

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

M.G., Appellant)

and)

U.S. POSTAL SERVICE, BOGGS ROAD POST)
OFFICE, Duluth, GA, Employer)
-----)

**Docket No. 24-0323
Issued: May 23, 2024**

Appearances:

*Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On February 8, 2024 appellant, through counsel, filed a timely appeal from a February 1, 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 to consider the merits of this case.

ISSUE

The issue is whether appellant has established a medical condition causally related to the accepted June 8, 2022 employment incident.

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 an 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.*

FACTUAL HISTORY

This case has previously been before the Board.³ 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 July 1, 2022 appellant, then a 54-year-old mail handler equipment operator, filed a traumatic injury claim (Form CA-1) alleging that on June 8, 2022 she injured her right shoulder, right elbow, the right side of her lower back, and right hip when operating a pallet jack while in the performance of duty. On the reverse side of the claim form, appellant's supervisor acknowledged that appellant was injured in the performance of duty. Appellant stopped work on June 13, 2022 and returned to work on June 14, 2022.

In a July 14, 2022 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. OWCP afforded her 30 days to respond.

The employing establishment executed an undated authorization for examination and/or treatment (Form CA-16). In Part B, attending physician's report, dated June 13, 2022, Demetrius Steele, a nurse practitioner, related appellant's history of injury. He diagnosed contusion to right shoulder, right elbow, and right hip and checked a box marked "Yes," indicating that the diagnosed condition was caused by the claimed employment incident. Mr. Steele released appellant to light-duty work. In a June 13, 2022 report and duty status report (Form CA-17), he related appellant's history of injury, diagnosed contusions of right shoulder, right elbow, and right hip, and released appellant to work with restrictions.

Appellant underwent x-ray scans of her shoulders and elbows on June 13, 2022, which revealed no abnormalities.

In an August 10, 2022 report, Barbara Bond, a nurse practitioner, noted appellant's history of injury and findings on examination, and diagnosed contusions of right shoulder, right elbow, and right hip. In a Form CA-17 of even date, she provided the same diagnoses and released appellant for work with restrictions.

By decision dated August 25, 2022, OWCP accepted that appellant had established that the June 8, 2022 employment incident occurred, as alleged. However, it denied her claim, finding that the medical evidence of record was insufficient to establish a medical diagnosis in connection with the accepted employment incident. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On September 20, 2022 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

OWCP received additional evidence, including an August 23, 2022 magnetic resonance imaging (MRI) scan of the right shoulder, which demonstrated a type 2 acromion with moderate

³ Docket No. 23-0693 (issued November 27, 2023).

degenerative changes indenting the supraspinatus tendon, partial tears of the supraspinatus tendon with bursal fluid most likely denoting acute partial tears, small partial tear of the infraspinatus tendon, and moderate degenerative changes along the acromioclavicular joint indenting the supraspinatus tendon. An August 23, 2022 lumbar spine MRI scan demonstrated grade 1 anterolisthesis of L4 on L5 secondary to facet arthropathy, bilateral foraminal narrowing suggesting impingement of the exiting L4 nerve roots, mild degenerative disc disease at L3-4, and mild-to-moderate left neuroforaminal narrowing.

In a September 21, 2022 report, Dr. Brandon Dawkins, a Board-certified occupational medicine specialist, indicated that appellant was examined due to right shoulder, leg, and hip pain. He diagnosed contusions of right shoulder, right elbow, and right hip.

A November 16, 2022 report from Dr. Rajiv Pandya, a Board-certified orthopedic surgeon, related that, on June 8, 2022, appellant was operating a pallet jack at work and sustained a jerking injury to her shoulder when the wheel became caught. Dr. Pandya noted that appellant reported no prior history of injury to the right upper extremity. His examination of the right shoulder demonstrated dyskinesia with range of motion tenderness along the anterolateral corner and giveaway weakness. He also noted that the MRI scan findings were consistent with a near full-thickness tear of the rotator cuff supraspinatus and biceps tendinosis. Dr. Pandya diagnosed full-thickness right rotator cuff tear, disorder of right rotator cuff, impingement syndrome of right shoulder region, biceps tendinitis, and shoulder pain, and recommended surgical intervention and physical therapy.

A telephonic hearing was held before an OWCP hearing representative on January 12, 2023.

By decision dated March 28, 2023, OWCP's hearing representative modified the August 25, 2022 decision, finding that appellant had established a medical diagnosis in connection with the accepted June 8, 2022 employment incident. The claim remained denied, however, as the medical evidence of record was insufficient to establish causal relationship between appellant's diagnosed conditions and the accepted June 8, 2022 employment incident.

On April 18, 2023 appellant, through counsel, appealed the March 28, 2023 decision to the Board.

By decision dated November 27, 2023,⁴ the Board affirmed OWCP's March 28, 2023 decision, finding that appellant had not met her burden of proof to establish a medical condition causally related to the accepted June 8, 2022 employment incident.

