United States Department of Labor
Employees' Compensation Appeals Board

F.M., Appellant	)	
	)	
and	)	**Docket No. 23-0103**
	)	**Issued: June 8, 2023**
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Memphis, TN, 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
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On October 25, 2022 appellant filed a timely appeal from a September 2, 2022 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.[2]

[1] 5 U.S.C. § 8101 *et seq*.

[2] The Board notes that following the September 2, 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*.

ISSUE

The issue is whether appellant has met his burden of proof to establish a right shoulder condition causally related to the accepted October 6, 2021 employment incident.

FACTUAL HISTORY

On October 21, 2021 appellant, then a 67-year-old laborer, filed a traumatic injury claim (Form CA-1) alleging that on October 6, 2021 he injured his right shoulder while in the performance of duty.[3] He indicated that he fell in a trailer while "working cardboard," and caught himself with his right arm. 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 October 11, 2021.

A work status note dated October 12, 2021 with an illegible signature placed appellant off work until October 15, 2021.

Appellant submitted a narrative statement dated October 6, 2021 reiterating the alleged history of injury that he fell in a trailer and caught himself with his right arm.

In a letter dated October 20, 2021, the employing establishment controverted appellant's claim, contending that the alleged disability was not caused by a traumatic injury as he had numerous nonwork-related preexisting conditions. It further contended that, upon investigation, "no cause" was observed to have caused him to stumble.

A duty status report (Form CA-17) dated October 21, 2021 with an illegible signature indicated a diagnosis of right shoulder tendinopathy. It noted that appellant related landing on his right arm from a fall at work. Appellant was advised not to return to work.

By development letter dated October 25, 2021, OWCP indicated that the evidence provided was insufficient to establish that appellant actually experienced the employment incident alleged to have caused the injury. It also noted that there was no diagnosis of any medical condition, nor a physician's opinion as to how the alleged injury resulted in a medical condition. A questionnaire was provided to appellant to substantiate the factual elements of his claim. Further, appellant was requested to provide a narrative report from a physician containing a detailed description of findings and a diagnosis, as well as a medical explanation from a physician as to how the work incident caused or aggravated a medical condition. OWCP afforded him 30 days to respond. No response was received.

By decision dated December 3, 2021, OWCP found that the October 6, 2021 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

[3] Appellant has a previously denied traumatic injury claim under OWCP File No. xxxxxx869 for an alleged July 27, 2016 right shoulder injury. The claim was denied on January 13, 2017.

employment incident. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

In a January 25, 2022 Certificate of Visit form, Dr. James D. McKinney, an orthopedic surgery specialist, diagnosed right shoulder pain with rotator cuff tear and noted that appellant may need surgery.

On January 27, 2022 appellant was seen by Dr. April Xenos, a Board-certified osteopathic psychiatrist, and related recent panic attacks but a little improvement with his depression. He indicated that he was not ready to fill out the paperwork for his work injury claim, and that he would be undergoing shoulder surgery next month.

On February 17, 2022 appellant underwent right shoulder rotator cuff repair. The discharge note was signed by Ronald Pulliam, a registered nurse.

On March 3, 2022 appellant was seen at a VA Medical Center for a post-op appointment. The signature on the report form was illegible.[4]

On April 19, 2022 appellant was seen again at a VA Medical Center. On a Certificate of Visit form, Dr. McKinney indicated that appellant would be placed off work for 40 days and that he was recovering from his right shoulder surgery.

In an undated letter received on June 7, 2022, Dr. McKinney reiterated appellant's injury history of falling on his outstretched right hand and developing right shoulder pain. He related that appellant was seen on December 1, 2021 at the VA Orthopedics Clinic, and that an MRI scan report indicated a rotator cuff tear. Dr. McKinney further related that appellant underwent right shoulder surgery for rotator cuff repair with distal clavicle resection. He opined that appellant's injury and surgery were a direct result of appellant's work-related fall.

Appellant submitted three narrative statements dated March 15, May 31, and June 1, 2022. In the first statement dated March 15, 2022, he related that he sustained a shoulder injury at work on October 6, 2021. Appellant indicated that he had previously undergone surgery on February 17, 2021. He further indicated that he was referred to orthopedics but had not yet had an appointment. In the second narrative statement dated May 31, 2022, appellant related that he did not submit the requested information within the 30-day deadline after the initial denial because he was unable to obtain an appointment with an orthopedic physician. In the third narrative statement dated June 1, 2022, he further related that he was not able to respond to the previously requested information due to depression.

On June 7, 2022 appellant requested reconsideration.

On July 21, 2022 appellant was seen again at a VA Medical Center. On a Certificate of Visit form, Dr. McKinney indicated that appellant remained unable to return to work as he was

[4] The signature on the form is illegible, but it appears to be signed by a certified physician's assistant.

still undergoing therapy to increase his motion and strength. He anticipated appellant could return to work on October 1, 2022.

