

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

J.S., Appellant)	
)	
and)	Docket No. 23-0930
)	Issued: January 2, 2024
U.S. POSTAL SERVICE, PORTLAND POST)	
OFFICE, Portland, ME, Employer)	
)	

Appearances:
Appellant, pro se.
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On March 20, 2023¹ appellant filed a timely appeal from a September 28, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.³

¹ Under the Board's *Rules of Procedure*, an appeal must be filed within 180 days from the date of the last OWCP decision. An appeal is considered filed upon receipt by the Clerk of the Appellate Boards. See 20 C.F.R. § 501.3(e)(f). One hundred and eighty days from September 28, 2022, the date of OWCP's decision, was May 27, 2023. Since using March 29, 2023, the date the appeal was received by the Clerk of the Appellate Boards, would result in the loss of appeal rights, the date of the postmark is considered the date of filing. The date of the U.S. Postal Service postmark is March 20, 2023, which renders the appeal timely filed. See 20 C.F.R. § 501.3(f)(1).

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that, following the September 28, 2022 decision, OWCP received additional evidence. 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.*

ISSUE

The issue is whether appellant has met his burden of proof to establish a right upper extremity condition causally related to the accepted February 7, 2022 employment incident.

FACTUAL HISTORY

On February 12, 2022 appellant, then a 60-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on February 7, 2022 he injured his right shoulder and arm when he bent over to lift a tub of mail and experienced a popping sensation in his arm and shoulder while in the performance of duty.⁴ He stopped work on that date.

In support of his claim, appellant submitted a February 8, 2022 statement relating that he was casing mail and turned to pick up a quarter-full tub of flats when he felt his right arm and shoulder pop. He immediately reported the injury to his supervisor and continued to deliver approximately 75 packages and three loops of mail, until the pain increased to the point that he could no longer work.

OWCP received an unsigned and undated authorization for examination and/or treatment (Form CA-16) providing a date of injury of February 7, 2022, and describing a right shoulder injury while lifting at work. In Part B of the Form CA-16, attending physician's report, dated February 9, 2022, Dr. Anna Schmid, a Board-certified emergency medicine physician, related that appellant was injured on February 7, 2022 when he felt a pop while lifting a tub of flats. She diagnosed a right bicep and rotator cuff tear/partial tear and checked a box marked "Yes" to indicate that the condition was caused or aggravated by the employment activity described.

In a February 9, 2022 visit note, prescription, and duty status report (Form CA-17), Dr. Schmid diagnosed a right shoulder injury and held appellant off work until February 16, 2022.

In a February 15, 2022 visit note and reports dated February 15 and March 3, 2022, Dr. Sarah Shubert, a Board-certified orthopedic surgeon, diagnosed a right shoulder rotator cuff and biceps tear and a complete rotator cuff tear or rupture of the right shoulder.

OWCP also received February 18 and 21, 2022 magnetic resonance imaging (MRI) scan reports of appellant's right shoulder.

In a March 3, 2022 Form CA-17, Dr. Shubert noted that appellant injured himself on February 7, 2022 when he was lifting a tub of flats. She diagnosed a right shoulder rotator cuff tear and bicep tear.

In a March 3, 2022 report, Sordena Muth, a physician assistant, performed a physical examination and diagnosed right shoulder pain. An unsigned visit summary of even date noted a diagnosis of right shoulder pain.

⁴ OWCP assigned the present claim OWCP File No. xxxxxx525. Appellant has a previously filed February 4, 2021 traumatic injury claim for a right shoulder injury sustained on January 29, 2021 under OWCP File No. xxxxxx616. The claims have been administratively combined by OWCP, with the latter case serving as the master file.

In a March 24, 2022 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the medical evidence necessary to establish his claim and afforded him 30 days to submit the necessary evidence.

Thereafter, appellant submitted an April 5, 2022 note in which Dr. Shubert indicated that she treated him beginning on February 15, 2022 and that he experienced two discrete work-related injuries, including one on January 28, 2021 and one on February 7, 2022. Dr. Shubert related that on February 7, 2022 he was lifting a heavy item and felt a pop in his shoulder and acute shoulder pain. She further indicated that diagnostic imaging revealed damage and tendinopathy in appellant's rotator cuff which had progressed to a partial tear with biceps tearing and subluxation, which was consistent with his clinical presentation and complaints of pain.

By decision dated April 27, 2022, OWCP accepted that the February 7, 2022 employment incident occurred as alleged. However, it denied appellant's traumatic injury claim, finding that he had not submitted medical evidence containing a medical diagnosis from a qualified physician in connection with the accepted February 7, 2022 employment incident. Consequently, OWCP found that the requirements had not been met to establish an injury as defined by FECA.

Thereafter, appellant submitted an undated timeline detailing his multiple injuries. He explained that he incurred an initial injury on January 28, 2021 subsequently filed a claim for compensation, underwent medical treatment, and injured himself again on February 7, 2022.

On May 3, 2022 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review and submitted additional evidence.

In an unsigned, undated comment attached to appellant's request for a review of the written record, an unidentified person noted that "without question, in my opinion the instant act of lifting the tub while in the performance of [appellant's] duties caused his diagnosis."

A February 9, 2022 x-ray report of appellant's right shoulder noted an impression of minor glenohumeral degenerative joint disease, no other acute findings.

