United States Department of Labor
Employees' Compensation Appeals Board

M.G., Appellant	)	
and	)	**Docket No. 23-0693**
	)	**Issued: November 27, 2023**
U.S. POSTAL SERVICE, BOGGS ROAD POST OFFICE, Duluth, GA, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
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 April 18, 2023 appellant, through counsel, filed a timely appeal from a March 28, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP). 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.

ISSUE

The issue is whether appellant has established a medical condition causally related to the accepted June 8, 2022 employment incident.

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id*. An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id*.; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq*.

FACTUAL HISTORY

On July 1, 2022 appellant, then a 54-year-old mail handler equipment operator, filed a traumatic injury claim (Form CA-1) alleging that on June 8, 2022 she injured her right shoulder, right elbow, right side of her lower back, and right hip when the pallet jack she was operating got stuck and the steering wheel hit her right side, thereby jerking her shoulder and elbow, and "slinging" her off the pallet jack while in the performance of duty. On the reverse side of the claim form, appellant's supervisor acknowledged that she was injured in the performance of duty but indicated that she had no knowledge of the incident and controverted continuation of pay. Appellant stopped work on June 13, 2022 and returned to work on June 14, 2022.[3]

In a July 14, 2022 development letter, 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.

The employing establishment executed an undated authorization for examination and/or treatment (Form CA-16). In Part B, attending physician's report, dated June 13, 2022, Demetrius Steele, a nurse practitioner, related appellant's history of injury. Mr. Steele diagnosed contusion to right shoulder, right elbow, and right hip and checked a box marked "Yes," indicating that the diagnosed condition was caused by the claimed employment incident. He released appellant to light-duty work. In a June 13, 2022 report and duty status report (Form CA-17), Mr. Steele related appellant's history of injury, diagnosed contusions of right shoulder, right elbow, and right hip, and released appellant to work with restrictions.

Appellant underwent x-ray scans of both shoulders and both elbows on June 13, 2022, which revealed no abnormalities.

In an August 10, 2022 report, Barbara Bond, a nurse practitioner, related appellant's history of injury, examined appellant, and diagnosed contusions of right shoulder, right elbow, and right hip. In a Form CA-17 of even date, Ms. Bond provided the same diagnoses and released appellant for work with restrictions.

By decision dated August 25, 2022, OWCP accepted that appellant had established that the June 8, 2022 employment incident occurred, as alleged. However, it denied her claim, finding that the medical evidence of record was insufficient to establish a medical diagnosis in connection with the accepted employment incident. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

Appellant, through counsel, subsequently requested an oral hearing before a representative of OWCP's Branch of Hearings and Review, which was held on January 12, 2023.

On August 23, 2022 appellant underwent a magnetic resonance imaging (MRI) scan of the right shoulder, which demonstrated a type 2 acromion with moderate degenerative changes indenting the supraspinatus tendon, partial tears of the supraspinatus tendon with bursal fluid most likely denoting acute partial tears, small partial tear of the infraspinatus tendon, and moderate degenerative changes along the acromioclavicular joint indenting the supraspinatus tendon. An

[3] Appellant erroneously indicated on her Form CA-1 that the employment incident occurred on June 13, 2022.

August 23, 2022 lumbar spine MRI scan demonstrated grade 1 anterolisthesis of L4 on L5 secondary to facet arthropathy, bilateral foraminal narrowing suggesting impingement of the exiting L4 nerve roots, mild degenerative disc disease at L3-4, and mild-to-moderate left neuroforaminal narrowing.

In a September 21, 2022 report, Dr. Brandon Dawkins, a Board-certified occupational medicine specialist, indicated that appellant was seen for follow up on right shoulder, leg, and hip pain. He diagnosed contusions of right shoulder, right elbow, and right hip.

A November 16, 2022 report from Dr. Rajiv Pandya, a Board-certified orthopedic surgeon, related that, on June 8, 2022, appellant was operating a pallet jack at work and sustained a jerking injury to her shoulder when the wheel became caught. He noted that appellant reported no prior history of injury to the right upper extremity. Dr. Pandya's examination of the right shoulder demonstrated dyskinesis with range of motion tenderness along the anterolateral corner and giveaway weakness. He also noted that the MRI scan findings were consistent with a near full-thickness tear of the rotator cuff supraspinatus and biceps tendinosis. Dr Pandya diagnosed full-thickness right rotator cuff tear, disorder of right rotator cuff, impingement syndrome of right shoulder region, biceps tendinitis, and shoulder pain, and recommended surgical intervention and physical therapy.

