United States Department of Labor
Employees' Compensation Appeals Board

S.P., Appellant	)	
and	)	**Docket No. 22-0944**
	)	**Issued: May 5, 2023**
U.S. POSTAL SERVICE, MONTICELLO POST OFFICE, Williamsburg, VA, 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 June 3, 2022 appellant, through counsel, filed a timely appeal from a May 9, 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.[3]

[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.*

[3] The Board notes that following the May 9, 2022 decision, appellant submitted additional evidence to OWCP. 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.*

ISSUE

The issue is whether appellant has met her burden of proof to establish a left upper extremity condition causally related to the accepted January 21, 2021 employment incident.

FACTUAL HISTORY

On January 29, 2021 appellant, then a 39-year-old rural delivery specialist, filed a traumatic injury claim (Form CA-1) alleging that on January 21, 2021 she sustained a left shoulder/arm injury when, during a stop at a mailbox, a truck backed out of a driveway and struck the left side of her long life vehicle (LLV) while in the performance of duty. She asserted that her injury included spasms in her left arm. Appellant stopped work on January 22, 2021 and returned to work on January 26, 2021 in a light-duty position.

In a February 3, 2021 development letter, OWCP notified 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.

In response, appellant submitted a January 26, 2021 duty status report (Form CA-17) from Arlene Richards-Lee, a physician assistant, which listed the date of injury as January 21, 2021 and the history of injury as "Parked in LLV [and] LLV struck." She provided a diagnosis "due to injury" of muscle strain and provided work restrictions. In a January 26, 2021 return to duty medical certification, Ms. Richards-Lee indicated that appellant was incapacitated from January 21 through 26, 2021 and could perform light-duty work commencing January 26, 2021.

In a February 3, 2021 Form CA-17, Dr. Melvin S. Farland, a Board-certified family medicine specialist, listed the date of injury as January 21, 2021 and the history of injury as "Parked in LLV [and] personal truck struck LLV." He provided clinical findings of left rotator cuff injury and listed the date January 21, 2021 in the section for the diagnosis "due to injury." Dr. Farland indicated that appellant could perform limited-duty work with restrictions, including no reaching, lifting, pushing, or pulling with the left arm. In a February 3, 2021 return-to-duty medical certification, he listed the history of illness as left rotator cuff injury and advised that appellant was incapacitated from January 21 through March 31, 2021.

By decision dated February 25, 2021, OWCP denied appellant's claim for a January 21, 2021 employment injury, finding that the medical evidence of record was insufficient to establish a medical diagnosis in connection with the accepted employment incident. Consequently, it concluded that the requirements had not been met to establish an injury as defined by FECA.

On February 8, 2022 appellant, through counsel, requested reconsideration of the February 25, 2021 decision.

Appellant submitted an undated statement in which she indicated that on January 21, 2021 a truck backing out of a driveway struck the non-driver side of her postal vehicle, resulting in a wheel being temporarily lifted off the ground. In separate undated statement, appellant's supervisor discussed appellant's reporting of the January 21, 2021 incident. Appellant also submitted a January 21, 2021 offer of medical care, which had been signed by her supervisor.

A January 22, 2021 x-ray of the left shoulder contained an impression of unremarkable left shoulder. In January 22, 2021 progress notes, Natalie Griggs, a registered nurse, and Xinde Song,

a physician assistant, noted that appellant had been involved in a motor vehicle accident and provided a diagnosis of joint pain.

In February 3, 2021 progress notes, Dr. Farland diagnosed superior labral tear from anterior to posterior. In a February 3, 2021 Form CA-17, he listed clinical findings of left rotator cuff injury and indicated that appellant could perform limited-duty work for the period January 26 through March 31, 2021. In a March 11, 2021 attending physician's report (Form CA-20), Dr. Farland diagnosed left shoulder pain and checked a box marked "Yes" indicating that the diagnosed condition was caused or aggravated by an employment activity. He advised that appellant was able to resume light-duty work on February 3, 2021.

