United States Department of Labor
Employees' Compensation Appeals Board

A.T., Appellant	)	
and	)	**Docket No. 23-0512**
	)	**Issued: October 17, 2023**
U.S. POSTAL SERVICE, PHILADELPHIA PROCESSING & DISTRIBUTION CENTER, Philadelphia, PA, Employer	)	

Appearances:
Michael D. Overman, Esq., for the appellant[1]
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 March 1, 2023 appellant, through counsel, filed a timely appeal from a September 7, 2022 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.*

ISSUE

The issue is whether appellant has met her burden of proof to establish a left shoulder condition causally related to the accepted September 10, 2020 employment incident.

FACTUAL HISTORY

On November 18, 2020 appellant, then a 61-year-old postal distribution clerk, filed a traumatic injury claim (Form CA-1) alleging that on September 10, 2020 she sustained a left shoulder injury when lifting mail trays while in the performance of duty. She stopped work on November 6, 2020.

In a development letter dated November 20, 2020, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence required, and afforded her 30 days to submit the requested evidence.

In support of her claim, appellant submitted an October 5, 2020 note from Dr. David L. Glaser, a Board-certified orthopedist, who treated her for left shoulder pain over the lateral aspect of the arm. She reported difficulty in reaching, lifting, pulling, and overhead activities. Findings on physical examination revealed pain through the impingement zones, positive Jobe's maneuver, and pain with abdominal compression maneuver. Dr. Glaser noted that x-rays of the left shoulder revealed a large enthesophyte with tuberosity changes consistent with a rotator cuff tear. He diagnosed rotator cuff disease of the left shoulder and recommended physical therapy. In a return to work note of even date, Dr. Glaser advised that appellant was totally disabled from work.

An October 19, 2020 magnetic resonance imaging (MRI) scan of the left shoulder revealed partial-thickness undersurface tearing of the supraspinatus tendon extending to the junction with the anterior infraspinatus tendon with delaminating component and tendinosis, high grade near full-thickness to full-thickness tearing of the superior subscapularis tendon, severe proximal long head biceps tendinosis with medial subluxation into the substance of the subscapularis, subacromial spur, mild acromioclavicular (AC) osteoarthritis, and glenohumeral degenerative changes.

On November 2, 2020 Dr. Glaser noted that appellant was totally disabled from work. On November 17, 2020 he performed arthroscopic left shoulder rotator cuff repair, arthroscopic biceps tenodesis, and arthroscopic acromioplasty, and diagnosed left shoulder complete tendon tear with impingement, glenohumeral joint arthritis, and biceps tenosynovitis with tearing. The procedure was not authorized by OWCP.

In a statement dated November 3, 2020, appellant indicated that on September 10, 2020 she volunteered to clear a line of standard mail because her unit was short staffed, and asserted that she was required to lift more trays than usual on that date. She noted that she filled three bulk mail containers and felt a pulling sensation in her left shoulder. Appellant felt discomfort that evening and sought medical treatment.

In a letter dated December 4, 2020, Mathew Maust, a physician assistant, opined that appellant's shoulder injury was work related.

Appellant provided a response to the development letter on December 15, 2020 in which she noted that after the September 10, 2020 injury she experienced a pulling sensation in her left shoulder. She advised that her pain subsided after treatment with oral analgesics, but it retumed a couple of days later. Appellant reported a history of left shoulder symptoms for one year.

By decision dated December 30, 2020, OWCP denied appellant's traumatic injury claim, finding that the medical evidence submitted was insufficient to establish causal relationship between her diagnosed conditions and the accepted September 10, 2020 employment incident. It concluded, therefore, that the requirements had not been met to establish an injury or condition due to the accepted employment factors.

On January 14, 2021 appellant requested reconsideration.

OWCP received additional evidence. In a January 11, 2021 report, Dr. Glaser opined within a reasonable degree of medical certainty that appellant's "left rotator cuff tear was either caused by or significantly aggravated by [appellant's] work activities" and that the provided treatment was reasonable and necessary. In a letter dated February 22, 2021, Mr. Maust noted that appellant was under the care of Dr. Glaser and could not return to work until after her next appointment in six weeks.

By decision dated March 5, 2021, OWCP denied modification of the December 30, 2020 decision.

OWCP received additional evidence. An x-ray of the left shoulder dated October 5, 2020 revealed mild degenerative changes of the AC joint with subacromial spurring.

In a letter dated April 5, 2021, Mr. Maust noted that appellant could not return to work until after her next appointment in six weeks.