On January 29, 2024 appellant, through counsel, requested reconsideration and submitted additional evidence. A July 18, 2023 surgical report revealed that on that date Dr. Pandya performed a right shoulder arthroscopy with arthroscopic rotator cuff repair, biceps tenodesis, extensive debridement and subacromial bursectomy with decompression. In further support of this request, she provided an August 16, 2023 report from Dr. Michael Slutzky, an orthopedic surgeon, diagnosing right lateral epicondylitis and a long history of right elbow pain. Appellant

⁴ *Id.*

also included unsigned medical records, a July 27, 2023 note from Clarence Millikin, a physician assistant, and an October 17, 2022 note from Elizabeth Rooney, a physician assistant. On October 28, 2022 appellant underwent an additional right shoulder MRI scan.

By decision dated February 1, 2024, OWCP denied modification.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁵ 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,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 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 an injury.⁹

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.¹⁰ 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 incident identified by the employee.¹¹

⁵ *Supra* note 2.

⁶ *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).

⁷ *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).

⁸ *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).

⁹ *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).

¹⁰ *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).

¹¹ *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).

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a medical condition causally related to the accepted June 8, 2022 employment incident.

Preliminarily, the Board notes that it is unnecessary for the Board to consider the evidence appellant submitted prior to the issuance of OWCP's March 28, 2023 merit decision as the Board considered that evidence in its November 27, 2023 decision. Findings made in prior Board decisions are *res judicata* absent further review by OWCP under section 8128 of FECA.¹²

On July 18, 2023 Dr. Pandya performed a right shoulder arthroscopy with arthroscopic rotator cuff repair, biceps tenodesis, extensive debridement and subacromial bursectomy with decompression. An August 16, 2023 report from Dr. Slutzky diagnosed right lateral epicondylitis and a long history of right elbow pain. However, neither of these reports contained an opinion regarding the cause of appellant's diagnosed conditions. 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 As such, this evidence is insufficient to establish the claim.

Appellant also submitted unsigned medical records. The Board has held that medical evidence containing an illegible signature, or which is unsigned has no probative value, as it is not established that the author is a physician.¹⁴

OWCP also received a July 27, 2023 note from Mr. Millikin, and an October 17, 2022 note from Ms. Rooney, physician assistants. Certain healthcare providers such as physician assistants, nurse practitioners, and physical therapists are not considered qualified physicians as defined under FECA.¹⁵ Their medical findings, reports and/or opinions, unless cosigned by a

¹² *D.A.*, Docket No. 19-1965 (issued February 10, 2021); *G.B.*, Docket No. 19-1448 (issued August 21, 2020); *Clinton E. Anthony, Jr.*, 49 ECAB 476, 479 (1998).

¹³ *L.M.*, Docket No. 23-0709 (issued January 10, 2024); *D.C.*, Docket No. 19-1093 (issued June 25, 2020); *see L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018); *Charles H. Tomaszewski*, 39 ECAB 461 (1988).

¹⁴ *See C.C.*, Docket No. 23-1006 (issued December 28, 2023); *T.C.*, Docket No. 21-1123 (issued April 5, 2022); *Z.G.*, Docket No. 19-0967 (issued October 21, 2019); *see R.M.*, 59 ECAB 690 (2008); *Merton J. Sills*, 39 ECAB 572, 575 (1988); *Bradford L. Sullivan*, 33 ECAB 1568 (1982).

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); 20 C.F.R. § 10.5(t). *See also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *H.A.*, Docket No. 24-0004 (issued January 26, 2024) (physician assistants are not considered qualified physicians as defined under FECA); *H.S.*, Docket No. 20-0939 (issued February 12, 2021) (physician assistants are not considered physicians as defined under FECA); *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).

qualified physician, will not suffice for purposes of establishing entitlement to FECA benefits.¹⁶ Consequently, these reports are insufficient to meet appellant's burden of proof.

The remaining evidence of record consists of an October 28, 2022 MRI scan. The Board has held that diagnostic studies, standing alone, lack probative value and are insufficient to establish the claim.¹⁷ Therefore, this report is also insufficient to meet appellant's burden of proof.

As the medical evidence of record is insufficient to establish a medical condition causally related to the accepted June 8, 2022 employment incident, the Board finds that appellant has not met her burden of proof.¹⁸

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 June 8, 2022 employment incident.

¹⁶ See *H.A., id.*; *K.A.*, Docket No. 18-0999 (issued October 4, 2019); *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk, id.*

¹⁷ *H.A., id.*; *J.K.*, Docket No. 20-0591 (issued August 12, 2020); *A.B.*, Docket No. 17-0301 (issued May 19, 2017).

¹⁸ The Board notes that the employing establishment issued a Form CA-16. A completed Form CA-16 authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. See 20 C.F.R. § 10.300(c); *V.S.*, Docket No. 20-1034 (issued November 25, 2020); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).

ORDER

IT IS HEREBY ORDERED THAT the February 1, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 23, 2024
Washington, DC

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

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

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