United States Department of Labor
Employees' Compensation Appeals Board

L.T., Appellant	)	
and	)	**Docket No. 22-1208**
	)	**Issued: November 15, 2023**
DEPARTMENT OF COMMERCE, U.S. CENSUS BUREAU, Girard, OH, 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
JANICE B. ASKIN, Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On August 15, 2022 appellant filed a timely appeal from a May 25, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP).[1] Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

[1] Appellant submitted a timely request for oral argument before the Board. 20 C.F.R. § 501.5(b). Pursuant to the Board's *Rules of Procedure*, oral argument may be held in the discretion of the Board. 20 C.F.R. § 501.5(a). The Board, in exercising its discretion, denies appellant's request for oral argument because the arguments on appeal can adequately be addressed in a decision based on a review of the case record. Oral argument in this appeal would further delay issuance of a Board decision and not serve a useful purpose. As such, oral argument is denied and this decision is based on the case record as submitted to the Board.

[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 September 4, 2020 employment incident.

FACTUAL HISTORY

On September 17, 2020 appellant, then a 52-year-old temporary miscellaneous clerk, filed a traumatic injury claim (Form CA-1) alleging that on September 4, 2020 she fell down uneven steps while in the performance of duty. She alleged injuries to her left shoulder, neck, and tailbone. Appellant did not stop work.

In progress notes dated September 15, 2020, Dr. David Davis, a physician specializing in family medicine, noted that appellant fell at work and detailed physical examination findings. He related a diagnosis of left shoulder pain.

A September 24, 2020 cervical spine x-ray noted appellant's history of left shoulder and neck pain following a September 4, 2020 fall at work. The x-ray findings included reversal of normal cervical lordosis, no acute fracture dislocation, C3-7 facet arthropathy, C5-6 severe disc space narrowing, C6-7 moderate disc space narrowing, and bilateral C4 and C6 bony foraminal encroachment.

Appellant's left shoulder x-ray dated September 24, 2020 revealed a normal study. It noted that the examination did not exclude impingement or contusion of the shoulder.

A November 11, 2020 magnetic resonance imaging (MRI) scan of the left shoulder revealed mild arthrosis of the acromioclavicular joint, with no joint effusion, signs of rotator cuff tear, or tendinosis.

In a report dated December 2, 2020, Dr. Thomas Joseph, a Board-certified orthopedic surgeon, noted that appellant was seen for complaints of left shoulder pain. Appellant stated that on September 4, 2020 she fell at work. Dr. Joseph's physical examination revealed diffuse and moderate pain/tenderness with range of motion (ROM). He diagnosed left shoulder sprain/strain which he attributed to the September 4, 2020 fall at work.

Dr. Joseph, in a report dated December 14, 2020, noted that appellant fell on September 4, 2020 while working for the employing establishment and she had experienced left shoulder pain for three months. Appellant also reported neck pain since the September 4, 2020 incident. Dr. Joseph detailed her physical examination findings, including pain/tenderness with ROM, a positive Neer test, and positive active compression. He diagnosed a left shoulder sprain/strain which he attributed to the September 4, 2020 accepted employment injury. Dr. Joseph opined that, as a result of the employment injury, appellant developed frozen shoulder and that she had classic clinical adhesive capsulitis findings.

In a January 6, 2021 progress note, Renee Mong, a physician assistant, noted that physical examination of appellant's left shoulder revealed decreased ROM and pain and tenderness with ROM. She related an impression of left shoulder joint sprain.

In an office visit dated January 7, 2021, Dr. Matthew A. McElroy, a Board-certified physiatrist, noted that appellant was seen for complaints of neck and left shoulder pain which began following her fall down three stairs on September 4, 2020. He reported decreased cervical ROM, negative Spurling test, and negative Hoffman's sign. Dr. McElroy diagnosed cervical spondyloarthritis, cervicalgia, cervical disc degeneration, and cervical radiculopathy. He opined that the fall aggravated appellant's C5-6 and C6-7 cervical degeneration.

A January 27, 2021 cervical MRI scan showed cervical stenosis and C5-6 and C6-7 protruding disc with central thecal sac effacement, C6-7 posterolateral disc extension with bilateral foraminal encroachment and compression, and straightening and mild reversal of normal cervical lordosis.

In February 17 and April 21, 2021 progress reports, Ms. Mong repeated her prior findings.

In a March 26, 2021 progress report, Dr. McElroy requested that OWCP accept the conditions of cervical spondyloarthritis, cervicalgia, cervical disc degeneration, and cervical radiculopathy.

In a development letter dated April 16, 2021, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence necessary to establish her claim and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond.

On May 21, 2021 OWCP received a May 11, 2021 note, wherein Dr. Davis advised that appellant's medical condition/history was not associated in any way with the accepted September 4, 2020 employment incident.

By decision dated May 21, 2021, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish causal relationship between the diagnosed conditions and the accepted September 4, 2020 employment incident.

On June 7, 2021 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. A telephonic hearing was held on November 9, 2021.

