

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

A.O., Appellant)	
)	
and)	Docket No. 20-1395
)	Issued: February 23, 2021
U.S. POSTAL SERVICE, POST OFFICE,)	
Columbia, SC, Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On July 6, 2020 appellant filed a timely appeal from a June 16, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ 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 Appellant requested an appeal from a June 28, 2020 OWCP decision. The Board notes, however, that there is no decision of record dated June 28, 2020. The June 16, 2020 OWCP decision is the only one of record.

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that, following the June 16, 2020 decision, OWCP received additional evidence. 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 medical condition causally related to the accepted April 25, 2020 employment incident.

FACTUAL HISTORY

On May 5, 2020 appellant, then a 49-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on April 25, 2020 she injured her left shoulder when a large parcel shifted as she lifted it from a postal container while in the performance of duty. She did not stop work at the time of injury.

In an April 27, 2020 report, Dr. Joshua Neal, a Board-certified family practitioner, obtained left shoulder x-rays and diagnosed left shoulder pain. He prescribed medication and referred appellant to an orthopedist.

Dr. James F. Bethea, a Board-certified orthopedic surgeon, indicated in a May 11, 2020 report that he prescribed physical therapy for six weeks. In a work capacity evaluation (Form OWCP-5c) of even date, he diagnosed left shoulder bursitis. Dr. Bethea returned appellant to full, unrestricted duty.

In a May 11, 2020 development letter, OWCP requested that appellant submit factual and medical evidence, including a comprehensive report from her physician regarding how the alleged employment incident contributed to her claimed injury. It provided her with a questionnaire for her completion and afforded her 30 days to submit the necessary evidence.

In response, appellant submitted a June 8, 2020 report from Dr. Bethea, ordering a magnetic resonance imaging (MRI) scan of the left shoulder.

OWCP also received May 13 and 18, 2020 physical therapy treatment notes signed by Taylor Brewer, a physical therapist, noting Dr. Bethea's diagnoses of cervical radiculopathy, cervical disc disorder with cervicothoracic radiculopathy, cervicgia, generalized muscle weakness, and left shoulder pain.

By decision dated June 16, 2020, OWCP denied appellant's traumatic injury claim, finding that she had not established causal relationship between her diagnosed medical conditions and the accepted April 25, 2020 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ 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

⁴ *Supra* note 2.

limitation of FECA,⁵ 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.⁶ 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.⁷

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. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged. The second component is whether the employment incident caused a personal injury and can be established only by medical evidence.⁸

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

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a medical condition causally related to the accepted April 25, 2020 employment incident.

In his April 27, 2020 medical report, Dr. Neal diagnosed left shoulder pain. The Board has held that, under FECA, the assessment of pain is not considered a diagnosis, as pain merely refers to a symptom of an underlying condition.¹¹ Furthermore, Dr. Neal provided no opinion on causal relationship. Additionally, the Board has held that medical evidence that does not offer an opinion

⁵ *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).

⁶ *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).

⁷ *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).

⁸ *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).

⁹ *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).

¹⁰ *N.D.*, Docket No. 20-0091 (issued January 12, 2021); *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).

¹¹ *T.W.*, Docket No. 20-0767 (issued January 13, 2021); *M.V.*, Docket No. 18-0884 (issued December 28, 2018). The Board has consistently held that pain is a symptom, not a compensable medical diagnosis. See *P.S.*, Docket No. 12-1601 (issued January 2, 2013); *C.F.*, Docket No. 08-1102 (issued October 10, 2008).

regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.¹² Therefore, this report is insufficient to establish the claim.

In a reports dated May 11, 2020, Dr. Bethea diagnosed left shoulder bursitis. On June 8, 2020 he ordered an MRI scan of the left shoulder. However, as these reports do not address causal relationship, they are likewise of no probative value and insufficient to establish a claim.¹³

Appellant also submitted reports from Ms. Brewer, a physical therapist. The Board has held that certain healthcare providers, such as physical therapists, are not considered physicians as defined under FECA.¹⁴ Consequently, these reports will not suffice for purposes of establishing entitlement to FECA benefits.¹⁵

As the medical evidence of record does not include a rationalized opinion establishing causal relationship between appellant's diagnosed conditions and the accepted April 25, 2020 employment incident, the Board finds that she has not met her burden of proof.¹⁶

On appeal appellant contended that she was in the performance of duty at the time of the claimed injury, and that an MRI scan report showed muscle and tendon tears. As noted above, she has established the April 25, 2020 employment incident as factual. However, the medical evidence of record is insufficient to establish causal relationship between that incident and the claimed left shoulder conditions.

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 April 25, 2020 employment incident.

¹² *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹³ *Id.*

¹⁴ 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); *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.L.*, Docket No. 19-0440 (issued July 8, 2019) (nurse practitioners and physical therapists are not considered physicians under FECA).

¹⁵ *K.G.*, Docket No. 20-1242 (issued January 1, 2021).

¹⁶ *N.D.*, *supra* note 10; *see T.J.*, Docket No. 19-1339 (issued March 4, 2020); *F.D.*, Docket No. 19-0932 (issued October 3, 2019); *D.N.*, Docket No. 19-0070 (issued May 10, 2019); *R.B.*, Docket No. 18-1327 (issued December 31, 2018).

ORDER

IT IS HEREBY ORDERED THAT the June 16, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 23, 2021
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

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