United States Department of Labor
Employees' Compensation Appeals Board

D.G., Appellant	)	
and	)	**Docket No. 17-0704**
	)	**Issued: January 24, 2018**
U.S. POSTAL SERVICE, POST OFFICE, Portland, OR, Employer	)	

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

Case Submitted on the Record[1]

DECISION AND ORDER

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

JURISDICTION

On February 7, 2017 appellant filed a timely appeal from a January 3, 2017 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 in this case.[3]

[1] Appellant filed a timely request for oral argument. By order dated July 17, 2017, the Board, after exercising its discretion, denied his request as his arguments could be adequately addressed in a decision based on a review of the case record. *Order Denying Request for Oral Argument*, Docket No. 17-0704 (issued July 17, 2017).

[2] 5 U.S.C. § 8101 *et seq.*

[3] With his request for an appeal, appellant submitted additional evidence. The Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its final decision. Therefore, the Board may not consider this additional evidence for the first time on appeal; 20 C.F.R. § 501.2(c)(1).

ISSUE

The issue is whether appellant has met his burden of proof to establish a right shoulder injury causally related to the accepted August 8, 2016 employment incident.

FACTUAL HISTORY

On August 9, 2016 appellant, then a 51-year-old clerk, filed a traumatic injury claim (Form CA-1) alleging that on August 8, 2016, while finishing his assigned zone, he attempted to place a tray on top of a pie rack and felt a pull in his right shoulder and bicep. He stopped work on August 8, 2016 and returned to a light-duty position on August 9, 2016.

By letter dated August 18, 2016, OWCP advised appellant of the evidence needed to establish his claim, particularly requesting that he submit a physician's reasoned opinion addressing the relationship between his claimed condition and specific employment factors. It noted that medical evidence must be submitted by a qualified physician and that a physician assistant is not considered a qualified physician under FECA.

In a work excuse note dated August 8, 2016, Anaise H. Hines, a nurse practitioner with the Department of Veterans Affairs Medical Center in Portland, OR, returned appellant to light-duty work on August 9, 2016, with no lifting over five pounds. She advised that appellant should follow-up with an orthopedist for release to regular duty.

In an industrial accident and injury investigation report dated August 8, 2016, appellant indicated that while finishing his duties he placed a tray on top of a pie rack when he felt a pull and pain in his bicep area and right arm. His supervisor indicated that on August 8, 2016 he was called to the delivery bar code sorter and was informed that appellant strained his right bicep when he was lifting a tray on top of a pie rack. Appellant did not want to go to the doctor. The supervisor noted that the accident was due to lifting the mail to a higher level and involved a strain in the upper right arm.

In a limited-duty job offer dated August 10, 2016, the employing establishment offered appellant a job as a manual clerk with restrictions of no lifting over five pounds with the right arm. On August 10, 2016 appellant accepted the position.

By decision dated September 21, 2016, OWCP denied appellant's claim for compensation because the medical evidence of record was insufficient to establish an injury in connection with the accepted employment incident. It found that there was no diagnosed condition in connection with the claimed employment injury.

In an appeal request form dated and received October 5, 2016, appellant requested reconsideration and submitted additional medical evidence. In an October 5, 2016 statement, he requested reconsideration and referenced additional evidence he submitted by facsimile (fax) on September 29, 2016. Appellant submitted emergency room discharge instructions dated August 8, 2016 for a biceps tendon injury and tendon rupture.

On August 29, 2016 appellant was seen by a physician assistant who opined that appellant should avoid lifting greater than 10 pounds and refrain from repetitive overhead

motions. The physician assistant noted that appellant would follow-up after his magnetic resonance imaging (MRI) scan.

A right shoulder MRI scan dated September 6, 2016 revealed torn and retracted supraspinatus tendon, torn and retracted long head biceps tendon, evidence of previous dislocation with nonacute lesion, mild glenohumeral degenerative joint disease with mild flattening and remodeling of the glenoid, small osteophytes, and mild acromioclavicular degenerative joint disease.

