

On July 12, 2005 appellant, then a 46-year-old modified clerk, filed a claim alleging that she injured her left hand and wrist in the performance of duty on June 21, 2005. She attributed the injury to using a hand grip machine during a functional capacity evaluation (FCE). Appellant claimed that the FCE left her with spasms and severe pain and no use of her left hand without numbness, throbbing and stiffness. She stated that the hand grip and strength test caused her

injury: “I had to do movement with my hands muscles, and lifting that I don’t normally do. ...My left hand was overused doing the F.C.E. examination.”

The employer controverted appellant’s claim. It scheduled appellant for an FCE because she had requested reasonable accommodation. The employer submitted a copy of the FCE report to show that she made no effort with her left hand and refused to do any lifting:

“[Appellant] was pleasant in nature while setting a very rigid set of limitations prior to any testing.

“Her affect appeared normal, and she was able to follow instructions and maintain concentration adequately throughout the evaluation. [Appellant’s] speech was normal and she did not have difficulty in communicating effectively. [She] appeared comfortable when awaiting the intake exam[ination] and started demonstrated [sic] severe pain behaviors during the intake process. [Appellant] was observed on her phone for 20 minutes in a gregarious fashion with frequent laughter, swinging both the lower extremities, frequently and quickly changing positions from and to semi-reclined with head against pillow, to upright sitting and standing. [Her] body movements and restrictions in movement changed dramatically when she was being directly observed for the initial evaluation. [Appellant] appeared uncomfortable when in the presence of an examiner during the physical examination. She was noted to guard, brace, grimace and moan/groan.

“[Appellant] attended a[n] FCE on June 21, 2005. The evaluation started at 9:00 a.m. and was completed at 11:00 a.m. [Appellant] arrived on time for the assessment and was uncooperative during testing.

“The results of this evaluation suggest that [appellant] gave unreliable effort with six of seven tests exceeding the expected limits. She was self limiting due to reported pain, paresthesias and refused most tests without any attempts. [Appellant] exceeded the coefficients of variance outpoint of 15 percent in four of five grip testing of her unaffected right hand and static push and static pull testing. Her complaints were global about her right upper quadrant and were inconsistent to her movement patterns. [Appellant] complained of increases in left upper extremity pain with right side gripping. During the Maximum Voluntary Effort Protocol, when the results were graphed, [her] results did not produce a bell shaped curve that is expected with maximal effort.¹ Cross validation of the handgrip tests indicated a possible lack of maximal effort. [Appellant] reported unable to tolerate very light pressure in the posterior head or top of head for ROM [range of motion] equipment placement but was observed in a semi-reclined

¹ Using the Maximum Voluntary Effort Protocol over a range of five positions on the hand dynamometer, the report explained, it was expected that the strength graphs obtained would result in a bell-shaped curve, even in a disabled population or if the client’s hand was injured. The graph obtained for appellant did not demonstrate a bell-shaped curve, which the report stated may be an indicator of submaximal effort, and the coefficients of variance of the underlying data may be an indicator of varied effort.

position with pressure to posterior head during pre-test casual observations. In casual movements during and after the evaluation, she was observed greatly exceeding measured range of motion of cervical and shoulder. [Appellant] demonstrated full cervical extension, extension and right rotation during casual observations. On the grip strength of the right unaffected side, she demonstrated significantly below normal strength according to age and sex referenced norms and refused to perform rapid exchange grip due to left upper extremity anticipated pain and difficulty. [Appellant] was unable to generate enough force on the grip of the left hand to register on the testing equipment to complete left Maximal Voluntary Effort Protocol. [She] demonstrated inconsistent effort when generating significantly more force in right hand grip than in a full body maximal static push and pull effort.”

* * *

“[Appellant] refused dynamic lifting and carrying testing due to starting weight exceeds doctors’ limitations of five pounds. The client refused any static lifting above or below waist level and stated ‘I can’t go that low, it’s hurting too much.’”²

The U.S. Postal Inspection Service conducted surveillance of appellant’s activities from July 26 to August 26, 2005. The resulting investigative memorandum stated that appellant was observed and videotaped performing activities that appeared in conflict with her medical restrictions. On August 15, 2005 she was observed driving to various places over the course of four hours. When appellant returned home, she was videotaped carrying two pizzas with her injured left hand and wrist, on which she wore a brace. On August 17, 2005 she was videotaped using her left hand to open her car door. Appellant later used her left hand and wrist to open and close her car door with no apparent pain or discomfort. On August 24, 2005 she was observed unloading items from her vehicle’s trunk and videotaped using her left hand and wrist to close the trunk with no apparent pain or discomfort. On August 25, 2005 appellant was observed driving with her left hand while talking on a cellular telephone held in her right hand for about 14 minutes. She told investigators that she had limited use of her left hand, “not enough to hold a small phone but that she could use a head set.” Appellant stated that she could not carry over five pounds or bend over but she could drive with her right hand.

