United States Department of Labor
Employees' Compensation Appeals Board

T.B., Appellant	)	
	)	**Docket No. 17-0304**
and	)	**Issued: May 16, 2017**
	)	
U.S. POSTAL SERVICE, MAIL PROCESSING ANNEX, Indianapolis, IN, 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:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On November 28, 2016 appellant, through counsel, filed a timely appeal from a September 1, 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 has met her burden of proof to establish cervical and right shoulder injuries causally related to an accepted February 24, 2016 employment incident.

[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 contends that OWCP's decision is contrary to fact and law.

FACTUAL HISTORY

On March 10, 2016 appellant, then a 54-year-old mail processing clerk, filed a traumatic injury claim (Form CA-1) alleging that on February 24, 2016 she was taking scanners from cradles and distributing them to employees at work when she experienced severe pain on the right side of her head, neck, shoulder, arm, and hand. She also had weakness in her arm, hand, and neck and was unable to grasp, hold, or lift. Appellant continued to perform her job through the night and experienced neck stiffness, head and shoulder pain, and arm weakness. She stopped work on February 25, 2016. In a March 11, 2016 "interview worksheet for accidents" form, appellant reiterated her description of the February 24, 2016 incident.

The employing establishment provided appellant with an authorization for examination (Form CA-16) on March 10, 2016.

By letter dated March 21, 2016, OWCP noted that, as appellant's injury initially appeared to be a minor injury resulting in minimal or no lost time from work, payment of a limited amount of medical expenses was administratively approved; however, the merits of the claim had not been formally considered. The claim was reopened for consideration because she had not returned to work in a full-time capacity. Appellant was advised that the evidence of record was insufficient to establish her traumatic injury claim. OWCP notified her of the medical and factual evidence necessary to establish her claim and was afforded 30 days to respond.

In a March 14, 2016 duty status report (Form CA-17), Dr. Theresa M. Kreuger, a Board-certified family practitioner, indicated February 7, 2015 as the date of injury. She described clinical findings and diagnosed cervical stenosis with cord compression, cervical radiculopathy, right rotator cuff tear, neck pain, and right upper extremity weakness and decreased range of motion (ROM). Dr. Kreuger advised that appellant's diagnosed conditions were due to the February 7, 2015 injury. She noted that on February 23, 2016 appellant was advised that she could resume work with restrictions. Dr. Kreuger placed her off work as of February 25, 2016. In a March 18, 2016 prescription, she indicated that appellant was excused from work for the period February 25, 2016 to an illegible date in March due to complete incapacity from a right rotator cuff tear. In an April 25, 2016 attending physician's report (Form CA-20), Dr. Kreuger provided a history that on February 24, 2016 appellant was throwing packages when she had an acute onset of right neck and right shoulder pain. She reported diagnostic test results and reiterated her prior diagnoses of right rotator cuff tear, cervical stenosis with cord compression, and cervical radiculopathy. Dr. Kreuger indicated by checking a box marked "yes" that the diagnosed conditions were caused or aggravated by an employment activity. She noted that appellant was totally disabled from February 25 to May 23, 2016.

On April 28, 2016 appellant responded to OWCP's March 21, 2016 development letter. She attributed her neck and shoulder pressure and pain to lifting scanners and signing a log book. Appellant had a rotator cuff tear while distributing scanners. She noted that this condition was diagnosed in 2015 and, since that time, continuous movement of her hands and arm caused pain and weakness and sometimes loss of mobility.

By decision dated May 2, 2016, OWCP denied appellant's traumatic injury claim as the medical evidence of record was insufficient to establish a medical condition causally related to the accepted February 24, 2016 work events.

OWCP received a Form CA-17 report dated April 25, 2016 in which Dr. Kreuger reiterated her prior diagnoses of cervical stenosis with cord compression, right rotator cuff tear, neck pain, and right upper extremity weakness and decreased ROM. She again opined that the diagnosed conditions were caused by the February 24, 2016 work incident. Dr. Kreuger advised appellant that she could resume work with restrictions as of May 12, 2016.

On June 6, 2016 appellant requested reconsideration. In a May 28, 2016 letter, she reported constant pain that caused difficulty with normal daily activities and caused her to stop work. Appellant attributed her condition to the February 24, 2016 employment incident.

In a May 10, 2016 Form CA-17 report, Dr. Kreuger reiterated diagnoses and her opinion on causal relationship. She indicated that appellant was advised on March 23, 2016 that she could resume work with restrictions. In a May 10, 2016 letter, Dr. Kreuger noted that appellant continued to have cervical stenosis with radiculopathy, spinal cord compression, and chronic right rotator cuff tear. She had minimal relief with spinal fusion and was still awaiting approval for rotator cuff surgery. Dr. Kreuger noted that, unfortunately, appellant's right neck and shoulder pain flared up recently due to repetitive motions while passing out scanners. She requested that she be allowed to cease work temporarily when repetitive motions caused flare-ups.

On May 23, 2016 Dr. Peter I. Sallay, a Board-certified orthopedic surgeon, noted appellant's history of injury and medical background. He reported findings on physical and x-ray examination. Dr. Sallay diagnosed arthritis of the right acromioclavicular (AC) joint, right shoulder impingement syndrome, and incomplete tear of the right rotator cuff.

