

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

_____)	
H.L., Appellant)	
)	
and)	Docket No. 22-1058
)	Issued: January 18, 2023
U.S. POSTAL SERVICE, EAST ROCKAWAY)	
POST OFFICE, East Rockaway, NY, Employer)	
_____)	

Appearances:

Thomas S. Harkins, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On July 11, 2022 appellant, through counsel, filed a timely appeal from a July 6, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 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.*

ISSUE

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

FACTUAL HISTORY

On December 3, 2020 appellant, then a 32-year-old mail carrier, filed a traumatic injury claim (Form CA-1) alleging that on November 28, 2020 he slipped and fell on water on the restroom floor, injuring his head, neck, shoulders, and lower back, while in the performance of duty. On the reverse side of the claim form the employing establishment controverted the claim and noted that appellant had “hit end tour.”

In an e-mail dated November 30, 2020 and in letters dated December 7, 8, and 14, 2020, the employing establishment further controverted the claim. It noted that appellant was not in the performance of duty when the injury occurred, as he had punched out for the day before he went into the men’s room. The employing establishment also noted that he had been on light duty because of two prior serious motor vehicle collisions. A copy of appellant’s position description and clock rings was enclosed.

OWCP received a copy of appellant’s work restrictions, due to his nonwork-related injuries, dated from January 30, 2019 to November 16, 2020.

OWCP received chiropractic reports and treatment notes dated from April 29, 2019 through October 21, 2020 from Dr. Jeffrey Washburn, a chiropractor, Dr. Ashley Simela, a Board-certified orthopedic surgeon, and Dr. Kevin E. Wright, a Board-certified orthopedic surgeon. These reports and notes predated appellant’s November 28, 2020 alleged injury and indicated that appellant was injured in an April 25, 2019 motorvehicle accident. The diagnoses included cervical internal derangement; other cervical disc displacement; other cervical disc displacement at C5-C6 level; and other cervical disc displacement at C6-C7 level. Dr. Wright in his September 25, 2020 report noted that appellant had sustained an injury to his left shoulder that required surgical intervention and a cervical spine injury. He also noted that appellant was status post left shoulder arthroscopy and had work limitations because of his left shoulder and cervical spine injuries.

OWCP also received a copy of appellant’s July 2, 2020 light-duty assignment.

In a December 14, 2020 duty status report (Form CA-17), a physician with an illegible signature noted a November 28, 2020 date of injury and indicated that appellant slipped on a wet bathroom floor. The healthcare provider diagnosed neck, back, and bilateral shoulder pain, and provided work restrictions.

In a development letter dated January 7, 2021, OWCP advised appellant of the deficiencies of his claim. It requested additional medical evidence and afforded appellant 30 days to respond. OWCP explained that the medical evidence did not explain how the diagnosed conditions were related to the claimed November 28, 2020 work incident and made recommendations based on appellant’s preexisting nonwork-related conditions. It also explained that under FECA, “pain” is a symptom and not a medical diagnosis.

OWCP received hospital treatment notes and examination findings dated November 28 to 30, 2020, from Dr. Phillip D. Smith, Board-certified in general surgery and surgical critical care. Dr. Smith noted that appellant slipped on water and fell backwards, striking his head, noted results from a computerized tomography (CT) scan of appellant's head and cervical spine, x-rays of his chest, pelvis, and cervical spine, and a magnetic resonance imaging (MRI) scan of his cervical spine.

In letters dated February 4 and March 8, 2021, counsel for appellant submitted additional medical evidence in support of the claim.

Dr. Simela, in December 8, 2020 treatment notes, noted that appellant slipped and fell at work and injured his head, right shoulder, and low back. She noted a previous injury to the cervical spine and status post anterior cervical discectomy and fusion. Dr. Simela opined that appellant sustained recent trauma causing headaches, shoulder pain, and low back pain. She further opined, "[i]t is my expert medical opinion that the patient's diagnoses are related to his work-related accident suffered on 11/28/20."

