United States Department of Labor
Employees' Compensation Appeals Board

K.G., Appellant	)	
and	)	**Docket No. 12-1148**
	)	**Issued: November 1, 2012**
U.S. POSTAL SERVICE, MAIN OFFICE, Long Island City, NY, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge

JURISDICTION

On May 2, 2012 appellant filed a timely appeal of an April 11, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 the case.

ISSUE

The issue is whether appellant met her burden of proof to establish that she sustained a traumatic injury in the performance of duty on October 26, 2010.

FACTUAL HISTORY

On October 26, 2010 appellant, then a 33-year-old letter carrier, filed a traumatic injury claim alleging that she was picking up a bucket of mail that morning when her right hand slipped

[1] 5 U.S.C. § 8101 *et seq.*

and snapped backwards.[2] She thereafter filed a claim for disability compensation on January 1, 2011.[3]

In November 6 and 18, 2010 attending physician's reports, Dr. Vaijinath M. Chakote, a Board-certified internist, stated that appellant injured her right hand on October 26, 2010 after she picked up a bucket of mail. He checked the "yes" box indicating that the injury resulted from her federal employment.[4] In a November 16, 2010 duty status report, Dr. Chakote diagnosed injured right hand, wrist and thumb and recommended that appellant be placed on modified duty.[5]

Dr. David W. Rabinovici, a neurologist, detailed in a December 21, 2010 report that appellant was carrying a basket at work on October 26, 2010 when she nearly dropped it. As she was grabbing hold of the basket with her right hand, appellant bent her thumb. On examination of the right upper extremity, Dr. Rabinovici observed decreased pinprick and vibratory sensation along the hand and forearm, positive Tinel's signs at the wrist and elbow and shoulder pain. He diagnosed injured right thumb.

OWCP informed appellant in a January 20, 2011 letter that additional evidence was needed to establish her claim. It gave her 30 days to submit a medical report from a qualified physician explaining how an October 26, 2010 work event caused or contributed to a diagnosed condition.[6]

X-rays obtained by Dr. Chakote on December 2, 2010 exhibited degenerative joint disease of the right finger, hand and wrist. He specified in a February 15, 2011 note that a bucket of mail fell on appellant's hand on October 26, 2010, which led to her condition and necessitated physical therapy.[7]

In reports dated January 18, 2011, Dr. Rabinovici related that appellant experienced right thumb, wrist, elbow and shoulder discomfort. An electromyogram (EMG) showed evidence of chronic bilateral carpal tunnel syndrome while motor and sensory nerve conduction, F-wave and

[2] Appellant did not immediately incur any lost time from work. Her supervisor signed a Form CA-16 on October 26, 2010 authorizing urgent care. Multiple duty status reports and an attending physician's report from that day contained illegible signatures.

[3] The case record contains several subsequent compensation claims.

[4] Appellant also provided Dr. Chakote's other attending physician's reports for the period November 23, 2010 to February 15, 2011. Except for the November 23, 2010 version, which mistakenly addressed a left hand injury, they essentially duplicated the content of the earlier reports.

[5] Appellant also provided Dr. Chakote's other duty status reports for the period October 28, 2010 to February 15, 2011. Except for the October 28, 2010 version, which mistakenly addressed a left hand injury, they essentially duplicated the content of the earlier report.

[6] OWCP pointed out that the claim was originally received as a simple, uncontroverted case resulting in minimal or no lost time from work and payment was approved for limited medical expenses without formal adjudication.

[7] The case record contains physical therapy records from January 28, 2011.

physical examination findings were within normal limits. Dr. Rabinovici advised that appellant was unable to return to work in a February 13, 2011 status note.

Appellant recounted in a February 16, 2011 statement that she picked up a bucket of mail to case on October 26, 2010 when it slipped from her grasp. She "went to catch it" and her thumb "bent back." Appellant remained symptomatic since the incident.[8]

By decision dated February 22, 2011, OWCP denied appellant's claim, finding the medical evidence insufficient to demonstrate that the accepted October 26, 2010 employment incident caused or contributed to a right hand injury.

Appellant requested reconsideration on April 4, 2011. Her representative argued in an April 5, 2011 memorandum that OWCP was obligated to pay for appellant's initial medical care and that the medical evidence established an industrial injury.

Dr. Chakote remarked in a January 29, 2011 note that appellant sustained a right hand injury when she picked up a falling basket of mail on October 26, 2010. He reiterated the results of the December 2, 2010 x-rays and Dr. Rabinovici's January 18, 2011 EMG and nerve conduction study. Dr. Chakote's subsequent March 28, 2011 note stated that a bucket of mail fell on appellant's right hand.

In a February 15, 2011 follow-up report, Dr. Rabinovici examined appellant's right arm, observed tenderness to palpation and diagnosed mild carpal tunnel syndrome based on his January 18, 2011 findings.[9]

On July 7, 2011 OWCP denied modification of the February 22, 2011 decision.

Appellant requested reconsideration on November 15, 2011. In a November 8, 2011 memorandum, counsel asserted that Dr. Chakote misdiagnosed appellant's condition and that new medical evidence established an industrial injury.

In September 28, 2011 reports, Dr. Pamela M. Levine, a Board-certified orthopedic surgeon, related that a bucket of mail fell on appellant's right hand on October 26, 2010. On examination, she observed right wrist tenderness to palpation, decreased range of motion (ROM), first, second and third digit pain and positive Watson's and Finkelstein's tests. Dr. Levine diagnosed torn right scapholunate ligament and ruled out degenerative joint disease. A September 29, 2011 right hand x-ray obtained by Dr. Franco G. Policaro, a Board-certified diagnostic radiologist, was normal.

