

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

A.G., Appellant)	
)	
and)	Docket No. 18-1257
)	Issued: October 21, 2019
U.S. POSTAL SERVICE, POST OFFICE,)	
Campbellsport, WI, 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 June 4, 2018 appellant filed a timely appeal from April 9 and 16, 2018 merit decisions 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

ISSUES

The issues are: (1) whether appellant has met her burden of proof to establish that the acceptance of her claim should be expanded to include right shoulder conditions causally related to the accepted February 5, 2010 employment injury; and (2) whether appellant has met her burden

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the April 16, 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.*

of proof to establish total disability for the period December 6 through 22, 2017 causally related to her accepted employment injury.

FACTUAL HISTORY

On February 10, 2010 appellant, then a 51-year-old mail processing clerk, filed a traumatic injury claim (Form CA-1) alleging that she sustained an upper back injury on February 5, 2010 when she slipped on snow-covered ice while in the performance of duty. She did not stop work. OWCP accepted the claim for right knee sprain and internal derangement of the right knee and it authorized a right knee arthroscopy, performed on October 5, 2010. It later expanded the accepted conditions to include cervical radiculitis and C4-5 disc herniation. OWCP subsequently authorized an anterior cervical discectomy and fusion, performed on July 8, 2011.

The record contains reports dated August 30, 2012 from Dr. Peeush Singhal, a Board-certified orthopedic surgeon, who indicated that a magnetic resonance imaging (MRI) scan of appellant's right shoulder demonstrated a partial thickness tear of the infraspinatus tendon.

In a September 19, 2012 report Dr. Paul R. Miller, a Board-certified orthopedic surgeon, diagnosed calcific tendinitis and adhesive capsulitis. He reported that appellant had right shoulder pain since June 2012 and sustained a "slipping and falling" injury at work on February 5, 2010.

In a work status report dated September 19, 2012, Dr. Miller advised that appellant was capable of returning to work that day and provided work restrictions of no lifting more than 10 pounds and no above-shoulder work.

By decision dated February 4, 2013, OWCP granted appellant wage-loss compensation for August 2, September 21, November 15, and December 14, 2012.

Appellant submitted a series of reports dated July 21, October 20, and December 15, 2017 from Megan A. Hackel, a certified physician assistant, who diagnosed pain in right shoulder and complete rotator cuff tear of right shoulder and indicated that appellant slipped on the ice catching herself from falling completely in January 2017 and that she had torn her rotator cuff. Ms. Hackel reported that appellant had chronic neck pain and was unable to distinguish between this pain and appellant's shoulder pain until June 2017.

In a September 14, 2017 report, Dr. David A. Toivonen, a Board-certified orthopedic surgeon, diagnosed impingement syndrome of right shoulder, other shoulder lesions, and primary osteoarthritis of the right shoulder. When he questioned appellant regarding the work-related nature of her shoulder, she indicated that it related back to the original fall and she had persistent and consistent symptoms in her right shoulder.

In a development letter dated December 13, 2017, OWCP advised appellant of the type of evidence required to establish that the accepted conditions in her claim should be expanded to include newly diagnosed right shoulder conditions, including a rationalized medical report explaining how the newly diagnosed conditions were caused or aggravated by her accepted February 5, 2010 employment injury.

In a physical capabilities restriction form dated December 6, 2017, Dr. Toivonen checked a box marked “yes” indicating his opinion that appellant was temporarily totally disabled due to her work-related injury.

Appellant filed claims for wage-loss compensation (Form CA-7) for the period December 6 through 22, 2017.

In a development letter dated January 8, 2018, OWCP requested additional evidence from appellant to establish disability from work during the entire period claimed. It noted that the medical evidence did not substantiate that her disability was caused by the accepted employment injury because it had not accepted a right shoulder injury, conditions, or surgery as causally related to the accepted February 5, 2010 employment injury. OWCP afforded appellant 30 days to respond to its inquiries.

In response, appellant submitted a note dated July 27, 2017 from Ms. Hackel diagnosing pain in right shoulder and recommending an orthopedic surgeon to examine her right rotator cuff.