In a December 8, 2020 state initial report form, Dr. Simela noted the date of injury as November 28, 2020. She diagnosed right shoulder, left shoulder, and low back pain, as well as cervicgia. Dr. Simela noted that appellant was injured in a work-related accident on November 28, 2020 and marked boxes "Yes" in response to a question as to whether the incident was the competent cause of the injury, whether appellant's complaints were consistent with the history of the injury, and whether appellant's history of injury was consistent with the objective findings.

In a December 23, 2020 report, Dr. Simela noted that appellant was status post anterior cervical discectomy and fusion, post left knee arthroscopy, and post facial surgery. She explained that, while appellant was doing well with respect to his cervical spine, he had a work injury to his right shoulder. Dr. Simela noted that appellant related that he was unable to raise his right hand above his head. She diagnosed internal derangement of the right shoulder.

A December 29, 2020 magnetic resonance imaging (MRI) scan of the left shoulder read by Dr. Ronald Wagner, Board-certified in diagnostic radiology, revealed supraspinatus and subscapularis tendons which demonstrated tendinosis/tendinopathy with diffuse intrasubstance signal abnormality distally; trace fluid within the glenohumeral joint and bursal fluid collection within the subscapular recess; hypertrophic changes of the AC joint and ventrally down sloping acromion which abuts the bursal surface of the rotator cuff; and eight-millimeter benign appearing ganglion cyst below the distal head of the clavicle.

A December 29, 2020 MRI scan of the right shoulder read by Dr. Wagner revealed supraspinatus tendon which demonstrated tendinosis/tendinopathy with heterogeneous intrasubstance signal abnormality ventrally approaching the distal insertion; fluid tracking within the long head biceps tendon sheath consistent with tenosynovitis; bursal fluid collection within the subscapular recess; and hypertrophic changes of the AC joint ventrally and laterally down sloping acromion which abuts the bursal surface of the rotator cuff.

In a January 27, 2021 state form doctor's progress report, Dr. Simela diagnosed right and left shoulder pain, cervicalgia, and low back pain. She again indicated by an affirmative checkmark that appellant's complaints were consistent with his history of injury.

By decision dated April 16, 2021, OWCP denied appellant's November 28, 2020 traumatic injury claim, finding that the medical evidence of record was insufficient to establish a diagnosed medical condition in connection with the accepted November 28, 2020 employment incident. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

By letters dated May 18 and June 3, 2021, counsel for appellant noted that, while appellant had received a copy of the decision, a copy had not been provided to his office, and requested a copy.

In a letter dated June 15, 2021, OWCP provided counsel with a copy of the decision.

On April 11, 2022 counsel for appellant requested reconsideration. He submitted arguments and additional medical evidence. Counsel argued that he was not provided with a copy of the decision and therefore, the decision was null and void. He also argued that the December 8 and 23, 2020 reports from Dr. Simela, the treating physician, were detailed and sufficient to establish causal relationship. Counsel also submitted new medical evidence.

In treatment notes dated January 5 and 27, 2021, Dr. Simela diagnosed internal derangement, bilateral shoulders, and lumbar disc disorder with radiculopathy. She also noted that an MRI scan of the brain demonstrated no acute changes.

In a March 27, 2021 treatment note, Dr. Osafradu Opam, an internist, noted appellant's history of injury on November 28, 2020, and in a motor vehicle collision in 2019. He noted that appellant's treatment following the motor vehicle collision in 2019 included surgery consisting of a left shoulder arthroscopy, a left knee arthroscopy, and a cervical discectomy. Dr. Opam further noted that appellant had normal MRI scans of the brain and both shoulders dated December 29, 2020. He diagnosed status post-cerebral concussion with loss of consciousness, post-traumatic headaches, cervical radiculopathy, history of cervical surgery/discectomy, lumbosacral radiculopathy, rule out possible herniated lumbosacral disc, post-traumatic stress reaction, history of left shoulder arthroscopy, right shoulder traumatic arthropathy, and emotional lability. Dr. Opam opined that the work incident on November 28, 2020, caused appellant's preexisting symptoms to reoccur and increase. He indicated that it was his opinion with a "reasonable degree of medical certainty, the injury of 11/28/2020 was a competent, provocative cause of the impairment and disability, and, in my opinion, there is causal relationship."

