

² The Board notes that, following the August 5, 2021 OWCP decision, appellant submitted additional evidence to the Board. 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 established a medical condition causally related to the accepted May 6, 2021 employment incident.

FACTUAL HISTORY

On June 1, 2021 appellant, then a 52-year-old hospital housekeeping manager, filed a traumatic injury claim (Form CA-1) alleging that on May 6, 2021 he sustained a severe strain of his cervical and thoracic spine and left shoulder when he attempted to lift a table to remove a therapy band that had become entangled under the leg of the table while in the performance of duty. On the reverse side of the claim form appellant's supervisor acknowledged that appellant was injured in the performance of duty. Appellant stopped work on May 10, 2021.

In support of his claim, appellant submitted a May 17, 2021 work excuse note bearing an illegible signature advising that he would be out of work from May 31, 2021 until his next evaluation.

In a development letter dated June 22, 2021, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of evidence needed. OWCP afforded appellant 30 days to respond.

Appellant subsequently submitted a May 17, 2021 progress note from Dr. Ayesha Aziz, a Board-certified internist, relating appellant's history of acute onset left shoulder pain, as well as numbness and grip weakness in the left hand, following lifting a massage table at work on May 6, 2021. Dr. Aziz diagnosed pain in the left shoulder and recommended computerized tomography (CT) and magnetic resonance imaging (MRI) scans of appellant's cervical spine. She noted that appellant had known cervical disc concerns. In a work capacity evaluation of even date, Scott Mendzef, a nurse practitioner, indicated that appellant was temporarily totally disabled pending reevaluation on June 8, 2021.

Appellant underwent a cervical spine x-ray on May 17, 2021, which compared to a previous January 28, 2020 x-ray, demonstrated moderate-to-severe disc space narrowing at C3-4, unchanged mild retrolisthesis of C3 on C4, severe narrowing of right neural foramen at C3-4, and mild scattered spurring.

On May 21, 2021 appellant underwent a cervical spine MRI scan, which demonstrated a soft tissue lesion within the left lateral recess at the C7-T1, which could represent a large left central disc extrusion migrating caudally or a nerve sheath tumor.

In a June 4, 2021 progress note, Dr. George Koutsouras, a neurosurgery resident, related that appellant was working on May 6, 2021 when he lifted something and felt a pop in his neck and since then had left lateral neck pain with a shocking sensation into the left arm down to the medial three digits of the left hand, as well as occasional right-sided digit numbness. He noted that appellant had undergone an MRI scan, which demonstrated a left-sided C7-T1 foraminal disc herniation. Dr. Koutsouras diagnosed C7-T1 left-sided disc extrusion and recommended left-sided C7-T1 laminectomy with foraminotomy.

In a preoperation clearance report dated June 8, 2021, Dr. Aziz related that, through physical therapy, appellant had regained strength in his left hand but still had pain in his neck and shoulder, radiating into the hand. She diagnosed cervical radiculopathy and cleared appellant for his pending C7-T1 laminectomy, foraminotomy, and discectomy.

Appellant underwent a left-sided C7-T1 endoscopic laminotomy foraminotomy with discectomy on June 23, 2021. In discharge instructions of even date, Dr. Koutsouras diagnosed cervical radiculopathy and recommended no lifting more than five pounds and no bending or twisting. In neurosurgery inpatient progress notes dated June 24, 2021, he diagnosed cervical radiculopathy and noted that appellant was doing very well and reported complete resolution of his arm pain. A discharge summary of even date from Dr. Koutsouras noted that appellant was doing well postoperatively and diagnosed C8 radiculopathy.

A surgical pathology report dated June 25, 2021 indicated that a fibrocartilage sample taken during the June 23, 2021 T7-C1 intervertebral discectomy demonstrated focal neo-vasculature and degenerative change.

In a work excuse note of even date, Dr. Satyajit Marawar, a Board-certified orthopedic surgeon, related that appellant was recovering from a C7-T1 laminoforaminotomy and neuromonitoring/excision of herniated disc surgery. He related that appellant was seen on June 4, 2020 and was advised to remain off work from June 5 through July 17, 2021. A July 9, 2021 work capacity evaluation from Dr. Marawar indicated that appellant was totally disabled due to recovery from surgery. In a July 16, 2021 work capacity evaluation, Dr. Marawar diagnosed status post cervical discectomy and advised that appellant was temporarily totally disabled until August 2, 2021, when he could resume regular work.

