United States Department of Labor
Employees' Compensation Appeals Board

B.P., Appellant	)	
and	)	**Docket No. 19-0777**
	)	**Issued: October 8, 2019**
U.S. POSTAL SERVICE, TRENTON PROCESSING & DISTRIBUTION CENTER, Trenton, NJ, Employer	)	

Appearances:
James D. Muirhead, 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
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On February 25, 2019 appellant, through counsel, filed a timely appeal from a September 28, 2018 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.[3]

[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*.

[3] The Board notes that appellant submitted additional evidence on appeal. 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 a left elbow condition causally related to the accepted March 4, 2014 employment incident.

FACTUAL HISTORY

On March 12, 2014 appellant, then a 55-year-old mail processing clerk, filed a traumatic injury claim (Form CA-1) alleging that on March 4, 2014 she injured her left elbow when she hit it on a "pie rack" while in the performance of duty. She did not stop work.

In a report dated March 13, 2014, Dr. Marcel Stern, a Board-certified internist, noted appellant's date of injury as March 4, 2014, and reported the history of injury as "she lifted a tray of mail to the upper shelf" and "banged her left elbow on a metal rod." He diagnosed status post contusion, sprain and strain of left elbow with lateral epicondylitis, and tendinitis. Dr. Stern provided work restrictions.

On March 24, 2014 the employing establishment issued an authorization for examination and medical treatment (Form CA-16).[4]

OWCP also received an attending physician's report, Part-B of the Form CA-16, dated March 13, 2014, which noted that appellant had hit her left elbow on a metal tray. The other findings in the report and the physician's signature are illegible.

A series of duty status reports (Forms CA-17) were received dated from March 13 through August 26, 2014 which noted appellant's history of injury as "lifting a tray of mail from a pie rack to top rack and hit left elbow." Appellant's work restrictions were provided.

In a report dated March 25, 2014, Dr. Arvind Patel, a Board-certified internist, related appellant's examination findings and diagnosed status post contusion and sprain and strain of left elbow with lateral epicondylitis. He noted that appellant could perform light-duty work with restrictions.

In a series of reports dated April 2, April 16, May 14, and June 4, 2016, Dr. Stern noted appellant's history of injury, and physical examination findings. He continued to diagnose persistent left elbow lateral epicondylitis, and provide work restrictions.

In a series of reports dated June 24, July 15, August 5, August 26, and September 16, 2014, Dr. Franklin Chen, a Board-certified orthopedic surgeon, reviewed appellant's history of injury and physical examination findings. In his June 24, 2014 report, he noted that x-rays of appellant's elbow revealed incidental calcification to medial and lateral elbow, and diagnosed left elbow epicondylitis. In his July 15, August 5, and August 26, 2014 reports, Dr. Chen noted that, based on a July 5, 2014 magnetic resonance imaging (MRI) scan, appellant displayed severe common extensor tendinitis with partial tearing of the deep fibers, and small joint, effusion. In each report, he related that, based on appellant's history of injury and examination findings, it was within

[4] The record reflects that the employing establishment issued additional Forms CA-16 authorizing medical treatment on June 24 and September 16, 2014. These forms are largely illegible.

medical probability that her current orthopedic complaints were causally related to her employment injury.

In a report dated March 16, 2016, Dr. David Weiss, an osteopath Board-certified in orthopedic surgery, performed a schedule award impairment evaluation of appellant's left upper extremity and left lower extremity. Regarding the left elbow he diagnosed chronic lateral epicondylitis of the left elbow. Dr. Weiss opined that appellant's employment-related injuries of July 22, 2005, September 26, 2010, February 10, 2013, March 28, 2013, and March 4, 2014 were the competent producing factors of her objective diagnoses.

In a development letter dated July 26, 2017, OWCP advised appellant that when her claim was submitted it appeared to be a minor injury that necessitated minimal or no lost time from work and payment of a limited amount of medical expenses had been administratively approved. It explained that her claim was being reopened for consideration because she filed a claim for wage loss pursuant to a schedule award impairment rating. OWCP further informed appellant of the deficiencies of her claim, advised her of the type of factual and medical evidence needed, and provided a questionnaire for her completion. It afforded her 30 days to submit the necessary evidence. No response was received.

By decision dated November 29, 2017, OWCP denied appellant's claim finding that the evidence submitted was insufficient to establish that the alleged incident occurred as described, and that she had not submitted sufficient medical evidence to establish a diagnosed medical condition causally related to the alleged employment incident. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On December 5, 2017 appellant, through counsel, requested a telephonic hearing regarding OWCP's November 29, 2017 decision. A hearing before an OWCP hearing representative was held on May 9, 2018. Appellant testified at the hearing that her left elbow injury occurred as she lifted a tray of mail to place it on a top rack, and she hit her left elbow on a connected rack.

By decision dated July 9, 2018, OWCP's hearing representative affirmed the November 29, 2017 decision finding that the evidence of record lacked a report from a physician containing a history of injury, a firm diagnosis, and a discussion, with rationale, of the relationship between the two.

On July 18, 2018 appellant, through counsel, requested reconsideration of the July 9, 2018 decision. She submitted additional medical evidence along with her request.

In an unsigned hospital report dated March 12, 2014, the treating physician indicated that appellant injured her left elbow on a metal cage while at work. In addition, it noted that she had elbow tenderness laterally and along the lateral epicondyle, no edema, no swelling, and full range of motion. Appellant was diagnosed with left elbow contusion.

