United States Department of Labor
Employees' Compensation Appeals Board

J.D., Appellant	)	
and	)	**Docket No. 22-0971**
	)	**Issued: September 27, 2022**
U.S. POSTAL SERVICE, SELMA POST OFFICE, Selma, AL, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On June 1, 2022 appellant filed a timely appeal from March 10 and 30, 2022 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 right shoulder and arm condition causally related to the accepted December 21, 2021 employment incident.

[1] 5 U.S.C. § 8101 *et seq*.

[2] The Board notes that, following the March 30, 2022 decision, OWCP received additional evidence. Appellant also submitted new evidence on appeal. 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 December 27, 2021 appellant, then a 52-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on December 21, 2021 she injured her right shoulder and arm when delivering two large parcels while in the performance of duty. She stopped work on December 23, 2021.

In a statement accompanying her claim form, appellant related that she had delivered two large parcels and then returned to her car. She noted that her arm and shoulder "began to hurt" but she continued delivering her route. Appellant's pain increased over the next few days, and she sought medical treatment.

On December 27, 2021 Dr. Bruce E. Taylor, an internist, advised that he had evaluated appellant on December 27, 2021 and indicated that she could resume work on January 10, 2022.

In a development letter dated January 28, 2022, OWCP advised appellant of the type of factual and medical evidence necessary to establish her claim and provided a questionnaire for her completion. It afforded her 30 days to provide the necessary evidence.

Thereafter, OWCP received a January 7, 2022 note from Dr. Taylor, who advised that he had evaluated appellant on January 7, 2022 and opined that she could resume work with no restrictions on February 14, 2022.

X-rays of the right shoulder, obtained on December 27, 2021, showed no abnormality. A January 11, 2022 magnetic resonance imaging (MRI) scan of the right shoulder yielded negative findings.

In a January 26, 2022 form report, Lisa Danley, a nurse practitioner, found that appellant had a muscle strain of the right shoulder. In a note of even date, Ms. Danley determined that appellant could resume work on February 28, 2022 without restrictions.

On February 14, 2022 OWCP received progress reports from Dr. Taylor dated November 25, 2013 through February 8, 2022. On January 31, 2022 Dr. Taylor diagnosed pain radiating to the right shoulder. In a progress report dated February 8, 2022, he obtained a history of appellant experiencing right shoulder pain after lifting two packages at work on December 21, 2021. Dr. Taylor noted that she was undergoing physical therapy. He diagnosed pain radiating to the right shoulder.

By decision dated March 10, 2022, OWCP denied appellant's traumatic injury claim. It found that she had established that the December 21, 2021 employment incident occurred as alleged. OWCP determined, however, that appellant had not established that the medical evidence contained a medical diagnosis in connection with the accepted December 21, 2021 employment incident. It advised that pain was not considered a diagnosis under FECA. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

X-rays of the cervical spine, obtained on February 9, 2022, showed mild narrowing at C5-6 with moderate anterior and small posterior osteophytes and small anterior osteophytes at C6-7 without significant joint space narrowing.

On March 18, 2022 appellant requested reconsideration.

In a March 28, 2022 attending physician's report (Form CA-20), Dr. Taylor diagnosed cervical radiculitis and right shoulder sprain. He checked a box marked "Yes" that the condition was caused or aggravated by the described employment activity, noting that it had occurred when she lifted a parcel at work. Dr. Taylor indicated that appellant was totally disabled from December 27, 2021 through January 26, 2022 and could resume her regular employment on January 28, 2022. In a March 28, 2022 duty status report (Form CA-17), he listed work restrictions.

By decision dated March 30, 2022, OWCP modified its March 10, 2022 decision and found that appellant had established medical diagnoses of cervical radiculitis and right shoulder sprain. It found, however, that the medical evidence was insufficient to establish that the diagnosed condition was causally related to the accepted December 21, 2021 employment incident.

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 the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was filed within the applicable time limitation of FECA,[4] that an injury was sustained while in the performance of duty as alleged, and that any disability or specific 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 on 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.[7] Generally, fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment

[3] *Supra* note 1.

[4] *C.B.*, Docket No. 21-1291 (issued April 28, 2022); *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

[5] *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *T.H.*, Docket No. 18-1736 (issued March 13, 2019); *R.C.*, 59 ECAB 427 (2008).

