

**United States Department of Labor
Employees' Compensation Appeals Board**

C.D., Appellant)	
)	
and)	Docket No. 23-0645
)	Issued: October 25, 2023
U.S. POSTAL SERVICE, DULUTH POST)	
OFFICE, Duluth, GA, 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 March 29, 2023 appellant filed a timely appeal from a February 27, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

ISSUE

The issue is whether appellant has met her burden of proof to establish a medical condition causally related to the accepted April 9, 2022 employment incident.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the February 27, 2023 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.*

FACTUAL HISTORY

On April 25, 2022 appellant, then a 48-year-old rural carrier associate, filed a traumatic injury claim (Form CA-1) alleging that on April 9, 2022 she injured her right knee, shoulders, and left wrist, when she tripped over a raised rock and fell while in the performance of duty. She stopped work on April 9, 2022.

In a narrative statement dated April 18, 2022, appellant reiterated a history of falling on April 9, 2022 while on her mail route.

Appellant submitted an undated work status note from Christi Freeman, a certified nurse practitioner, which indicated that she could return to work with restrictions.³

In a development letter dated April 28, 2022, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of medical evidence needed, and afforded her 30 days to submit the necessary evidence.

OWCP subsequently received an April 5, 2022 report from Ms. Freeman, who related that, over the weekend, appellant experienced left wrist and bilateral shoulder pain after tripping on a loose stone in a walkway and falling, while delivering a package with subsequent worsening pain. Ms. Freeman reported her findings on physical examination and reviewed diagnostic test results. She assessed: (1) left wrist pain; (2) bilateral shoulder joint pain; (3) left wrist sprain; and (4) right closed fracture proximal humerus, greater tuberosity.

On May 5, 2022 appellant was seen by Dr. Thad Riddle, a Board-certified orthopedic surgeon, for a follow-up evaluation of her right shoulder and left wrist. Dr. Riddle related that appellant's left wrist had improved, but she had some pain and weakness in the right shoulder. He discussed his findings on physical examination and reviewed diagnostic test results. Dr. Riddle assessed right closed fracture proximal humerus, greater tuberosity. In a May 5, 2022 work status note, he advised that appellant could return to work with restrictions.

By decision dated June 9, 2022, OWCP accepted that the April 9, 2022 employment incident occurred as alleged, and that a medical condition was diagnosed. However, it denied appellant's claim, finding that the medical evidence of record was insufficient to establish causal relationship between her diagnosed condition and the accepted April 9, 2022 employment incident.

On June 15, 2022 appellant requested review of the written record by a representative of OWCP's Branch of Hearings and Review.

In a magnetic resonance imaging (MRI) scan report of the right shoulder dated June 11, 2022 from Dr. James E. Robertson, a Board-certified diagnostic radiologist, provided impressions of complete supraspinatus tear with mild retraction, but no fatty atrophy and tendinosis of the infraspinatus.

³ Appellant returned to full-time modified-duty work with restrictions on April 29, 2022.

In a report dated June 11, 2022, Tammy Garmany⁴ provided a primary diagnosis of right shoulder pain, unspecified chronicity.

In a June 21, 2022 report, Dr. Riddle again noted a date of injury of April 2, 2022. He provided his findings on physical examination and reviewed diagnostic test results. Dr. Riddle diagnosed right rotator cuff tear and left shoulder joint pain. In a June 21, 2022 work status report, he advised that appellant could return to work with the same restrictions.

Dr. David Matthews, a Board-certified diagnostic radiologist, in a July 1, 2022 left shoulder MRI scan, provided impressions of high-grade partial thickness bursal surface or full-thickness tear at the supraspinatus footprint without significant retraction or muscle atrophy and severe supraspinatus tendinosis; subpleural subdeltoid bursal effusion; mild subscapularis and long head biceps tendinosis; and ecstatic vessel or a lobulated cyst overlying the supraspinatus and infraspinatus muscles.

On July 14, 2022 the employing establishment issued an authorization for examination and/or treatment (Form CA-16) to Rome Orthopedic Center.

On July 18, 2022 appellant was seen by Dr. Stephen L. Brown, a Board-certified orthopedic surgeon. Dr. Brown related that she fell on her right shoulder while on her mail route. Appellant reported worse pain in the right shoulder versus the left shoulder. Dr. Brown discussed his findings on physical examination and reviewed diagnostic test results. He assessed sprain of right rotator cuff capsule, initial encounter; right shoulder impingement; right and left shoulder pain; and right rotator cuff tear.