In a July 27, 2021 addendum to Dr. Aziz's May 17, 2021 progress note, Mr. Mendzef related appellant's history of injury and treatment and noted that appellant "report[ed] that the injury took place at work [on May 6, 2021] ... and symptoms were consistent with his history."

By decision dated August 5, 2021, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish that his medical condition was causally related to the accepted May 6, 2021 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 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 period 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

³ *Supra* note 1.

⁴ *S.S.*, Docket No. 19-1815 (issued June 26, 2020); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989).

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 an employee has sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. 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 incident that allegedly occurred at the time and place, and in the manner alleged.⁷ The second component is whether the employment incident caused a personal injury.⁸

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.⁹ 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 factors identified by the employee.¹⁰

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a medical condition causally related to the accepted May 6, 2021 employment incident.

In a May 17, 2021 progress note, Dr. Aziz related appellant's history of injury and diagnosed pain in the left shoulder. A June 4, 2021 progress note, Dr. Koutsouras related appellant's history of injury and diagnosed C7-T1 left-sided disc extrusion. In a preoperation clearance report dated June 8, 2021, Dr. Aziz related appellant's history of treatment and diagnosed cervical radiculopathy. In reports dated June 23 and 24, 2021, Dr. Koutsouras diagnosed cervical radiculopathy, and in a June 24, 2021 discharge summary, he reported complete resolution of his arm pain and diagnosed C8 radiculopathy. Appellant also submitted a work excuse note dated June 24, 2021 and work capacity evaluations dated July 9 and 16, 2021 from Dr. Marawar indicating that appellant was disabled from work for the period June 5 through August 2, 2021. However, none of these reports offered an opinion on causal relationship. The Board has held that medical evidence that does not offer an opinion regarding the cause of an

⁵ *M.H.*, Docket No. 19-0930 (issued June 17, 2020); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *S.A.*, Docket No. 19-1221 (issued June 9, 2020); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁷ *R.K.*, Docket No. 19-0904 (issued April 10, 2020); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁸ *Y.D.*, Docket No. 19-1200 (issued April 6, 2020); *John J. Carlone*, 41 ECAB 354 (1989).

⁹ *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).

¹⁰ *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).

employee's condition is of no probative value on the issue of causal relationship.¹¹ For these reasons, the evidence from Drs. Aziz, Koutsouras, and Marawar is insufficient to meet appellant's burden of proof.

Appellant also submitted a May 17, 2021 work capacity evaluation and July 27, 2021 addendum signed by Mr. Mendzef, a nurse practitioner. The Board has held that medical reports signed solely by a physician assistant, nurse practitioner, or medical assistant are of no probative value as such healthcare providers are not considered physicians as defined under FECA and are, therefore, not competent to provide medical opinions.¹² Consequently, their medical findings and/or opinions will not suffice for the purpose of establishing entitlement to FECA benefits.

In support of his claim, appellant submitted a May 17, 2021 work excuse note bearing an illegible signature. The Board has held that reports that are unsigned or bear an illegible signature cannot be considered probative medical evidence as the author cannot be identified as a physician.¹³ Therefore, this report is also of no probative value and is insufficient to establish appellant's claim.

The remaining medical evidence consisted of cervical spine x-ray and MRI scans and a surgical pathology report. 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.¹⁴ For this reason, this evidence is also insufficient to meet appellant's burden of proof.

As appellant has not submitted rationalized medical evidence establishing a medical condition causally related to the accepted May 6, 2021 employment incident, the Board finds that he has not met his burden of proof to establish his 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.

¹¹ *S.J.*, Docket No. 19-0696 (issued August 23, 2019); *M.C.*, Docket No. 18-0951 (issued January 7, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹² 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); *R.L.*, Docket No. 19-0440 (issued July 8, 2019) (nurse practitioners 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).

¹³ *C.S.*, Docket No. 20-1354 (issued January 29, 2021); *D.T.*, Docket No. 20-0685 (issued October 8, 2020); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

¹⁴ *W.M.*, Docket No. 19-1853 (issued May 13, 2020); *L.F.*, Docket No. 19-1905 (issued April 10, 2020).

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a medical condition causally related to the accepted May 6, 2021 employment incident.

ORDER

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

Issued: February 28, 2023
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