United States Department of Labor
Employees' Compensation Appeals Board

P.L., Appellant	)	
and	)	**Docket No. 16-1445**
	)	**Issued: January 12, 2017**
U.S. POSTAL SERVICE, POST OFFICE, Englishtown, NJ, Employer	)	

Appearances:
James D. Muirhead, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On July 5, 2016 appellant, through counsel, filed a timely appeal from an April 12, 2016 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.

ISSUE

The issue is whether appellant met her burden of proof to establish an employment-related injury on February 8, 2014.

[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.*

On appeal counsel asserts that the two incidents on February 8, 2014 occurred as alleged and that the medical evidence of record establishes causal relationship.

FACTUAL HISTORY

On February 8, 2014 appellant, then a 54-year-old rural carrier, filed a traumatic injury claim (Form CA-1), alleging that she felt bad pain in front and around the back under the shoulder blade of her right shoulder. She indicated that while performing work duties loading her mail truck, she felt sharp pain and a burning sensation. Appellant stopped work that day.[3] In statements dated February 8, 2014, she described right shoulder pain that occurred while loading her mail truck with regular, not heavy, parcels. Appellant indicated that she would like to see a physician that day, Saturday, or could wait until Monday. On an authorization for examination and/or treatment (Form CA-16) dated February 8, 2014, an employing establishment supervisor authorized medical treatment.

Dr. Jeffrey G. Schlogl, Board-certified in emergency medicine, completed an emergency department report on February 8, 2014. He noted a history that appellant reported right shoulder muscle pain for the past month while lifting heavy parcels during the holiday season, and on that day, while sitting in her vehicle reaching over some ice to get to a mailbox, she developed sharp right anterior shoulder pain. Examination findings included tenderness along the top of the right shoulder. Right shoulder x-ray that day was negative for fracture. Appellant was discharged to home with a diagnosis of right shoulder tendinitis and advised not to work until seen by an orthopedic surgeon. On a separate disability slip Dr. Schlogl advised that she should not work for five days. Appellant did not return to work.

On March 17, 2014 appellant was seen by Dr. David B. Dickerson, a Board-certified orthopedic surgeon, who noted a history that she was injured when a door hit the cart she was using to load her mail truck. He described her complaint of pain with motion and examination findings of tenderness and decreased range of motion of the right upper extremity. Dr. Dickerson diagnosed bicipital tenosynovitis and rotator cuff impingement. He recommended physical therapy and medication, and advised that appellant could not work until she could lift more than 25 pounds.

By letter dated March 27, 2014, OWCP advised appellant that the evidence of record was insufficient to establish her claim. It informed her of the evidence needed to establish her claim.

In an undated statement appellant explained that she initially had difficulty having her claim filed with OWCP and was then unable to find an orthopedic surgeon who would take OWCP patients until her March 17, 2014 appointment with Dr. Dickerson. She also submitted aftercare instructions from the February 8, 2014 emergency department visit. Appellant also

[3] The record contains one page of a handwritten Form CA-1 claim and a typed version. It also indicates that appellant had two prior claims: (1) a February 5, 2004 claim for a left shoulder condition, adjudicated by OWCP under File No. xxxxxx440 as a short form closure; and (2) a May 16, 2007 claim for a right shoulder condition, back, and leg injury, adjudicated under File No. xxxxxx183 as a short form closure. The instant claim was adjudicated under File No. xxxxxx742.

filed claims for compensation (Form CA-7) for the period March 25 to April 18, 2014. These indicated that she received continuation of pay from February 9 to March 25, 2014.

On April 16, 2014 Dr. Dickerson noted that appellant's right shoulder pain had improved. He found tenderness and pain on right shoulder examination with full range of motion. Dr. Dickerson reiterated his diagnoses, recommended a right shoulder magnetic resonance imaging (MRI) scan, and advised that appellant could not work.

By decision dated April 29, 2014, OWCP denied the claim. It found that an employment incident occurred on February 8, 2014, but that the medical evidence of record was insufficient to establish a medical condition causally related to the employment event.