In a work status note dated July 18, 2022, Kenneth B. Bingham, a certified physician assistant, diagnosed bilateral shoulder rotator cuff tears and shoulder impingement. He held appellant off work as of July 18, 2022 until her next appointment. In a July 26, 2022 attending physician's report (Form CA-20), Part B of an authorization for examination and/or treatment (Form CA-16), a certified physician assistant with an illegible signature diagnosed bilateral shoulder rotator cuff tear. The healthcare provider checked a box marked "Yes" indicating that the diagnosed condition was work related.

By decision dated November 16, 2022, OWCP's hearing representative affirmed the June 9, 2022 decision, finding that the medical evidence of record was insufficient to establish a medical condition causally related to the April 9, 2022 employment incident.

On December 9, 2022 appellant requested reconsideration. In support of her request, she submitted a narrative statement reiterating her injury history and medical treatment.

Thereafter, OWCP received reports dated January 18 and February 15, 2023 and a work status note dated February 15, 2023 from Dr. Brown. Dr. Brown reiterated his prior assessments of right rotator cuff tear and sprain of right rotator cuff capsule. He also provided assessments of

⁴ The Board notes that the professional qualifications of Ms. Garmany are not found in the case record.

left shoulder impingement and left shoulder rotator cuff tear arthropathy. In the February 15, 2023 work status note, Dr. Brown advised that appellant could return to work with restrictions.

By decision dated February 27, 2023, OWCP denied modification of the November 16, 2022 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁵ 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 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 and 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.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 Neither the mere fact that a disease or condition manifests itself during a period of employment,

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 *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).

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.*

nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.¹²

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a medical condition causally related to the accepted April 9, 2022 employment incident.

Appellant submitted reports and work status notes dated May 5 and June 21, 2022 by Dr. Riddle. He provided examination findings and reviewed diagnostic test results. Dr. Riddle diagnosed right closed fracture proximal humerus, greater tuberosity; right rotator cuff tear; and left shoulder joint pain. He advised that appellant could return to work with restrictions. Dr. Riddle did not, however, provide an opinion as to whether the diagnosed conditions were causally related to the accepted April 9, 2022 employment incident. 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 Therefore, this evidence is insufficient to establish appellant's claim.

In reports and work status notes dated July 18, 2022 and January 18 and February 15, 2023, Dr. Brown noted a date of injury as April 2, 2022. He diagnosed sprain of right rotator cuff capsule, initial encounter; right and left shoulder impingement; right and left shoulder pain; right rotator cuff tear; left shoulder impingement; and left shoulder rotator cuff tear arthropathy. In the February 15, 2023 work status note, Dr. Brown advised that appellant could return to work with restrictions. However, he similarly did not offer an opinion on causal relationship.¹⁴ As such, this evidence is insufficient to establish appellant's claim.

The MRI scan reports of Dr. Matthews and Dr. Robertson addressed appellant's bilateral shoulder conditions. The Board has held 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 Thus, these diagnostic studies are insufficient to establish appellant's claim.

Additionally, appellant submitted a June 11, 2022 report from Ms. Garmany, and an unsigned July 1, 2022 report. The Board has held that a medical report may not be considered probative medical evidence if there is no indication that the person completing the report qualifies

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 *See C.S.*, Docket No. 21-0354 (issued June 27, 2023); *R.C.*, Docket No. 19-0376 (issued July 15, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁴ *Id.*

¹⁵ *R.L.*, Docket No. 23-0098 (issued June 20, 2023); *A.O.*, Docket No. 21-0968 (issued March 18, 2022); *see M.S.*, Docket No. 19-0587 (issued July 22, 2019).

as a physician under FECA.¹⁶ Therefore, these reports are insufficient to establish appellant's claim.

The remaining evidence consists of reports from a certified nurse practitioner and certified physician assistants. The Board has held that certain healthcare providers such as nurse practitioners and physician assistants are not considered physicians as defined under FECA.¹⁷ This evidence is, therefore, insufficient to establish appellant's claim.

As the medical evidence of record is insufficient to establish causal relationship between her diagnosed medical conditions and the accepted April 9, 2022 employment incident, the Board finds that she has not met her burden of proof.¹⁸

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 April 9, 2022 employment incident.

¹⁶ *A.D.*, Docket No. 23-0148 (issued May 22, 2023); *A.D.*, Docket No. 22-1264 (issued May 15, 2023); *A.D.*, Docket No. 20-0179 (issued April 8, 2021); *C.S.*, Docket No. 19-1377 (issued February 26, 2020); *R.M.*, 59 ECAB 690 (2008).

¹⁷ 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); *see also C.S.*, *supra* note 14 (nurse practitioners are not considered physicians as defined under FECA); *A.F.*, Docket No. 22-1135 (issued January 5, 2023) (physician assistants are not considered physicians as defined under FECA).

¹⁸ The Board notes that the employing establishment issued a Form CA-16, dated July 14, 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 February 27, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 25, 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