[6] *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *T.E.*, Docket No. 18-1595 (issued March 13, 2019); *Delores C. Ellyett*, 41 ECAB 992 (1990).

[7] *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *S.S.*, Docket No. 18-1488 (issued March 11, 2019); *T.H.*, 59 ECAB 388 (2008).

incident at the time and place and in the manner alleged.[8] The second component is whether employment incident caused a personal injury.[9]

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.[10] A physician's opinion on whether there is a causal relationship between the diagnosed condition and the accepted employment incident must be based on a complete factual and medical background.[11] 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 the specific employment incident.[12]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a right shoulder and arm condition causally related to the accepted December 21, 2021 employment incident.

In a Form CA-20 dated March 28, 2022, Dr. Taylor diagnosed right shoulder sprain and cervical radiculitis. He checked a box marked "Yes" that the condition was caused or aggravated by the described employment activity and indicated that it had occurred when she lifted a parcel at work. Dr. Taylor did not, however, offer medical rationale sufficient to explain how and why he believed that the accepted employment incident resulted in or contributed to the diagnosed conditions, other than it noted that it happened while she lifted a parcel. When a physician's opinion on causal relationship consists only of checking a box marked "Yes" in response to a form question, without rationale explaining causal relationship, that opinion has limited probative value and is insufficient to establish a claim.[13] Consequently, this report is insufficient to establish appellant's claim.

Dr. Taylor provided work restrictions in a Form CA-17 but did not offer an opinion on causal relationship. As the Board has held, medical evidence which does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.[14] Thus, this report is also insufficient to establish appellant's claim.

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[8] *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

[9] *Id*.

[10] *S.K.*, Docket No. 22-0432 (issued June 27, 2022); *E.G.*, Docket No. 20-1184 (issued March 1, 2021); *T.H.*, 59 ECAB 388 (2008).

[11] *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

[12] *B.C.*, Docket No. 20-0221 (issued July 10, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

[13] *See J.K.*, Docket No. 20-0527 (issued May 24, 2022); *J.K.*, Docket No. 20-0590 (issued July 17, 2020); *Donald W. Long*, 41 ECAB 142 (1989).

[14] *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018); *see also Charles H. Tomaszewski*, 39 ECAB 461 (1988).

In a February 8, 2022 progress report, Dr. Taylor discussed appellant's history of right shoulder pain beginning December 21, 2021 after lifting two packages at work. He diagnosed pain radiating into the right shoulder. Dr. Taylor also diagnosed right shoulder pain on January 31, 2022. The Board has held, however, that pain is a symptom and not a compensable medical diagnosis.[15] As such, this evidence is insufficient to establish appellant's claim.

On December 27 and January 7, 2022 Dr. Taylor indicated that he had evaluated appellant and provided a return to work date. He did not, however, provide a diagnosis or address causation. 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.[16] Thus, Dr. Taylor's reports are insufficient to meet appellant's burden of proof to establish her claim.

Appellant submitted the results of x-rays of the right shoulder and cervical spine and an MRI scan of the right shoulder. The Board has held, however, that diagnostic testing reports, standing alone, lack probative value on the issue of causal relationship as they do not address the relationship between the accepted employment factors and a diagnosed condition.[17] Consequently, this evidence is also insufficient to meet appellant's burden of proof.

The remaining medical evidence consists of a January 26, 2022 report from Ms. Danley, a nurse practitioner. A nurse practitioner is not considered a "physician" as defined under FECA, and thus her report does not constitute competent medical opinion evidence.[18] Therefore, this report is also insufficient to establish appellant's 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.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a right shoulder and arm condition causally related to the accepted December 21, 2021 employment incident.

[15] *B.A.*, Docket No. 22-0213 (issued July 26, 2022); *R.C.*, Docket No. 20-1321 (issued July 7, 2021); *J.S.*, Docket No. 0764 (issued January 21, 2021).

[16] *See supra* note 14.

[17] *See R.P.*, Docket No .22-0621 (issued July 20, 2022); *W.M.*, Docket No. 19-1853 (issued May 13, 2020); *L.F.*, Docket No. 19-1905 (issued April 10, 2020).

[18] Section 8101(2) 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* 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 W.Z.*, Docket No. 20-0191 (issued July 31, 2020) (a nurse practitioner is not considered a physician under FECA).

ORDER

IT IS HEREBY ORDERED THAT the March 10 and 30, 2022 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: September 27, 2022
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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