

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

_____)	
W.T., Appellant)	
)	
and)	Docket No. 23-0323
)	Issued: August 15, 2023
DEPARTMENT OF HOMELAND SECURITY,)	
U.S. CUSTOMS & BORDER PROTECTION,)	
Honolulu, HI, Employer)	
_____)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On December 20, 2022 appellant filed a timely appeal from a November 23, 2022 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

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that following the November 23, 2022 decision, appellant submitted additional evidence to OWCP and with her appeal to the Board. 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 shoulder condition causally related to the accepted May 13, 2022 employment incident.

FACTUAL HISTORY

On May 13, 2022 appellant, then a 60-year-old administrative officer, filed a traumatic injury claim (Form CA-1) alleging that on that date she sustained left upper arm pain when she lifted monitors and a television in a storage room while in the performance of duty. She stopped work on the date of the claimed injury.

In a work status report dated May 13, 2022, Dr. Stella W. Tadaki, a Board-certified internist, noted a diagnosis of left upper arm strain, and released appellant to modified-duty work.

In an office visit report dated May 24, 2022, Dr. Tadaki noted a date of injury of May 13, 2022 and indicated that appellant was treated for complaints of increased left arm pain. On examination of the left upper extremity, she observed tenderness to palpation over the deltoid and biceps muscles. Flexion and abduction were limited to 90 degrees by pain. Dr. Tadaki diagnosed left upper arm strain.

Appellant submitted office visit reports and work status notes dated June 1 through July 6, 2022 by Dr. Tadaki who noted a May 13, 2022 date of injury. Dr. Tadaki conducted examinations and diagnosed left upper arm strain, and left shoulder adhesive capsulitis.

A June 10, 2022 left upper extremity magnetic resonance imaging (MRI) scan showed adhesive capsulitis and no acute muscular or tendon injury.

In an August 3, 2022 office visit report, Dr. Tadaki noted the May 13, 2022 date of injury and described that appellant was moving all kinds of equipment at work when she lifted a monitor to the second shelf and felt sharp pain in her left upper arm. She reported that a left upper extremity MRI scan demonstrated adhesive capsulitis. On examination of appellant's left upper extremity, Dr. Tadaki observed limited range of motion on flexion and abduction. She diagnosed left upper arm strain and left shoulder adhesive capsulitis. In an August 3, 2022 work status note, Dr. Tadaki provided the same diagnoses and reported that appellant could work modified duty from August 3 through September 7, 2022.

In an October 12, 2022 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence necessary to establish her claim, and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond.

In an October 22, 2022 completed questionnaire and response to OWCP's development letter, appellant alleged that the May 13, 2022 employment incident aggravated a previous October 1, 2021 work-related injury. She indicated that on October 1, 2021 she received the COVID-19 vaccination as required by her employment, and experienced significant left arm pain. Appellant reported that on May 13, 2022 she was lifting monitors and televisions onto shelves when she tweaked something in her left arm. She noted that she immediately filed a Form CA-1.

Appellant indicated that her treating physician was sure that lifting the equipment strained something in her arm.

Appellant submitted an October 17, 2021 Form CA-1, and an October 21, 2021 work status report by Charina Toilolo, a physician assistant, who indicated that appellant was unable to work on that date.

OWCP received office visit reports dated September 7 and October 5, 2022 by Dr. Tadaki who indicated that appellant was evaluated for follow up of left arm pain. Dr. Tadaki described the May 13, 2022 employment incident, and provided examination findings. She diagnosed left upper arm strain and left shoulder adhesive capsulitis.

By decision dated November 23, 2022, OWCP accepted that the May 13, 2022 employment incident occurred as alleged, and that a left shoulder medical condition had been diagnosed; however, it denied appellant's claim finding that she had failed to establish causal relationship between the accepted employment incident and the diagnosed condition. It concluded, therefore, that the requirements had not been met to establish an injury or condition due to the accepted employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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,⁴ 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.⁵ 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.⁶

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.⁷ 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

³ *Supra* note 1.

⁴ *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *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).

⁷ *T.J.*, Docket No. 19-0461 (issued August 11, 2020); *D.B.*, Docket No. 18-1348 (issued January 4, 2019); *S.P.*, 59 ECAB 184 (2007).

time and place, and in the manner alleged. Second, the employee must submit probative medical evidence to establish that the employment incident caused a personal injury.⁸

To establish causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit 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 employee.¹⁰

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a left shoulder condition causally related to the accepted May 13, 2022 employment incident.

Appellant submitted reports dated May 13 through October 5, 2022 by Dr. Tadaki, who described the May 13, 2022 employment incident. She noted examination findings of limited range of motion of the left upper extremity, and diagnosed left upper arm strain and left shoulder adhesive capsulitis based on MRI scan findings. Dr. Tadaki, however, did not provide an opinion addressing the cause of appellant's diagnosed left shoulder conditions. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value on the issue of causal relationship.¹¹ Therefore, these reports are insufficient to establish appellant's burden of proof.¹²

Appellant also submitted an October 21, 2021 work status note from a physician assistant. The Board has held that certain healthcare providers such as physician assistants are not considered

⁸ *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *David Apgar*, 57 ECAB 137 (2005); *John J. Carlone*, 41 ECAB 354 (1989).

⁹ *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *S.A.*, Docket No. 18-0399 (issued October 16, 2018); *see also Robert G. Morris*, 48 ECAB 238 (1996).

¹⁰ *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *C.F.*, Docket No. 18-0791 (issued February 26, 2019); *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

¹¹ *R.O.*, Docket No. 20-1243 (issued May 28, 2021); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹² *See M.F.*, Docket No. 21-0533 (issued January 31, 2023).

physicians as defined under FECA.¹³ Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.¹⁴

OWCP received a June 10, 2022 left upper extremity MRI scan report. The Board has held that reports of diagnostic tests, standing alone, lack probative value as they do not provide an opinion as to whether the accepted employment factors caused the diagnosed condition.¹⁵ For this reason, this evidence is not sufficient to meet her burden of proof.

As the medical evidence of record is insufficient to establish a left shoulder condition causally related to the accepted May 13, 2022 employment incident, the Board finds that appellant has not met her burden of proof to establish her 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.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a left shoulder condition causally related to the accepted May 13, 2022 employment incident.

¹³ Section 8102(2) of FECA provides as follows: (2) 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. § 8102(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); *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 George H. Clark*, 56 ECAB 162 (2004) (physician assistants are not considered physicians under FECA).

¹⁴ *S.S.*, Docket No. 21-1140 (issued June 29, 2022) (physician assistants are not considered physicians under FECA and are not competent to provide medical opinions).

¹⁵ *S.E.*, Docket No. 21-1230 (issued January 27, 2023); *V.Y.*, Docket No. 18-0610 (issued March 6, 2020); *G.S.*, Docket No. 18-1696 (issued March 26, 2019); *A.B.*, Docket No. 17-0301 (issued May 19, 2017).

ORDER

IT IS HEREBY ORDERED THAT the November 23, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 15, 2023
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board