

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

_____)	
J.P., Appellant)	
)	
and)	Docket No. 19-0303
)	Issued: August 13, 2019
U.S. POSTAL SERVICE, POST OFFICE,)	
Morrison, IL, Employer)	
_____)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On November 21, 2018 appellant filed a timely appeal from a July 31, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

ISSUE

The issue is whether appellant has met her burden of proof to establish left shoulder strain causally related to the accepted factors of her federal employment.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that following the July 31, 2018 decision, OWCP received additional evidence. 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.*

FACTUAL HISTORY

On November 15, 2017 appellant, then a 25-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that she strained her left shoulder on November 13, 2017 when carrying a heavy mailbag while in the performance of duty.

In a note dated November 15, 2017, Dr. David F. Kavanaugh, an osteopath, examined appellant due to left shoulder pain which had developed over the past month while carrying a mailbag over her left shoulder. He found marked triggering with palpation over the left trapezius and that appellant was unable to rotate her head without increasing pain. Dr. Kavanaugh diagnosed trapezius strain. He noted that as a mail carrier appellant was required to carry a heavy bag full of mail. Dr. Kavanaugh reported that she carried her mailbag on her left shoulder and over the past month had been experiencing spasm of the left trapezius muscle. Appellant had, in the past few days, experienced difficulty with left lateral rotation of her head due to increasing spasm. Dr. Kavanaugh restricted her lifting to five pounds.

The employing establishment provided appellant with an authorization for examination and/or treatment (Form CA-16) which Laurie Whelchel, a family nurse practitioner, completed on November 20, 2017. On November 21, 2017 Ms. Whelchel completed an additional form report.

On May 9, 2018 Dr. Bharat N. Raju, Board-certified in emergency medicine, examined appellant due to left shoulder pain. He noted that she carried a heavy bag of mail and that her shoulder pain worsened during the workday. When appellant returned home and lifted her arm to wash her hair, she reported significant worsening in her pain and experienced a pop sensation. She noted that she had experienced similar symptoms several months ago which had resolved with no treatment. Dr. Raju diagnosed left shoulder pain. Appellant sought treatment with Ms. Whelchel on May 11, 2018, who requested a magnetic resonance imaging (MRI) scan.

In a June 13, 2018 development letter, OWCP noted that when appellant's claim was received, it appeared to be a minor injury that resulted in minimal or no lost time from work. It reopened her claim as she requested an MRI scan. OWCP advised appellant of the deficiencies of her claim and requested additional factual and medical evidence from her. It also provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond.

On June 21, 2018 appellant responded to OWCP's questionnaire and asserted that she was claiming an occupational disease. She also provided additional medical evidence. On May 9, 2018 Dr. David C. Hulsey, an osteopath, examined appellant due to left shoulder pain and a pop appellant heard when washing her hair. He diagnosed left shoulder pain.

In notes dated May 11 and June 11, 2018, Dr. Denise Smith, a family practitioner, examined appellant due to chronic left shoulder pain. She reported that appellant injured her shoulder at work in September 2017. Dr. Smith noted that on a daily basis appellant carried a mail satchel on her left shoulder. The satchel weighed between 30 and 50 pounds. Dr. Smith noted appellant's left shoulder pain began in September 2017 and intensified on May 9, 2018 while she was washing her hair at home. She listed appellant's report of significant pain and a popping sensation that radiated from the front of her shoulder to the back when she raised her left shoulder.

On July 20, 2018 appellant filed a notice of recurrence (Form CA-2a) alleging that commencing on May 9, 2018 she was disabled due to her November 13, 2017 employment injury.³

By decision dated July 31, 2018, OWCP denied appellant's claim as a traumatic injury. It noted that she had filed a traumatic injury claim, found that the injury and/or events occurred as alleged, but determined that she had not provided medical evidence of a diagnosed condition in connection with those events. OWCP concluded, therefore, 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 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,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

In an occupational disease claim, appellant's burden of proof requires submission of the following: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.⁷

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical opinion evidence.⁸ The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical

³ OWCP has not issued a final decision on this claim, and the Board is precluded from addressing it for the first time on appeal. 20 C.F.R. § 501(c)(2).

⁴ *T.H.*, Docket No. 18-1585 (issued March 22, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *T.H.*, *id.*; *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 *T.H.*, *supra* note 4; *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 *T.H.*, *supra* note 4; *R.H.*, 59 ECAB 382 (2008); *Ernest St. Pierre*, 51 ECAB 623 (2000).

⁸ *T.H.*, *supra* note 4; *I.R.*, Docket No. 09-1229 (issued February 24, 2010); *D.I.*, 59 ECAB 158 (2007).

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

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish left shoulder strain causally related to the accepted factors of her federal employment.

