

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

K.S., Appellant)	
)	
and)	Docket No. 24-0414
)	Issued: June 4, 2024
DEPARTMENT OF VETERANS AFFAIRS,)	
IRON MOUNTAIN VA MEDICAL CENTER,)	
Iron Mountain, MI, Employer)	
)	

Appearances:
Alan J. Shapiro, Esq., for the appellant¹
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 March 11, 2024 appellant, through counsel, filed a timely appeal from a February 15, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

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.*

ISSUE

The issue is whether appellant has met her burden of proof to expand the acceptance of her claim to include left leg weakness, right shoulder rotator cuff tear, presumed biceps tendon tear, and/or severe shoulder tendinitis, as causally related to, or as a consequence of, her accepted December 19, 2011 employment injury.

FACTUAL HISTORY

On December 20, 2011 appellant, then a 46-year-old nurse, filed a traumatic injury claim (Form CA-1) alleging that on December 19, 2011 she sustained injury to her right shoulder, elbow, knee, and back when she slipped and fell on ice in the clinic parking lot, while in the performance of duty. On February 7, 2012 OWCP accepted the claim for a closed dislocation of sacrum and closed dislocation of lumbar vertebra. By decision dated February 28, 2012, it expanded acceptance of the claim to include temporary aggravation of lumbosacral spondylosis without myelopathy, bilateral sacroiliac strain, enthesopathy of right hip region (right hip bursitis).³

On June 22, 2022 appellant, through counsel, requested that OWCP further expand its acceptance of the claim to include an anterior dislocation of the right shoulder.

In a July 28, 2021 report, Dr. John Culliney, a Board-certified radiologist, noted that appellant presented with pain and stiffness in the left shoulder which started two weeks prior after a fall. In an addendum, he revised the history of injury to reflect right shoulder pain, apparently from previous trauma. Magnetic resonance imaging (MRI) scans of appellant's lumbar spine and right shoulder were performed. Dr. Culliney indicated that the right shoulder MRI scan demonstrated abnormal appearance to the shoulder which may be related to a recent anterior dislocation; probable Bankart lesion and subtle Hill-Sachs contusion; abnormal appearance to the supraspinatus and subscapularis tendons which may be related to partial tears, especially if there had been a recent shoulder dislocation; small glenohumeral joint effusion, possibly complicated due to a small underlying hemarthrosis; degenerative changes at the acromioclavicular (AC) joint, which impinged upon the musculotendinous junction of the supraspinous tendon; and bicipital tendinitis.

In an April 6, 2022 report, Dr. Scott H. Warren, a Board-certified orthopedic surgeon, noted that appellant was seen again following a right shoulder injection 10 months prior. He indicated that appellant wanted to document that she had suffered a fall due to left leg weakness that she had experienced since her work-related December 2011 fall. Appellant explained that her leg would give out on her without warning. She reported that her leg gave out on June 12, 2021 and she had reached for the guidepost on her son's boat trailer to catch herself. However, the guidepost had a nylon sleeve and appellant's hand slipped off which caused her to fall backward and injure her right shoulder. Dr. Warren noted examination findings and provided an impression of moderate improvement post injection and probable right proximal biceps rupture.

³ The record indicates that appellant resigned from the employing establishment effective April 4, 2019.

In a development letter dated July 19, 2022, OWCP informed appellant of the deficiencies of her claim for expansion. It advised her of the type of medical evidence necessary and afforded her 30 days to provide the necessary evidence.

In an August 16, 2022 report, Dr. Andrew Matheus, a Board-certified family medical specialist, provided a history of appellant falling in June of the prior year when her left leg gave out, she fell backward and dislocated her right shoulder anteriorly. He noted that an MRI scan of appellant's right shoulder demonstrated tear of the supraspinatus and rotator cuff, severe shoulder tendinitis, and presumed biceps tendon tear. Dr. Matheus also noted that appellant continued to struggle with left leg weakness since her work injury, with frequent falls and injuries on several occasions. He reported examination findings of right shoulder pain with abduction and external rotation. Dr. Matheus provided an assessment of right shoulder rotator cuff tear.

In an August 31, 2023 letter, OWCP again informed appellant of the deficiencies of her claim for expansion. It advised her of the type of medical evidence needed and afforded her 30 days to provide the necessary evidence. No response was received.

By decision dated October 11, 2023, OWCP denied appellant's request for expansion of the claim to include additional diagnoses of left leg weakness, right shoulder rotator cuff tear, severe shoulder tendinitis, and presumed biceps tendon tear. It found that the medical evidence of record was insufficient to establish causal relationship between the additional diagnosed conditions and the accepted employment injury.

On October 24, 2023 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held on January 11, 2024. Appellant testified that she suffered weakness from her left lower extremity after her 2011 accepted back condition worsened. She recounted that she had undergone radio frequency ablation in 2012, which helped relieve the back pain. Thereafter appellant would sporadically go to a chiropractor for continued treatment. She indicated that the pain recurred in 2016. Appellant also testified as to her fall and right shoulder injury on June 12, 2021, when her left leg gave out. She also testified that she had another fall in August 2021 which resulted in a torn right knee meniscus for which she underwent surgery.

OWCP subsequently received a June 12, 2021 emergency department report, wherein Dr. Stephen W. Hubbard, a family medicine specialist, related appellant's fall and diagnosed back strain and shoulder strain. A June 12, 2021 pelvis x-ray was negative for acute fracture.

