

ISSUE

The issue is whether appellant has met her burden of proof to establish that her diagnosed conditions were causally related to the accepted March 19, 2014 employment incident.

FACTUAL HISTORY

This case was previously before the Board.⁴ The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On March 24, 2014 appellant, then a 50-year-old account technician, filed a traumatic injury claim (Form CA-1) alleging that on March 19, 2014 she sustained an injury when she was struck by a gate as she was entering the worksite while in the performance of duty. She reported getting hit on the nose by the gate and sustaining a neck and shoulder injury, nose fracture, extreme swelling of the face, and a bruised neck and collar bone. Appellant first sought emergency medical treatment on March 19, 2014.

In an April 29, 2014 progress note, Dr. Matthew Clarke, Board-certified in family medicine, noted that he had treated appellant for neck and back complaints.

In a May 21, 2014 attending physician's report (Form CA-20) and a prescription note, John Mullin, a certified physician assistant, documented appellant's treatment.

In a May 13, 2014 report, Dr. Lily Belfi, a Board-certified diagnostic radiologist, provided diagnostic findings pertaining to an x-ray of the cervical spine. An impression of mild grade 1 retrolisthesis of C4-5, moderate left-sided neural foraminal narrowing at C4-5, and mild left-sided neuroforaminal narrowing at C3-4 and C5-6 was noted.

In a June 18, 2014 note, Dr. Jean Xiao, Board-certified in internal medicine, reported that appellant was unable to work due to a work-related condition sustained on March 19, 2014. He diagnosed neck and back pain and provided work restrictions.

In a development letter dated June 24, 2014, OWCP notified appellant that her claim was initially administratively handled to allow medical payments as it appeared to involve a minor injury resulting in minimal or no lost time from work. However, appellant's claim had been reopened because a claim for wage-loss compensation had been received. OWCP advised her of the type of medical and factual evidence needed to establish her claim and afforded her 30 days to respond.

In a June 18, 2014 narrative report, Dr. Xiao reported that appellant sustained a work-related injury on March 19, 2014. He noted that she sustained injury to her neck, back, face, shoulder, and hands when a gate fell on her.

In a June 29, 2014 form report, Dr. Xiao again reported that appellant was injured on March 19, 2014 when she was performing accounting work. He diagnosed unspecified backache, cervicalgia, and unspecified derangement of joint of shoulder region. When asked if the incident

⁴ Docket No. 16-0342 (issued July 26, 2016).

as described by appellant was the competent medical cause of her injury/illness, Dr. Xiao checked the box marked “yes.”

In a July 9, 2014 Form CA-20, Dr. Michael Hearn, Board-certified in occupational medicine, diagnosed traumatic neck pain, headaches, bilateral shoulder pain, and chest wall pain. He noted that the injury occurred on March 19, 2014 when appellant was hit by a gate at her job. Dr. Hearn checked the box marked “no” when asked if the condition was caused or aggravated by the employment incident.

By decision dated July 25, 2014, OWCP denied appellant’s claim finding that the evidence of record was insufficient to establish an injury because she had not submitted medical evidence containing a diagnosis in connection with the accepted March 19, 2014 employment incident. It noted that the medical evidence submitted contained a diagnosis of “pain” which is a symptom, but not a diagnosed medical condition.

On August 11, 2014 appellant requested review of the written record before a representative of OWCP’s Branch of Hearings and Review.

In support of her claim, appellant submitted medical reports dated March 19, 2014 by Dr. Resa Lewiss, Board-certified in emergency medicine. Dr. Lewiss reported that appellant was at work when a gate hit her on the nose and left shoulder. She diagnosed contusion at multiple sites and noted the external cause of injury as accident on industrial premises.

Handwritten treatment notes dated March 26 through August 13, 2014 were also submitted. While many of the reports did not contain a legible signature, it appears that some of the reports were signed by Mr. Mullin.

In a June 5, 2014 diagnostic report, Dr. Belfi reported that an x-ray of the acromioclavicular (AC) joint, facial bones, left shoulder, right shoulder, chest, and lumbar spine revealed no acute fracture or dislocation.

In an August 11, 2014 Form CA-20, Dr. Hearn diagnosed herniated disc of the neck and back. He checked the box marked “no” when asked if the conditions were caused or aggravated by the employment activity, noting that appellant was hit by a gate.

In a September 26, 2014 report, Dr. Puneet S. Pawha, a Board-certified diagnostic radiologist, provided findings pertaining to a magnetic resonance imaging (MRI) scan of the cervical spine.

In an October 9, 2014 report, Dr. Houman Danesh, Board-certified in physical medicine and rehabilitation, diagnosed cervical radiculopathy and left shoulder impingement.

By decision dated February 18, 2015, OWCP’s hearing representative affirmed the July 25, 2014 decision finding that the evidence of record failed to provide a medical diagnosis which could be reasonably attributed to the March 19, 2014 employment incident.

On June 25, 2015 appellant, through counsel, requested reconsideration. Counsel argued that the medical reports submitted were not properly considered or developed by OWCP and that they established that her injury was causally related to the March 19, 2014 employment incident.

