

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

C.A., Appellant)

and)

DEPARTMENT OF VETERANS AFFAIRS,)
VETERANS ADMINISTRATION MEDICAL)
CENTER, Marion, IL, Employer)

**Docket No. 21-1005
Issued: April 14, 2023**

Appearances:
Appellant, pro se
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 June 22, 2021 appellant filed a timely appeal from an April 14, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ 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 The Board notes that, following the April 14, 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.

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met her burden of proof to establish a medical condition causally related to the accepted December 28, 2020 employment incident.

FACTUAL HISTORY

On January 12, 2021 appellant, then a 54-year-old health aid and technician, filed a traumatic injury claim (Form CA-1) alleging that on December 28, 2020 she sustained an injury to her right shoulder when moving a heavy patient while in the performance of duty. She did not stop work.

In a report dated January 13, 2021, Hailey Riggs, a physician assistant, noted that appellant related complaints of right shoulder and elbow pain which she attributed to pushing a heavy patient at work on December 28, 2020. She performed a physical examination of the right shoulder and documented tenderness to palpation at the glenohumeral joint, reduced range of motion in all planes secondary to pain, painful supraspinatus and Speed's tests, and positive impingement signs. Ms. Riggs also examined appellant's right elbow, noting tenderness to palpation at the lateral aspect and pain with supination and pronation. She diagnosed contusion of the right shoulder and bicipital tendinitis. In a form report of even date, Ms. Riggs noted a diagnosis of right shoulder tendinitis and checked a box marked "Yes" indicating that the condition was work related. She released appellant to return to work with no lifting, pushing, or pulling more than 15 pounds with the right hand and limited work above the right shoulder.

In a form report dated January 22, 2021, Kerrie Suits, a physician assistant, diagnosed right shoulder bursitis and right elbow tendinitis and maintained the same work restrictions.

In a form report dated February 5, 2021, Ms. Riggs reiterated diagnoses of right shoulder bursitis and bicipital tendinitis and recommended physical therapy.

In an initial evaluation report dated February 10, 2021, Philip Mutter, a licensed physical therapist, noted that appellant related complaints of pain in her right shoulder, elbow and forearm. He recommended various therapeutic exercises and modalities to improve her strength and functional ability. Physical therapy notes dated February 17 through 24, 2021 documented additional treatment for appellant's right shoulder and elbow pain.

In a referral form dated February 26, 2021, Ms. Riggs noted a date of injury of December 28, 2020 and diagnoses of right shoulder bursitis and right elbow pain. She again checked off a box marked "Yes" indicating that the injury was work related. Ms. Riggs recommended an orthopedic consultation.

In a March 8, 2021 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed to establish her claim and provided a questionnaire for completion. OWCP afforded appellant 30 days to respond.

In a March 11, 2021 response to OWCP's development questionnaire, appellant related that she felt pain in her right shoulder and arm on December 28, 2020 when she attempted to maneuver a heavy patient, who was sitting on a wheeled office chair.

OWCP thereafter received an additional copy of the January 13, 2021 report of Ms. Riggs and a January 22, 2021 report by Ms. Suits. Each report was co-signed on March 30, 2021 by Dr. David B. Green, a Board-certified emergency medicine specialist. On a January 22, 2021 report appellant related that she injured her right shoulder while pushing/pulling a large patient and included diagnoses of bursitis of the right shoulder and other specified disorders of the tendon of the right elbow.

Physical therapy notes dated February 26 through March 5, 2021 documented ongoing treatment to the right shoulder, elbow, and wrist.

In an after-visit summary dated April 1, 2021, Dr. James E. Goris, a Board-certified orthopedic surgeon, noted a diagnosis of right shoulder pain, unspecified, and recommended continued physical therapy.

In an April 1, 2021 letter, Dr. Goris released appellant to return to light-duty work with restrictions of no forceful repetitive gripping or overhead lifting and no lifting more than 10 pounds to waist level.

By decision dated April 14, 2021, OWCP denied appellant's traumatic injury claim, finding that she had not submitted medical evidence sufficient to establish causal relationship between her diagnosed medical conditions and the accepted December 28, 2020 employment incident.

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 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

³ *Id.*

⁴ *F.H.*, Docket No.18-0869 (issued January29, 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).

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 A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment incident must be based on a complete factual and medical background.⁹ 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 appellant's specific employment incident.¹⁰

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a medical condition causally related to the accepted December 28, 2020 employment incident.

The January 13, 2021 report of Ms. Riggs, co-signed by Dr. Green on March 30, 2021, documented appellant's history of pushing a heavy patient at work on December 28, 2020 and listed diagnoses of contusion of right shoulder and bicipital tendinitis. The January 22, 2021 report of Ms. Suits, also co-signed by Dr. Green on March 30, 2021, noted the same history of injury and provided diagnoses of right shoulder bursitis and other specified disorders of the tendon of the right elbow. Neither report offered an opinion regarding the cause of appellant's diagnosed conditions. The Board has held that an opinion which does not address the cause of an employee's condition is of no probative value on the issue of causal relationship.¹¹ Thus, these reports are insufficient to establish her claim.

In an after-visit summary dated April 1, 2021, Dr. Goris noted a diagnosis of right shoulder pain, unspecified, and recommended appellant continue physical therapy. In his letter of even date, he did not provide an opinion as to the cause of any of appellant's conditions. Therefore, Dr. Goris' April 1, 2021 letter is also of no probative value on the issue of causal relationship and is insufficient to establish appellant's claim.¹²

The remaining medical evidence consists of form reports by Ms. Riggs and Ms. Suits, both physician assistants and physical therapy records. The Board has held that health care providers

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 *C.F.*, Docket No. 18-0791 (issued February 26, 2019); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

¹⁰ *Id.*

¹¹ *T.D.*, Docket No. 19-1779 (issued March 9, 2021); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹² *Id.*

such as nurses, physician assistants, and physical therapists are not considered physicians under FECA.¹³ Thus, their opinions on causal relationship do not constitute rationalized medical opinions and are of no probative value.¹⁴

As the medical evidence of record is insufficient to establish causal relationship between her diagnosed conditions and the accepted December 28, 2020 employment incident, the Board finds that she has not met her burden of proof to establish her 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 medical condition causally related to the accepted December 28, 2020 employment incident.

¹³ Section 8102(2) of FECA provides that the term 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); *D.J.*, Docket No. 18-0593 (issued February 24, 2020) (physical therapists are not considered physicians under FECA); *R.K.*, Docket No. 20-0049 (issued April 10, 2020) (physician assistants are not considered physicians under FECA); *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).

¹⁴ *See J.F.*, Docket No. 19-1694 (issued March 18, 2020); *A.A.*, Docket No. 19-0957 (issued October 22, 2019); *Jane A. White*, 34 ECAB 515, 518 (1983).

ORDER

IT IS HEREBY ORDERED THAT the April 14, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 14, 2023
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