Ms. Hackel also provided work restrictions of lifting/carrying a maximum of 10 pounds. She advised that appellant was able to sit constantly and that these restrictions would be in effect until appellant was evaluated by an orthopedic surgeon due to a right rotator cuff tear.

Appellant accepted an offer of modified duty as a part-time flexible clerk on December 21, 2017.

In a January 11, 2018 report, Dr. Michael Jung, an anesthesiologist and pain medicine specialist, advised that he had treated appellant since June 28, 2013 when she presented with symptoms of neck, shoulder, and arm pain. He reported that she was injured at work when she fell, resulting in a knee and neck injury. Dr. Jung indicated that appellant had a cervical fusion on July 8, 2011 and was seen for a follow-up by her surgeon, Dr. Singhal, after having a right shoulder MRI scan which showed a partial thickness tear of the infraspinatus tendon. Over the course of treatment since 2013, he found that there were multiple office visits where appellant had symptoms of right shoulder pain. Dr. Jung opined that her work injury was a “contributory causative factor” in the development of her right shoulder pain as it started after the work injury and was contributory to its progression.

By decision dated April 9, 2018, OWCP reiterated that it had accepted the February 5, 2010 employment injury, but denied expansion of the acceptance of the claim because the medical evidence of record failed to establish a causal relationship between appellant’s diagnosed conditions of right shoulder supraspinatus and infraspinatus tendinosis and full-thickness subscapular tear and the February 5, 2010 employment injury.

By decision dated April 16, 2018, OWCP denied appellant's claim for wage-loss compensation because the medical evidence of record failed to establish disability for the period December 6 through 22, 2017³ causally related to her accepted employment injury.

LEGAL PRECEDENT -- ISSUE 1

Where an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.⁴

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁵ A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.⁶ Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s).⁷

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish that the acceptance of her claim should be expanded to include right shoulder conditions causally related to the accepted February 5, 2010 employment injury.

In his September 14, 2017 report, Dr. Toivonen diagnosed impingement syndrome of right shoulder, other shoulder lesions, and primary osteoarthritis of the right shoulder. He reported that appellant had a significant history of right shoulder issues that she related back to her accepted February 5, 2010 employment injury. Dr. Toivonen also reported that she had a fall in January 2017. He indicated that appellant claimed that her right shoulder condition had been a work-related condition due to her 2010 employment injury. Dr. Toivonen did not, however, provide an opinion on the issue of causal relationship. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.⁸ These reports, therefore, are insufficient to establish appellant's claim to expand the conditions accepted by OWCP.

³ The Board notes that, in its April 16, 2018 decision, OWCP incorrectly indicated that appellant claimed disability compensation for the period December 6 through 20, 2017. However, appellant submitted claims for wage-loss compensation (Form CA-7) for the period December 6 through 22, 2017.

⁴ *R.J.*, Docket No. 17-1365 (issued May 8, 2019); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

⁵ *T.H.*, 59 ECAB 388, 393 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

⁶ *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

⁷ *Id.*; *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁸ *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

In a January 11, 2018 report, Dr. Jung opined that appellant's accepted employment injury was a contributory causative factor in her right shoulder pain as it started after the employment injury and was contributory to its progression. The Board has held that a mere conclusion without the necessary rationale as to whether a period of disability is due to an accepted employment condition is insufficient to meet a claimant's burden of proof.⁹ Therefore, the Board finds that the report from Dr. Jung is insufficient to establish appellant's request for claim expansion.

In his August 30, 2012 report, Dr. Singhal diagnosed partial thickness tear of the infraspinatus tendon. In his September 19, 2012 reports, Dr. Miller diagnosed calcific tendinitis and adhesive capsulitis. While both physicians provide right-shoulder diagnoses, neither provides the necessary rationale to explain how the diagnosed right shoulder conditions were causally related to the accepted February 5, 2010 employment injury. As the attending physicians failed to address causal relationship, their reports are also insufficient to meet appellant's burden of proof.¹⁰

Appellant also submitted evidence from a physician assistant. The Board has long held that medical reports signed solely by a physician assistant are of no probative value as a physician assistant is not considered a physician as defined under FECA and is therefore not competent to provide medical opinions.¹¹ Consequently, this evidence is also insufficient to establish appellant's claim.

