

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

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**S.H., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Chicago, IL, Employer**

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**Docket No. 18-1579  
Issued: February 22, 2019**

*Appearances:*

*Alan J. Shapiro, Esq., for the appellant<sup>1</sup>  
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  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On August 13, 2018 appellant, through counsel, filed a timely appeal from a June 27, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>3</sup>

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<sup>1</sup> 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.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

<sup>3</sup> The Board notes that following the June 27, 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.*

## **ISSUE**

The issue is whether appellant has met her burden of proof to establish that her left shoulder condition was causally related to the accepted June 21, 2016 employment incident.

## **FACTUAL HISTORY**

On June 23, 2016 appellant, then a 52-year-old tool and parts clerk, filed a traumatic injury claim (Form CA-1) alleging that on June 21, 2016 she injured her left shoulder in the performance of duty. On the reverse side of the claim form the employing establishment indicated that she did not stop work.

In a duty status report (Form CA-17) dated June 21, 2016, appellant's supervisor indicated that appellant lifted heavy parts and felt a pull in her left shoulder. In this report and in the accompanying medical report dated June 21, 2016, Sara Elizabeth Wolschlag, a certified physician assistant, diagnosed a left shoulder strain. Ms. Wolschlag indicated that appellant was fit for duty, with restrictions.

In medical reports dated June 24 and July 6, 2016, Julianne Wong, a physician assistant, examined appellant and diagnosed an unspecified sprain of the left shoulder joint. She indicated that appellant was fit for duty, with restrictions.

In a medical report dated July 28, 2016, Megha Shah, a certified physician assistant, examined appellant and indicated that she was fit for duty without restrictions.

By development letter dated September 7, 2017, OWCP notified appellant that her claim was initially administratively approved to allow medical payments, as it appeared to involve a minor injury resulting in minimal or no lost time from work. However, the merits of appellant's claim had not been formally considered and her claim had been reopened for consideration of the merits because the medical bills had exceeded \$1,500.00. OWCP indicated that the evidence of record was insufficient to establish her traumatic injury claim, and advised her of the medical and factual evidence necessary to establish her claim. It afforded appellant 30 days to submit the additional evidence. No additional evidence was received.

By decision dated November 9, 2017, OWCP denied appellant's claim, finding that the evidence submitted was insufficient to establish that she sustained an injury causally related to the accepted employment incident. It noted that she had not submitted medical evidence signed by a qualified physician that contained a medical diagnosis in connection with the alleged condition. OWCP also related that, even if appellant submitted medical evidence that contained a diagnosis, she must also submit evidence establishing that the diagnosed condition was causally related to the accepted employment incident.

OWCP continued to receive medical evidence. In a report dated September 26, 2017, Dr. James A. Hill, Board-certified in orthopedic surgery, indicated that he examined appellant and that x-rays revealed a spur on her acromion indicative of an impingement syndrome. He noted his impression of left rotator cuff tear.

In a diagnostic report dated October 2, 2017 and in an addendum to the September 26, 2017 letter dated November 17, 2017, Dr. Hill diagnosed a full tear of the supraspinatus and a tear of

the leaning edge of the infraspinatus. He recommended that she undergo surgery to repair her left rotator cuff.

In a letter dated January 4, 2018, Dr. Hill indicated that he examined appellant and that she was in significant pain. He noted that the diagnosed left rotator cuff tear was caused by lifting at work on February 24, 2016.

On April 2, 2018 appellant requested reconsideration.

In letters dated March 15 and April 24, 2018, Dr. Hill indicated that appellant had yet to receive the recommended surgery and continued to have significant left shoulder pain.

In a letter dated May, 17, 2018, Dr. Hill related that he performed surgery on appellant on May 7, 2018 and that she was to remain off work.

By decision dated June 27, 2018, OWCP affirmed the November 9, 2017 decision, as modified. It found that a medical condition had been diagnosed, but affirmed the previous decision because the medical evidence of record was insufficient to establish causal relationship between the diagnosed condition and the accepted employment incident.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>4</sup> 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, that an injury was sustained while 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.<sup>5</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.<sup>6</sup>

In order to determine whether an employee sustained a traumatic 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 which is alleged to have occurred.<sup>7</sup> The second component is whether the

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<sup>4</sup> *Supra* note 2

<sup>5</sup> *J.P.*, Docket No. 18-1165 (issued January 15, 2019); *Alvin V. Gadd*, 57 ECAB 172 (2005); *Anthony P. Silva*, 55 ECAB 179 (2003).

