United States Department of Labor
Employees' Compensation Appeals Board

M.S., Appellant	)	
and	)	**Docket No. 12-1091**
	)	**Issued: December 28, 2012**
U.S. POSTAL SERVICE, MASSENA POST OFFICE, Massena, NY, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 23, 2012 appellant filed a timely appeal of the April 13, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her traumatic injury claim. Pursuant to the Federal Employees' Compensation Act[1] (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 issuance of the April 13, 2012 OWCP decision, appellant submitted new evidence. The Board is precluded from reviewing evidence which was not before OWCP at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c)(1). The Board also notes that after the April 23, 2012 filing of the current appeal, OWCP's Branch of Hearings and Review issued a final decision on June 13, 2012 denying appellant's April 24, 2012 request for an oral hearing before an OWCP hearing representative concerning the denial of her traumatic injury claim, the same issue presently before the Board. An OWCP decision issued while the Board has jurisdiction over the matter in dispute is null and void. *Lawrence Sherman*, 55 ECAB 359, 360 n.4 (2004); *see also* 20 C.F.R. § 501.2(c)(3). Because the Board had already obtained jurisdiction over the question of whether appellant sustained a traumatic injury, the Branch of Hearings & Review could not simultaneously exercise jurisdiction over that same issue. Accordingly, the June 13, 2012 final decision shall be set aside as null and void.

ISSUE

The issue is whether appellant established that she sustained left shoulder and hip injuries in the performance of duty on February 16, 2012, as alleged.

On appeal, appellant contends that she sustained employment-related left shoulder and hip injuries on February 16, 2012 for which medical treatment is warranted. She added that all she desired was to obtain medical treatment and to return to work as soon as possible. Further, appellant added that, if she had the proper insurance to pay for medical expenses, she would not have appealed.

FACTUAL HISTORY

On February 17, 2012 appellant, then a 43-year-old rural carrier associate, filed a traumatic injury claim alleging that on February 16, 2012 she slipped on the ice while loading trays of mail into her long life vehicle (LLV). She stopped work on the date of injury.

Massena Memorial Hospital emergency room records dated February 16, 2012 contained illegible signatures and stated that appellant fell at work. They also stated that she could return to work on February 23, 2012 with no restrictions.

An unsigned and undated authorization for examination and/or treatment (Form CA-16), bearing the stamp of the employing establishment, provided a history that on February 16, 2012 appellant injured her left hip when she fell while loading a tray of mail into her LLV.

In a February 22, 2012 report, Bunny French, a licensed practical nurse (LPN), obtained a history that on February 16, 2012 appellant fell on ice at work and hurt her left shoulder and entire arm.

In a February 29, 2012 duty status report (Form CA-17), Laura Rizzo, a nurse practitioner (NP), obtained a history of the February 16, 2012 incident. She advised that appellant had a left arm rotator cuff injury. Nurse Rizzo further advised that appellant could not perform her regular work duties or use her left arm. Appellant could, however, return to work on March 5, 2012. In an attending physician's report (Form CA-20) also dated February 29, 2012, Nurse Rizzo advised that appellant sustained a shoulder rotator cuff injury as a result of the February 16, 2012 incident. Appellant was totally disabled for work from the date of injury through March 5, 2012 when she could return to work with no use of the left shoulder. In narrative reports dated February 22 and 29, 2012, Nurse Rizzo listed normal physical examination findings and advised that appellant had pain and disorders in the left shoulder joint area and cervicalgia.

In reports dated February 16, 2012, Dr. Gary L. Robbins, a Board-certified radiologist, advised that x-rays of the left hip and shoulder showed no fracture. Also, on February 16, 2012 he advised that an x-ray of the cervical spine was negative.

By letter dated March 13, 2012, OWCP advised appellant that the evidence submitted was insufficient to establish her claim. It requested that she submit medical evidence, including a rationalized medical opinion from an attending physician describing a history of injury and

providing dates of examination and treatment, findings, test results, a diagnosis together with an explanation as to how the February 16, 2012 incident caused her medical condition.

In a March 19, 2012 letter, appellant addressed her medical treatment and disability for work. She submitted a February 17, 2012 notification of injury form describing the February 16, 2012 incident.

In a February 16, 2012 narrative statement, Ryan McGregor, an employee, related that on that date appellant was on the ground near her vehicle when she called out for help. He helped her get up and then she went inside the building to report her injury to Giselle Reynolds.

In reports dated February 22 and 29, 2012, Nurse French reiterated a history that appellant fell on the ice at work on February 16, 2012. She diagnosed cervical strain.

In reports dated February 22 and 29, 2012, Nurse Rizzo advised that appellant had joint pain in the shoulder, shoulder disorders otherwise specified, cervicalgia, cervical strain and left shoulder rotator cuff tear.

In CA-20 and CA-17 forms dated March 12, 2012 a physician whose signature is illegible stated that appellant had a left rotator cuff tear caused or aggravated by the February 16, 2012 incident. A disability certificate that was also dated March 12, 2012 contained the same illegible signature. It stated that appellant could return to light-duty work on March 13, 2012 with no use of her left arm.

In an April 13, 2012 decision, OWCP denied appellant's claim. It found that the evidence established that the February 16, 2012 incident occurred as alleged. OWCP, however, found that appellant failed to submit rationalized medical evidence from a qualified physician as defined under FECA establishing a diagnosis causally related to the accepted employment-related incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA; that the claim was filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged; and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.[4] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury of an occupational disease.[5]

In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been

[3] 5 U.S.C. §§ 8101-8193.