In a note dated May 3, 2022, Dr. Shubert reiterated that appellant experienced two injuries, one on January 28, 2021 and another on February 7, 2022, which worsened his shoulder condition. She noted that the second injury occurred when he was lifting a heavy item and he felt popping and acute pain in his shoulder, and that diagnostic imaging substantiated the finding that his rotator cuff tendon tearing worsened and was found to be more advanced, and his biceps subluxation worsened to the point of biceps dislocation in subsequent MRI scans.

In May 17 and 24, 2022 CA-17 forms, Dr. Shubert reiterated the history of the February 7, 2022 injury as reported by appellant and noted a diagnosis of right shoulder rotator cuff tear and biceps tear. In a note dated May 17, 2022, she provided work restrictions of left-hand work only, and indicated that he would wear a sling constantly throughout the workday.

By decision dated September 28, 2022, OWCP's hearing representative modified OWCP's April 27, 2022 decision to find that appellant had established a medical diagnosis in connection with the accepted February 7, 2022 employment incident. However, the claim remained denied, as the evidence of record did not establish causal relationship between the diagnosed condition and the accepted February 7, 2022 employment incident.

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,⁶ 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.⁷ 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.⁸

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 he or she actually experienced the employment incident at the time, place, and in the manner alleged. The second component is whether the employment incident caused an injury and can be established only by medical evidence.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 the specific employment incident identified by the claimant.¹¹

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a right upper extremity condition causally related to the accepted February 7, 2022 employment incident.

In a February 9, 2022 Form CA-16, Dr. Schmid diagnosed a right bicep and rotator cuff tear/partial tear and checked a box marked “Yes” to indicate that the condition was caused or aggravated by the employment activity described. The Board has held that when a physician’s

⁵ *Supra* note 2.

⁶ *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).

⁷ *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).

⁸ *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).

⁹ *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).

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 *A.S.*, Docket No. 19-1955 (issued April 9, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

opinion as to the cause of a condition consists only of a checkmark on a form, without further explanation or rationale, that opinion is of diminished probative value and is insufficient to establish a claim.¹² Therefore, this evidence is insufficient to establish appellant's claim.

Appellant also submitted a February 9, 2022 visit note, prescription, and Form CA-17 in which Dr. Schmid diagnosed a right shoulder injury. Similarly, in a visit note, Form CA-17, and reports dated February 15 and March 3, 2022, Dr. Shubert diagnosed a right shoulder rotator cuff and biceps tear, and a complete rotator cuff tear or rupture of the right shoulder. However, neither Drs. Schmid nor Shubert provided an opinion on the cause of appellant's diagnosed conditions. The Board has consistently held that medical evidence which does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship. As such, these reports are insufficient to establish appellant's claim.¹³

In notes dated April 5 and May 3, 2022, Dr. Shubert noted that on February 7, 2022 appellant was lifting a heavy item and felt a pop in his shoulder and acute shoulder pain. She indicated that diagnostic imaging substantiated the finding that his rotator cuff tendon tearing had worsened and advanced, and his biceps subluxation worsened to the point of biceps dislocation in subsequent MRI scans. Additionally, in CA-17 forms dated May 17 and 24, 2022 and a note dated May 17, 2022, Dr. Shubert provided work restrictions and diagnosed a right shoulder rotator cuff tear and biceps tear. As noted above, a report without an opinion on causation is of no probative value and is, therefore, insufficient to establish appellant's claim.¹⁴

OWCP also received a March 3, 2022 report from Ms. Muth, a physician assistant. The Board has long held that certain healthcare providers such as physician assistants are not considered qualified "physician[s]" as defined under FECA and their findings, reports and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.¹⁵ Accordingly, these reports are insufficient to satisfy appellant's burden of proof.¹⁶

OWCP also received a March 3, 2022 unsigned visit summary diagnosing right shoulder pain, and an undated comment from unidentified person noting that "the instant act of lifting the tub while in the performance of his duties caused his diagnosis." However, the Board has long held that reports that are unsigned or bear an illegible signature lack proper identification and

¹² See *A.C.*, Docket No. 21-0087 (issued November 9, 2021); *O.M.*, Docket No. 18-1055 (issued April 15, 2020); *Gary J. Watling*, 52 ECAB 278 (2001); *Lillian M. Jones*, 34 ECAB 379, 381 (1982).

¹³ See *D.Y.*, Docket No. 20-0112 (issued June 25, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁴ *Id.*

¹⁵ 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. § 8101(2); 20 C.F.R. § 10.5(t). See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (September 2020); *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).

¹⁶ *R.H.*, Docket No. 21-1382 (issued March 7, 2022); *S.E.*, Docket No. 21-0666 (issued December 28, 2021).

cannot be considered probative medical evidence because the author cannot be identified as a physician.¹⁷

The remaining evidence of record includes a February 9, 2022 x-ray report and MRI scan reports of appellant's right shoulder dated February 18 and 21, 2022. The Board has held that diagnostic reports, standing alone, lack probative value on the issue of causal relationship as they do not provide an opinion as to whether the accepted employment incident caused a diagnosed condition.¹⁸ For this reason, this evidence is also insufficient to establish appellant's claim.

As appellant has not submitted rationalized medical opinion evidence establishing a right upper extremity condition causally related to the accepted February 7, 2022 employment incident, the Board finds that he has not met his burden of proof to establish his claim.

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 his burden of proof to establish a right upper extremity condition causally related to the accepted February 7, 2022 employment incident.¹⁹

¹⁷ *L.B.*, Docket No. 21-0353 (issued May 23, 2022); *T.D.*, Docket No. 20-0835 (issued February 2, 2021); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

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

¹⁹ The Board notes that the employing establishment issued a Form CA-16. 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 September 28, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 2, 2024
Washington, DC

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

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