Appellant also submitted an undated witness statement from a coworker, which corroborated her account of the June 8, 2022 employment incident.

By decision dated March 28, 2023, OWCP's hearing representative modified the August 25, 2022 decision, finding that the evidence of record contained a medical diagnosis made in connection with the accepted June 8, 2022 employment incident. The claim remained denied, however, as the evidence of record was insufficient to establish causal relationship between appellant's diagnosed conditions and the accepted June 8, 2022 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA[4] has the burden of proof to establish the essential elements of his or her claim, including the fact 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 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]

[4] *Supra* note 2.

[5] *S.S.*, Docket No. 19-1815 (issued June 26, 2020); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989).

[6] *M.H.*, Docket No. 19-0930 (issued June 17, 2020); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[7] *S.A.*, Docket No. 19-1221 (issued June 9, 2020); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

To determine whether an employee has sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident at the time and place, and in the manner alleged.[8] The second component is whether the employment incident caused a personal injury.[9]

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.[10] 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.[11]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a medical condition causally related to the accepted June 8, 2022 employment incident.

In a November 16, 2022 report, Dr. Pandya related that appellant was operating a pallet jack at work and sustained a jerking injury to her shoulder when the wheel became caught. He diagnosed full-thickness right rotator cuff tear, disorder of right rotator cuff, impingement syndrome of right shoulder region, biceps tendinitis, and shoulder pain and recommended surgical intervention and physical therapy. Although Dr. Pandya suggested a work-related cause for appellant's medical condition, he did not provide a rationalized medical opinion relating the specific diagnosed conditions to the June 8, 2022 employment incident. 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.[12] Therefore, this report is insufficient to establish appellant's traumatic injury claim.

In a September 21, 2022 report, Dr. Dawkins diagnosed contusion of right shoulder, right elbow, and right hip. However, he did not offer 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

[8] *R.K.*, Docket No. 19-0904 (issued April 10, 2020); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[9] *Y.D.*, Docket No. 19-1200 (issued April 6, 2020); *John J. Carlone*, 41 ECAB 354 (1989).

[10] *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).

[11] *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).

[12] *Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

condition is of no probative value on the issue of causal relationship.[13] For this reason, this medical evidence is insufficient to meet appellant's burden of proof.

OWCP also received medical records from Mr. Steele and Ms. Bond, nurse practitioners. The Board has held that medical reports signed solely by a nurse practitioner are of no probative value as such healthcare providers are not considered physicians as defined under FECA and are, therefore, not competent to provide medical opinions.[14] Consequently, their medical findings and/or opinions will not suffice for the purpose of establishing entitlement to FECA benefits.

The remaining medical evidence consisted of diagnostic imaging reports dated June 13 and August 23, 2022. The Board has held, however, that diagnostic testing reports, standing alone, lack probative value on the issue of causal relationship as they do not address the relationship between the accepted employment factors and a diagnosed condition.[15] For this reason, this evidence is also insufficient to meet appellant's burden of proof.

As the medical evidence of record is insufficient to establish causal relationship between appellant's diagnosed conditions and the accepted June 8, 2022 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.[16]

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a medical condition causally related to the accepted June 8, 2022 employment incident.

[13] *S.J.*, Docket No. 19-0696 (issued August 23, 2019); *M.C.*, Docket No. 18-0951 (issued January 7, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[14] Section 8102(2) of FECA provides as follows: (2) 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. § 8102(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 S.S.*, Docket No. 21-1140 (issued June 29, 2022) (physician assistants are not considered physicians under FECA and are not competent to provide medical opinions); *P.S.*, Docket No. 17-0598 (issued June 23, 2017) (registered nurses are not considered physicians as defined under FECA).

[15] *W.M.*, Docket No. 19-1853 (issued May 13, 2020); *L.F.*, Docket No. 19-1905 (issued April 10, 2020).

[16] The case record contains a Form CA-16, a portion of which was completed on June 13, 2022. A completed Form CA-16 authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. *See* 20 C.F.R. § 10.300(c); *V.S.*, Docket No. 20-1034 (issued November 25, 2020); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).

ORDER

IT IS HEREBY ORDERED THAT the March 28, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 27, 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