He referenced Dr. Xiao's June 19, 2014 report as the basis for his claim. Counsel noted that the physician provided a diagnosis of cervicalgia and also established that the diagnosed medical condition was causally related to the work injury. No other evidence was submitted with his arguments.

By decision dated November 3, 2015, OWCP denied appellant's request for reconsideration finding that she neither raised substantive legal questions nor included relevant and pertinent new evidence.

On December 16, 2015 appellant, through counsel, appealed to the Board. By decision dated July 26, 2016, the Board affirmed the November 3, 2015 decision finding that OWCP properly denied her request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).⁵

On May 8, 2017 appellant requested reconsideration of the claim before OWCP.

In support of her claim, appellant submitted medical reports dated November 23 and December 10, 2015 from Dr. Stephen Silver, a Board-certified orthopedic surgeon. Dr. Silver described the March 19, 2014 employment incident when she was walking into work through two gates when the second gate fell and hit her hard; crushing her chest, head, and face. Appellant had sought treatment for her conditions, but complained of continued neck and shoulder pain. Dr. Silver reviewed diagnostic testing pertaining to the bilateral shoulders and recommended right and left shoulder arthroscopy. A December 4, 2015 MRI scan of the right and left shoulder was provided.

In a January 14, 2016 operative report, Dr. Silver noted a preoperative diagnosis of left shoulder impingement, AC joint degenerative joint disease, and labral tear. He reported a postoperative diagnosis of superior labrum complex tear, subacromial bone spur, and AC joint spur. Appellant underwent surgical arthroscopy of the left shoulder, debridement, biceps tenotomy of detached superior labrum, subacromial decompression, and distal clavicle excision.

In a June 8, 2017 operative report, Dr. Silver noted that he had performed appellant's right shoulder arthroscopy for the diagnosed conditions of right shoulder superior labral tear from anterior to posterior, impingement, and AC joint degenerative joint disease.

By decision dated November 16, 2017, OWCP reviewed the merits of the claim, but denied modification of its prior decision, finding that the evidence of record failed to provide a medical diagnosis which could be reasonably attributed to the March 19, 2014 employment incident.

On February 2, 2018 appellant requested reconsideration.

In support of her claim, appellant submitted a January 19, 2018 narrative report from Dr. Silver. Dr. Silver reported that she was under his care for treatment of left and right shoulders due to a work-related injury in March 2014. He reported first evaluating appellant on November 23, 2015 for a consultation when she was diagnosed with impingement of both shoulders, indicating partial rotator cuff and labral tears. Dr. Silver explained that her conditions

⁵ *Supra* note 2.

required left and right shoulder surgery. He opined that appellant's conditions were causally related to her March 19, 2014 employment incident.

By decision dated May 1, 2018, OWCP affirmed the November 16, 2017 decision, as modified, finding that the evidence of record established a diagnosed medical condition. It denied the claim, however, for failing to establish that the diagnoses were causally related to the accepted March 19, 2014 employment incident.

On March 20, 2019 appellant, through counsel, requested reconsideration of the May 1, 2018 decision. Counsel submitted a January 28, 2019 medical report from Dr. Silver in support of the claim.

In his January 28, 2019 report, Dr. Silver described appellant's March 19, 2014 employment incident. He discussed her course of treatment while under his care since November 23, 2015, reviewed diagnostic studies, and summarized the results of her left and right shoulder arthroscopy. Dr. Silver opined that appellant suffered an injury on March 19, 2014 when a gate fell on top of her, injuring both shoulders. He reported that his examination findings and the MRI scans were consistent with bilateral shoulder labral tears and impingement which was trauma induced. Dr. Silver further noted that appellant underwent arthroscopy of the left shoulder on January 14, 2016 and the right shoulder on June 8, 2017, which confirmed the labral tears and impingement diagnoses. He opined that the injuries to both shoulders as described in his report were directly and causally related to the employment injury suffered on March 19, 2014.

By decision dated March 25, 2019, OWCP denied modification of the May 1, 2018 decision.

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,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

To determine if an employee has sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Fact of injury consists of two components that must be considered in conjunction with one another. The first

⁶ *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁷ *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 *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).

component is whether the employee actually experienced the employment incident that allegedly occurred.⁹ The second component is whether the employment incident caused a personal injury.¹⁰

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve.¹¹ 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 incident.¹²

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish that her diagnosed conditions were causally related to the accepted March 19, 2014 employment incident.¹³

The record reflects that following the March 19, 2014 employment incident appellant was seen by Dr. Lewiss in a hospital emergency room. Dr. Lewiss' March 19, 2014 hospital report documented appellant's history of injury, immediate medical treatment following the injury, and noted diagnoses of multiple site contusions. However, she merely repeated the history of injury as reported by appellant, without providing her own opinion regarding whether appellant's condition was work related. The mere recitation of patient history does not suffice for purposes of establishing causal relationship between a diagnosed condition and the employment incident.¹⁴