Physical therapy reports regarding appellant's right shoulder dated August 25 and September 9 and 22, 2021 were also received.

By decision dated February 15, 2024, OWCP's hearing representative affirmed the October 11, 2023 decision.

LEGAL PRECEDENT

When an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally

related to the employment injury.⁴ To establish causal relationship between the condition as well as any additional conditions claimed and the employment injury, an employee must submit rationalized medical evidence.⁵ The opinion of the physician must be based on a complete factual and medical background of the claimant, 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 factors identified by the claimant.⁶

The claimant bears the burden of proof to establish a claim for any consequential injury.⁷ In discussing the range of compensable consequences, once the primary injury is causally connected with the employment, the question is whether compensability should be extended to a subsequent injury or aggravation related in some way to the primary injury.⁸ The basic rule is that a subsequent injury, whether an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury,⁹ unless it is the result of an independent intervening cause attributable to the claimant's own conduct.¹⁰

ANALYSIS

The Board finds that appellant has not met her burden of proof to expand the acceptance of her claim to include left leg weakness, right shoulder rotator cuff tear, presumed biceps tendon tear, and/or severe shoulder tendinitis as causally related to, or as a consequence of, her accepted December 19, 2011 employment injury.

In an emergency report of June 12, 2021, Dr. Hubbard noted a fall and diagnosed back and shoulder strains. However, no history of the fall or an opinion on causal relationship was provided. The Board has held that medical opinions based on an incomplete or inaccurate history and which do not provide an opinion on causal relationship are insufficient to establish a claim.¹¹ Consequently, this report is insufficient to establish expansion of the claim.

⁴ *S.S.*, Docket No. 23-0391 (issued October 24, 2023); *M.M.*, Docket No. 19-0951 (issued October 24, 2019); *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

⁵ *S.S.*, *id.*; *T.K.*, Docket No. 18-1239 (issued May 29, 2019); *M.W.*, 57 ECAB 710 (2006); *John D. Jackson*, 55 ECAB 465 (2004).

⁶ *T.K.*, *id.*; *I.J.*, 59 ECAB 408 (2008).

⁷ *V.K.*, Docket No. 19-0422 (issued June 10, 2020); *A.H.*, Docket No. 18-1632 (issued June 1, 2020); *I.S.*, Docket No. 19-1461 (issued April 30, 2020).

⁸ *K.S.*, Docket No. 17-1583 (issued May 10, 2018).

⁹ *See L.M.*, Docket No. 23-0605 (issued December 5, 2023); *D.L.*, Docket No. 21-0047 (issued February 22, 2023); *D.H.*, Docket Nos. 20-0041 & 20-0261 (issued February 5, 2021).

¹⁰ *A.M.*, Docket No. 18-0685 (issued October 26, 2018); *Mary Poller*, 55 ECAB 483, 487 (2004).

¹¹ *See L.C.*, Docket No. 18-0933 (issued March 13, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

In a July 28, 2021 report, Dr. Culliney reported a history of right shoulder pain which started two weeks prior after a fall, apparently from a previous trauma. He provided several diagnoses, including bicipital tendinitis, but no opinion regarding causal relationship. Medical evidence 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 Consequently, the Board finds that this report is also insufficient to establish expansion of the claim.

In an April 6, 2022 report, Dr. Warren noted the history of injury, as reported by appellant, of a fall on June 12, 2021 which she attributed to left leg weakness since her December 2011 work-related fall. He diagnosed probable right proximal biceps rupture. While Dr. Warren related appellant's belief that her June 12, 2021 fall was caused by left leg weakness due to the December 2011 work-related fall, he did not provide his own opinion regarding causal relationship. 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 on the issue of causal relationship.¹³ These reports, therefore, are insufficient to establish appellant's claim.

For these reasons, Dr. Warren's report is insufficient to establish appellant's consequential claim.

In an August 16, 2022 report, Dr. Matheus noted the history of the June 2021 fall and MRI scan results of her right shoulder and diagnosed right shoulder rotator cuff tear. He also noted that appellant continued to struggle with left leg weakness since her work injury with frequent falls and injuries. Dr. Matheus, however, did not provide an opinion on causal relationship.¹⁴ His report, therefore, is insufficient to meet appellant's burden of proof.

Appellant also submitted reports from a physical therapist. This evidence has no probative value, however, because physical therapists are not considered physicians as defined under FECA.¹⁵

As the medical evidence of record is insufficient to establish causal relationship between the accepted employment injury and the additional diagnosed conditions of left leg weakness, right shoulder rotator cuff tear, presumed biceps tendon tear, and/or severe shoulder tendinitis, the Board finds that appellant has not met her burden of proof.

¹² See *L.C., id.*; *J.H.*, Docket No. 19-0838 (issued October 1, 2019); *S.G.*, Docket No. 19-0041 (issued May 2, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ 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). See also 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); *R.K.*, Docket No. 20-0049 (issued April 10, 2020); *K.L.*, Docket No. 18-1018 (April 10, 2019) (neither physical therapists nor acupuncturists are considered physicians under FECA).

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 expand the acceptance of her claim to include left leg weakness, right shoulder rotator cuff tear, presumed biceps tendon tear, and/or severe shoulder tendinitis as causally related to, or as a consequence of, her accepted December 19, 2011 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the February 15, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 4, 2024
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