

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

_____)	
L.L., Appellant)	
)	
and)	Docket No. 22-1224
)	Issued: June 9, 2023
U.S. POSTAL SERVICE, GULFPORT)	
PROCESSING AND DISTRIBUTION)	
FACILITY, Gulfport, MS, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge

JURISDICTION

On August 15, 2022 appellant filed a timely appeal from a March 28, 2022 merit decision and an August 8, 2022 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

ISSUES

The issues are: (1) whether appellant has met her burden of proof to establish a diagnosed medical condition in connection with the accepted January 31, 2022 employment incident; and

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the August 8, 2022 decision, OWCP 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) whether OWCP properly determined that appellant abandoned her request for an oral hearing before a representative of OWCP's Branch of Hearings and Review.

FACTUAL HISTORY

On February 1, 2022 appellant, then a 26-year-old postal clerk, filed a traumatic injury claim (Form CA-1) alleging that on January 31, 2022 she injured her shoulder when throwing a package into a box 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. The form indicated that appellant stopped work on January 31, 2022.

By letter dated January 31, 2022, the employing establishment advised a medical facility that it was authorized to provide emergency medical care to appellant.

Unsigned January 31, 2022 hospital discharge instructions, indicated that appellant was seen by Dr. James Rose, a Board-certified emergency medicine physician, and was diagnosed with left shoulder pain and unspecified mononeuropathy of the left upper limb. A work status note of even date with an illegible signature allowed appellant to return to work with restrictions.

Appellant submitted a witness statement from a coworker, dated January 31, 2022. The statement indicated that appellant made a pained facial expression after picking up a box and placing it into another box. Appellant also provided a statement dated January 31, 2022 wherein she reiterated the alleged history of injury and added that she felt her shoulder pop when she threw the box. OWCP also received an accident statement completed by appellant, reiterating the history of injury.

By development letter dated February 25, 2022, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond.

OWCP received additional hospital records dated January 31, 2022, wherein Dr. Rose indicated that appellant was seen in an emergency department for a possible fractured shoulder. Dr. Rose related that appellant had lifted a heavy box at work and injured her left shoulder. He indicated pain in appellant's left arm and noted diagnoses of pain in left shoulder and unspecified mononeuropathy of left upper limb. Dr. Rose released appellant to return to light-duty work. An x-ray report of appellant's left shoulder dated February 1, 2022, by Dr. Mark Wall, a Board-certified diagnostic radiologist, revealed a normal left shoulder.

An x-ray of the left shoulder dated February 2, 2022, read by Dr. Roland Mestayer, a Board-certified diagnostic radiologist, did not show any fractures or dislocations. A subsequent x-ray of the left shoulder dated February 21, 2022 and read by Dr. Rosemary Klecker, a Board-certified diagnostic radiologist, showed unremarkable radiographs of the shoulder.

On February 21, 2022 appellant was seen by Dr. Terry B. Clay, an orthopedic surgeon. Appellant related left shoulder pain after throwing a box at work and feeling a pop in her shoulder. Dr. Clay noted tenderness throughout her left shoulder. He reviewed the February 21, 2022 x-ray by Dr. Klecker of appellant's left shoulder and noted that it revealed no acute osseous abnormalities. Dr. Clay assessed possible left shoulder labral tear.

By decision dated March 28, 2022, OWCP found that the incident had occurred as alleged, but denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish a diagnosed medical condition in connection with the accepted employment incident.

On April 10, 2022 appellant requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

A magnetic resonance imaging (MRI) scan report dated April 29, 2022, signed by Dr. Klecker, showed suspicion for defect in the supraspinatus tendon, as well as superior labral anterior to posterior tear within the joint space and complete tear of the coracohumeral ligament.

In a May 9, 2022 report, Dr. Clay related that appellant's pain had not improved. He assessed left shoulder superior labrum from anterior to posterior tear and possible rotator cuff tear.

In a June 13, 2022 notice, OWCP's hearing representative informed appellant that her oral hearing was scheduled for July 28, 2022 at 3:00 p.m. Eastern Standard Time (EST). Appellant was provided with a toll-free number and passcode to access the hearing. The notice was mailed to appellant's last known address of record. Appellant failed to appear for the hearing.

By decision dated August 8, 2022, OWCP found that appellant had abandoned her request for an oral hearing, as she had received written notification of the hearing 30 days in advance, but failed to appear. It further noted that there was no indication in the record that she had contacted the Branch of Hearings and Review either prior to or after the scheduled hearing to explain his failure to appear.

LEGAL PRECEDENT -- ISSUE 1

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, 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.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 an employee 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. The first component is whether the employee actually

³ *Id.* at § 8101.

⁴ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁵ *B.H.*, Docket No. 20-0777 (issued October 21, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

experienced the employment incident that allegedly occurred. The second component is whether the employment incident caused a personal injury.⁶

The medical evidence required to establish causal relationship 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 incidents identified by the employee.⁸

ANALYSIS -- ISSUE 1

The Board finds that appellant has established a diagnosed condition in connection with the accepted January 31, 2022 employment incident.

In hospital records dated January 31, 2022, Dr. Rose diagnosed unspecified mononeuropathy of the left upper limb. The Board, therefore, finds that appellant has established a diagnosed medical condition in connection with the accepted January 31, 2022 employment incident and, therefore, established both components of fact of injury.⁹

As OWCP has not yet reviewed the medical evidence of record with regard to the issue of causal relationship, the case must therefore be remanded.¹⁰ Following any further development as deemed necessary, OWCP shall issue a *de novo* decision as to whether appellant has met his burden of proof to establish that his diagnosed medical condition is causally related to the accepted January 31, 2022 employment incident.¹¹

CONCLUSION

The Board finds that appellant has met his burden of proof to establish a diagnosed medical condition. The Board further finds, however, that the case is not in posture for decision with regard to whether his diagnosed medical condition is causally related to the accepted January 31, 2022 employment incident.

⁶ *M.H.*, Docket No. 18-1737 (issued March 13, 2019); *John J. Carlone*, 41 ECAB 354 (1989); see 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(ee), 10.5(q) (traumatic injury and occupational disease defined, respectively).

⁷ *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 *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).

⁹ *K.W.*, Docket No. 21-0389 (issued January 31, 2023); *D.F.*, Docket No. 20-0631 (issued September 23, 2020); *M.B.*, Docket No. 20-0265 (issued June 17, 2020); *K.A.*, Docket No. 18-0999 (issued October 4, 2019).

¹⁰ See *K.W.*, *id.*

¹¹ In light of the Board's disposition of Issue 1, Issue 2 is rendered moot.

ORDER

IT IS HEREBY ORDERED THAT the March 28, 2022 decision of the Office of Workers' Compensation Programs is reversed and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: June 9, 2023
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board