In a June 3, 2016 Form CA-17, Dr. Kreuger reiterated diagnoses and her opinion on causal relationship from her prior reports. She advised that appellant was unable to work.

By decision dated September 1, 2016, OWCP denied modification of its May 2, 2016 decision. It found that the medical evidence submitted did not contain a rationalized medical opinion to establish a causal relationship between appellant's diagnosed conditions and the February 24, 2016 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 by the weight of the reliable, probative, and substantial evidence[3] including that he or she sustained an injury in the performance of duty and that any

[3] *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

specific condition or disability for work for which he or she claims compensation is claimed is causally related to that employment injury.[4]

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.[5] There are two components involved in establishing the 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.[6]

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.[7] The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing a causal relationship between the claimed condition and the identified factors.[8] The belief of the claimant that a condition was caused or aggravated by the employment is insufficient to establish a causal relationship.[9]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a traumatic injury caused by the February 24, 2016 employment incident. Appellant failed to submit sufficient medical evidence to establish that she had cervical and right shoulder conditions causally related to the accepted employment incident.

Appellant submitted several reports from Dr. Kreuger. While Dr. Kreuger's Form CA-17 and narrative reports dated April 25, May 10, and June 3, 2016 offered cervical and right shoulder diagnoses which she attributed to the February 24, 2016 work incident, she did not provide a probative, rationalized opinion addressing how the accepted work incident caused a personal injury.[10] She did not sufficiently explain how appellant could have sustained cervical, right shoulder, and right upper extremity injuries that resulted in her disability because she lifted and handed out scanners to employees at work on February 24, 2016. Thus, these reports are of limited probative value.

In an April 25, 2016 Form CA-20 report, Dr. Kreuger provided a history of the February 24, 2016 employment incident and provided diagnoses. She indicated by checking a

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[4] *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[5] *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

[6] *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

[7] *John J. Carlone*, 41 ECAB 354 (1989); *see* 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(ee), 10.5(q) (traumatic injury and occupational disease defined, respectively).

[8] *Lourdes Harris*, 45 ECAB 545 (1994); *see Walter D. Morehead*, 31 ECAB 188 (1979).

[9] *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

[10] *See George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified with by medical rationale is of little probative value).

box marked "yes" that the diagnosed conditions were caused or aggravated by an employment activity and found that appellant was totally disabled from February 25 to May 23, 2016. The Board has held, however, that a checkmark, without supporting rationale, is of limited probative value and insufficient to establish the claim.[11] Dr. Kreuger did not explain how or why appellant's diagnosed conditions and resultant disability were caused or contributed to by the work accepted employment incident. Her March 14, 2016 Form CA-17 report attributed appellant's diagnosed conditions to a February 7, 2015 incident. This is not based on an accurate factual background as the accepted work-related incident occurred on February 24, 2016.[12] Other reports from Dr. Kreuger did not offer a medical opinion addressing whether the diagnosed condition and resultant total disability were causally related to the accepted work incident.[13] The Board thus finds that evidence from Dr. Kreuger is insufficient to establish appellant's claim.

The remaining medical evidence is also insufficient to establish causal relationship between appellant's injuries and the February 24, 2016 employment incident. On May 23, 2016 Dr. Sallay noted appellant's injury history, provided examination findings, and diagnosed right AC joint arthritis, right shoulder impingement syndrome, and right rotator cuff tear. However, he did not opine that her conditions were caused by the accepted employment incident. The Board therefore finds that Dr. Sallay's report is of limited probative value.[14]

The Board finds that appellant has failed to submit any rationalized probative medical evidence to establish cervical and right shoulder injuries causally related to the February 24, 2016 employment incident. Thus, appellant has not met her burden of proof.

The Board notes, however, that the record does not verify that the issue of appellant's incurred medical expenses has been addressed. The record contains a Form CA-16 executed by the employing establishment on March 10, 2016, authorizing medical treatment. Ordinarily, where the employing establishment authorizes treatment of a job-related injury by providing the employee a properly executed Form CA-16,[15] OWCP is under contractual obligation to pay for the authorized medical treatment.[16] The Board finds that upon return of the case record this matter should be addressed.

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[11] *See D.S.,* Docket No. 15-1930 (issued January 30, 2016).

[12] *S.R.*, Docket No. 14-1086 (issued February 26, 2015) (medical conclusions based on an incomplete or inaccurate factual background are of limited probative value).

[13] *A.D.*, 58 ECAB 159 (2006) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

[14] *See id*.

[15] *See Val D. Wynn,* 40 ECAB 666 (1989); *see also* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Authorizing Examination and Treatment*, Chapter 3.300.3(a)(3) (February 2012).

[16] 5 U.S.C. § 8103; 20 C.F.R. § 10.304. *See L.B.*, Docket No. 10-469 (issued June 2, 2010); *see also* Federal (FECA) Procedure Manual, *id.*

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 a traumatic injury causally related to the accepted February 24, 2016 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the September 1, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 16, 2017
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board