By decision dated July 6, 2022, OWCP modified the April 16, 2021 decision, accepting that appellant had submitted sufficient medical evidence to establish diagnosed medical conditions for which compensation was claimed, and that he was within the performance of duty, but affirming denial of the claim on the basis that appellant had not submitted sufficient medical evidence to establish a causal relationship between the accepted November 28, 2020 employment incident and his diagnosed conditions.

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. 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 sufficient evidence to establish that the employment incident caused a personal injury.⁷

The medical evidence required to establish a causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.⁸ 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 incident.⁹

In any case where a preexisting condition involving the same part of the body is present and the issue of causal relationship therefore involves aggravation, acceleration or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.¹⁰

³ *Supra* note 2.

⁴ *See W.L.*, Docket No. 20-1589 (issued August 26, 2021); *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).

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).

⁷ *T.J.*, Docket No. 19-0461 (issued August 11, 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 *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).

¹⁰ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); *K.G.*, Docket No. 18-1598 (issued January 7, 2020); *M.S.*, Docket No. 19-0913 (issued November 25, 2019).

ANALYSIS

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

Hospital records from Dr. Smith dated November 28 through 30, 2020 noted that appellant slipped on water and fell backwards, striking his head. Dr. Smith reviewed diagnostic studies including a CT scan, x-rays, and an MRI scan. However, he did not provide an opinion regarding causal relationship between the accepted employment incident and appellant's diagnosed conditions. The Board has held that a report is of no probative value if it does not provide an opinion on causal relationship.¹¹ As such, these reports are insufficient to establish appellant's claim.

Appellant provided several reports from Dr. Simela. In her December 8, 2020 reports, Dr. Simela opined, "[i]t is my expert medical opinion that the patient's diagnoses are related to his work-related accident suffered on 11/28/20." She diagnosed headaches, shoulder and low back pain, as well as cervicgia. Similarly, in her January 27, 2021 report, Dr. Simela also diagnosed pain in the right shoulder, pain in the left shoulder, cervicgia, and low back pain. The Board has held that pain is a symptom and not a medical diagnosis.¹²

Dr. Simela also failed to explain the causal relationship between appellant's medical conditions and the work incident. In her December 8, 2020 treatment notes, she noted that appellant slipped and fell at work and injured his head, right shoulder, and low back; however, she also noted his previous injury to the cervical spine and status post anterior cervical discectomy and fusion. Similarly, in her December 23, 2020 report, Dr. Simela noted that appellant was status post anterior cervical discectomy and fusion, post left knee arthroscopy, and post facial surgery as a result of his nonwork-related automobile accident. While she related appellant's history of the accepted employment incident, the Board has held that a medical report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how a given medical condition/period of disability has an employment-related cause.¹³

In her January 5 and 27, 2021 treatment notes, Dr. Simela diagnosed internal derangement, bilateral shoulders, and lumbar disc disorder with radiculopathy, but offered no opinion regarding the cause of appellant's diagnosed conditions. As previously noted, a report is of no probative value if it does not provide an opinion on causal relationship.¹⁴

OWCP also received a December 14, 2020 Form CA-17, by a physician with an illegible signature, noting appellant's November 28, 2020 date of injury and diagnosing neck, back and

¹¹ See *G.D.*, Docket No. 20-0966 (issued July 21, 2022); *A.H.*, Docket No. 18-1632 (issued June 1, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹² See *T.P.*, Docket No. 22-0465 (issued July 29, 2022); *R.N.*, Docket No. 19-1004 (issued October 18, 2019); *A.T.*, Docket No. 19-0410 (issued August 13, 2019); *Robert Broome*, 57 ECAB 339, 342 (2004).

