United States Department of Labor
Employees' Compensation Appeals Board

A.D., Appellant	)	
and	)	**Docket No. 22-0319**
	)	**Issued: September 6, 2022**
DEPARTMENT OF COMMERCE, U.S. CENSUS BUREAU, Bethesda, MD, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On December 20, 2021 appellant filed a timely appeal from December 9, 2021 and July 8, 2021 merit decisions of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[2]

ISSUE

The issue is whether appellant has met her burden of proof to establish a medical condition causally related to the accepted January 10, 2020 employment incident.

[1] 5 U.S.C. § 8101 *et seq*.

[2] The Board notes that, following the December 9, 2021 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 additional evidence for the first time on appeal. *Id*.

FACTUAL HISTORY

On January 29, 2020 appellant, then a 61-year-old field representative, filed a traumatic injury claim (Form CA-1) alleging that, on January 10, 2020, she tripped over a meter and fell forward landing on her palms, while in the performance of duty. She alleged injuries to her right hand, right shoulder, right wrist, and left side. Appellant did not stop work.

Treatment notes dated April 7, May 19, June 1 and 29, and July 27, 2020 from Dr. Jonathan Oheb, a Board-certified orthopedic hand surgeon, were submitted. In an April 7, 2020 report, Dr. Oheb noted that appellant had previously undergone right wrist surgery. He provided an assessment of: right wrist de Quervain tenosynovitis; right wrist triangular fibrocartilage complex (TFCC) degeneration, rule out partial tear with associated ulnar positive wrist (asymptomatic); and rule out right wrist lunotriquetral ligament, partial tear versus sprain (asymptomatic). Appellant continued conservative treatment for the right wrist and Dr. Oheb provided progress notes of her right hand/wrist condition. In his June 29 and July 27, 2020 reports, Dr. Oheb provided an additional assessment of right index ring finger stenosing tenosynovitis, and symptomatic and resolved right wrist de Quervain tenosynovitis. He continued to assess right wrist TFCC degeneration, rule out partial tear with associated ulnar positive wrist (asymptomatic); and rule out right wrist lunotriquetral ligament, partial tear versus sprain (asymptomatic).

OWCP also received physical therapy treatment notes from February 28 through November 2020.

In a November 25, 2020 development letter, OWCP informed appellant that the medical evidence was insufficient to establish her claim, advised her of the type of factual and medical evidence needed, and provided a questionnaire for completion. It afforded her 30 days to respond.

In a December 5, 2020 statement and signed development questionnaire, appellant indicated that on January 10, 2020 she tripped on a utility meter that was higher than the curb she had stepped onto and that she fell in a plank position on the gravel. She provided photographs of her alleged injuries.

In a December 7, 2020 report, a nurse practitioner reported that appellant had a trip and fall at work two weeks ago. She noted that appellant's January 30, 2020 x-rays did not show acute fractures or dislocations of the areas examined and that appellant's current complaints were consistent with soft tissue inflammation due to the fall. Assessments of osteopenia, degeneration of lumbar intravertebral disc, shoulder pain, low back pain, and right thumb pain were provided.

By decision dated January 11, 2021, OWCP accepted that the January 10, 2020 employment incident occurred, as alleged. However, it denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish that the diagnosed medical conditions were causally related to the accepted January 10, 2020 employment incident.

On January 25, 2021 appellant requested an oral hearing before an OWCP hearing representative, which was held telephonically on May 13, 2021. She testified regarding the January 10, 2020 incident. Appellant clarified that she had a prior wrist injury in 2002, for which she had undergone surgery, but had no other prior injuries or conditions. She indicated that she

did not lose time from work following the January 10, 2020 incident and continued to work her regular duties.

OWCP received February 18, 2020 and April 7, 2021 right wrist magnetic resonance imaging (MRI) studies, as well as a February 26, 2021 cervical spine MRI scan. The MRI studies noted abnormal findings.

In a February 10, 2020 report, Dr. Maurice Dicterow, a family medical specialist, noted appellant's history of injury as pain in right wrist due to work injury. He provided appellant's physical examination findings and diagnosed pain in right wrist, low back pain, other intervertebral disc degeneration, lumbar region, right wrist injury, osteopenia. Addendum reports dated February 19 and March 3, 2020 were also provided. Dr. Dicterow indicated, in the March 3, 2020 addendum, that appellant's right wrist x-ray revealed central perforation/tear of the articular disc with joint effusion, degenerative changes, and a nine-millimeter ganglion cyst. He referred appellant to a hand surgeon.

In a May 21, 2021 note, Dr. Jonathan Botts, a Board-certified orthopedic surgeon, opined that, "at this time the injury she sustained on January 10, 2020 to the right wrist is due to her present diagnosis." A photograph of a hand was provided.

In a February 11, 2021 report, Dr. Douglas Brown, a diagnostic radiologist specialist, noted findings regarding appellant's right shoulder, including a Type II superior labrum anterior posterior (SLAP) labral tear with small paralabral cyst, moderate degenerative change at the acromial (AC) joint with undersurface osteophyte, and capsular thickening of the axillary recess of the anteroinferior glenohumeral joint.

By decision dated July 8, 2021, an OWCP hearing representative affirmed OWCP's January 11, 2021 decision.

