

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

_____)	
J.R., Appellant)	
)	
and)	Docket No. 21-1257
)	Issued: April 27, 2022
U.S. POSTAL SERVICE, POST OFFICE, Hartford, CT, Employer)	
_____)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 16, 2021 appellant filed a timely appeal from a June 22, 2021 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 a medical condition causally related to the accepted May 10, 2020 employment incident.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the February 17, 2021 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 May 19, 2020 appellant, then a 70-year-old postal distribution associate, filed a traumatic injury claim (Form CA-1) alleging that on May 10, 2020 she sustained a right elbow injury³ when lifting letter trays from the high-speed tray sorter while in the performance of duty. She did not stop work.

In a May 13, 2020 note, Nisha Malik, a physician assistant, indicated that appellant related complaints of right arm pain, which she attributed to lifting a heavy box from a conveyor belt on May 9, 2020. She noted that she described sudden pain around the elbow, followed by swelling. Ms. Malik performed a physical examination and documented mild swelling and tenderness to palpation over the lateral epicondyle of the right elbow. She diagnosed right elbow pain and recommended that appellant undergo an x-ray of the right elbow.

An x-ray of the right elbow, also dated May 13, 2020, was read as normal.

In a follow-up note dated May 26, 2020, Ms. Malik noted a history of prior x-rays of the left elbow taken on April 24, 2016, which revealed medial and lateral epicondylitis. She again diagnosed right arm pain.

In a note dated June 10, 2020, Lauren Phillips, a physician assistant, documented appellant's ongoing complaints of right elbow pain. She diagnosed right elbow pain and recommended physical therapy.

Natasha Rodriguez, a physician assistant, in a note dated June 19, 2020, diagnosed right arm pain. A separate order form of even date indicated that appellant was referred to undergo a magnetic resonance imaging (MRI) scan of the right elbow for a diagnosis of right elbow pain by Dr. Thomas Gartman, an internist.

In a letter dated July 21, 2020, Ms. Rodriguez recommended light-duty work with no lifting, pushing, or pulling over 20 pounds.

In an occupational therapy evaluation dated August 20, 2020, Lisa Blain, a registered occupational therapist, indicated that appellant related a history of right arm pain, which she attributed to picking up a heavy box in April 2020. She performed a physical examination and diagnosed pain and lateral epicondylitis of the right elbow.

In a follow-up note and letter dated September 1, 2020, Ms. Phillips recommended ongoing restrictions of lifting no more than 20 pounds.

Elvis Smith, a physician assistant in orthopedics, indicated in a note dated September 17, 2020, that appellant stated that her correct date of injury was May 10, 2020. He noted that she described attempting to lift a heavy box at work and feeling something give in the right elbow.

³ OWCP previously processed a traumatic injury claim for an October 8, 2015 right elbow injury as a short form closure under OWCP File No. xxxxxx740. That claim is not presently before the Board.

Mr. Smith performed a physical examination and diagnosed lateral epicondylitis of the right elbow.

Therapy notes dated October 19 and 20, 2020 documented ongoing occupational therapy with Ms. Blain.

OWCP, in a January 15, 2021 development letter, advised appellant of the deficiencies of her claim, requested additional factual and medical evidence, and provided a questionnaire for her completion. It afforded her 30 days to respond. No additional evidence was received.

By decision dated June 22, 2021, OWCP accepted that the May 10, 2020 employment incident occurred as alleged. However, it denied the claim, finding that the medical evidence of record was insufficient to establish a medical condition causally related to the accepted employment incident. Consequently, OWCP found that appellant had not met the requirements to establish an injury as defined by FECA.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ has the burden of proof to establish the essential elements of his or her claim, including 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,⁵ 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.⁶ 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.⁷

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. The first component is that the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time and place, and in the manner alleged. The second component is whether the employment incident caused a personal injury and can be established only by medical evidence.⁸

⁴ *Supra* note 1.

⁵ *F.H.*, Docket No.18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued December 13, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁷ *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁸ *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.⁹ 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 specific employment factors identified by the employee.¹⁰

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a medical condition causally related to the accepted May 10, 2020 employment incident.

In support of her claim, appellant submitted a June 19, 2020 MRI scan referral by Dr. Gartman for a diagnosis of pain in the right elbow. The Board has held that pain is a description of a symptom, not a clear diagnosis of a medical condition.¹¹ As such, Dr. Gartman's note is insufficient to meet appellant's burden of proof.

In further support of her claim, appellant also submitted various medical notes by physician assistants and a registered occupational therapist. This Board has long held that certain healthcare providers such as physician assistants and occupational therapists are not considered physicians as defined under FECA.¹² Their medical findings, reports and/or opinions, unless cosigned by a qualified physician, will not suffice for purposes of establishing entitlement to FECA benefits.¹³ Consequently, these reports are insufficient to meet appellant's burden of proof.

The remaining medical evidence includes radiographic studies of appellant's right elbow. The Board has held, however, that diagnostic studies, standing alone, lack probative value and are insufficient to establish the claim.¹⁴

⁹ *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

¹⁰ *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

¹¹ *D.R.*, Docket No. 18-1408 (issued March 1, 2019); *D.A.*, Docket No. 18-0783 (issued November 8, 2018).

¹² Section 8101(2) of FECA provides that physician "includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law." 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *C.G.*, Docket No. 20-0957 (issued January 27, 2021); *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). See also *K.A.*, Docket No. 18-0999 (issued October 4, 2019).

¹³ *K.A.*, *id.*; *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, *id.*

¹⁴ *J.K.*, Docket No. 20-0591 (issued August 12, 2020); *J.P.*, *supra* note 5; *A.B.*, Docket No. 17-0301 (issued May 19, 2017).

As the medical evidence of record is insufficient to establish a medical condition causally related to the accepted May 10, 2020 employment incident, 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 a medical condition causally related to the accepted May 10, 2020 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the June 22, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 27, 2022
Washington, DC

Alec J. Koromilas, 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