The Board finds that appellant has not submitted the necessary rationalized medical evidence to support her claim that she sustained additional right shoulder conditions causally related to the accepted February 5, 2010 employment injury. Therefore, appellant has not met her burden of proof to establish her claim.

LEGAL PRECEDENT -- ISSUE 2

An employee seeking benefits under FECA¹² has the burden of proof to establish the essential elements of his or her claim, including that any disability or specific condition for which compensation is claimed is causally related to the employment injury.¹³

⁹ *A.T.*, Docket No. 19-0410 (issued August 13, 2019); *E.L.*, Docket No. 17-1632 (issued January 3, 2018).

¹⁰ *Supra* note 8.

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). *E.T.*, Docket No. 17-0265 (issued May 25, 2018) (physician assistants are not considered physicians under FECA); *J.M.*, 58 ECAB 448 (2007) (physical therapists are not considered physicians under FECA).

¹² *Supra* note 1.

¹³ *C.R.*, Docket No. 18-1805 (issued May 10, 2019); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

Under FECA, the term disability means the incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of injury.¹⁴ The question of whether an employee is disabled from work is an issue that must be resolved by competent medical evidence.¹⁵ The employee is responsible for providing sufficient medical evidence to justify payment of any compensation sought.¹⁶

For each period of disability claimed, the employee has the burden of proof to establish that he or she was disabled from work as a result of the accepted employment injury.¹⁷ The Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so, would essentially allow an employee to self-certify his or her disability and entitlement to compensation.¹⁸

ANALYSIS -- ISSUE 2

The Board finds that appellant has not met her burden of proof to establish total disability for the period December 6 through 22, 2017 causally related to her accepted February 5, 2010 employment injury.

In a December 6, 2017 physical capabilities restriction form, Dr. Toivonen checked a box marked “yes” indicating that appellant was temporarily totally disabled from work due to work-related right shoulder injuries. While he indicated that she was disabled on that date, his opinion is insufficient to support the claimed period of disability. The Board has held that when a physician’s opinion consists only of checking “yes” to a form question, without explanation or rationale, that opinion has little probative value and is insufficient to establish a claim.¹⁹ Further, and as previously noted, appellant’s claim has not been accepted for right shoulder conditions.

In his January 2018 report, Dr. Jung did not provide a firm diagnosis or an opinion on the causal relationship between appellant’s accepted injuries and her alleged disability from work for the claimed period.²⁰ For these reasons, this report is also insufficient to establish her claim for total disability for the period December 6 through 22, 2017

¹⁴ 20 C.F.R. § 10.5(f).

¹⁵ *A.T.*, *supra* note 9.

¹⁶ *Id.*; *see T.A.*, Docket No. 18-0431 (issued November 7, 2018); *see also Amelia S. Jefferson*, 57 ECAB 183 (2005).

¹⁷ *S.M.*, Docket No. 17-1557 (issued September 4, 2018); *William A. Archer*, 55 ECAB 674, 679 (2004); *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001).

¹⁸ *T.L.*, Docket No. 18-0934 (issued May 8, 2019); *Sandra D. Pruitt*, 57 ECAB 126 (2005).

¹⁹ *See M.O.*, Docket No. 18-1056 (issued November 6, 2018); *Deborah L. Beatty*, 54 ECAB 3234 (2003).

²⁰ *Supra* note 9.

Appellant also submitted evidence from a physician assistant. As set forth herein, the opinion of a physician assistant has no probative value.²¹

As the medical evidence of record is insufficient to establish that appellant was disabled from work for the period December 6 through 22, 2017 due to her accepted right knee and cervical conditions, the Board finds that she has not met her burden of proof.

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 the acceptance of her claim should be expanded to include right shoulder conditions causally related to the accepted February 5, 2010 employment injury. The Board further finds that she has not met her burden of proof to establish total disability for the period December 6 through 22, 2017 causally related to her accepted employment injury.

ORDER

IT IS HEREBY ORDERED THAT the April 16 and 9, 2018 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: October 21, 2019
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

²¹ *Supra* note 11.