Dr. Davis, in a letter dated December 15, 2021, noted that appellant was seen for a left shoulder injury on May 5, 2020. He explained that she was seen later on September 4, 2020 for a fall, and that a referral had been made for her to see an orthopedic specialist, and consequently an MRI scan and x-ray studies were performed. Dr. Davis advised that the May 5, 2020 evaluation was unrelated and did not aggravate the fall injury.

By decision dated January 25, 2022, OWCP's hearing representative vacated the June 21, 2021 decision, finding that further development was required. The hearing representative ordered OWCP to refer appellant, along with a statement of accepted facts and the medical record to Dr. Joseph for an addendum report on whether the September 4, 2020 employment incident caused, aggravated, accelerated, or precipitated a diagnosed condition. Upon receipt of Dr. Joseph's report, and any other development deemed necessary, OWCP was to issue a *de novo* decision.

In a letter dated February 15, 2022, OWCP requested that Dr. Joseph provide an addendum report, responding to questions concerning conditions due to the accepted September 4, 2020 employment incident including explaining the causal relationship between the diagnosed conditions and the accepted employment incident. It also requested that he address appellant's nonwork-related May 3, 2020 injury and preexisting/underlying degenerative disease.

Appellant subsequently resubmitted copies of reports from Ms. Mong, Dr. McElroy, and Dr. Joseph, which were previously of record.

By decision dated May 25, 2022, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish causal relationship between the diagnosed conditions and the accepted September 4, 2020 incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] 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. There are two components involved in establishing fact of injury. The first component is whether the employee 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.[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

[3] *Id*.

[4] *A.D.*, Docket No. 22-0319 (issued September 6, 2022); *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.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).

[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).

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.[9]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a medical condition causally related to the accepted September 4, 2020 employment incident.

In December 2 and 14, 2020 reports, Dr. Joseph diagnosed left shoulder sprain/strain which he attributed to the accepted September 4, 2020 employment incident. He noted that appellant on September 4, 2020 had left shoulder pain complaints following the incident. On January 7, 2021 Dr. McElroy diagnosed cervical spondyloarthritis, cervicalgia, cervical disc degeneration, and cervical radiculopathy. He noted that appellant developed neck and shoulder pain following her fall down three stairs on September 4, 2020. Dr. McElroy opined that the fall on September 4, 2020 aggravated her C5-6 and C6-7 cervical degeneration. In a March 26, 2021 report, he requested OWCP accept cervical spondyloarthritis, cervical disc degeneration, cervicalgia, and cervical radiculopathy as employment-related conditions. However, while Drs. Joseph and McElroy attributed appellant's diagnosed left shoulder and cervical conditions to the accepted September 4, 2020 employment incident, neither physician provided medical reasoning explaining how or why the fall resulted in those diagnosed conditions. They did not explain how, physiologically, the mechanism of the September 4, 2020 fall caused or contributed to the diagnosed conditions.[10] A well-rationalized opinion is particularly warranted when there is a history of a preexisting condition.[11] This evidence is, therefore, of limited probative value and is insufficient to establish the claim.[12]

On September 15, 2020 Dr. Davis noted appellant's history of injury and diagnosed left shoulder pain. In notes dated May 11 and December 15, 2021, he advised that her appointment on September 5, 2020 was unrelated to her fall on September 4, 2020. Dr. Davis, however, did not provide an opinion on causal relationship. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.[13] These reports, therefore, are insufficient to establish appellant's claim.

[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] *S.C.*, Docket No. 20-0492 (issued May 6, 2021); *R.S.*, Docket No. 19-1774 (issued April 3, 2020).

[11] *J.C.*, Docket No. 20-1509 (issued May 25, 2021); *J.L.*, Docket No. 20-0717 (issued October 15, 2020); *E.B.*, Docket No. 17-1497 (issued March 19, 2019).

[12] *D.M.*, Docket No. 21-1244 (issued March 25, 2022); *J.N.*, Docket No. 21-0606 (issued November 23, 2021); *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).

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

Appellant also submitted progress notes from Ms. Mong, a physician assistant. 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.[14] Consequently, appellant's medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.

The record also contains diagnostic studies. The Board has held that diagnostic studies, standing alone, lack probative value on the issue of causal relationship, as they do not provide an opinion as to whether the employment incident caused any of the diagnosed conditions.[15] Accordingly, these diagnostic studies are insufficient to establish appellant's claim.

As the medical evidence of record is insufficient to establish causal relationship between appellant's diagnosed conditions and the accepted September 4, 2020 employment incident, the Board finds that she 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 medical condition causally related to the accepted September 4, 2020 employment incident.

[14] 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); *C.S.*, Docket No. 21-0354 (issued June 27, 2023); *C.P.*, Docket No. 19-1716 (issued March 11, 2020) (physician assistants are not considered physicians as defined under FECA).

[15] *See C.S., id.*; *K.C.*, Docket No. 20-1325 (issued May 5, 2021); *C.B.*, Docket No. 20-0464 (issued July 21, 2020).

ORDER

IT IS HEREBY ORDERED THAT the May 25, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 15, 2023
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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