On July 27, 2005 Dr. James Eichel, appellant’s family physician, diagnosed tendinitis of the left wrist flexors, left 4th/5th finger flexors. He indicated that this directly resulted from a medical examination the employer ordered on June 21, 2005. Appellant told Dr. Eichel that her left hand was tested for 15 minutes intermittently during the examination. On September 27, 2005 Dr. Eichel reported that for the past several years appellant had remarkably reduced strength and ability to use her left upper extremity, rendering her muscles quite weak from

² At the beginning of the examination, appellant reported current complaints of numbness, tingling and weakness in the whole of her left hand and reported that the pain in her hand was eight on the pain scale, or “intense.”

disuse. Appellant also had fibromyalgia syndrome, which markedly amplified any pain. Dr. Eichel addressed the FCE, as follows:

“On June 21, 2005 [appellant] underwent a functional capacity evaluation. She came to me the following day and described the experience as ‘humiliating’ because she was forced to attempt to do things she says she is not capable of doing; she specifically mentioned the tests of her grip strength as being particularly difficult, and she was castigated for her inability to perform them while she complained of the pain the testing caused. Over the following week, [appellant] developed severe pain in her left medial volar wrist and forearm. Her exam[ination] in my office on July 6, 2005 revealed findings consistent with a tendinitis of her left medial finger flexors, not a surprising diagnosis given all of the predisposing factors mentioned above.”

Dr. Eichel referred appellant to Dr. Timothy C. Shen, a physiatrist specializing in pain medicine, for consultation. Dr. Shen saw appellant on September 8, 2005. He reported a history of symptoms dating back to 1981. Appellant told Dr. Shen that following the testing on June 21, 2005 she developed the sudden onset of severe pain in the volar aspect of the left wrist. She described the pain as constant and exacerbated by light touch, gripping and any activity involving her hand. On examination Dr. Shen noted significant pain behavior. He noted increased pain with light touch diffusely in the wrist. Appellant was not able to abduct her left fingers due to complaints of pain. Minimal effort was noted during the examination. Dr. Shen concluded that there appeared to be evidence of nonorganic factors as well as a repetitive stress injury.

On October 6, 2005 a witness stated that she observed appellant on June 21, 2005 “when she went to a physical examination and returned in extreme pain.” Another witness stated on October 6, 2005 that when appellant returned from her appointment in June 2005 “she was in a lot of pain in her left hand.” The second witness stated that she now had to help appellant carry her tray at lunch and at times break her chicken wings apart for her.

An October 13, 2005 magnetic resonance imaging (MRI) scan found suspicion for disruption of the ulnar attachment of the triangular fibrocartilage complex (TFCC), which was adjacent to the area of tenderness.

On March 1, 2006 the Office denied appellant’s claim, finding that the medical evidence did not establish that the claimed left wrist condition resulted from the accepted work-related events.

At an August 8, 2006 oral hearing before an Office hearing representative, appellant testified about the circumstances of her claimed injury. The Office received a June 22, 2005 medical report, which stated that she had a humiliating examination the previous day. The examination focused exclusively on her conjunctivitis and recovery from a removed toenail.

On August 29, 2006 Dr. Michael Hebrard, a physiatrist, reported that it was his opinion to a reasonable degree of medical probability that appellant’s left wrist pain was related to the activities she performed during her FCE. He noted no medical records to the contrary.

In a decision dated October 18, 2006, the Office hearing representative affirmed the denial of appellant's claim. He noted that Dr. Eichel did not review the FCE report and did not address the fact that appellant had no left wrist complaints when she saw him one day after the FCE.

