵

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 employee actually 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.⁶

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.⁷ 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 specific employment incident identified by the employee.⁸

ANALYSIS

The Board finds that appellant has met her burden of proof to establish a diagnosed medical condition causally related to the accepted August 26, 2021 employment incident.

Dr. Kolb, in his September 10 and 24, 2021 reports, diagnosed closed fracture of multiple ribs, dislocation of the right shoulder, and a sprain of the right shoulder girdle. The Board, therefore, finds that the record establishes diagnosed medical conditions in connection with the established employment incident.⁹

The Board further finds, however, that this case is not in posture for decision with regard to whether the diagnosed medical conditions are causally related to the accepted August 26, 2021

³ *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).

⁴ *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).

⁵ *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).

⁶ *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).

⁷ *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).

⁸ *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁹ *See S.A.*, Docket No. 20-1498 (issued March 11, 2021); *A.H.*, Docket No. 20-0730 (issued October 27, 2020); *B.C.*, Docket No. 20-0079 (issued October 16, 2020).

employment incident. As the medical evidence of record establishes diagnosed medical conditions, the case must be remanded for consideration of the medical evidence with regard to the issue of causal relationship.¹⁰ Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that appellant has met her burden of proof to establish diagnosed medical conditions. The Board further finds, however, that the case is not in posture for decision as to whether her diagnosed conditions are causally related to the accepted August 26, 2021 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the October 15, 2021 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded for further proceedings consistent with this order of the Board.

Issued: September 16, 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

¹⁰ See *F.D.*, Docket No. 21-1045 (issued December 22, 2021).