

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

_____)		
J.H., Appellant)		
)		
and)		Docket No. 24-0748
)		Issued: September 20, 2024
U.S. POSTAL SERVICE, STAMFORD)		
PROCESSING & DISTRIBUTION CENTER,)		
Stamford, CT, Employer)		
_____)		

Appearances: *Case Submitted on the Record*
*Alan J. Shapiro, Esq., for the appellant*¹
Office of Solicitor, for the Director

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On July 8, 2024 appellant, through counsel, filed a timely appeal from a June 27, 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.³

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.*

³ The Board notes that following the June 27, 2024 decision, appellant submitted additional evidence to OWCP. 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 right upper extremity condition causally related to the accepted September 29, 2023 employment incident.

FACTUAL HISTORY

On October 5, 2023 appellant, then a 65-year-old postal distribution clerk, filed a traumatic injury claim (Form CA-1) alleging that on September 29, 2023 she handled oversized parcels and injured her right hand, thumb, and upper extremity while in the performance of duty. She stopped work on September 30, 2023.

In an undated statement, appellant's supervisor, J.A., recounted that on September 29, 2023 she instructed appellant to throw a nonmachinable package down a chute. Afterward, appellant informed J.A. that her finger hurt and requested medical attention. J.A. instructed appellant to remain seated and write a statement. She alleged that instead, appellant walked around the building. Appellant left the employing establishment with emergency medical service personnel.

Thereafter, OWCP received a series of work slips dated September 29 through October 5, 2023, bearing illegible signatures, holding appellant off work.

An authorization for examination and/or treatment (Form CA-16) dated October 5, 2023 provided the date of injury as September 29, 2023, and the history as appellant sustaining a right thumb injury.

In an October 6, 2023 statement, the employing establishment controverted the claim, alleging that appellant was observed walking around the building while waiting for emergency medical services.

In a development letter dated October 18, 2023, OWCP informed appellant of the deficiencies in her claim. It advised her of the type of factual and medical evidence needed, provided her with a questionnaire, and afforded her 60 days to respond.

Thereafter, OWCP received a September 29, 2023 emergency department report by Chelsea Gifford, a physician assistant, in which she recounted that while at work, a 70-pound box struck appellant's right upper extremity and hand. On examination, Ms. Gifford noted swelling in appellant's right hand and right shoulder pain. X-rays of the right upper extremity revealed osteoarthritis of the right glenohumeral and acromioclavicular joints, a healed fracture deformity of the distal humerus, and no abnormalities of the wrist or hand.

In reports dated October 4 and 18, 2023, Dr. Richard A. Gasalberti, a Board-certified physiatrist, recounted treating appellant for injuries sustained in a January 31, 2023 motor vehicle accident (MVA), including cervical and lumbar derangement, and bilateral shoulder, hip and knee derangement. Appellant asserted that, on September 29, 2023, while at work, a large box struck her right hand and forearm. Dr. Gasalberti opined that the September 29, 2023 injury caused a 60 percent exacerbation of preexisting shoulder pain. He noted that appellant was scheduled for left knee surgery on October 19, 2023 for injuries sustained in the January 31, 2023 MVA. On examination, Dr. Gasalberti observed positive impingement and flag signs in the bilateral shoulders, limited flexion and abduction of the bilateral shoulders, tenderness to palpation of the

right wrist over the triangular fibrocartilage complex (TFCC), restricted right wrist motion in all planes, and mild tenderness over the right forearm. He diagnosed a September 29, 2023 employment injury with resultant exacerbation of a January 31, 2023 right shoulder injury, partial right supraspinatus tendon tear, right elbow and forearm derangement, and right wrist derangement. Dr. Gasalberti opined that “within a certain degree of medical certainty,” based on the history presented by appellant, the clinical findings and diagnoses were “causally related to the injury [appellant] incurred on the specified date.” He opined that appellant totally disabled from work.⁴

In an October 18, 2023 work slip, S. Roman,⁵ recounted that appellant had been evaluated that day by Dr. Gasalberti and was found to be disabled from work.

In a November 9, 2023 statement, the employing establishment controverted the claim, alleging that appellant had claimed a new traumatic injury as she was scheduled to be off work for nonoccupational knee surgery performed on October 19, 2023.

