United States Department of Labor
Employees' Compensation Appeals Board

C.G., Appellant	)	
and	)	**Docket No. 22-1270**
	)	**Issued: December 20, 2023**
U.S. POSTAL SERVICE, LONG BEACH MAIN POST OFFICE, Long Beach, NY, Employer	)	

Appearances:
Bruce H. Didriksen, for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On August 31, 2022 appellant filed a timely appeal from a July 7, 2022 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.

ISSUE

The issue is whether appellant has met her burden of proof to establish a right elbow condition causally related to the accepted May 22, 2019 employment incident.

[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*.

FACTUAL HISTORY

On May 22, 2019 appellant, then a 45-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on that date she injured her right elbow when lifting a bundle of flat postage and placing it into her carrier case while in the performance of duty. She noted that, thereafter, she developed pain in her right elbow. Appellant stopped work that day.

In a May 22, 2019 duty status report (Form CA-17), Dr. Joshua Hourizadeh, an osteopath Board-certified in family practice, recounted that appellant had injured herself lifting a bundle from a mail hamper while at work. In form report of even date, he diagnosed an elbow strain and recommended work restrictions.

In a May 22, 2019 authorization for examination and/or treatment (Form CA-16) the employing establishment authorized appellant to seek medical treatment. In Part B of the Form CA-16, attending physician's report, of even date, Dr. Hourizadeh diagnosed elbow strain.

Dr. Arthur Pallotta, a Board-certified orthopedic surgeon completed a Form CA-17 dated May 24, 2019 providing a date of injury of May 22, 2019 and described appellant's mechanism of injury as lifting a bundle from a mail hamper causing right elbow pain.

In a May 30, 2019 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 her completion. OWCP afforded appellant 30 days to submit the necessary evidence.

Dr. Pallotta completed a report on May 24, 2019, recounting that appellant had lifted a bundle of newspapers on May 22, 2019 and injured her right elbow and forearm. He diagnosed lateral epicondylitis of the right elbow and a right forearm strain. Dr. Pallotta opined that the incident described by appellant was the competent medical cause of the injury, that her complaints were consistent with the injury, and that her history of injury was consistent with his observations. In a form report of even date, he diagnosed a right forearm strain and found appellant totally disabled from work through June 6, 2019.

In a June 7, 2019 treatment note, Dr. Pallotta again diagnosed sprain/strain of the right elbow and repeated his opinion that the May 22, 2019 incident was the competent medical cause of the injury. He further diagnosed lateral epicondylitis of the right elbow and found that as her pain started immediately after her injury at work, this condition was related to the May 22, 2019 employment incident rather than her preexisting shoulder injury.

In a June 22, 2019 response to OWCP's development questionnaire, appellant related that on May 22, 2019 she was moving 5 to 10 pound bundles of flats from the mail hamper to her carrier case. She indicated that she felt a pulsating and throbbing pain in her right elbow, extending into her forearm. Appellant noted that she informed her supervisor and sought medical care, and that her condition prevented her from completing daily tasks. She asserted that, prior to May 22, 2019, she has never had pain in her right elbow or forearm.

By decision dated July 5, 2019, OWCP accepted that the May 22, 2019 employment incident occurred as alleged. However, it denied appellant's traumatic injury claim, finding that

the evidence of record was insufficient to establish a right elbow condition causally related to the accepted May 22, 2019 employment incident.

Appellant continued to submit evidence, including a June 28, 2019 visit note and Form CA-17 from Dr. Pallotta, reiterating his diagnoses and noting that the prognosis for recovery was uncertain. In a work status note of even date, Dr. Pallotta continued to opine that she was disabled from work.

In a July 26, 2019 work status note, Dr. Pallotta opined that appellant was totally disabled from work through August 2, 2019 and provided light-duty work restrictions.

On August 2, 2019 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review, which took place on October 22, 2019.