Appellant, through counsel, timely requested a hearing before an OWCP hearing representative. In an April 24, 2014 statement, received by OWCP on April 29, 2014, she indicated that on February 8, 2014, as she was leaving the building and pushing a mail cart out of a set of heavy, swinging doors, her loaded cart got caught, and the sudden stop jarred her body. Appellant recounted that she then adjusted the tub and pushed it through and, as she went out, the door swung back and hit the tub. She related that her truck door was already open and that when she picked up the first parcel to put it in the truck, she felt a sharp pain and burning sensation between the back of her right shoulder and inside the right shoulder blade. Appellant continued that she did not mention the door on her claim form because getting caught there, or having them swing back and hit your tub, was a common, everyday occurrence. She indicated that several years before her right shoulder hurt and she went to the emergency room where a calcified spot was found on x-ray. Appellant advised that she did not see an orthopedic surgeon immediately because she was not informed by the employing establishment regarding how to file a claim, and that, in addition to continued pain, she also had diminished right shoulder range of motion.

On April 30, 2014 Dr. Dickerson advised that appellant could not work. A May 7, 2014 MRI scan of the right shoulder demonstrated a full-thickness tear of the supraspinatus tendon and calcific bursitis.

On May 20, 2014 appellant was seen by Dr. Anthony V. Petrosini, Board-certified in orthopedic surgery. Dr. Petrosini noted a history that on February 8, 2014 a mail cart she was pushing got caught in a door and, when she tried to push the cart, she felt right shoulder pain. Right shoulder examination demonstrated limited range of motion and tenderness over the biceps and greater tuberosity. Dr. Petrosini reviewed the MRI scan and diagnosed right shoulder rotator cuff tear, biceps synovitis, and calcific tendinitis. He recommended arthroscopic repair.

Dr. Petrosini performed right shoulder arthroscopic repair of the supraspinatus tear, excision of calcific tendinitis, and biceps tenotomy on June 3, 2014. On June 13, 2014 he noted appellant's report that she injured her right shoulder when loading a truck at work on February 8, 2014. Dr. Petrosini continued that she was moving a cart in a doorway, and as she tried to push the cart, she felt a sharp pain in the right shoulder. He described appellant's medical and surgical treatment and opined that her diagnosis and surgical findings, which included a full-thickness rotator cuff tear, were related to the described work event. On November 18, 2014 Dr. Petrosini advised that she could return to work on November 20, 2014.

At the hearing, held on December 3, 2014, appellant testified that on February 8, 2014 she was rolling a tub of mail to her truck when it suddenly stuck in a doorway, and when she pushed it through, the door swung back and hit the tub. She continued that, when she picked up the first mail parcel, she had immediate pain and a burning sensation in her right shoulder. Appellant noted returning to full-time, full-duty, work on November 20, 2014.

By decision dated January 26, 2015, an OWCP hearing representative affirmed the April 29, 2014 OWCP decision. He found that, as conflicting histories of the employment injury were presented to the physicians, the medical evidence was insufficient to establish causal relationship.

On April 21, 2015 appellant, through counsel, requested reconsideration, and submitted statements dated March 19, 2015 in which she and her daughter, who drove appellant to the emergency room on February 8, 2014, described the events there. She maintained that Dr. Schlogl recorded an incorrect history, claiming that she felt a severe, sharp pain with a burning sensation as she was loading parcels into her truck.

In a nonmerit decision dated May 6, 2015, OWCP denied appellant's request for reconsideration.

On January 13, 2016 appellant, through counsel, again requested reconsideration and submitted a January 7, 2016 report from Dr. Petrosini. Dr. Petrosini indicated that she reported that the employment injury occurred while she was loading her mail truck on February 8, 2014, and while pushing a cart of mail, it was caught in a door, and as she tried to push it through the door, she felt a sharp pain in her right shoulder. He described the MRI scan findings and appellant's subsequent surgery on June 3, 2014. Dr. Petrosini noted that he had last seen her on October 21, 2014. He observed that, since he had not seen appellant recently, he could not comment on her current work status. Dr. Petrosini concluded "within a reasonable degree of medical certainty that the need for surgery for her rotator cuff tear was directly related to described work event."