On April 11, 2012 OWCP denied modification of the July 7, 2011 decision.

[8] Appellant later furnished additional factual statements.

[9] Appellant also submitted an unsigned November 3, 2010 medical note and an illegible February 4, 2011 report from Dr. Sairamachandra R. Kolla, a Board-certified physiatrist.

LEGAL PRECEDENT

An employee seeking compensation under FECA has the burden of establishing the essential elements of her claim by the weight of reliable, probative and substantial evidence,[10] including that she is an "employee" within the meaning of FECA and that she filed her claim within the applicable time limitation.[11] The employee must also establish that she sustained an injury in the performance of duty as alleged and that her disability for work, if any, was causally related to the employment injury.[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. First, the employee must submit sufficient evidence to establish that she actually experienced the employment incident at the time, place and in the manner alleged. Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.[13]

Rationalized medical opinion evidence is generally required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, 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 the specific employment factors identified by the claimant.[14]

ANALYSIS

The case record supports that appellant caught a bucket of mail with her right hand on October 26, 2010. Nonetheless, the Board finds that she did not establish her claim because the medical evidence did not sufficiently demonstrate that the accepted employment incident was causally related to a right hand injury.

Dr. Chakote's reports from November 6, 2010 to February 15, 2011 indicated that appellant sustained degenerative joint disease of the right finger, hand and wrist and attributed the condition to picking up a falling basket of mail on October 26, 2010. However, subsequent February 15 and March 28, 2011 notes specified that a bucket of mail fell on appellant's right hand. Inconsistent records from the same physician lack probative value.[15] Moreover,

[10] *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

[11] *R.C.*, 59 ECAB 427 (2008).

[12] *Id.*; *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[13] *T.H.*, 59 ECAB 388 (2008).

[14] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

[15] *K.S.*, Docket No. 11-2071 (issued April 17, 2012); *Cleona M. Simmons*, 38 ECAB 814 (1987). *See also John W. Montoya*, 54 ECAB 306, 309 (2003) (a physician's opinion must discuss whether the employment incident described by the claimant caused or contributed to the diagnosed medical condition).

Dr. Chakote failed to pathophysiologically explain how the accepted October 26, 2010 employment incident caused or contributed to the diagnosed condition.[16]

In a December 21, 2010 report, Dr. Rabinovici reviewed appellant's account of the October 26, 2010 work event and conducted a physical examination. He later diagnosed carpal tunnel syndrome in January 18 and February 15, 2011 reports based on EMG findings. Dr. Rabinovici did not provide an opinion regarding causal relationship: he appeared to be merely communicating appellant's belief on the matter.[17] Assuming *arguendo* that this represented his opinion on causal relationship, he did not offer fortifying medical rationale.[18]

Dr. Levine stated in reports dated September 28, 2011 that a bucket of mail fell on appellant's hand. Following an examination, she diagnosed torn right scapholunate ligament. Dr. Levine, however, did not discuss whether the October 26, 2010 employment incident that was accepted by OWCP, namely catching a bucket of mail with her right hand, caused or contributed to the diagnosed injury.[19] In the absence of rationalized medical opinion evidence, appellant failed to meet her burden of proof.[20]

Appellant may submit new evidence or argument as part of a formal 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.[21]

CONCLUSION

The Board finds that appellant did not establish that she sustained a traumatic injury in the performance of duty on October 26, 2010.

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[16] *Joan R. Donovan*, 54 ECAB 615, 621 (2003); *Ern Reynolds*, 45 ECAB 690, 696 (1994). The Board also points out that Dr. Policaro's September 29, 2011 x-ray report did not support Dr. Chakote's diagnosis.

[17] *See P.K.*, Docket No. 08-2551 (issued June 2, 2009) (an award of compensation may not be based on a claimant's belief of causal relationship).

[18] *George Randolph Taylor*, 6 ECAB 986, 988 (1954).

[19] *See John W. Montoya*, *supra* note 15. *See also M.W.*, 57 ECAB 710 (2006); *James A. Wyrick*, 31 ECAB 1805 (1980) (medical opinions based on an incomplete or inaccurate history are of diminished probative value).

[20] The Board adds that January 27, 2011 physical therapy records, an unsigned November 3, 2010 medical note, and Dr. Kolla's illegible February 4, 2011 report each lacked probative value. First, medical opinion is generally given by a qualified physician. *Charley V.B. Harley*, 2 ECAB 208, 211 (1949). A physical therapist is not a physician under FECA. 5 U.S.C. § 8101(2); *Jennifer L. Sharp*, 48 ECAB 209 (1996). Second, an unsigned report cannot constitute competent medical evidence because one cannot determine whether the report was completed by a qualified physician. *See R.M.*, 59 ECAB 690, 693 (2008). Finally, an unreadable report lacks evidentiary weight. *Charlie McRae*, Docket No. 98-1730 (issued February 22, 2000).

[21] The Board notes that the employing establishment completed a Form CA-16 on October 26, 2010. *See supra* note 2. A properly executed Form CA-16 creates a contractual obligation, which does not involve the employee directly, to pay the cost of the examination or treatment, regardless of the action taken on the claim. *See Elaine M. Kreymborg*, 41 ECAB 256 (1989). Although OWCP adjudicated and denied appellant's traumatic injury claim, it has not yet addressed the issue of medical reimbursement pursuant to the Form CA-16.

ORDER

IT IS HEREBY ORDERED THAT the April 11, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 1, 2012
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board