United States Department of Labor
Employees' Compensation Appeals Board

L.B., Appellant	)	
and	)	**Docket No. 23-0708**
	)	**Issued: November 6, 2023**
U.S. POSTAL SERVICE, AVA POST OFFICE, Ava, MO, 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
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On April 21, 2023 appellant filed a timely appeal from an April 13, 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.

[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*.

ISSUES

The issues are: (1) whether appellant has met his burden of proof to establish a medical condition causally related to the accepted May 3, 2022 employment incident; and (2) whether appellant has met his burden of proof to establish entitlement to continuation of pay (COP).

FACTUAL HISTORY

On June 7, 2022 appellant, then a 38-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on May 3, 2022 he sustained an injury to the front of his left shoulder when picking up a parcel to load it into his vehicle while in the performance of duty. On the reverse side of the claim form, appellant's supervisor challenged the factual basis of the claim. Appellant did not stop work.

In a June 9, 2022 development letter, OWCP informed appellant of the deficiencies of his traumatic injury claim. It advised him of the type of factual and medical evidence necessary and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the necessary evidence.

By decision dated June 9, 2022, OWCP denied appellant's claim for COP, finding that he had not reported his injury on an OWCP-approved form within 30 days of the accepted May 3, 2022 employment incident. It noted that the denial of COP did not preclude him from filing a claim for disability due to the effects of his claimed injury.

Appellant subsequently responded to OWCP's development questionnaire, explaining that on May 3, 2022 he was loading his car with mail and parcels for the day when he picked up a parcel weighing approximately three pounds from the hamper with his left hand. When he moved his arm forward, he felt a sharp pain in the front of his shoulder and dropped the package back into the cart. Appellant continued to load the mail with his right arm. He initially thought he had strained a muscle, however, when the pain did not pass and worsened to the point that he had to sleep with a pillow under his arm, he reported the incident to the postmaster on June 2, 2022, and notified the postmaster that he needed medical attention on June 6, 2022.

A June 7, 2022 report signed by Dr. Kenneth Dugan, a Board-certified family physician, related appellant's history of shoulder pain since picking up a heavy package at work in May that caused his shoulder to pop. Dr. Dugan's examination of the left shoulder demonstrated decreased strength, limited range of motion (ROM) with external rotation and abduction, and pain over acromion process. He diagnosed acute pain of left shoulder, decreased ROM of left shoulder, and weakness of shoulder. A June 7, 2022 work excuse note bearing the illegible signature of a nurse practitioner held appellant off work until June 21, 2022.

Appellant underwent a left shoulder magnetic resonance imaging (MRI) scan on June 16, 2022, which revealed a focal area of intense reactive edema at the greater tuberosity compatible with contusion, insertional supraspinatus and infraspinatus tendinitis, minimal glenohumeral effusion, and mild acromioclavicular (AC) joint arthropathy.

In a June 21, 2022 report, Dr. Robert Hockman, a Board-certified family physician, diagnosed left shoulder tendinitis. In a work excuse note of even date, Rebecca McBride, a nurse practitioner, held appellant off work until June 27, 2022.

On June 30, 2022 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

By decision dated July 12, 2022, OWCP accepted that the May 3, 2022 employment incident occurred, as alleged, but denied appellant's claim, finding that he had not submitted medical evidence containing a medical diagnosis by a physician in connection with the accepted May 3, 2022 employment incident. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On July 19, 2022 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. The hearing regarding the June 9 and July 12, 2022 decisions was held on November 4, 2022.

By decision dated December 21, 2022, OWCP's hearing representative affirmed the June 9, 2022 decision. The hearing representative modified the July 12, 2022 decision, finding that the evidence of record contained a medical diagnosis. The traumatic injury claim remained denied, however, as the evidence of record was insufficient to establish causal relationship between appellant's diagnosed conditions and the accepted May 3, 2022 employment incident.

On April 7, 2023 appellant, through counsel, requested reconsideration. In support of his request, he submitted a March 2, 2023 narrative report from Dr. Dugan explaining that tendinitis is inflammation of the tendons, which is caused by overuse or strain on a joint through activities such as reaching, stretching, or lifting. He opined that appellant's left shoulder tendinitis "could very likely have been caused when he reached for and lifted the package." Dr. Dugan further noted that his motions of stretching his left arm forward to reach for and then lift the package "could have caused friction in the tendon sheath resulting in inflammation."

By decision dated April 13, 2023, OWCP denied modification of the December 21, 2022 decision.

LEGAL PRECEDENT -- ISSUE 1

A claimant 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

[3] *Id*.

[4] *F.H.*, Docket No.18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued December 13, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

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 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 that allegedly occurred at the time and place, and in the manner alleged.[7] The second component is whether the employment incident caused a personal injury.[8]

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.[9] The opinion of the physician must be based upon a complete factual and medical background, 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 the specific employment factors.[10]

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met his burden of proof to establish a medical condition causally related to the accepted May 3, 2022 employment incident.