<sup>6</sup> *J.P.*, *id.*; *see also Elizabeth H. Kramm (Leonard O. Kramm)*, 57 ECAB 117 (2005); *Ellen L. Noble*, 55 ECAB 530 (2004).

<sup>7</sup> *R.E.*, Docket No. 17-0547 (issued November 13, 2018); *David Apgar*, 57 ECAB 137 (2005); *Delphyne L. Glover*, 51 ECAB 146 (1999).

employment incident caused a personal injury and generally can be established only by medical evidence.<sup>8</sup>

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence.<sup>9</sup> 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.<sup>10</sup> 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.<sup>11</sup>

### ANALYSIS

The Board finds that appellant has not met her burden of proof to establish that her left shoulder condition was causally related to the accepted June 21, 2016 employment incident.

Appellant first sought treatment on June 21, 2016 with Ms. Wolschlag, and then was examined on June 24 and July 6, 2016 by Ms. Wong, and on July 28, 2016 by Ms. Shah. While each of these physician assistants diagnosed appellant's condition, reports from physician assistants have no probative value as those healthcare providers are not considered physicians as defined under FECA.<sup>12</sup> Consequently, their reports are insufficient to establish appellant's claim.<sup>13</sup>

Appellant submitted numerous letters dated September 26, 2017 to May 17, 2018 from Dr. Hill. In his January 4, 2018 report, Dr. Hill diagnosed a left rotator cuff tear and opined that the condition was work related. He did not indicate the correct date of appellant's alleged injury. Dr. Hill indicated that she suffered her alleged injury on February 24, 2016, whereas she had, in her CA-1 form, indicated that her injury occurred on June 21, 2016. Medical opinions based on an incomplete or inaccurate history are of limited probative value.<sup>14</sup> Additionally, Dr. Hill offered only a general conclusion on causal relationship. He did not offer a rationalized medical explanation regarding causal relationship between the diagnosed conditions and the accepted June 21, 2016 employment incident. A mere conclusion without necessary rationale explaining

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<sup>8</sup> *R.E., id.*

<sup>9</sup> *G.N.*, Docket No. 18-0403 (issued September 13, 2018); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

<sup>10</sup> *K.V.*, Docket No. 18-0723 (issued November 9, 2018); *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

<sup>11</sup> *J.P.*, *supra* note 5; *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

<sup>12</sup> *M.B.*, Docket No. 18-1182 (issued January 9, 2019); *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 M.M.*, Docket No. 16-1617 (issued January 24, 2017).

<sup>13</sup> *J.L.*, Docket No. 18-0698 (issued November 5, 2018); *L.M.*, Docket No. 18-0473 (issued October 22, 2018).

<sup>14</sup> *M.B.*, *supra* note 12; *C.L.*, Docket No. 14-1585 (issued December 16, 2014); *J.R.*, Docket No. 12-1099 (issued November 7, 2012); *Douglas M. McQuaid*, 52 ECAB 382 (2001).

why the physician believes that a claimant's accepted employment incident resulted in the diagnosed condition is insufficient to establish appellant's claim.<sup>15</sup>

An award of compensation may not be based on surmise, conjecture, speculation, or on the employee's own belief of causal relationship.<sup>16</sup> As she has not submitted rationalized medical evidence establishing a left knee injury causally related to the accepted employment incident, she has not met her burden of proof to establish her claim.<sup>17</sup>

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 that her left shoulder condition was causally related to the accepted June 21, 2016 employment incident.

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<sup>15</sup> *D.O.*, Docket No. 18-0086 (issued March 28, 2018).

<sup>16</sup> See *B.A.*, Docket No. 17-1130 (issued November 24, 2017); *S.S.*, 59 ECAB 315 (2008); *J.M.*, 58 ECAB 303 (2007); *Donald W. Long*, 41 ECAB 142 (1989).

<sup>17</sup> *T.O.*, Docket No. 18-0139 (issued May 24, 2018).

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 27, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 22, 2019  
Washington, DC

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

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

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