¹³ See *R.H.*, Docket No. 22-0140 (issued August 12, 2022); *T.S.*, Docket No. 20-1229 (issued August 6, 2021).

¹⁴ *Supra* note 11.

shoulder pain. As previously noted, pain is not a firm diagnosis. Furthermore, the Board has previously held that a medical note, which is unsigned or contains an illegible signature, is of no probative value, as it is not established that the author is a physician.¹⁵

Appellant also provided a March 27, 2021 treatment note from Dr. Opam who indicated that, with a “reasonable degree of medical certainty, the injury of 11/28/2020 was a competent, provocative cause of the impairment and disability, and, in my opinion, there is causal relationship.” Dr. Opam noted that appellant’s treatment following a nonwork-related motor vehicle collision in 2019 included surgery consisting of a left shoulder arthroscopy, a left knee arthroscopy, and a cervical discectomy. He opined that the work incident on November 28, 2020, caused appellant’s preexisting symptoms to reoccur and increase. Dr. Opam diagnosed status post-cerebral concussion with loss of consciousness, post-traumatic headaches, cervical radiculopathy, history of cervical surgery/discectomy, lumbosacral radiculopathy, rule out possible herniated lumbosacral disc, post-traumatic stress reaction, history of left shoulder arthroscopy, right shoulder traumatic arthropathy, and emotional lability. He did not explain which diagnoses related to the November 28, 2020 work incident and which were preexisting conditions. A rationalized medical opinion is especially necessary in light of appellant’s preexisting conditions.¹⁶ He provided only a conclusory opinion on causal relationship and failed to explain the physiological process by which the November 28, 2020 work incident caused or aggravated the diagnosed conditions. Medical conclusions unsupported by rationale are of little probative value.¹⁷ As such, the report from Dr. Opam fails to establish appellant’s claim.

Appellant also provided December 29, 2020 MRI scans of the right and left shoulders read by Dr. Wagner. The Board has held that diagnostic test reports, standing alone, lack probative value on the issue of causal relationship as they do not provide an opinion as to whether the accepted employment incident caused a diagnosed condition.¹⁸ These diagnostic reports are therefore also insufficient to establish appellant’s claim.

The reports from Dr. Washburn, Dr. Simela, and Dr. Wright, are of no probative value as they predate the accepted November 28, 2020 employment incident.¹⁹ The Board has held that medical evidence which predates the date of a traumatic injury has no probative value on the issue of causal relationship of a current medical condition.²⁰ Therefore, they too are insufficient to establish appellant’s claim.

¹⁵ See *D.H.*, Docket No. 20-1410 (issued December 21, 2022); *Z.G.*, 19-0967 (issued October 21, 2019); see *R.M.*, 59 ECAB 690 (2008); *Merton J. Sills*, 39 ECAB 572, 575 (1988); *Bradford L. Sullivan*, 33 ECAB 1568 (1982).

¹⁶ *J.H.*, Docket No. 19-0838 (issued October 1, 2019); *D.M.*, Docket No. 19-0389 (issued July 16, 2019).

¹⁷ See *F.C.*, Docket No. 19-1267 (issued December 20, 2019); *T.A.*, Docket No. 18-0431 (issued November 7, 2018).

¹⁸ *A.P.*, Docket No 18-1690 (issued December 12, 2019).

¹⁹ *J.K. (nee R.)*, Docket No. 22-0945 (issued December 16, 2022); *B.P.*, Docket No. 21-0872 (issued December 8, 2021).

²⁰ *Id.*

As the medical evidence of record is insufficient to establish causal relationship between a medical condition and the accepted November 28, 2020 employment incident, appellant has not met his 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 his burden of proof to establish a medical condition causally related to the accepted November 28, 2020 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the July 6, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 18, 2023
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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