

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

K.N., Appellant)	
)	
and)	Docket No. 16-1900
)	Issued: March 9, 2017
U.S. POSTAL SERVICE, DALLAS)	
PERFORMANCE CLUSTER, Coppell, TX,)	
Employer)	

Appearances:
Appellant, pro se
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 September 27, 2016 appellant filed a timely appeal from a September 8, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employee's Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the case.

ISSUE

The issue is whether appellant has met her burden of proof to establish an injury causally related to the accepted July 18, 2016 employment incident.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On July 18, 2016 appellant, then a 56-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on that date she sprained her left lower arm when she tripped over a water hose and fell on a customer's porch.

On July 18, 2016 appellant sought treatment from Dr. Sveta Khalina, a Board-certified internist. Dr. Khalina indicated that appellant was injured on that date. She noted that appellant informed her that she was delivering a package when she tripped over a hose and fell on her outstretched left arm and left knee. Dr. Khalina diagnosed her with strain of muscles fascia and tendons at shoulder and upper left arm level and at the left forearm, and an abrasion of the left knee. She indicated that appellant could return to work on July 18, 2016 with restrictions of no driving, no use of the left arm, and no reaching above the shoulders or above the head with the affected extremity. Appellant was also provided a sling for her left upper extremity.

Dr. Khalina also completed a duty status report (Form CA-17) on July 18, 2016 indicating that appellant could not climb, kneel, or use her left arm.

In a July 20, 2016 narrative report, Dr. Khalina provided an assessment of contusion of the forearm and elbow, strain of left elbow, strain of left trapezius muscle, contusion of left knee, abrasion of left knee, chest wall muscle strain, and strain of left forearm. She related that appellant could return to modified work on that day, with restrictions. In a duty status report dated July 20, 2016, Dr. Khalina reiterated her restrictions from July 18, 2016.

By report dated July 27, 2016, Dr. Khalina related that appellant was returning for a recheck of her injuries. She noted that appellant had not been working because no light duty was available. Dr. Khalina assessed appellant with: (1) strain of left elbow; (2) strain of left forearm; (3) tendinitis of forearm; (4) chest wall muscle strain; (5) contusion of left knee; and (6) strain of the left trapezius muscle. She listed the injury date as July 18, 2016.

Appellant saw Lisa Steinbauer, an occupational therapist, on July 21, 25, 27, and 28 and August 1, 2016 for treatment of contusion of forearm and elbow, strain of left elbow, and strain of left forearm.

In a report dated August 3, 2016, Dr. Khalina related that appellant was seen for a left forearm recheck and that she was two weeks post injury. She related that appellant's left elbow was tingling with supination, with no pain but a subjective complaint of decreased strength. Dr. Khalina also related that appellant had left triceps pain on extension and left forearm pain with supination. She noted that appellant had been referred to physical therapy. Dr. Khalina repeated the assessment provided in her previous reports.

By letter dated August 8, 2016, OWCP informed appellant that further information was necessary to support the claim and afforded her 30 days to submit the evidence.

In response, appellant resubmitted reports from Dr. Khalina and a new note from her occupational therapist, Ms. Steinbauer, dated August 3, 2016.

OWCP also received an August 8, 2016 Form CA-17 which related that appellant had been advised to resume full-duty work on August 4, 2016.²

On September 8, 2016 OWCP denied appellant's claim as she had failed to establish a medical diagnosis causally related to the accepted employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim, including the fact 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 period of FECA, that an injury was sustained in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury. 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.³

In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components, which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident or exposure which is alleged to have occurred.⁴ In order to meet his or her burden of proof to establish the fact that he or she sustained an injury in the performance of duty, an employee must submit sufficient evidence to establish that he or she actually experienced the employment injury or exposure at the time, place, and in the manner alleged.⁵

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.⁶ The medical evidence required to establish causal relationship is usually rationalized medical evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. 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 claimant.⁷

² The signature on this form is illegible, but the form appears to be signed by Dr. Khalina.

³ *Jussara L. Arcanjo*, 55 ECAB 281, 283 (2004).

⁴ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803(2)(a) (August 2012).

⁵ *Linda S. Jackson*, 49 ECAB 486 (1998).

⁶ *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

⁷ *Judith A. Peot*, 46 ECAB 1036 (1995); *Ruby I. Fish*, 46 ECAB 276 (1994).

ANALYSIS

OWCP accepted that the employment incident occurred on July 18, 2016, as alleged. Furthermore, appellant has established medical diagnoses. Dr. Khalina indicated that appellant had a strain of the left elbow, strain of the left forearm, tendinitis of the forearm, chest wall muscle strain, contusion of the left knee, and strain of the left trapezius muscle. However, appellant's claim was denied because she failed to establish a causal relationship between the accepted employment incident and Dr. Khalina's diagnoses.

The Board finds that appellant failed to meet her burden of proof to establish that the diagnosed conditions were causally related to the accepted employment incident of July 18, 2016. No physician has clearly indicated that appellant's diagnosed medical conditions were causally related to the accepted employment incident. Neither the fact that a disease or condition manifests itself during a period of employment nor the belief that the condition was caused or aggravated by the employment factor is sufficient to establish causal relationship.⁸

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.⁹ Dr. Khalina treated appellant from the date of injury and noted her history of injury, however she provided no opinion on causation, and therefore, her opinion is insufficient to establish a causal relationship. To be of probative value the medical evidence must contain a sufficient explanation of the process through which the accepted employment incident physiologically caused or aggravated appellant's diagnosed condition. Medical conclusions unsupported by rationale are of little probative value.¹⁰

While appellant submitted a number of reports from Ms. Steinbauer, her occupational therapist, reports from appellant's occupational therapist are not probative on the issue of causal relationship. Evidence from an occupational therapist does not constitute competent medical evidence under FECA as an occupational therapist is not considered a physician under section 8101(2) of FECA.¹¹

The Board finds that appellant has failed to submit any rationalized probative medical evidence to establish an injury causally related to the accepted July 18, 2016 employment incident. Appellant therefore did not meet her burden of proof.

⁸ *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

⁹ *M.S.*, Docket No. 16-1497 (issued December 20, 2016).

¹⁰ *See D.B.*, Docket No. 14-0295 (issued April 25, 2014).

¹¹ 5 U.S.C. § 8101(2) provides that a physician includes, surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law. *R.S.*, Docket No. 16-1303 (issued December 2, 2016) (occupational therapists are not considered physicians as defined under FECA); *J.J.*, Docket No. 15-0727 (issued July 16, 2015) (reports from an occupational therapist have no probative value as an occupational therapist is not a physician as defined under FECA).

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 failed to meet her burden of proof to establish an injury causally related to the accepted July 18, 2016 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 8, 2016 is affirmed.

Issued: March 9, 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