By decision dated September 2, 2022, OWCP modified its December 3, 2021 decision to reflect that appellant had established that the incident occurred, however, if found that he had not established causal relationship between the diagnosed condition and the accepted employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA[5] 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.[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 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 experienced the employment incident that allegedly occurred. The second component is whether the employment incident caused a personal injury. An employee may establish that an injury occurred in the performance of duty as alleged but fail to establish that the disability or specific condition for which compensation is being claimed is causally related to the injury.[8]

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.[9] A physician's opinion on whether there is a causal relationship between the diagnosed condition and the employment injury must be based on a complete factual and medical background.[10] Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's employment injury.[11]

[5] *Supra* note 1.

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

[7] *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).

[8] *M.H.*, Docket No. 18-1737 (issued March 13, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

[9] *R.P.*, Docket No. 21-1189 (issued July 29, 2022); *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

[10] *R.P., id.*; *F.A.*, Docket No. 20-1652 (issued May 21, 2021); *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[11] *Id.*

Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incident is sufficient to establish causal relationship.[12]

ANALYSIS

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

Appellant submitted an undated letter from Dr. McKinney received on June 7, 2022. Dr. McKinney related that appellant had undergone right shoulder surgery for rotator cuff repair with distal clavicle resection. He also opined that appellant's right shoulder condition and surgery were a direct result of appellant's work-related fall. While Dr. McKinney offered an opinion on the relationship between the diagnosed condition and appellant's employment injury, he did not specifically explain how the employment incident itself physiologically caused the right shoulder condition. Medical opinion evidence should offer a rationalized explanation of how the specific employment incident or work factors physiologically caused injury.[13]

Appellant also submitted Certificate of Visit forms dated January 25, April 19, and July 21, 2022 and signed by Dr. McKinney. On January 25, 2022 Dr. McKinney diagnosed right shoulder pain with rotator cuff, and noted that appellant may need surgery. Under FECA, the assessment of pain is not considered a diagnosis, as pain merely refers to a symptom of an underlying condition.[14] Further, on April 19, 2022, Dr. McKinney placed appellant off work due to recovery from the right shoulder surgery, and on July 21, 2022 Dr. McKinney continued to place appellant off work. These reports do not offer an opinion on causal relationship. The Board has held that medical evidence that does not offer an opinion on causal relationship is of no probative value.[15]

On January 25, 2022 appellant was seen by Dr. Xenos, and related recent panic attacks, but a little improvement with his depression. He indicated that he was not ready to fill out the paperwork for his work injury claim. An opinion on the causal relationship between appellant's condition and his employment injury was not provided. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how an employment activity could have caused or aggravated a medical condition.[16] This report is also irrelevant to the underlying issue of whether appellant's right shoulder condition

[12] *T.M.*, Docket No. 22-0220 (issued July 29, 2022); *S.S.*, Docket No. 18-1488 (issued March 11, 2019); *see also J.L.*, Docket No. 18-1804 (issued April 12, 2019).

[13] *O.E.*, Docket No. 20-0554 (issued October 16, 2020); *L.R.*, Docket No. 16-0736 (issued September 2, 2016).

[14] *D.A.*, Docket No. 22-0762 (issued September 30, 2022); *M.V.*, Docket No. 18-0884 (issued December 28, 2018). The Board has consistently held that pain is a symptom, not a compensable medical diagnosis. *See P.S.*, Docket No. 12-1601 (issued January 2, 2013); *C.F.*, Docket No. 08-1102 (issued October 10, 2008).

[15] *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[16] *J.D.*, Docket No. 21-1422 (issued May 24, 2022); *Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

was causally related to the accepted employment injury and is, therefore, insufficient to establish appellant's claim.

On February 17, 2022 appellant underwent right shoulder rotator cuff repair. The discharge note was signed by Ronald Pulliam, a registered nurse. On March 3, 2022 appellant was seen at a VA Medical Center for a post-op appointment. The signature on the report form was illegible, but the form appeared to have been signed by a certified physician's assistant. However, certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered "physician[s]" as defined under FECA and their reports do not constitute competent medical evidence.[17] These reports are thus of no probative value.

OWCP received a work status note dated October 12, 2021 with an illegible signature that placed appellant off work, as well as a duty status report (Form CA-17) dated October 21, 2021 with an illegible signature that indicated a diagnosis of right shoulder tendinopathy. The Board has held that medical evidence containing an illegible signature, or which is unsigned, has no probative value, as it is not established that the author is a physician.[18]

As the medical evidence of record is insufficient to establish causal relationship between the diagnosed medical conditions and the accepted October 6, 2021, employment incident, the Board finds that 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 right shoulder condition causally related to the accepted October 6, 2021, employment incident.

[17] *H.S.*, Docket No. 20-0939 (issued February 12, 2021). 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); *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); *R.L.*, Docket No. 19-0440 (issued July 8, 2019) (physical therapists are not considered physicians under FECA).

[18] *G.D.*, Docket No. 22-0555 (issued November 18, 2022); *see T.C.*, Docket No. 21-1123 (issued April 5, 2022); *Z.G.*, Docket No. 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).

ORDER

IT IS HEREBY ORDERED THAT the September 2, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 8, 2023
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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