By decision dated September 28, 2018, OWCP denied modification of the July 9, 2018 decision as appellant had not met her burden of proof to establish that her diagnosed left elbow conditions were causally related to the accepted employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA[5] 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 of FECA,[6] 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.[7] 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.[8]

In order to determine whether a federal employee has sustained a traumatic injury in the performance of duty, OWCP must first determine whether fact of injury has been established.[9] There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged.[10] Second, the employee must submit evidence, generally only in the form of probative medical evidence, to establish that the employment incident caused a personal injury.[11]

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical evidence.[12] The opinion of the physician must be based on a complete factual and medical background of the employee, 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 factor(s) identified by the employee.[13] The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.[14]

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[5] *Supra* note 2.

[6] *R.C.*, Docket No. 18-1146 (issued August 12, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

[7] *L.E.*, Docket No. 19-0470 (issued August 12, 2019); *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[8] *L.E., id.*; *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).

[9] *D.B.*, Docket No. 18-1348 (issued January 4, 2019); *S.P.*, 59 ECAB 184 (2007).

[10] *R.C., supra* note 6; *D.S.*, Docket No. 17-1422 (issued November 9, 2017); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

[11] *L.E., supra* note 7; *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *David Apgar*, 57 ECAB 137 (2005); *John J. Carlone*, 41 ECAB 354 (1989).

[12] *M.K.*, Docket No. 19-0428 (issued July 15, 2019); *L.D.*, Docket No. 17-1581 (issued January 23, 2018); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[13] *L.E., supra* note 7; *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

[14] *R.C., supra* note 6; *James Mack*, 43 ECAB 321 (1991).

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a left elbow condition causally related to the accepted March 4, 2014 employment incident.

Appellant submitted a series of reports from Dr. Stern who noted appellant's history of injury, and diagnosed persistent left elbow lateral epicondylitis status post contusion, sprain and strain of left elbow with lateral epicondylitis, and tendinitis. Dr. Stern did not, however, address the issue of causal relationship. Medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value regarding the issue of causal relationship.[15]

Similarly, Dr. Patel provided diagnoses of appellant's left elbow condition and noted work restrictions, but offered no opinion causally relating the diagnoses to the March 4, 2014 employment incident. As such his report is insufficient to establish appellant's claim.[16]

OWCP also received a series of reports from Dr. Chen who noted that x-rays revealed incidental calcification of appellant's medial and lateral elbow, and diagnosed left elbow epicondylitis. In Dr. Chen's July 15, August 5, and 26, 2014 reports, he noted that, based on a July 5, 2014 magnetic resonance imaging (MRI) scan, appellant displayed severe common extensor tendinitis with partial tearing of the deep fibers, small joint effusion. In each report, he related that, based on the patient's history and examination, it was within medical probability that her current orthopedic complaints were causally related to her employment injury. Although Dr. Chen's reports contain an affirmative opinion on causal relationship, the Board finds that they do not contain sufficient medical rationale explaining how the mechanism of injury caused or contributed to appellant's left elbow conditions. The Board has found that medical evidence that states a conclusion, but does not offer any rationalized medical explanation regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[17] Because Dr. Chen did not provide a reasoned opinion explaining how, physiologically, the March 4, 2014 employment incident caused or contributed to appellant's left elbow condition, his reports are insufficient to establish her claim.

Appellant also submitted a report from Dr. Weiss, who diagnosed *inter alia* chronic lateral epicondylitis to the left elbow. Dr. Weiss opined that the employment-related injuries of July 22, 2005, September 26, 2010, February 10, March 28, 2013, and March 4, 2014 were the competent producing factors of her objective diagnoses. As previously discussed, the Board has found that medical evidence that provides a conclusion, but does not offer a rationalized medical explanation regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[18] Because Dr. Weiss' report did not provide sufficient rationalized medical

[15] *D.H.*, Docket No. 17-1913 (issued December 13, 2018); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *Linda I. Sprague*, 48 ECAB 386 (1997).

[16] *Id*.

[17] *R.C.*, *supra* note 6; *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006).

[18] *Id*.

explanation explaining how the March 4 2014 employment incident was sufficient to have caused appellant's diagnosed left elbow condition, his report is of limited probative value.[19]

OWCP also received an unsigned hospital report, which noted that appellant injured her left elbow on a metal cage while at work, that she had elbow tenderness laterally and along the lateral epicondyle, no edema, no swelling, full range of motion, and a diagnosis of left elbow contusion at that time. Reports that are unsigned or that bear illegible signatures cannot be considered as probative medical evidence because they lack proper identification.[20] Thus, this report is insufficient to meet appellant's burden of proof.

In order to obtain benefits under FECA an employee 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.[21] Because appellant has failed to provide such evidence demonstrating that her diagnosed left elbow condition was causally related to the accepted March 4, 2014 employment incident, she has not met her burden of proof to establish her traumatic injury claim.[22]

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 a left elbow condition causally related to the accepted March 4, 2014 employment incident.

[19] The duty status reports which accompany the physicians' medical reports in the record are of no probative value as they do not contain an opinion on the issue of causation. *See supra* note 16.

[20] *T.C.*, Docket No. 18-1351 (issued May 9, 2019); *Thomas L. Agee*, 56 ECAB 465 (2005); *Richard F. Williams*, 55 ECAB 343 (2004).

[21] *Supra* note 7.

[22] The Board notes that the employing establishment issued an authorization for examination and/or treatment (Form CA-16). A completed Form CA-16 authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. *See* 20 C.F.R. § 10.300(c); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).

ORDER

IT IS HEREBY ORDERED THAT the September 28, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 8, 2019
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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