Appellant was then treated by Drs. Clark and Xiao. Dr. Clark's April 29, 2014 progress note and Dr. Xiao's reports dated June 18 through 29, 2014 lack probative value as these reports failed to provide a firm medical diagnosis which could be related to the employment incident.¹⁵ While Dr. Xiao's reports noted pain, backache and cervicgia, pain and cervicgia are considered symptoms, not diagnoses and do not constitute a basis for payment of compensation.¹⁶

Dr. Hearn's July 9 and August 11, 2014 form reports also do not provide support for a work-related injury as he diagnosed herniated disc of the neck and back and checked the box marked "no" when asked if the condition was caused or aggravated by the employment incident when appellant was hit by a gate. As he does not relate her conditions to the March 19, 2014 employment incident, his reports are of no probative value.¹⁷

⁹ *Elaine Pendleton*, 40 ECAB 1143 (1989).

¹⁰ *M.H.*, Docket No. 18-1737 (issued March 13, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

¹¹ *See K.C.*, Docket 17-1693 (issued October 29, 2018); *Robert G. Morris*, 48 ECAB 238 (1996).

¹² *S.S.*, Docket No. 18-1488 (issued March 11, 2019).

¹³ *R.V.*, Docket No. 18-1037 (issued March 26, 2019).

¹⁴ *J.G.*, Docket No. 19-1116 (issued November 25, 2019); *see J.G.*, Docket No. 17-1382 (issued October 18, 2017).

¹⁵ *A.B.*, Docket No. 18-0577 (issued October 10, 2018).

¹⁶ *T.G.*, Docket No. 19-09904 (issued November 25, 2019); *P.H.*, Docket No. 07-1016 (issued August 15, 2007).

¹⁷ *See P.D.*, Docket No. 18-1461 (issued July 2, 2019).

While the October 9, 2014 report of Dr. Danesh provided a diagnosis of cervical radiculopathy and left shoulder impingement, his opinion is of no probative value as he did not provide a history of injury and he failed to provide an opinion on the cause of appellant's condition.¹⁸ 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.¹⁹

OWCP also received medical reports dated November 23, 2015 through January 28, 2019 from Dr. Silver. Dr. Silver diagnosed bilateral shoulder impingement and labral tears, which he opined were causally related to the March 19, 2014 employment incident. The Board finds that the reports of Dr. Silver are not well-rationalized.²⁰ While Dr. Silver provided a firm medical diagnosis pertaining to the shoulders, he failed to provide a sufficient explanation, based on medical rationale, on the cause of appellant's condition, only generally noting that the labral tears and impingement were trauma-induced.²¹ The Board has held that medical evidence that does not offer supporting rationale regarding the cause of an employee's condition is of limited probative value.²² Dr. Silver's general statement on causation failed to provide a sufficient explanation as to the mechanism of injury pertaining to this traumatic injury claim, namely, how a falling gate would cause tears and impingement to both shoulders.²³ Without providing a rationalized opinion explaining how physiologically the accepted employment incident caused or contributed to the diagnosed conditions, his opinion is of limited probative value.²⁴ As such, Dr. Silver's report is insufficient to meet appellant's burden of proof.²⁵

While OWCP also received a number of diagnostic studies, the Board has held that diagnostic studies lack probative value as they do not address whether the employment incident caused any of the diagnosed conditions.²⁶ Such reports are therefore insufficient to establish appellant's claim.

¹⁸ *K.G.*, Docket No. 18-1691 (issued May 1, 2019).

¹⁹ *M.V.*, Docket No. 18-1132 (issued September 16, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

²⁰ *R.C.*, Docket No. 19-0376 (issued July 15, 2019).

²¹ *H.A.*, Docket No. 18-1466 (issued August 23, 2019).

²² See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

²³ See *T.H.*, Docket No. 18-1736 (issued March 13, 2019); *R.R.*, Docket No. 16-1901 (issued April 17, 2017).

²⁴ *D.W.*, Docket No. 19-0968 (issued October 9, 2019).

²⁵ *K.L.*, Docket No. 18-1018 (issued April 10, 2019).

²⁶ *F.D.*, Docket No. 19-0932 (issued October 3, 2019).

The physician assistant notes are also of no probative value. Such healthcare providers are not considered “physician[s]” as defined under FECA.²⁷ Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.²⁸

The Board finds that the record lacks rationalized medical evidence establishing causal relationship between the March 19, 2014 employment incident and appellant’s diagnosed conditions.²⁹ Thus, appellant has not met her burden of proof.

Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board’s 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 diagnosed conditions were causally related to the accepted March 19, 2014 employment incident.

²⁷ 5 U.S.C. § 8102(2) of FECA provides that the term physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. *K.C.*, Docket No. 19-0834 (issued October 28, 2019); *E.T.*, Docket No. 17-0265 (issued May 25, 2018) (physician assistants are not considered physicians under FECA).

²⁸ *N.B.*, Docket No. 19-0221 (issued July 15, 2019).

²⁹ *K.L.*, Docket No. 18-1029 (issued January 9, 2019).

ORDER

IT IS HEREBY ORDERED THAT the March 25, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 8, 2020
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board