In a June 7, 2022 report, Dr. Dugan related appellant's history of shoulder pain since picking up a heavy package at work in May that caused his shoulder to pop. He diagnosed acute pain of left shoulder, decreased ROM of left shoulder, and weakness of shoulder. Although Dr. Dugan suggested a work-related cause for appellant's medical conditions, he did not provide a rationalized medical opinion relating a specific diagnosed condition to the May 3, 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.[11] Therefore, this report is insufficient to establish appellant's traumatic injury claim.

In a June 21, 2022 report, Dr. Hockman diagnosed left shoulder tendinitis. However, he did not offer an opinion on causal relationship. The Board has held that medical evidence that

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

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

[9] *I.J.*, Docket No. 19-1343 (issued February 26, 2020); *T.H.*, 59 ECAB 388 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

[10] *D.C.*, Docket No. 19-1093 (issued June 25, 2020); *see L.B.*, Docket No. 18-0533 (issued August 27, 2018).

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

does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.[12] For this reason, this medical evidence is insufficient to meet appellant's burden of proof.

In a March 2, 2023 narrative report, Dr. Dugan opined that appellant's left shoulder tendinitis "could very likely have been caused when he reached for and lifted the package." He further noted that his motions of stretching his left arm forward to reach for and then lift the package "could have caused friction in the tendon sheath resulting in inflammation." The Board finds that Dr. Dugan's opinion that appellant's diagnosed condition "could very likely have been caused" by the accepted factors of his federal employment is speculative in nature.[13] The Board has held that medical opinions that are speculative or equivocal in character are of diminished probative value.[14] Accordingly, Dr. Dugan's opinion is insufficient to establish appellant's claim.

In support of his claim, appellant submitted records from nurse practitioners. However, certain healthcare providers such as nurse practitioners[15] are not considered "physician[s]" as defined under FECA.[16] Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.[17]

The remaining medical evidence consisted of an MRI scan report dated June 16, 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.[18] For this reason, this evidence is also insufficient to meet appellant's burden of proof.

[12] *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).

[13] *See P.D.*, Docket No. 18-1461 (issued July 2, 2019); *E.B.*, Docket No. 18-1060 (issued November 1, 2018); *Leonard J. O Keefe*, 14 ECAB 42 (1962).

[14] *D.B.*, Docket No. 18-1359 (issued May 14, 2019); *Ricky S. Storms*, 52 ECAB 349 (2001).

[15] *S.J.*, Docket No. 17-0783, n.2 (issued April 9, 2018) (nurse practitioners are not considered physicians under FECA).

[16] 5 U.S.C. § 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. 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); *George H. Clark*, 56 ECAB 162 (2004) (physician assistants are not considered physicians under FECA).

[17] *Id*.

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

As the medical evidence of record is insufficient to establish a medical condition causally related to the accepted May 3, 2022 employment incident, the Board finds that he 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.

LEGAL PRECEDENT -- ISSUE 2

Section 8118(a) of FECA authorizes COP, not to exceed 45 days, to an employee who has filed a claim for a period of wage loss due to a traumatic injury with his or her immediate superior on a form approved by the Secretary of Labor within the time specified in section 8122(a)(2) of this title.[19] This latter section provides that written notice of injury shall be given within 30 days.[20] The context of section 8122 makes clear that this means within 30 days of the injury.[21]

OWCP's regulations provide, in pertinent part, that to be eligible for COP, an employee must: (1) have a traumatic injury which is job related and the cause of the disability and/or the cause of lost time due to the need for medical examination and treatment; (2) file Form CA-1 within 30 days of the date of the injury; and (3) begin losing time from work due to the traumatic injury within 45 days of the injury.[22]

ANALYSIS -- ISSUE 2

The Board finds that appellant has not met his burden of proof to establish entitlement to COP.

The record reflects that appellant filed his Form CA-1 on June 7, 2022. By decisions dated June 9, 2022, and affirmed December 21, 2022 and April 13, 2023, OWCP denied his claim for COP, as his claim was not filed within 30 days of the claimed employment injury.

The 30th day following May 3, 2022 was June 2, 2022. Because appellant filed his Form CA-1 on June 7, 2022, the Board finds that it was not filed within 30 days of the claimed May 3, 2022 employment injury, as specified in sections 8118(a) and 8122(a)(2) of FECA.[23] As such, appellant has not met his burden of proof to establish entitlement to COP.

[19] *Supra* note 2 at § 8118(a).

[20] *Id.* at § 8122(a)(2).

[21] *E.M.*, Docket No. 20-0837 (issued January 27, 2021); *J.S.*, Docket No. 18-1086 (issued January 17, 2019); *Robert M. Kimzey*, 40 ECAB 762-64 (1989); *Myra Lenburg*, 36 ECAB 487, 489 (1985).

[22] 20 C.F.R. § 10.205(a)(1-3); *see also T.S.*, Docket No. 19-1228 (issued December 9, 2019); *J.M.*, Docket No. 09-1563 (issued February 26, 2010); *Dodge Osborne*, 44 ECAB 849 (1993); *William E. Ostertag*, 33 ECAB 1925 (1982).

[23] *Supra* notes 11 and 12.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a medical condition causally related to the accepted May 3, 2022 employment incident. The Board further finds that he has not met his burden of proof to establish entitlement to COP.

ORDER

IT IS HEREBY ORDERED THAT the April 13, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 6, 2023
Washington, DC

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

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

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