OWCP received additional evidence, including a May 22, 2019 report from Dr. Hourizadeh, noting that he examined appellant that day and she related being injured while lifting newspapers. Dr. Hourizadeh diagnosed a work-related injury of right elbow strain. He explained that an elbow strain occurs when you overstretch or tear the ligaments around your elbow and that ligaments are the tough tissues that connect one bone to another. Dr Hourizadeh also completed an August 16, 2019 form report.

On July 26, 2019 Dr. Pallotta diagnosed right forearm strain and lateral epicondylitis of the right elbow. He related that her lateral epicondylitis "can be explained by lifting once." He noted that it did not appear to be related to her previous shoulder injury.

In an August 23, 2019 visit note, Dr. Pallotta reiterated his prior diagnoses and indicated that appellant's condition was unrelated to her shoulder condition, and that a single episode of lifting "could lead to her forearm and elbow diagnosis."

In notes dated September 20 and October 8, 2019, Dr. Pallotta opined that her right lateral epicondylitis and forearm strain were caused by her repetitively lifting bundles of papers at work on May 22, 2019 and that the injury was not related to her previous shoulder injury.

In a November 11, 2019 note, Samantha Bravo, a physician assistant, reiterated Dr. Pallotta's findings and diagnoses.

On December 9, 2019 Dr. Pallotta opined that appellant sustained the conditions of right lateral epicondylitis and forearm strain while lifting a bundle of papers at work on May 22, 2019.

By decision dated December 19, 2019, the hearing representative affirmed OWCP's July 5, 2019 decision.[3]

On December 18, 2020 appellant, through her representative, requested reconsideration of the December 19, 2019 decision and submitted additional evidence.

[3] Following OWCP's hearing representative's December 19, 2019 decision, OWCP received medical records dated May 30, 2019 from Jonathan Simhaee regarding a male patient which are inappropriately associated with this case record.

In a November 15, 2020 report, Dr. Pallotta reviewed his previous medical records noting that appellant had related that on May 22, 2019 she was lifting a bundle of papers at work when she injured her right elbow and forearm, resulting in pain. He diagnosed a right forearm strain and lateral epicondylitis of the right elbow, and opined that the May 22, 2019 injury was causally related to the work incident and unrelated to her previous shoulder injury. Dr. Pallotta explained that the act of lifting and gripping bundles weighing 5 to 10 pounds activates the wrist extensor muscles, which originate from the lateral epicondyle. He related that whether there was a one-time or repetitive activation these movements "can lead" to micro trauma of the extensor carpi radialis brevis tendon, which "can lead" to the diagnosis of lateral epicondylitis.

By decision dated July 7, 2022, OWCP denied modification of its prior 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 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 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 fact of injury has been established. There are two components involved in establishing fact of injury. The first component is whether he or she actually experienced the employment incident at the time, 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.[8]

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.[9] The opinion of the physician must be based on a complete factual and medical background, 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

[4] *Id*.

[5] *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).

[6] *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).

[7] *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).

[8] *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).

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

the specific employment incident.[10] Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[11]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a right elbow condition causally related to the accepted May 22, 2019 employment incident.

The Form CA-16 report dated May 22, 2019 from Dr. Hourizadeh, addressed appellant's right elbow strain, but did not offer an opinion on causal relationship. Medical reports lacking an opinion regarding causal relationship are insufficient to establish a claim.[12] Thus, the Board finds that this report is insufficient to establish appellant's claim.

Drs. Hourizadeh and Pallotta completed reports dated May 22 through December 9, 2019 which diagnosed right elbow strain and lateral epicondylitis of the right elbow. The physicians described the May 22, 2019 employment incident and opined that the diagnosed conditions were due to this injury. However, neither physician offered a rationalized medical opinion explaining how the mechanism by which the accepted May 22, 2019 employment incident would have resulted in her diagnosed left elbow conditions. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how a given medical condition/disability was related to employment factors.[13]