Appellant was treated by Dr. Casey Cornelius, an osteopath, on September 14, 2016. Dr. Cornelius opined that appellant could return to light duty immediately, with a restriction of no lifting over 25 pounds.

Appellant submitted postoperative instructions dated October 25, 2016 after arthroscopic shoulder repair. He underwent a right open biceps tenodesis, diagnostic arthroscopy, and debridement. Appellant was diagnosed with right biceps tendon tear and complete tear of his right rotator cuff. He was treated by Dr. Michael Johnson, a Board-certified orthopedist. On October 27, 2016 Dr. Johnson opined that appellant should remain off work until January 2, 2017, or until cleared by a physician. Appellant also submitted an appointment reminder from a nurse practitioner.

By decision dated January 3, 2017, OWCP denied appellant's claim for compensation as modified. It advised that the medical evidence of record contained a diagnosis in connection with the claimed injury, but his claim was denied because the medical evidence was insufficient to establish that the accepted work incident of August 8, 2016 caused or contributed to the diagnosed conditions.

LEGAL PRECEDENT

An employee seeking benefits under FECA[4] 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 filed within the applicable time limitation of FECA, that an injury was sustained in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is 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.[5]

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 he actually experienced the employment incident at

[4] *Supra* note 2.

[5] *Gary J. Watling*, 52 ECAB 357 (2001).

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.[6]

Rationalized medical opinion evidence is generally 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 factors identified by the claimant.[7]

ANALYSIS

It is undisputed that on August 8, 2016 appellant was working as a clerk, which included placing trays on top of a pie rack. However, the Board finds that he failed to submit sufficient medical evidence to establish that this accepted work incident caused or aggravated his right shoulder condition.

Appellant submitted a note from Dr. Cornelius on September 14, 2016, in which he opined that appellant could return to light duty with restrictions of no lifting over 25 pounds. Similarly, in a note dated October 27, 2016, Dr. Johnson opined that appellant should remain off duty until January 2, 2017 or until cleared by a physician. Dr. Cornelius and Dr. Johnson's notes are insufficient to establish the claim as they did not provide a history of injury[8] or specifically address whether appellant's employment incident was sufficient to have caused or aggravated a diagnosed medical condition.[9]

Appellant submitted an August 29, 2016 reports from a physician assistant and a nurse practitioner. The Board has held that document notes signed by a physician assistant or a nurse practitioner[10] lack probative value as medical evidence as these providers are not considered physicians under FECA.[11]

The remainder of the medical evidence, including discharge instructions dated August 8, 2016, a right shoulder MRI scan dated September 6, 2016, and postoperative instructions after

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

[7] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

[8] *Frank Luis Rembisz*, 52 ECAB 147 (2000) (medical opinions based on an incomplete history or which are speculative or equivocal in character have little probative value).

[9] *A.D.*, 58 ECAB 149 (2006); Docket No. 06-1183 (issued November 14, 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).

[10] *Paul Foster*, 56 ECAB 208 (2004) (where the Board found that a nurse practitioner is not considered a "physician" as defined under FECA).

[11] *See 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); 5 U.S.C. § 8101(2) (this subsection defines a "physician" as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law).

arthroscopic shoulder repair dated October 25, 2016 are of limited probative value as they fail to provide a physician's opinion on a causal relationship between appellant's work incident and his diagnosed right shoulder injury.[12] Thus, this evidence is insufficient to meet his burden of proof.

Consequently, the Board finds that appellant has failed to meet his burden of proof to establish that his accepted work incident on August 8, 2016 caused or aggravated a diagnosed medical condition, as he has submitted insufficient medical evidence.

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 failed to meet his burden of proof to establish a right shoulder injury causally related to the accepted August 8, 2016 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the January 3, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 24, 2018
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

[12] *Supra* note 9.