On November 6, 2006 Dr. Eichel addressed the hearing representative's concerns, as follows:

"Those of us who have experience and training in the assessment and treatment of overuse syndromes know that the symptoms of these injuries usually worsen 48 to 72 hours after the injury, not in the first 24 hours. If one reads the note from [June 22, 2005], one can see that we appropriately focused our attention during the brief 15-minute visit on the humiliation she experienced during the FCE and on the treatment of her conjunctivitis. [Patients with chronic pain and depression] generally make less scheduled visits to doctors when their pain and depression are at their worst. They return to the office when their pain and mood allow them to do so. When [appellant] did come back on July 6, 2005, her history and exam[ination] were very consistent with the TFCC tear that was found later on [the] MRI scan.

"In my 14 years of medical practice, I have assessed thousands of injuries. My experience, my familiarity with [appellant's] medical problems over the past nine years and my evaluation of her wrist injuries allow me to state with confidence that the FCE caused a significant disabling ligament injury to her left wrist. It is true that few other patients would have sustained such an injury, and very few would be so disabled from it for such a long time, but that does not change the fact that she was injured and she is disabled. I thought at the time it was unwise to order an FCE on someone with such severe fibromyalgia, chronic pain and deconditioning, and I was not surprised at the result."

On February 7, 2007 the Office reviewed the merits of appellant's claim and denied modification of its October 18, 2006 decision.

On February 18, 2007 Dr. Eichel expanded his previous report:

"To be specific, during the FCE [appellant] developed severe pain in throughout her left wrist and hand, worst on the medial aspect of the wrist and in her fourth and fifth fingers. She could not spread the fingers of her left hand, nor grip objects with the hand. Supporting [appellant's] subjective complaints, on my examinations on July 6, 27 and August 5, [20]05, I found significant edema and tenderness of the soft tissues in the medial left wrist. She could not actively separate her left fourth and fifth fingers, and she had markedly diminished strength in the left medial finger flexors. [Appellant's] pain and objective findings did not improve with conservative treatment, including rest, ice and nonsteroidal anti-inflammatory agents, and I therefore referred her to a physiatrist, Dr. Timothy Shen. He ordered the MRI [scan] of her wrist which showed disruption of the TFCC. We do not have any evidence that any such injury

existed prior to the FCE and it is therefore highly rational to conclude that this injury occurred during the FCE. Any other conclusion would be a misinterpretation of these specific facts of her presentation and objective findings.”

On April 12, 2007 the Office reviewed the merits of appellant’s claim and denied modification of its February 7, 2007 decision. It found that Dr. Eichel did not provide a well-rationalized opinion based on the specific activities appellant performed during the FCE.³

On April 26, 2007 Dr. Eichel clarified his earlier opinion:

“On June 21, [2005] [appellant] presented for her FCE. The FCE included use of the JAMAR hand dynamometer, which [appellant] was asked to lift and squeeze firmly with her left hand. She felt immediate pain on the ulnar side of the left wrist. The results of that test showed that she was unable to give a maximum effort, which is consistent with her assertion that she was injured during that maneuver. It does not necessarily imply a lack of compliance on her part.”

On July 10, 2007 the Office reviewed the merits of appellant’s claim and denied modification of its April 12, 2007 decision. It found that Dr. Eichel did not account for observations in the FCE report that appellant was not cooperative, including casual movements that were inconsistent with her performance during tests. The Office found that Dr. Eichel did not distinguish pre-FCE symptoms and post-FCE symptoms, nor did he account for videotaped surveillance of appellant using her left hand and wrist. It again questioned why the June 22, 2005 treatment note showed no left hand or wrist complaints if, as appellant and Dr. Eichel reported, symptoms appeared immediately on June 21, 2005 with swelling the following day.

On October 23, 2007 Dr. Eichel explained that, when appellant attempted to lift with her wrist and squeeze with her finger flexor muscles the JAMAR dynamometer, a maneuver she had not performed in several years due to her chronic left neck pain, she felt immediate pain on the ulnar aspect of her left wrist, which was consistent with the finding of a torn TFCC. He asserted that the video surveillance was not credible. Dr. Eichel stated that “inconsistent effort” with the right hand during the FCE was not relevant and was not unexpected in someone with severe constant neck pain. He explained that the lack of a bell curve on the left was entirely consistent with appellant’s history. Dr. Eichel address pre- and post-FCE findings:

“My report of September 19, 2006 makes this distinction quite clearly. As of early June 2005, she had full range of motion in her left wrist and could use her left hand for such tasks as manipulating the steering wheel of a car, personal grooming and typing. She did not have pain or tenderness in her left wrist or hand. Ever since going to the FCE, she has had severe pain and tenderness on the

³ Appellant charged that someone tampered with the video showing her carrying pizzas with her left hand because the image was reversed to make it appear that way. The Office explained that, although there were a couple of quick camera shots that appeared to be taken through a rearview mirror, appellant’s wrist splint stayed on the left arm and the video showed appellant engaged in multiple activities with her left hand.

ulnar aspect of the left wrist. This could not be more consistent with the injury, the mechanism of injury and the findings on [the] MRI [scan].”