Dr. Glaser treated appellant on September 14, 2021 and diagnosed status-post left rotator cuff repair and partial nontraumatic tear of the right rotator cuff. In a narrative report dated September 14, 2021, he noted that her history was significant for right shoulder pain that began in 2002 and required right rotator cuff repair in 2009. Appellant presented in October 2020 with left shoulder pain and explained that she continued to have right shoulder pain, which resulted in increasing use of her left shoulder. An MRI scan of the left shoulder revealed a subluxed long head of the biceps tendon, degenerative and torn subscapularis, and a partial tear of the supraspinatus. On November 17, 2020 appellant underwent left shoulder surgery. Dr. Glaser opined within a reasonable degree of medical certainty that appellant's left shoulder rotator cuff abnormalities and the need for treatment were directly related to her work at the employing establishment. He indicated that, if it were not for her work as a mail handler, she would not have required treatment for her bilateral shoulders. Dr. Glaser opined that the right shoulder rotator cuff deficiency led to increased use of appellant's left shoulder to complete her work tasks. He indicated that her job required performing activities that involved reaching and lifting with the left shoulder, which led to the development of symptoms related to her shoulder. Dr. Glaser explained that the rotator cuff was exposed to increased stress when the arm was placed away from the body such as required for a mail handler.

On March 7, 2022 appellant, through counsel, requested reconsideration.

Dr. Glaser continued to treat appellant through May 16, 2022 for left shoulder pain. He diagnosed rotator cuff tear of the left shoulder status postsurgery and continued work restrictions. Dr. Glaser noted without elaboration, "[m]y opinion is [sic] stated on the previous report remain [sic] unchanged."

By decision dated September 7, 2022, OWCP denied modification of the March 5, 2021 decision.

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. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged. Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.[7]

The medical evidence required to establish a causal relationship 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 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]

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[3] *Id*.

[4] *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.J.*, Docket No. 19-0461 (issued August 11, 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).

[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).

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a left shoulder condition causally related to the accepted September 10, 2020 employment incident.

Appellant submitted an October 5, 2020 report from Dr. Glaser who diagnosed rotator cuff disease of the left shoulder and took her off work. In a return to work note of even date, Dr. Glaser advised that she was totally disabled from work. Similarly, on November 2, 2020 he indicated that appellant could not return to work until further notice. On November 17, 2020 Dr. Glaser performed arthroscopic left shoulder rotator cuff repair and diagnosed left shoulder complete tendon tear with impingement, glenohumeral joint arthritis, and biceps tenosynovitis with tearing. He treated appellant on September 14, 2021 and diagnosed status-post left rotator cuff repair and partial nontraumatic tear of the right rotator cuff. In a May 16, 2022 report, Dr. Glaser diagnosed rotator cuff tear of the left shoulder status postsurgery and continued work restrictions. He noted without elaboration, "[m]y opinion is [sic] stated on the previous report remain [sic] unchanged." However, these reports failed to provide an opinion regarding the cause of appellant's left shoulder condition.[10] 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.[11] These reports are thus insufficient to establish causal relationship.

On January 11, 2021 Dr. Glaser opined within a reasonable degree of medical certainty that appellant's left rotator cuff tear was either caused by or significantly aggravated by her work activities. In a narrative report dated September 14, 2021, he opined within a reasonable degree of medical certainty that her left shoulder rotator cuff abnormalities and the need for treatment were directly related to her work at the employing establishment. Dr. Glaser maintained that if it were not for appellant's work as a mail handler she would not have required treatment for her bilateral shoulders. He indicated that appellant's job required performing activities that involved reaching and lifting with the left shoulder, which led to the development of shoulder symptoms. While Dr. Glaser indicated that her left shoulder injury was work related, he failed to provide adequate medical rationale explaining the basis of his opinion. Without explaining, physiologically, how the specific employment incident or employment factors caused or aggravated the diagnosed condition, his opinions on causal relationship are of limited probative value and insufficient to establish appellant's claim.[12]

Appellant submitted reports from a physician assistant. However, certain healthcare providers such as physician assistants[13] are not considered "physician[s]" as defined under

[10] *L.D.*, Docket No. 18-1468 (issued February 11, 2019).

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

[12] *G.L.*, Docket No. 18-1057 (issued April 14, 2020); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, *supra* note 4.

[13] *See S.E.*, Docket No. 08-2214 (issued May 6, 2009) (reports of a physician assistant have no probative value as medical evidence).

FECA.[14] Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.[15]

Appellant also submitted an MRI scan and x-rays. 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.[16] This evidence is, therefore, insufficient to establish appellant's claim.

As the medical evidence of record is insufficient to establish a medical condition causally related to the accepted September 10, 2020 employment incident, the Board finds that appellant 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 left shoulder condition causally related to the accepted September 10, 2020 employment incident.

[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); *George H. Clark*, 56 ECAB 162 (2004) (physician assistants are not considered physicians under FECA).

[15] *Id*.

[16] *C.B.*, Docket No. 20-0464 (issued July 21, 2020).

ORDER

IT IS HEREBY ORDERED THAT the September 7, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 17, 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