United States Department of Labor
Employees' Compensation Appeals Board

M.M., Appellant	)	
and	)	**Docket No. 23-0475**
	)	**Issued: July 27, 2023**
DEPARTMENT OF VETERANS AFFAIRS, COLMERY-O'NEIL VA MEDICAL CENTER, Topeka, KS, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On February 21, 2023 appellant filed a timely appeal from a January 31, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (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 diagnosed medical condition causally related to the accepted February 8, 2021 employment incident.

FACTUAL HISTORY

On February 8, 2021 appellant, then a 52-year-old custodial worker, filed a traumatic injury claim (Form CA-1) alleging that on that date she bruised her ribs when she slipped and fell on the left side of her upper torso while in the performance of duty.

[1] 5 U.S.C. § 8101 *et seq.*

OWCP, by development letter dated December 28, 2022, informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed and afforded her 30 days to respond.

OWCP subsequently received a December 8, 2022 progress note by Stephanie K. Haas, a registered nurse, and Julie Stanley, an advanced registered nurse practitioner, who related appellant's history of injuring her left shoulder which she thought had healed at the end of October/beginning of November 2022 and reinjuring her left shoulder on December 5, 2022 while changing sheets of a bed at work.

A December 5, 2022 left shoulder x-ray provided an impression of no acute bony findings.

A December 8, 2022 left shoulder magnetic resonance imaging (MRI) scan demonstrated a marked abnormal thinning of the distal supraspinatus and infraspinatus tendons along with elevation of the humeral head and narrowing of the subacromial space, which were findings compatible with near complete tears of the distal supraspinatus and infraspinatus tendons. There were also probable intact fibers involving the anterior aspect of the supraspinatus and posterior aspect of the infraspinatus tendons. Additionally, there was marked supraspinatus and infraspinatus muscle atrophy compatible with chronic distal tendinous tears; mild-to-moderate degenerative change and hypertrophy at the acromioclavicular joint; mild degenerative change at the glenohumeral joint; no definite labral tear; and fluid within the sub coracoid bursa that could be due to decompressed joint fluid or possibly a mild bursitis.

By decision dated January 31, 2023, OWCP accepted that the February 8, 2021 employment incident occurred, as alleged, but denied appellant's claim, finding that the medical evidence of record was insufficient to establish a diagnosed medical condition causally related to the accepted employment incident. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

LEGAL PRECEDENT

An employee seeking benefits under FECA[2] 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,[3] 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

[2] *Id*.

[3] *V.L.*, Docket No. 20-0884 (issued February 12, 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).

employment injury.[4] 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.[5]

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, 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.[6]

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.[7] 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 identified by the employee.[8]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a diagnosed medical condition causally related to the accepted February 8, 2021 employment incident.

In support of her claim, appellant submitted a December 8, 2022 progress note signed by Ms. Haas, a registered nurse, and Ms. Stanley, an advanced registered nurse practitioner. However, certain healthcare providers such as nurses and nurse practitioners are not considered

[4] *C.H.*, Docket No. 20-1212 (issued February 12, 2021); *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).

[5] *V.L.*, *supra* note 3; *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).

[6] *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).

[7] *C.H.*, *supra* note 4; *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).

[8] *V.L.*, *supra* note 3; *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).

physicians as defined under FECA.[9] Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.[10]

Appellant also submitted a December 5, 2022 x-ray and a December 8, 2022 MRI scan of her left shoulder. The Board has held, however, that diagnostic studies standing alone lack probative value on the issue of causal relationship as they do not provide an opinion on causal relationship between an employment incident and a diagnosed condition.[11]

As appellant has not submitted rationalized medical evidence from a physician to establish a firm diagnosis of a medical condition causally related to the accepted February 8, 2021 employment incident, the Board finds that she has not met her burden of proof.[12]

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 causally related to the accepted February 8, 2021 employment incident.

[9] Section 8101(2) 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) (September 2020); *N.F.*, Docket No. 21-1145 (issued January 25, 2023) (nurses are not considered physicians as defined by FECA); *B.L.*, Docket No. 22-1338 (issued January 20, 2023) (nurse practitioners are not considered physicians as defined by 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).

[10] *N.F.*, Docket No. 21-1145 (issued January 25, 2023); *R.H.*, Docket No. 21-1382 (issued March 7, 2022); *S.E.*, Docket No. 21-0666 (issued December 28, 2021).

[11] *E.K.*, Docket 22-1130 (issued December 30, 2022); *N.B.*, Docket No. 20-0794 (issued July 29, 2022); *C.F.*, Docket No. 19-1748 (issued March 27, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[12] *N.F.*, *supra* note 10.; *J.P.*, Docket No. 20-0381 (issued July 28, 2020); *R.L.*, Docket No. 20-0284 (issued June 30, 2020).

ORDER

IT IS HEREBY ORDERED THAT the January 31, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 27, 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