[4] *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[5] *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999); *Elaine Pendleton, id*.

established. Generally, fact of injury consists of two components, which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident or exposure, which is alleged to have occurred.[6] In order to meet her burden of proof to establish the fact that she sustained an injury in the performance of duty, an employee must submit sufficient evidence to establish that she actually experienced the employment injury or exposure at the time, place and in the manner alleged.[7]

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.[8] The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing a causal relationship between the claimed condition and the identified factors.[9] The belief of the claimant that a condition was caused or aggravated by the employment is insufficient to establish a causal relationship.[10]

ANALYSIS

In an April 13, 2012 decision, OWCP accepted as factual that appellant loaded a tray of mail into her LLV on February 16, 2012 while working as a rural carrier associate. The Board finds, however, that the medical evidence of record is insufficient to establish that her left shoulder and hip conditions were caused or aggravated by the February 16, 2012 employment incident.

Dr. Robbins' diagnostic test results regarding appellant's left hip and shoulder and cervical spine were negative. He did not provide a diagnosis that was caused or contributed to by the accepted employment incident. The Board finds, therefore, that Dr. Robbins' reports are insufficient to establish appellant's claim.

The unsigned Form CA-16 and hospital records, and the reports and disability certificate which contained illegible signatures have no probative value, as the author(s) cannot be identified as a physician.[11] Further, the reports of Nurses French and Rizzo have no probative medical value in establishing appellant's claim as a nurse is not defined as a qualified physician under FECA.[12]

[6] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803(2)(a) (June 1995).

[7] *Linda S. Jackson*, 49 ECAB 486 (1998).

[8] *John J. Carlone*, 41 ECAB 354 (1989); *see* 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(ee), 10.5(q) (traumatic injury and occupational disease defined, respectively).

[9] *Lourdes Harris*, 45 ECAB 545 (1994); *see Walter D. Morehead*, 31 ECAB 188 (1979).

[10] *Charles E. Evans*, 48 ECAB 692 (1997).

[11] *See R.M.*, 59 ECAB 690, 693 (2008); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

[12] *See* 5 U.S.C. § 8101(2); *G.G.*, 58 ECAB 389 (2007).

The Board finds that there is insufficient rationalized probative medical evidence of record to establish that appellant sustained left shoulder and hip injuries causally related to the accepted February 16, 2012 employment incident. Appellant did not meet her burden of proof.

On appeal, appellant contended that she sustained left shoulder and hip injuries causally related to the February 16, 2012 employment incident for which medical treatment is necessary. For the reasons stated, the Board finds that she did not submit sufficiently rationalized probative medical evidence 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.

Appellant also contended that all she wanted following the February 16, 2012 employment incident was to receive medical treatment to return to work as soon as possible and had she possessed the proper insurance to cover the treatment, she would not have pursued an appeal. OWCP, however, did not adjudicate the issue of her incurred medical expenses. It has broad discretionary authority in the administration of FECA to achieve the objective of section 8103 of FECA.[13] OWCP has discretionary authority to approve unauthorized medical care which it finds necessary and reasonable and is required to exercise that discretion.[14] Ordinarily, when an employee sustains a job-related injury which may require medical treatment, the designated agency official shall promptly authorize such treatment by giving the employee a properly executed Form CA-16 authorizing medical treatment and expenses within four hours.[15] The regulations provide that in unusual or emergency circumstances OWCP may approve payment for medical expenses incurred otherwise than as authorized in section 10.303.[16] It may approve payment for medical expenses incurred even if a CA-16 form authorizing medical treatment and expenses has not been issued and the claim is subsequently denied; payment in such situations must be determined on a case-by-case basis.[17]

Although the record contains an unsigned and undated Form CA-16, it does contain the employing establishment's stamp. Additionally, immediately following the employment incident of February 16, 2012, appellant sought medical treatment from the emergency room of Massena Memorial Hospital. She received treatment from Nurse French, LPN and Nurse Rizzo, NP. The Board notes that nonphysicians, such as nurse practitioners, "may also provide authorized services for injured employees to the extent allowed by applicable Federal and State law."[18] As OWCP did not determine whether appellant was entitled to reimbursement for

[13] *Id*. at § 8103.

[14] *L.B.*, Docket No. 10-469 (issued June 2, 2010); *see Thomas W. Keene*, 42 ECAB 623 (1991); *Val D. Wynn*, 40 ECAB 666 (1989).

[15] 20 C.F.R. § 10.300(b).

[16] *Id*. at § 10.304.

[17] *See L.B., supra* note 14; *see also* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Authorizing Examination and Treatment*, Chapter 3.300.3(a) (October 1990).

[18] 20 C.F.R. § 10.310 (2012).

expenses incurred for medical treatment rendered, the Board will remand the case for such determination. Following any necessary further development, it shall issue a *de novo* decision on the issue of reimbursement of medical expenses.

CONCLUSION

The Board finds that appellant has failed to establish that she sustained left shoulder and hip injuries on February 16, 2012, as alleged. The case is remanded for a determination as to the reimbursement of expenses for medical treatment rendered.

ORDER

IT IS HEREBY ORDERED THAT the April 13, 2012 decision of the Office of Workers' Compensation Programs is affirmed. The case is remanded for consideration of the issue of reimbursement of medical expenses for treatment rendered.

Issued: December 28, 2012
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board