A March 18, 2021 magnetic resonance imaging (MRI) scan of the left shoulder contained an impression of mild supraspinatus tendinosis, superior labral tear from anterior to posterior, and mild acromioclavicular joint osteoarthritis.

In an April 8, 2021 Form CA-17, Dr. Farland listed the date of injury as January 21, 2021, provided clinical findings of left rotator injury/superior labral tear from anterior to posterior, and listed the date January 28, 2021 in the section for the diagnosis "due to injury." He indicated that appellant was able to resume limited-duty work on January 26, 2021.

In a June 4, 2021 letter, Dr. Farland advised that appellant was seen on February 3, 2021 as a follow-up from an emergency room visit after a motor vehicle accident. He noted that appellant reported, during the February 3, 2021 visit, that she had ongoing left shoulder pain, which was concerning for left rotator cuff tear. Dr. Farland indicated an MRI scan of the left shoulder demonstrated a superior labral tear from anterior to posterior with an anterior para-labral cyst. He indicated that, during a March 25, 2021 telephonic visit, appellant advised that she braced herself during the January 21, 2021 accident with her left hand on the roof and her right hand on the steering wheel. Dr. Farland noted, "[i]t is possible for this type of injury to occur during her [motor vehicle accident]."

In an October 22, 2021 letter, Dr. Farland indicated that, per his records and the provided history, appellant never complained of left shoulder pain prior to her reported January 21, 2021 employment injury. He noted that he first saw her on February 3, 2021 at which time she reported that she injured her left shoulder during the January 21, 2021 motor vehicle accident. Dr. Farland indicted that, on February 2, 2021, he diagnosed a left rotator cuff injury and that, on March 25, 2021, he diagnosed superior labral tear from anterior to posterior.

In a November 30, 2021 Form CA-17, Dr. Farland listed the date January 28, 2021 in the sections for clinical findings and the diagnosis "due to injury." He indicated that appellant was able to resume limited-duty work on January 26, 2021.

By decision dated May 9, 2022, OWCP modified its February 25, 2021 decision, to reflect that appellant had established the medical component of fact of injury. However, the claim remained denied, as the medical evidence of record was insufficient to establish a medical condition causally related to the accepted January 21, 2021 employment incident. Consequently, OWCP concluded that the requirements had not been met to establish an injury as defined by FECA.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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 filed within the applicable time limitation period 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 if 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.[7] The second component is whether the employment incident caused a personal injury.[8]

Rationalized medical opinion evidence is required to establish causal relationship. The opinion of the physician must be based on 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 incident.[9] Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[10]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a left upper extremity condition causally related to the accepted January 21, 2021 employment incident.

Appellant submitted a February 3, 2021 Form CA-17 from Dr. Farland who listed the date of injury as January 21, 2021 and the history of injury as "Parked in LLV [and] personal truck struck LLV." Dr. Farland provided clinical findings of left rotator cuff injury and listed the date January 21, 2021 in the section for the diagnosis "due to injury." He indicated that appellant could perform limited-duty work with restrictions, including no reaching, lifting, pushing, or pulling

[4] *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

[5] *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[6] *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).

[7] *B.P.*, Docket No. 16-1549 (issued January 18, 2017); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[8] *M.H.*, Docket No. 18-1737 (issued March 13, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

[9] *S.S.*, Docket No. 18-1488 (issued March 11, 2019).

[10] *J.L.*, Docket No. 18-1804 (issued April 12, 2019).

with the left arm. In an April 8, 2021 Form CA-17, Dr. Farland listed the date of injury as January 21, 2021, provided clinical findings of left rotator injury/superior labral tear from anterior to posterior, and Indicated that the diagnosis was "due to injury." In a November 30, 2021 Form CA-17, he again noted that the diagnosis was "due to injury." Dr. Farland indicated that appellant was able to resume limited-duty work on January 26, 2021. However, while he provided a conclusory opinion relative to causal relationship, he failed to provide medical rationale in support of his opinion. 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, these reports of Dr. Farland are insufficient to establish appellant's claim.