Dr. Eichel reasoned that his failure to document the pain and swelling in appellant’s left wrist on June 22, 2005, one day after the injury, did not justify the assumption that pain and swelling were not present. He stated that he addressed other issues and did not report anything that would contradict the fact that pain and swelling existed on that day.

In a decision dated February 22, 2008, the Office reviewed the merits of appellant’s claim and denied modification of its July 10, 2007 decision. It found that Dr. Eichel’s opinion did not establish the element of causal relationship. The Office noted that pain may be consistent with a torn TFCC, but the diagnosis alone did not establish that the tear was a result of the attempted use of the JAMAR dynamometer. It also noted that the FCE has indicators built into the testing to show inconsistencies and minimal or reduced effort. Cross-testing and comparison of the various activities during the evaluation represent medical data that establishes the validity of the testing. The Office found that Dr. Eichel failed to address the many inconsistencies in appellant’s test results or explain why such validation methods did not apply. It noted that appellant’s complaints of pain and limitation during testing were not compatible with similar activities on casual observation. The Office further noted that Dr. Eichel’s post-FCE finding that appellant had no use of her left hand for specific activities was not consistent with reported observations on surveillance. It found that Dr. Eichel’s opinion lacked sufficient rationale, in part because on September 27, 2005 he reported that appellant had experienced markedly reduced strength and ability to use her left upper extremity for the past several years, which was in complete contradiction to his argument that appellant had full range of motion in the left wrist prior to the FCE and was able to perform tasks with her left hand without pain or tenderness. The Office found noteworthy that findings of left wrist pain and swelling were not documented the day after the alleged injury.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees’ Compensation Act⁴ has the burden of proof to establish the essential elements of her claim. When an employee claims that she sustained an injury in the performance of duty, she must submit sufficient evidence to establish that she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. She must also establish that such event, incident or exposure caused an injury.⁵

Causal relationship is a medical issue,⁶ and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician’s rationalized opinion on whether there is a causal relationship between the claimant’s diagnosed condition and the established

⁴ 5 U.S.C. §§ 8101-8193.

⁵ See generally *John J. Carlone*, 41 ECAB 354 (1989).

⁶ *Mary J. Briggs*, 37 ECAB 578 (1986).

incident or factor of employment. The opinion of the physician must be based on a complete factual and medical background of the claimant,⁷ must be one of reasonable medical certainty⁸ and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.⁹

A person who claims benefits under the Act has the burden of establishing by a preponderance of the reliable, probative and substantial evidence the essential elements of her claim, including the fact that she sustained an injury at the time and in the place and manner alleged.¹⁰ To establish that an injury occurred as alleged, the injury need not be confirmed by eyewitnesses, but the employee's statements must be consistent with the surrounding facts and circumstances and her subsequent course of action. In determining whether a *prima facie* case has been established, such circumstances as late notification of injury, lack of confirmation of injury and failure to obtain medical treatment may, if otherwise unexplained, cast sufficient doubt on a claimant's statements. The employee has not met this burden when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim.¹¹

ANALYSIS

The Office does not dispute that appellant attended an employer-scheduled FCE on June 21, 2005, during which an attempt was made to test her left grip strength. The question is whether the FCE caused a left wrist injury.

Dr. Eichel, appellant's family physician, supported appellant's claim in several medical reports. The FCE report stated that appellant appeared comfortable when awaiting the intake examination and started demonstrating severe pain behaviors only during the intake process. Her body movements and restrictions in movement changed dramatically when she was being directly observed for the initial evaluation. Appellant was reported to be uncooperative during testing. Results therefore suggest unreliable effort. Appellant was self-limiting and refused most tests without any attempts. Her complaints were global and inconsistent with her movement patterns. Dr. Eichel stated that appellant's dynamometer results were consistent with a left wrist injury occurring during her first attempt. However, he has never satisfactorily accounted for the inconsistencies reported during the FCE.¹² Appellant was unable to tolerate very light pressure in the posterior head or top of the head for range-of-motion equipment placement, but she was observed in a semi-reclined position with pressure to the posterior head during pretest casual

⁷ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

⁸ *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

⁹ *See William E. Enright*, 31 ECAB 426, 430 (1980).