In a merit decision dated April 12, 2016, OWCP found the medical evidence inconsistent regarding the February 8, 2014 employment incident and denied the claim.

LEGAL PRECEDENT

An employee seeking compensation under FECA has the burden of proof to establish the essential elements of his or her claim by the weight of reliable, probative, and substantial evidence,[4] including that he or she is an "employee" within the meaning of FECA and that he or she filed his or her claim within the applicable time limitation.[5] The employee must also

[4] *J.P.*, 59 ECAB 178 (2007).

[5] *R.C.*, 59 ECAB 427 (2008).

establish that she sustained an injury in the performance of duty as alleged and that his disability for work, if any, was causally related to the employment injury.[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. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that she actually experienced the employment incident at the time, place, and in the manner alleged. Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.[7]

Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence.[8] The opinion of the physician must be based on a complete factual and medical background of the claimant, 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 identified by the employee.[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 evidence supports that, on February 8, 2014, appellant developed right shoulder pain. The Board, however, finds that the medical evidence of record is insufficient to establish that these incidents resulted in an employment injury.

Medical evidence submitted to support a claim for compensation should reflect a correct history, and the physician should offer a medically sound explanation of how the claimed work event caused or aggravated the claimed condition.[11] No physician did so in this case.

Dr. Schlogl, the emergency medicine physician who saw appellant on February 8, 2014 provided a history of right shoulder muscle pain occurring over the past month while lifting heavy parcels during the holiday season. He indicated that on February 8, 2014, while she was sitting in her vehicle and reaching over some ice to get to a mailbox, she developed sharp right anterior shoulder pain. Dr. Dickerson provided a history that appellant was injured when the

[6] *Id.*; *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[7] *T.H.*, 59 ECAB 388 (2008).

[8] *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[9] *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

[10] *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

[11] *D.D.*, Docket No. 13-1517 (issued April 14, 2014). *See also Douglas M. McQuaid*, 52 ECAB 382 (2001) (the Board has long held that medical reports must be based on a complete and accurate factual and medical background, and medical opinions based on an incomplete or inaccurate history are of little probative value).

door leading out of the building hit her mail cart. He did not further describe the circumstances of or explain how a door hitting her mail cart caused the claimed right shoulder injury.

Likewise, Dr. Petrosini provided an insufficient history of injury. On May 20, 2014 he reported that on February 8, 2014, appellant was pushing a mail cart that got stuck in a door, and when she tried to move the cart, she felt pain in her shoulder. Dr. Petrosini noted MRI scan findings and diagnosed rotator cuff tear. Following the June 3, 2014 surgery, on June 13, 2014 Dr. Petrosini first indicated that appellant injured her right shoulder on February 8, 2014 when she was loading a truck, but then related that, as she was moving a cart in a doorway and tried to push the cart, she felt a sharp pain in the right shoulder.

The Board finds that the May 7, 2014 MRI scan did not provide a cause of any diagnosed conditions. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[12]

Thus, contrary to the assertions on appeal, these medical opinions are of diminished probative value. Each describes a different history of injury and none provides the necessary rationale explaining how and why the physician believes that the February 8, 2014 work incidents could result in a diagnosed condition. The medical evidence is, therefore, insufficient to establish that appellant's diagnosed conditions were caused by the February 8, 2014 employment incident.[13] It is appellant's burden to establish that a diagnosed condition is causally related to the February 8, 2014 incident. She submitted insufficient evidence to establish an injury caused by this incident.

Where, as in this case, an employing establishment properly executes a Form CA-16, which authorizes medical treatment as a result of an employee's claim for an employment-related injury, the CA-16 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 Tracy P. Spillane*, 54 ECAB 608 (2003). The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP. *See* 20 C.F.R. § 10.300(c).

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 did not meet her burden of proof to establish an employment-related injury on February 8, 2014.

[12] *Willie M. Miller*, 53 ECAB 697 (2002).

[13] *J.D.*, Docket No. 14-2061 (issued February 27, 2015).

ORDER

IT IS HEREBY ORDERED THAT the April 12, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 12, 2017
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

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

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