In a March 11, 2021 Form CA-20, Dr. Farland diagnosed left shoulder pain and checked a box marked "Yes" to indicate that the diagnosed condition was caused or aggravated by an employment activity. However, the Board has held that when a physician's opinion on causal relationship consists only of checking "Yes" to a form question, without more by the way of medical rationale, that opinion is of limited probative value.[12] Accordingly, Dr. Farland's March 11, 2021 report is insufficient to establish the claim.

In a June 4, 2021 letter, Dr. Farland noted that an MRI scan of the left shoulder demonstrated a superior labral tear from anterior to posterior with an anterior para-labral cyst. He indicated that, during a March 25, 2021 encounter, appellant advised that she braced herself during the January 21, 2021 accident with her left hand on the roof and her right hand on the steering wheel. Dr. Farland noted, "[i]t is possible for this type of injury to occur during her [motor vehicle accident]." However, the Board has held that an opinion which is equivocal or speculative in nature is of limited probative value regarding the issue of causal relationship.[13] Therefore, this report is insufficient to establish the claim.

In an October 22, 2021 letter, Dr. Farland indicated that, per his records and the provided history, appellant never complained of left shoulder pain prior to her reported January 21, 2021 employment injury. He noted that, on February 3, 2021, he diagnosed a left rotator cuff injury and that, on March 25, 2021, he diagnosed superior labral tear from anterior to posterior. However, the Board has held that the fact that a condition manifests itself or worsens during a period of employment or that work activities produce symptoms revelatory of an underlying condition does not raise an inference of causal relationship between a claimed condition and employment factors.[14] Therefore, this report is also insufficient to establish the claim.

In a February 3, 2021 return-to-duty medical certification, Dr. Farland listed the history of illness as left rotator cuff injury and advised that appellant was incapacitated from January 21 through March 31, 2021. In February 3, 2021 progress notes, he diagnosed superior labral tear from anterior to posterior. In a February 3, 2021 Form CA-17, Dr. Farland listed clinical findings of left rotator cuff injury and indicated that appellant could perform limited-duty work for the period January 26 through March 31, 2021. However, he did not provide an opinion on the cause

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

[12] *J.A.*, Docket No. 18-1586 (issued April 9, 2019); *Lillian M. Jones*, 34 ECAB 379, 381 (1982).

[13] *See E.B.*, Docket No. 18-1060 (issued November 1, 2018); *Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962).

[14] *J.S.*, Docket No. 18-0944 (issued November 20, 2018).

of the diagnosed conditions. 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.[15] Therefore, these reports of Dr. Farland are insufficient to establish appellant's claim.

Appellant submitted January 26, 2021 reports from Ms. Richards-Lee, a physician assistant, and January 22, 2021 progress notes from Ms. Griggs, a registered nurse, and Mr. Song, a physician assistant. The Board has held, however, that health care providers such as nurses, physician assistants, physical therapists are not considered physicians as defined under FECA and their reports do not constitute competent medical evidence.[16] Therefore, these reports are of no probative value and are insufficient to establish the claim.

Appellant also submitted diagnostic studies of her left shoulder, including a January 22, 2021 x-ray report and a March 18, 2021 MRI scan. However, diagnostic studies, standing alone, lack probative value on causal relationship as they do not address whether employment factors caused the diagnosed condition.[17]

As the medical evidence of record is insufficient to establish causal relationship between appellant's diagnosed conditions and the accepted January 21, 2021 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 upper extremity condition causally related to the accepted January 21, 2021 employment incident.

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

[16] 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).

[17] *C.S.*, Docket No. 19-1279 (issued December 30, 2019).

ORDER

IT IS HEREBY ORDERED THAT the May 9, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 5, 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