

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

S.S., Appellant)	
)	
and)	Docket No. 21-1384
)	Issued: June 13, 2023
U.S. POSTAL SERVICE, POST OFFICE,)	
Portland, OR, Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On September 7, 2021 appellant filed a timely appeal from a June 7, 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 to consider the merits of this case.³

¹ The Board notes that, following the June 7, 2021 decision, OWCP and the Board 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. *Id.*

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that, during the pendency of this appeal, OWCP issued an April 12, 2022 merit decision which effectively modified the June 7, 2021 decision and a January 25, 2023, merit decision which vacated the April 12, 2022 decision. As the Board and OWCP may not simultaneously exercise jurisdiction over the same issue(s) in a case on appeal, OWCP's April 12, 2022 and January 25, 2023 decisions are null and void. 20 C.F.R. §§ 501.2(c)(3), 10.626; *see e.g., M.C.*, Docket No. 18-1278 (issued March 7, 2019); *Lawrence Sherman*, 55 ECAB 359, 360 n.4 (2004); *Russell E. Lerman*, 43 ECAB 770 (1992); *Douglas E. Billings*, 41 ECAB 880 (1990).

ISSUE

The issue is whether appellant has met her burden of proof to establish a left shoulder condition causally related to the accepted January 22, 2021 employment incident.

FACTUAL HISTORY

On April 11, 2021 appellant, then a 43-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on January 22, 2021 she developed left shoulder rotator cuff syndrome when a parcel she was arranging fell on her and pulled on her shoulder while in the performance of duty. She did not stop work.

In an April 26, 2021 development letter, OWCP advised appellant of the deficiencies of her claim. It requested additional factual and medical evidence and provided a questionnaire for her completion. OWCP afforded appellant 30 days to provide the requested information.

On January 29, 2021 Laura Kent, a nurse practitioner, examined appellant, diagnosed left shoulder injury, and provided work restrictions. She underwent left shoulder x-rays of even date. On February 4, 2021 Audrey Duke, a family nurse practitioner, provided work restrictions.

On February 18, 2021 appellant underwent a magnetic resonance imaging (MRI) scan of her left shoulder joint which demonstrated supraspinatus tendon partial tear, suspected partial subscapularis tendon tear with biceps tendon subluxation into the tear site.

In February 24 and April 26, 2021 notes, Dr. Dallas Carter, a Board-certified family practitioner, diagnosed left shoulder strain and strain of the muscles and tendons of the left rotator cuff. In a separate note of even date, he provided work restrictions.

On April 20, 2021 Dr. Lucas S. Korcek, an orthopedic surgeon, noted appellant's work-related injury on January 22, 2021 when a package landed on her left arm. He reviewed the February 18, 2021 MRI scan of her left shoulder and found that it demonstrated rotator cuff tearing of the supraspinatus and subscapularis with partial tendon tearing of both tendons as well as biceps subluxation. Dr. Korcek diagnosed traumatic left rotator cuff tears after a forceful impingement-type event with biceps tendon subluxation.

By decision dated June 7, 2021, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish a left shoulder condition causally related to the accepted January 22, 2021 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ 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 FECA, that the claim was timely filed within the applicable time

⁴ *Id.*

limitation period 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 must first be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. 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 medical evidence to establish that 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 incident.¹⁰

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a left shoulder condition causally related to the accepted January 22, 2021 employment incident.

In his narrative report dated April 20, 2021, Dr. Korcek described appellant's accepted January 22, 2021 employment injury and diagnosed traumatic left rotator cuff tears after a forceful impingement-type event with biceps tendon subluxation. However, although he generally supported causal relationship, Dr. Korcek did not provide sufficient medical rationale explaining how the accepted January 22, 2021 employment incident caused or contributed to appellant's diagnosed left shoulder conditions.¹¹ He did not explain, physiologically, how appellant's specific

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 *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 *O.P.*, Docket No. 19-0445 (issued July 24, 2019); *L.H.*, Docket No. 18-1217 (issued May 3, 2019); *S.C.*, Docket No. 16-0293 (issued May 10, 2016); *A.C.*, Docket No. 08-1453 (issued November 18, 2008).

¹¹ *M.F.*, Docket No. 21-0533 (issued January 31, 2023); *G.H.*, Docket No. 21-1225 (issued January 30, 2023); *T.W.*, Docket No. 20-0767 (issued January 13, 2021); *see H.A.*, Docket No. 18-1466 (issued August 23, 2019); *L.R.*, Docket No. 16-0736 (issued September 2, 2016).

work incident caused or contributed to appellant's diagnosed 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.¹² For these reasons, the Board finds that Dr. Korcek's report is of limited probative value.¹³

In his February 24 and April 26, 2021 notes, Dr. Carter diagnosed left shoulder strain and strain of the muscles and tendons of the left rotator cuff. However, he did not offer an opinion on causal relationship. Medical evidence that fails to address causation is of no probative value on that issue.¹⁴ As such, these reports are insufficient to meet appellant's burden of proof.

The record also contains January 29, 2021 x-rays and a February 18, 2021 left shoulder MRI scan. The Board has long held, however, that diagnostic studies, standing alone, lack probative value as they do not provide an opinion regarding the cause of the diagnosed conditions.¹⁵ These diagnostic studies are, therefore, insufficient to establish appellant's claim.

OWCP also received reports signed by nurse practitioners. However, the Board has held that certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered physicians as defined under FECA.¹⁶ Consequently, their findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.¹⁷

¹² See *F.U.*, Docket No. 22-1205 (issued January 9, 2023); *S.D.*, Docket No. 22-1006 (issued December 5, 2022); *R.B.*, Docket No. 18-0162 (issued July 24, 2019); *C.M.*, Docket No. 17-1977 (issued January 29, 2019).

¹³ *V.L.*, Docket No. 20-0884 (issued February 12, 2021); *G.H.*, Docket No. 21-1225 (issued January 30, 2023); *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *A.P.*, Docket No. 19-0224 (issued July 11, 2019). *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

¹⁴ *M.F.*, *supra* note 11; *M.O.*, Docket No. 21-0940 (issued January 25, 2023); *C.G.*, Docket No. 20-0957 (issued January 27, 2021); *L.G.*, Docket No. 20-0433 (issued August 6, 2020); *S.D.*, Docket No. 20-0413 (issued July 28, 2020); *S.K.*, Docket No. 20-0102 (issued June 12, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁵ *M.F. id.*; *M.O., id.*; *L.T.*, Docket No. 20-0582 (issued November 15, 2021); *L.B.*, Docket No. 19-1907 (issued August 14, 2020); *J.K.*, Docket No. 20-0591 (issued August 12, 2020).

¹⁶ 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 *J.D.*, Docket No. 21-0164 (issued June 15, 2021) (nurse practitioners are not physicians as defined under FECA).

¹⁷ *K.D.*, Docket No. 22-0756 (issued November 29, 2022); *J.B.*, Docket No. 20-1566 (issued August 31, 2021); *D.P.*, Docket No. 19-1295 (issued March 16, 2020); *G.S.*, Docket No. 18-1696 (issued March 26, 2019); see *M.M.*, Docket No. 17-1641 (issued February 15, 2018); *K.J.*, Docket No. 16-1805 (issued February 23, 2018); *David P. Sawchuk, id.*

As the evidence of record is insufficient to establish a left shoulder condition causally related to the accepted January 22, 2021 employment incident, 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 left shoulder condition causally related to the accepted January 22, 2021 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the June 7, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 13, 2023
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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

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