United States Department of Labor
Employees' Compensation Appeals Board

J.E., Appellant	)	
and	)	**Docket No. 21-0810**
	)	**Issued: April 13, 2023**
U.S. POSTAL SERVICE, POST OFFICE, Albany, NY, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On May 4, 2021 appellant, through counsel, filed a timely appeal from an April 5, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (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 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 April 5, 2021 decision, OWCP received additional 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.*

ISSUE

The issue is whether appellant has met her burden of proof to establish a diagnosed medical condition in connection with the accepted August 4, 2020 employment incident.

FACTUAL HISTORY

On August 8, 2020 appellant, then a 35-year-old postal distributor, filed a traumatic injury claim (Form CA-1) alleging that on August 4, 2020 she injured her left shoulder while in the performance of duty. She explained that she pulled her left shoulder after repetitively closing a truck door. Appellant stopped work on August 5, 2020.

In an August 3, 2020 statement, J.B., appellant's coworker, indicated that she was training appellant to be an expeditor on the door and that she informed her several times to ask for assistance when opening and closing trailer doors. She explained that she believed appellant was following her instructions as she witnessed her call for assistance in closing a trailer door earlier that day.

In an August 4, 2020 statement, appellant recounted that, at approximately 7:10 p.m., she was attempting to close a truck door and pulled her left shoulder.

In a statement also dated August 4, 2020, L.S., appellant's supervisor controverted appellant's claim, contending that appellant was trying to put herself in a position whereby she would not lose her job.

On August 5, 2020 the employing establishment executed an authorization for examination and/or treatment (Form CA-16). T.L., the authorizing official, described appellant's injury as a left shoulder injury.

In a duty status report (Form CA-17) dated August 5, 2020, a nurse practitioner related that appellant had injured her left shoulder on August 4, 2020 when she pulled the door of a truck and pulled her left shoulder. The Form CA-17 diagnosed a left shoulder strain and advised that she was able to return to work with restrictions.

On August 5, 2020 appellant accepted an offer of modified assignment (limited duty) sorting manual letters, scanning placards on the dock, and working racks.

In an August 6, 2020 medical note, Dr. Axelrod referred appellant to physical therapy for evaluation and treatment of her left shoulder pain.

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

In medical reports dated August 6 to 28, 2020, Dr. Axelrod related that appellant had injured her left shoulder at work on August 4, 2020 when she went to pull a tractor trailer door down and heard and felt a pop, followed by pain. On evaluation, he diagnosed acute left shoulder pain and opined that she may have either torn or subluxed her biceps tendon. Dr. Axelrod referred appellant to physical therapy.

In response to OWCP's development questionnaire, appellant submitted a September 21, 2020 statement wherein she reiterated that on August 4, 2020 she reached with both arms for a strap to close a truck door. As the door was coming down she heard a pop in her left shoulder followed by immediate pain. Appellant immediately reported the incident and went home to ice her shoulder.

By decision dated September 30, 2020, OWCP denied appellant's traumatic injury claim, finding that she had not established a medical diagnosis in connection with the accepted employment incident. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined under FECA.

OWCP continued to receive evidence. In a September 30, 2020 note, Dr. Axelrod released appellant to return to work with restrictions on October 5, 2020.

In an October 9, 2020 narrative report, Dr. Axelrod recounted the history of his treatment for appellant's August 4, 2020 left shoulder injury. He diagnosed acute shoulder pain and explained that he was unable to provide a specific diagnosis without diagnostic testing. Dr. Axelrod indicated that appellant underwent an x-ray scan on August 6, 2020 of her left shoulder that demonstrated a little abnormal appearance to the acromion process. He opined that the motion of raising her arm above her shoulders, gripping a door handle, and then pulling down was the direct cause of her injury, reasoning that the movement and the weight of the door caused the pop in her left shoulder.

On October 16, 2020 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

A telephonic hearing was held on February 2, 2021.

By decision dated April 5, 2021, OWCP's hearing representative affirmed the September 30, 2020 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[4] 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 timely filed within the applicable time limitation of FECA,[5] 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

[4] *Supra* note 2.

[5] *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989).

the employment injury.[6] 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.[7]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the fact of injury has been established. There are two components involved in establishing the fact of injury. First, 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. Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.[8]

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.[9] A physician's opinion on whether there is causal relationship between the diagnosed condition and the accepted employment incident must be based on a complete factual and medical background.[10] 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.[11]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a diagnosed medical condition in connection with the accepted August 4, 2020 employment incident.

Appellant submitted medical evidence dated August 6 through September 30, 2020 wherein Dr. Axelrod noted evaluating her for an August 4, 2020 left shoulder injury. Dr. Axelrod diagnosed acute shoulder pain and noted that he was unable to provide a specific diagnosis without diagnostic testing. The Board has found that pain is a symptom and not a specific medical diagnosis.[12] The Board has further held that a medical report lacking a firm diagnosis and a rationalized medical opinion regarding causal relationship is of no probative value.[13] For these reasons, Dr. Axelrod's medical evidence is insufficient to establish appellant's burden of proof.

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

[7] *R.R.*, Docket No. 19-0048 (issued April 25, 2019); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

[8] *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *see* 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(ee), 10.5(q)

[9] *T.H.*, 59 ECAB 388, 393-94 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

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

[11] *Id.*; *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[12] *M.H.*, Docket No. 18-0873 (issued December 18, 2019); *J.S.*, Docket No. 19-0863 (issued November 4, 2019); *V.B.*, Docket No. 19-0643 (issued September 6, 2019).

[13] *P.C.*, Docket No. 18-0167 (issued May 7, 2019).

Appellant also submitted an August 5, 2020 Form CA-17 signed by a nurse practitioner which diagnosed a left shoulder strain. However, the Board has held that certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered physician[s] as defined under FECA.[14] Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.[15]

The Board finds that appellant has not submitted rationalized, probative medical evidence sufficient to establish a diagnosed medical condition in connection with her August 4, 2020 employment incident.[16] Appellant, therefore, 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 diagnosed medical condition in connection with the accepted August 4, 2020 employment incident.[17]

[14] 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* 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 J.D.*, Docket No. 21-0164 (issued June 15, 2021) (nurse practitioners are not physicians as defined under FECA).

[15] *D.P.*, Docket No. 19-1295 (issued March 16, 2020); *G.S.*, Docket No. 18-1696 (issued March 26, 2019); *see M.M.*, Docket No. 17-1641 (issued February 15, 2018); *K.J.*, Docket No. 16-1805 (issued February 23, 2018); *David P. Sawchuk*, *id.*

[16] *See T.J.*, Docket No. 18-1500 (issued May 1, 2019); *see D.S.*, Docket No. 18-0061 (issued May 29, 2018).

[17] The Board notes that the employing establishment issued a Form CA-16. A completed Form CA-16 authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. *See* 20 C.F.R. § 10.300(c); *V.S.*, Docket No. 20-1034 (issued November 25, 2020); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).

ORDER

IT IS HEREBY ORDERED THAT the April 5, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 13, 2023
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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