In a separate May 22, 2019 report, Dr. Hourizadeh diagnosed right elbow strain, described the lifting incident of even date, and opined that the diagnosed condition was work related. He explained that an elbow strain occurs when you overstretch or tear the ligaments around your elbow and that ligaments are the tough tissues that connect one bone to another. However, he did not explain how lifting a bundle of newspapers, the accepted May 22, 2019 employment incident, resulted in the diagnosed condition. Dr. Hourizadeh did not offer a rationalized medical opinion explaining that the accepted May 22, 2019 employment incident would have resulted in appellant's diagnosed right elbow conditions. The Board has held that a medical opinion should offer a medically-sound explanation of how the specific employment incident physiologically caused the diagnosed condition.[14] The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how a given medical

[10] *S.S.*, Docket No. 18-1488 (issued March 11, 2019); *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[11] *T.M.*, Docket No. 22-0220 (issued July 29, 2022); *J.L.*, Docket No. 18-1804 (issued April 12, 2019).

[12] *See E.K.*, Docket 22-1130 (issued December 30, 2022); *L.K.*, Docket No. 21-1155 (issued March 23, 2022); *T.S.*, Docket No. 20-1229 (issued August 6, 2021); *J.M.*, Docket No. 19-1169 (issued February 7, 2020); *A.L.*, Docket No. 19-0285 (issued September 24, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[13] *Id.*; *see also P.B.*, Docket No. 23-0449 (issued July 28, 2023); *H.D.*, Docket No. 22-0419 (issued February 22, 2023).

[14] *T.W.*, Docket No. 20-0767 (issued January 13, 2021); *H.A.*, Docket No. 18-1466 (issued August 23, 2019).

condition was related to the employment incident.[15] For these reasons, this report is insufficient to establish appellant's claim.

In his November 15, 2020 report, Dr. Pallotta conducted a physical examination and diagnosed a right forearm strain and lateral epicondylitis of the right elbow. He opined that the diagnosed conditions were caused by the accepted May 22, 2019 employment incident involving the lifting of a bundle of papers. Dr. Pallotta explained that the act of lifting and gripping bundles weighing 5 to 10 pounds activates the wrist extensor muscles, which originate from the lateral epicondyle, and that this activation "can lead" to micro trauma of the extensor carpi radialis brevis tendon, which can lead to lateral epicondylitis. While he explained that activation "can lead" to micro trauma which could lead to lateral epicondylitis, his opinion is speculative in nature. The Board has held that medical opinions that are speculative or equivocal are of diminished probative value.[16] Therefore, this evidence is insufficient to establish the claim.

The remaining evidence consists of medical evidence signed by a physician assistant. However, the Board has held that certain healthcare providers, such as physician assistants, are not considered physician[s] as defined under FECA.[17] Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.[18]

As the medical evidence of record is insufficient to establish causal relationship between the diagnosed condition(s) and the accepted employment exposure, 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 right elbow condition causally related to the accepted May 22, 2019 employment incident.

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[15] *R.V.* Docket No. 21-0976 (issued July 18, 2023); *S.O.*, Docket No. 21-0332 (issued September 24, 2021); *G.L.*, Docket No. 18-1057 (issued April 14, 2020).

[16] *See L.B.*, Docket No. 23-0099 (issued July 26, 2023); *C.C.*, Docket No. 22-0609 (issued October 25, 2022); *H.A.*, Docket No. 18-1455 (issued August 23, 2019); *Ricky S. Storms*, 52 ECAB 349 (2001) (while the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty).

[17] 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 S.S.*, Docket No. 21-1140 (issued June 29, 2022) (physician assistants are not considered physicians under FECA and are not competent to provide medical opinions); *George H. Clark*, 56 ECAB 162 (2004) (physician assistants are not considered physicians under FECA).

[18] *Id.*

ORDER

IT IS HEREBY ORDERED THAT the July 7, 2022 decision of the Office of Workers' Compensation Programs is affirmed.[19]

Issued: December 20, 2023
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

[19] The case record contains a Form CA-16 signed by appellant's supervisor on May 22, 2019. A properly 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. The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP. 20 C.F.R. § 10.300(c); *D.L.*, Docket No. 23-0356 (issued July 27, 2022); *P.R.*, Docket No. 18-0737 (issued November 2, 2018); *N.M.*, Docket No. 17-1655 (issued January 24, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).