¹⁰ *Henry W.B. Stanford*, 36 ECAB 160 (1984); *Samuel L. Licker*, 4 ECAB 458 (1951).

¹¹ *Carmen Dickerson*, 36 ECAB 409 (1985); *Joseph A. Fournier*, 35 ECAB 1175 (1984). *See also George W. Glavis*, 5 ECAB 363 (1953).

¹² Dr. Eichel's explanation that the absence of a bell-shaped curve was consistent with injury is contradicted by the FCE report, which, citing medical authority, explained that a bell-shaped curve was expected "even in a disabled population or if the client's hand is injured."

observations. During and after examination, she was observed greatly exceeding measured range of cervical and shoulder motion. Such observations raise a substantial question about appellant's reliability.

Moreover, the FCE report itself does not document the injury appellant claims. The report states that appellant refused to perform rapid exchange grip due to left upper extremity "anticipated" pain and difficulty. The report also states that appellant was unable to generate enough force on grip of the left hand to register on the testing equipment. It does not state that appellant experienced severe pain on her first attempt and could not continue or that she otherwise hurt her left wrist during the examination.

The issue of appellant's reliability does not stop with the FCE report. The U.S. Postal Inspection Service observed appellant performing activities that appeared to conflict with her claim. She was observed opening and closing her car door and trunk with her injured left hand, driving with her injured left hand for a period of time, and carrying two pizzas with her injured left hand. Appellant then told investigators she did not have enough use of her left hand to hold a small telephone.

Dr. Shen, the physiatrist to whom Dr. Eichel referred appellant for consultation, reported significant pain behavior on examination. He reported minimal effort and found evidence of nonorganic factors. This finding is consistent with the observations of the FCE examiner.

There is also the June 22, 2005 treatment note that makes no mention of any left wrist injury. Appellant claimed that the grip test caused immediate and severe pain. She claimed swelling the next day. Dr. Eichel reported that appellant came to him on June 22, 2005 and specifically mentioned that the tests of her grip strength were particularly difficult and that she was castigated for her inability to perform them while she complained of the pain the testing caused. However, this is not reflected in the June 22, 2005 treatment note. It is reasonable to expect that a person who sustains a severely painful and significantly disabling ligament injury to her left wrist one day would mention it to her physician the following day. Dr. Eichel's argument that he was focused on other matters is weak. A lack of findings negating pain and swelling is hardly proof that appellant injured her left wrist the previous day and was experiencing severe wrist pain and swelling when she saw Dr. Eichel on June 22, 2005.¹³

Dr. Eichel reported that as of early June 2005 appellant did not have pain or tenderness in her left wrist or hand, but this does not appear consistent with what she told the FCE examiner on June 21, 2005. She reported current complaints of numbness, tingling and weakness in the whole of her left hand and reported that the pain in her hand was eight on the pain scale, or "intense." To the extent that Dr. Eichel uses appellant's pre-FCE picture to support that an

¹³ Dr. Hebrard, a physiatrist, also cited the absence of medical records to the contrary as support for his opinion that appellant's left wrist pain was related to the activities she performed during the FCE. This opinion lacks medical rationale and is of little probative value. *See generally Melvina Jackson*, 38 ECAB 443, 450 (1987) (addressing factors that bear on the probative value of medical opinions).

injury must have occurred during the test, his opinion appears premised on an inaccurate history.¹⁴

Ultimately, appellant bears the burden of proof to establish her claim by the weight of the evidence. Because the evidence raises too many doubts about whether the injury occurred as alleged, the Board finds that she has not met her burden of proof. The Board will affirm the Office decisions denying compensation.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that she injured her left wrist during the June 21, 2005 FCE, as alleged. The medical opinion evidence is supportive of her claim but fails to establish in a convincing manner the critical element of causal relationship.

ORDER

IT IS HEREBY ORDERED THAT the February 22, 2008, July 10 and April 12, 2007 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: October 7, 2008
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

¹⁴ See *James A. Wyrick*, 31 ECAB 1805 (1980) (a physician's report was entitled to little probative value because the history was both inaccurate and incomplete).