Appellant filed a Form CA-1 and described her employment activity of carrying a mailbag on her left shoulder. In her June 21, 2018 statement to OWCP, she clarified that she was claiming an occupational disease. OWCP defines an occupational disease as a condition produced by the work environment over a period longer than a single workday or shift.¹⁰ As appellant attributed her left shoulder condition to her work duties over several months, OWCP should have described her claim as an occupational disease.¹¹ While she filed a traumatic injury claim, the Board finds, in fact, her claim was for an occupational disease. The Board further finds that OWCP's continued reference to the claim as a traumatic injury was harmless error.¹² The Board properly accepted appellant's occupational exposure, carrying a mailbag while performing work duties, but denied the claim because the medical evidence submitted failed to establish a causal relationship between appellant's diagnosed left trapezius strain and the accepted employment factors.

In support of her occupational disease claim, appellant provided a November 15, 2017 note from Dr. Kavanaugh diagnosing trapezius strain. While Dr. Kavanaugh noted that as a mail carrier appellant was required to carry a heavy bag full of mail, that she carried her mailbag on her left shoulder, and over the past month had been experiencing spasm of the left trapezius muscle, he did not offer a clear opinion that appellant's left trapezius strain was causally related to her accepted employment factors. The Board notes that Dr. Kavanaugh did not definitively relate her diagnosed medical condition to the accepted exposure. Dr. Kavanaugh's opinion on causation is speculative and couched in equivocal terms. To be of probative value, a physician's opinion on causal relationship should be one of reasonable medical certainty. Dr. Kavanaugh's opinion therefore lacks the specificity and detail needed to establish appellant's claim.¹³

⁹ *T.H.*, *supra* note 4; *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

¹⁰ 20 C.F.R. § 10.5(q).

¹¹ *Id.*; *E.K.*, Docket No. 18-0091 (issued April 6, 2018); *J.B.*, Docket No. 16-0661 (issued July 20, 2017); *L.W.*, Docket No. 15-1437 (issued May 9, 2016).

¹² *See Z.B.*, Docket No. 17-1027 (issued November 17, 2017) (finding that when an OWCP decision is based on a proper review of the medical evidence, an incorrect statement in the decision is harmless error when it does not go to the substance of the claim); *J.M.*, Docket No. 17-0785 (issued June 9, 2017) (finding a misstatement of fact harmless error as the medical evidence did not meet appellant's burden of proof). *T.K.*, Docket No. 15-0187 (issued March 9, 2015) (the Board found that OWCP's reference of an occupational disease claim as a traumatic injury was harmless error as OWCP properly weighed the medical evidence in denying the claim).

¹³ *D.P.*, Docket No. 18-1647 (issued March 21, 2019); *P.O.*, Docket No. 14-1675 (issued December 3, 2015); *S.R.*, Docket No. 12-1098 (issued September 19, 2012).

On May 9, 2018 Dr. Hulsey diagnosed left shoulder pain. Dr. Raju examined appellant on May 9, 2018, and also diagnosed left shoulder pain. In notes dated May 11 and June 11, 2018, Dr. Smith made the same diagnosis of left shoulder pain. The Board has consistently held that a diagnosis of “pain” does not constitute the basis for payment of compensation, as pain is a symptom rather than a specific diagnosis.¹⁴ As such, the reports from these physicians are insufficient to establish a medical diagnosis in connection with the accepted employment factors.

On November 21, 2017 and May 11, 2018 Ms. Whelchel, a family nurse practitioner, completed form reports and notes. A nurse practitioner is not considered a “physician” as defined under FECA.¹⁵ As such, this evidence is also insufficient to meet appellant’s burden of proof.

As appellant has not submitted sufficiently rationalized medical evidence to support her claim that she developed a left shoulder strain causally related to her employment factors, she has not met her burden of proof to establish her occupational disease claim.¹⁶

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 left shoulder strain causally related to the accepted factors of her federal employment. The Board notes that OWCP should reclassify her November 15, 2017 claim as an occupational disease.

¹⁴ *A.F.*, Docket No. 17-1374 (issued March 19, 2019); *Robert Broome*, 55 ECAB 339 (2004).

¹⁵ Section 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. *See* 5 U.S.C. § 8102(2); *T.H.*, Docket No. 18-1736 (issued March 13, 2019); *M.M.*, Docket No. 16-1617 (issued January 24, 2017); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as nurses, physician assistants and physical therapists are not competent to render a medical opinion under FECA). *See also Gloria J. McPherson*, 51 ECAB 441 (2000); *Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (a medical issue such as causal relationship can only be resolved through the submission of probative medical evidence from a physician).

¹⁶ The record contains a Form CA-16 signed by an employing establishment official. When the 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 Form CA-16 creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination/treatment regardless of the action taken on the claim. *C.W.*, Docket No. 17-1293 (issued February 12, 2018); *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).

ORDER

IT IS HEREBY ORDERED THAT the July 31, 2018 decision of the Office of Workers' Compensation Programs is affirmed as modified.

Issued: August 13, 2019
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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