In a December 15, 2020 state form report, Dr. Barry Rosenblum, an osteopath specializing in occupational and family medicine, reported the history of appellant's injury on January 10, 2020. He noted that she had a second job as a babysitter which involved prolonged sitting, standing, repetitive lifting, and repetitive use of hands. Appellant denied a prior history of a sports-related, private or work-related injury; however, she indicated having had physical therapy for a prior musculoskeletal condition. Dr. Rosenblum diagnosed right shoulder sprain, unspecified shoulder sprain type and right wrist sprain, related to the January 10, 2020 fall. He opined that appellant had experienced chronic myofascial symptoms since the date of injury and should be under the care of an orthopedist or physiatrist for her ongoing symptoms. Dr. Rosenblum also opined that she would remain on full duty. An information sheet regarding a shoulder superior labrum anterior to posterior (SLAP) tear, noting causes and symptoms was provided.

On November 22, 2021 appellant requested reconsideration.

By decision dated December 9, 2021, OWCP denied modification of its July 8, 2021 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] 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,[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 that 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. 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 a 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 specific employment incident identified by the employee.[9] Where no such rationale is present, medical evidence is of diminished probative value.[10]

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,

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[3] *Supra* note 1.

[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] *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).

[10] *See M.F.*, Docket No. 21-1221 (issued March 28, 2022); *M.P.*, Docket No. 19-0161 (issued August 16, 2019); *Michael Stockert*, 39 ECAB 1186 (1988).

the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.[11]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a medical condition causally related to the accepted January 10, 2020 employment incident.

In a February 10, 2020 report, Dr. Dicterow noted appellant's diagnoses as right wrist pain, low back pain, other intervertebral disc degeneration, lumbar region, right wrist injury, osteopenia. He also indicated, in the March 3, 2020 addendum, that the x-ray results of the right wrist revealed central perforation/tear of the articular disc with joint effusion, degenerative changes, and a nine millimeter ganglion cyst. In multiple progress reports as of April 7, 2020, Dr. Oheb indicated that appellant had previous surgery on her right wrist. He diagnosed several medical conditions regarding the right wrist in his treatment notes. However, neither Dr. Dicterow nor Dr. Oheb described the January 10, 2020 employment incident or provided an opinion on the cause of appellant's condition. The Board has long held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value.[12] Therefore, these reports are insufficient to establish appellant's claim.

In a December 15, 2020 report, Dr. Rosenblum diagnosed right shoulder sprain, unspecified shoulder sprain type and right wrist sprain as related to the accepted January 10, 2020 employment incident. He also noted that she has had chronic myofascial symptoms since the date of injury. The Board notes that, to be of probative medical value, a medical opinion must explain how physiologically the movements involved in the employment incident caused or contributed to the diagnosed conditions.[13] Dr. Rosenblum did not explain the physiologic mechanism by which the accepted January 10, 2020 employment incident caused the diagnosed conditions. The Board also notes that additional medical rationale is necessary in this case as appellant testified that she had right wrist surgery in 2002.[14] Also Dr. Rosenblum noted that appellant had a second job as a babysitter, listed the activities involved as a babysitter, and indicated that she had undergone physical therapy for a prior musculoskeletal injury, which was not identified. While he attributed her diagnosed right shoulder and right wrist conditions to her accepted January 10, 2020 employment incident, he failed to provide any medical reasoning explaining how or why the trip and fall resulted in her diagnosed conditions.[15] Dr. Rosenblum also failed to discuss the effect of

[11] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); *K.G.*, Docket No. 18-1598 (issued January 7, 2020); *M.S.*, Docket No. 19-0913 (issued November 25, 2019).

[12] *See D.M.*, Docket No. 21-1244 (issued March 25, 2022); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[13] *See J.P.*, Docket No. 19-1317 (issued May 1, 2020); *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

[14] *J.P., id.*

[15] *J.N.*, Docket No. 21-0606 (issued November 23, 2021); *T.W.*, Docket No. 20-0767 (issued January 13, 2021); *see H.A.*, Docket No. 18-1466 (issued August 23, 2019); *L.R.*, Docket No. 16-0736 (issued September 2, 2016).

appellant's babysitting activities on her diagnosed conditions. This report is, therefore, of limited probative value and insufficient to establish causal relationship.

Dr. Botts opined, in a May 21, 2021 note, that "at this time the injury she sustained on January 10, 2020 to the right wrist is due to her present diagnosis." However, he did not indicate appellant's present diagnosis. As this report lacked a complete history or injury, firm diagnosis, and rationalized opinion regarding causal relationship it was insufficient to establish appellant's claim.[16]

The remaining evidence of record consists of diagnostic testing reports and notes from a physical therapist and a nurse practitioner. The Board has held that diagnostic studies, standing alone, lack probative value and are insufficient to establish the claim.[17] In addition, the Board has previously explained that certain healthcare providers such as physician assistants, nurse practitioners, and physical therapists are not considered physicians as defined under FECA.[18] Their medical findings, reports and/or opinions, unless cosigned by a qualified physician, will not suffice for purposes of establishing entitlement to FECA benefits.[19] 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 a medical condition and the accepted January 10, 2020 employment incident, 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 January 10, 2020 employment incident.

[16] *L.T.*, Docket No. 20-0582 (issued November 15, 2021); *J.P.*, Docket No. 20-0381 (issued July 28, 2020); *R.L.*, Docket No. 20-0284 (issued June 30, 2020).

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

[18] 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); *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). *B.R.*, Docket No. 21-1109 (issued December 28, 2021) (physical therapists and nurse practitioners are not physicians as defined under FECA).

[19] *B.R., id.*; *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk, id.*

ORDER

IT IS HEREBY ORDERED THAT the December 9, 2021 and July 8, 2021 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: September 6, 2022
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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