In a November 10, 2023 work slip, an unidentifiable provider related that appellant had been under care for injuries sustained in a MVA, and was scheduled for left knee arthroscopy on November 6, 2023.

In a follow-up letter dated November 21, 2023, OWCP advised appellant that it had conducted an interim review, and the evidence remained insufficient to establish her claim. It noted that she had 60 days from the October 18, 2023 letter to submit the requested supporting evidence. OWCP further advised that if the evidence was not received during this time, it would issue a decision based on the evidence contained in the record.

Thereafter, OWCP received a November 14, 2023 report by Dr. Gasalberti wherein he noted continued right shoulder, elbow and wrist pain with restricted motion. Dr. Gasalberti repeated prior diagnoses and held appellant off work. He repeated his opined that “within a certain degree of medical certainty,” based on the history presented by appellant, that the clinical findings and diagnoses were “causally related to the injury [appellant] incurred on the specified date.” Dr. Gasalberti prescribed physical therapy.⁶

OWCP received work slips by the same unidentifiable provider dated November 14 and December 6, 2023.

By decision dated December 18, 2023, OWCP denied appellant’s traumatic injury claim, finding that she had not established a diagnosed right upper extremity condition causally related to the accepted September 29, 2023 employment incident.

Thereafter, OWCP received attending physician’s reports (Form CA-20) dated December 18 and 27, 2023 by Dr. Gasalberti, wherein he recounted that on September 29, 2023 a

⁴ An October 11, 2023 magnetic resonance imaging (MRI) scan of appellant’s right wrist revealed bone bruises in the triquetrum and hamate bones. An October 11, 2023 MRI scan of the right shoulder demonstrated acromioclavicular joint osteoarthritis, supraspinatus tendinopathy, and a partial supraspinatus tendon tear.

⁵ S. Roman’s title or credentials are not of record.

⁶ OWCP received physical therapy treatment notes dated September 29, 2023 through February 7, 2024.

box fell on appellant's right shoulder, elbow, and wrist while she was at work. Dr. Gasalberti diagnosed a partial tear of the supraspinatus tendon of the right shoulder. He responded to a question "Yes" indicating that the condition found was caused or aggravated by the identified employment incident. Dr. Gasalberti opined on December 18, 2023 that appellant's injury was "caused by box that cause[d] her injury." He held appellant off work.

In a December 27, 2023 report, Dr. Gasalberti repeated prior findings and diagnoses and reiterated his opinion on causal relationship.

In a January 17, 2024 report, Dr. Richard E. Pearl, a Board-certified orthopedic surgeon, recounted a history of the September 29, 2023 injury and treatment. On examination of the right upper extremity, he noted limited motion and weakness of the shoulder, limited motion of the wrist, a positive TFCC compression test at the wrist, and a positive Cozen test at the elbow. Dr. Pearl diagnosed partial rotator cuff tear, wrist sprain, and elbow sprain. He opined that within a reasonable degree of medical certainty the September 29, 2023 employment incident "was the competent producing cause of the injuries sustained and the need for further treatment." Dr. Pearl found appellant totally disabled from work.

On March 22, 2024 appellant, through counsel, requested reconsideration.

Thereafter, OWCP received a February 1, 2024 work slip by Dr. Pearl wherein he opined that appellant was totally disabled from work from November 16, 2023 through February 9, 2024 due to status post left knee arthroscopy.

In a February 28, 2024 report, Dr. Pearl repeated prior findings and diagnoses. He opined that appellant's diagnosed conditions were causally related to the September 29, 2023 employment incident, and found appellant totally disabled from work. Dr. Pearl prescribed physical therapy.⁷

In reports dated April 10 and May 8, 2024, Dr. Gasalberti repeated prior findings and diagnoses. He opined that the diagnosed conditions were causally related to the September 29, 2023 employment incident.

OWCP received an April 10 and 29, 2024 work slips bearing an illegible signature.⁸

In a May 8, 2024 work slip, the same unidentifiable provider noted that appellant would be off work until approximately June 19, 2024.

