United States Department of Labor
Employees' Compensation Appeals Board

C.H., Appellant	)	
and	)	**Docket No. 22-1186**
	)	**Issued: December 22, 2022**
U.S. POSTAL SERVICE, POST OFFICE, Detroit, MI, 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
JANICE B. ASKIN, Judge

JURISDICTION

On August 10, 2022 appellant filed a timely appeal from a June 24, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP).[1] 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] The Board notes that, following the June 24, 2022 merit decision, OWCP received additional evidence. 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*.

[2] 5 U.S.C. § 8101 *et seq*.

[3] Appellant submitted a timely request for oral argument before the Board. 20 C.F.R. § 501.5(b). Pursuant to the Board's *Rules of Procedure*, oral argument may be held in the discretion of the Board. 20 C.F.R. § 501.5(a). The Board, in exercising its discretion, denies appellant's request for oral argument because the arguments on appeal can adequately be addressed in a decision based on a review of the case record. Oral argument in this appeal would further delay issuance of a Board decision and not serve a useful purpose. As such, oral argument is denied and this decision is based on the case record as submitted to the Board.

ISSUE

The issue is whether appellant has met his burden of proof to establish a right shoulder condition causally related to the accepted March 21, 2022 employment incident.

FACTUAL HISTORY

On April 4, 2022 appellant, then a 55-year-old rural delivery specialist, filed a traumatic injury claim (Form CA-1) alleging that on March 21, 2022 he developed a right shoulder condition when delivering a package into a mailbox while in the performance of duty. He related that he felt a sharp pain in his right shoulder that extended down to his wrist and the pain worsened until he was unable to raise his right shoulder on April 4, 2022. Appellant did not stop work.

Appellant submitted April 5 and 15, 2022 duty status reports (Form CA-17) from an unidentifiable certified nurse practitioner, noting a diagnosis of right shoulder tendinitis.

In a May 11, 2022 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of medical evidence needed to establish his claim and afforded him 30 days to submit the necessary evidence.

In response to the development letter, appellant submitted April 28, 2022 progress notes from Dr. Timothy Lukas, a Board-certified orthopedic surgeon, diagnosing a right rotator cuff tear/impingement and releasing him to work with restrictions. Dr. Lukas noted that appellant reported that, in a previous incident occurring approximately five years prior, he was delivering mail when he felt a pop in his shoulder and he subsequently experienced right shoulder pain over the past five years, with an increase in the past three weeks. He further indicated that appellant reported a history of physical therapy beginning approximately five years ago.

In a May 23, 2022 Form CA-17, an unidentifiable medical provider noted a diagnosis of right rotator cuff tear/impingement. In a work excuse letter of even date, Lori Nugent, a certified physician assistant, held appellant off work for a right rotator cuff tear/impingement.

By decision dated June 24, 2022, OWCP accepted that the March 21, 2022 employment incident occurred as alleged. However, it denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish causal relationship between his diagnosed right shoulder condition and the accepted March 21, 2022 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA[4] 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

[4] *Supra* note 2.

[5] *F.H.*, Docket No.18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

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 whether 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]

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 the specific employment incident identified by the claimant.[10]

In any case where a preexisting condition involving the same part of the body is present and the issue of causal relationship therefore involves aggravation, acceleration or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.[11]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a right shoulder condition causally related to the accepted March 21, 2022 employment incident.

Appellant submitted April 28, 2022 progress notes in which Dr. Lukas diagnosed a right rotator cuff tear/impingement and noted that appellant reported that, in an incident occurring approximately five years prior, he was delivering mail when he felt a pop in his shoulder and he subsequently experienced right shoulder pain during the past five years. However, he did not provide an opinion on causal relationship in these notes. The Board has held that a medical report

[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).

[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] *A.S.*, Docket No. 19-1955 (issued April 9, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

[11] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); *K.G.*, Docket No. 18-1598 (issued January 7, 2020); *M.S.*, Docket No. 19-0913 (issued November 25, 2019).

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.[12] Moreover, the need for a rationalized medical opinion is particularly important here, as appellant had a preexisting condition of right shoulder pain and a history of physical therapy for the condition.[13] As such, Dr. Lukas' April 28, 2022 progress notes are insufficient to establish appellant's claim.[14]

Appellant also submitted April 5 and 15, 2022 Form CA-17s signed by a certified nurse practitioner and a May 23, 2022 work excuse letter from Ms. Nugent, a certified physician assistant. However, certain healthcare providers such as nurse practitioners and physician assistants are not considered "physician[s]" as defined under FECA.[15] Consequently, their medical findings or opinions will not suffice for purposes of establishing entitlement to FECA benefits.[16]

OWCP also received a May 23, 2022 Form CA-17 from an unidentifiable medical provider noting a diagnosis of right rotator cuff tear/impingement. The Board has held that reports that are unsigned or bear an illegible signature lack proper identification and cannot be considered probative medical evidence as the author cannot be identified as a physician.[17] Therefore, this form is also insufficient to establish appellant's claim.

As appellant has not submitted rationalized medical opinion evidence establishing a diagnosed condition causally related to the accepted March 21, 2022 employment incident, the Board finds that he has not met his burden of proof to establish his claim.

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.

[12] *See D.Y.*, Docket No. 20-0112 (issued June 25, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[13] *Supra* note 11.

[14] *Supra* note 12.

[15] 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).

[16] Section 8101(2) of FECA provides that medical opinions can only be given by a qualified physician. This section 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. 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); *H.K.*, Docket No. 19-0429 (issued September 18, 2019); *K.W.*, 59 ECAB 271, 279 (2007); *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 J.D.*, Docket No. 21-0164 (issued June 15, 2021) (nurse practitioners are not physicians as defined under FECA).

[17] *L.B.*, Docket No. 21-0353 (issued May 23, 2022); *T.D.*, Docket No. 20-0835 (issued February 2, 2021); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a right shoulder condition causally related to the accepted March 21, 2022 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the June 24, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 22, 2022
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board