⁷ OWCP received physical therapy treatment notes dated March 15 through May 15, 2024.

⁸ An April 8, 2024 MRI study of the right elbow revealed tendinopathy/tendinitis of the common extensor tendon, and a small joint effusion.

By decision dated June 11, 2024, OWCP denied modification of its December 18, 2023 decision.⁹

Thereafter, OWCP received a June 5, 2024 work slip bearing an illegible signature.

In a June 19, 2024 report, Dr. Gasalberti diagnosed a history of a September 29, 2023 work-related injury with exacerbation and 60 percent worsening of a January 31, 2023 right shoulder injury sustained in an MVA, and derangement of the right elbow, forearm, and wrist. He indicated that appellant's condition had not improved. Dr. Gasalberti opined that appellant's physical findings and diagnoses were causally related to the September 29, 2023 employment incident. He found appellant totally disabled from work.

On June 26, 2024 appellant, through counsel, requested reconsideration.

By decision dated June 27, 2024, OWCP denied modification of its June 11, 2024 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA¹⁰ 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, 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.¹¹ 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.¹²

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 the employee 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 and can be established only by medical evidence.¹³

⁹ On June 12, 2024 OWCP administratively combined appellant's prior claims under OWCP File No. xxxxxx627, accepted for a left ankle sprain and contusion sustained on September 29, 2023, OWCP File No. xxxxxx684 accepted for cervical strain, lumbar strain, and chest wall sprain sustained on May 14, 2020, and OWCP File No. xxxxxx682, accepted for a left leg and foot injury sustained on December 16, 2008, with the present claim, OWCP File No. xxxxxx741. OWCP designated OWCP File No. xxxxxx741 as the master file.

¹⁰ *Supra* note 2.

¹¹ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

¹² *B.H.*, Docket No. 20-0777 (issued October 21, 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).

¹³ *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).

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.¹⁴ A physician’s opinion on whether there is a causal relationship between the diagnosed condition and the employment injury must be based on a complete factual and medical background.¹⁵ Additionally, the physician’s opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant’s employment injury.¹⁶ Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents, is sufficient to establish causal relationship.¹⁷

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.¹⁸

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a right upper extremity condition causally related to the accepted September 29, 2023 employment incident.

Dr. Gasalberti, in narrative reports dated October 4, 2023 through June 19, 2024, opined that the claimed September 29, 2023 injury caused a partial right supraspinatus tendon tear, right elbow and forearm derangement, right wrist derangement, and exacerbated a January 31, 2023 nonoccupational right shoulder injury. He indicated that based on the history of injury presented by appellant, the clinical findings and diagnoses were “causally related to the injury [she] incurred on the specified date. While Dr. Gasalberti provided an opinion as to the cause of appellant’s diagnosed right upper extremity conditions, he did not support his opinion with medical rationale explaining how the September 29, 2023 employment incident caused her claimed conditions. Without explaining how, physiologically, the specific effects of the box striking her right upper extremity caused, contributed to, or aggravated the specific diagnosed conditions, the opinion in these reports are of limited probative value and insufficient to establish the claim.¹⁹ Additionally, Dr. Gasalberti did not support his opinion that the September 29, 2023 employment injury

¹⁴ *R.P.*, Docket No. 21-1189 (issued July 29, 2022); *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

¹⁵ *S.W.*, Docket No. 24-0302 (issued July 26, 2024); *R.P., id.*; *F.A.*, Docket No. 20-1652 (issued May 21, 2021); *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

¹⁶ *Id.*

¹⁷ *S.W.*, *supra* note 15; *T.M.*, Docket No. 22-0220 (issued July 29, 2022); *S.S.*, Docket No. 18-1488 (issued March 11, 2019); *see also J.L.*, Docket No. 18-1804 (issued April 12, 2019).

¹⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (May 2023). *See A.G.*, Docket No. 24-0647 (issued July 31, 2024); *R.D.*, Docket No. 18-1551 (issued March 1, 2019).

¹⁹ *See A.G.*, Docket No. 24-0647 (issued July 31, 2024); *T.F.*, Docket No. 20-0260 (issued June 12, 2020); *D.J.*, Docket No. 18-0694 (issued March 16, 2020); *K.G.*, Docket No. 18-1598 (issued January 7, 2020); *K.O.*, Docket No. 18-1422 (issued March 19, 2019).

aggravated the January 31, 2023 nonoccupational right shoulder injury by setting forth the pathophysiologic mechanism of such aggravation.²⁰

In CA-20 form reports dated December 18 and 27, 2023, Dr. Gasalberti recounted that on September 29, 2023 a box fell on appellant's right shoulder, elbow, and wrist while she was at work. He responded "Yes" to a question indicating that the diagnosed partial right supraspinatus tendon tear was caused or aggravated by the identified employment incident. Dr. Gasalberti added that appellant's injury was "caused by box that cause[d] her injury." The Board has held that reports that address causal relationship only by checkmark, without medical rationale explaining how the employment incident caused or aggravated the diagnosed condition, are of diminished probative value.²¹ Thus, these reports are insufficient to establish the claim.

Dr. Pearl, in reports dated January 17 and February 28, 2024, recounted a history of the September 29, 2023 employment incident, and diagnosed partial right rotator cuff tear, right wrist sprain, and right elbow sprain. He opined that the September 29, 2023 incident was competent to produce the injuries sustained and held her off work. The Board finds that as Dr. Pearl did not set forth the pathophysiologic mechanisms whereby the September 29, 2023 employment incident would cause or aggravate the diagnosed conditions, his opinion is insufficient to meet appellant's burden of proof.²² Additionally, in a February 1, 2024 work slip, Dr. Pearl found appellant totally disabled from work from November 16, 2023 through February 9, 2024 due to status post left knee arthroscopy. He did not, however, address causation. 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.²³ Therefore, these reports are insufficient to establish the claim.

OWCP received a September 29, 2023 emergency department report by Ms. Gifford, a certified physician assistant. It also received work slips dated October 18, 2023 through May 8, 2024 by S. Roman. The Board has held that medical reports signed solely by a physician assistant or by lay individuals are of no probative value as such health care providers are not considered physicians as defined under FECA and, therefore, are not competent to provide a medical opinion.²⁴

²⁰ *Supra* note 18.

²¹ *See S.W., id.; J.O.*, Docket No. 22-0240 (issued June 8, 2022); *R.C.*, Docket No. 20-1525 (issued June 8, 2021); *D.A.*, Docket No. 20-0951 (issued November 6, 2020); *K.R.*, Docket No. 19-0375 (issued July 3, 2019); *Deborah L. Beatty*, 54 ECAB 340 (2003).

²² *Supra* note 19.

²³ *See L.B.*, Docket No. 18-0533 (issued August 27, 2018) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship); *see also G.M.*, Docket No. 24-0388 (issued May 28, 2024); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

²⁴ 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, *supra* note 18 at Chapter 2.805.3a (May 2023); *C.G.*, Docket No. 20-0957 (issued January 27, 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).

OWCP received work slips dated September 29 and October 5, 2023, and April 10 and June 5, 2024, bearing illegible signatures. 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.²⁵ Therefore, these reports are of no probative value and are insufficient to meet appellant's burden of proof.

OWCP also received October 11, 2023 and April 8, 2024 MRI scans. The Board has held that diagnostic studies, standing alone, are of limited probative value as they do not provide an opinion regarding whether the accepted employment incident caused a diagnosed condition.²⁶ These reports, therefore, are insufficient to establish the claim.

As the medical evidence of record is insufficient to establish causal relationship between a right upper extremity condition and the accepted September 29, 2023 employment incident, the Board finds that appellant 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 10.607.²⁷

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a right upper extremity condition causally related to the accepted September 29, 2023 employment incident.

²⁵ See *D.B.*, Docket No. 24-0552 (issued July 31, 2024); *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).

²⁶ See *J.J.*, Docket No. 24-0724 (issued July 30, 2024); *R.K.*, Docket No. 24-0545 (issued June 28, 2024); *P.G.*, Docket No. 24-0511 (issued June 26, 2024).

²⁷ 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); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).

ORDER

IT IS HEREBY ORDERED THAT the June 27, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 20, 2024
Washington, DC

Alec J. Koromilas, 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