

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

---

V.C., Appellant )

and )

**DEPARTMENT OF VETERANS AFFAIRS,** )  
**VETERANS HEALTH ADMINISTRATION,** )  
**Hines, IL, Employer** )

---

**Docket No. 14-1124**  
**Issued: November 3, 2014**

*Appearances:*

*Alan J. Shapiro, Esq., for the appellant*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

CHRISTOPHER J. GODFREY, Chief Judge  
ALEC J. KOROMILAS, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On April 15, 2014 appellant, through counsel, filed a timely appeal from a March 24, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her claim for compensation. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over merits of this case.

**ISSUE**

The issue is whether appellant has met her burden of proof to establish that she sustained an injury or medical condition on October 17, 2012.

**FACTUAL HISTORY**

On November 1, 2012 appellant, then a 60-year-old dental assistant, filed an occupational disease claim indicating weakness of her right arm and hand every time she worked with a left-

---

<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

handed dentist. She explained that she was used to working with her right hand and she had to stand up and find the right position to place her suction if the dentist was working on the right side of the patient. Appellant first became aware of her condition and that it was caused or aggravated by her employment on October 17, 2012. No additional evidence was submitted.

In a November 19, 2012 letter, OWCP advised appellant of the deficiencies in her claim and provided her the opportunity to submit additional evidence. Appellant was requested to submit within 30 days a response to the questionnaire regarding the factual aspects of her claim and a comprehensive medical report from a physician supported by a medical explanation as to how work factors caused or aggravated her condition.

In response, OWCP received a December 13, 2012 claim for compensation and a December 12, 2012 request for physical therapy and work restrictions for appellant's right arm from Dr. Keith L. Komnick, a Board-certified orthopedic surgeon. In a January 9, 2013 report, Dr. Paul Papierski, a Board-certified hand surgeon, indicated that appellant was off work from January 9 to 10, 2013 and may return to medium work January 10 to February 13, 2013. He also indicated that appellant had a follow-up appointment to schedule surgery.

By decision dated January 29, 2013, OWCP denied the claim on the grounds that appellant had not established the medical component of fact of injury as the medical evidence submitted failed to contain a diagnosis in connection with the event or a well-rationalized opinion based on objective findings of whether and how any condition diagnosed was attributable to identified work activities.

In a December 30, 2013 letter, appellant, through her attorney, requested reconsideration. Physical therapy notes dated January 9, 2013 to March 12, 2014 were submitted along with November 25 and a December 4, 2013 report from an occupational therapist and requests for authorization of hand therapy.

In another January 9, 2013 report, Dr. Papierski provided a history of right wrist and forearm pain, much worse since October 2011. He noted that appellant has worked as a dental assistant for many years and works with patients as well as cleaning various kinds of equipment. Dr. Papierski opined that appellant had right de Quervain's tenosynovitis most likely related to her job activities. Treatment options were discussed and appellant agreed to surgery. In a November 1, 2013 report, Dr. Papierski noted that appellant was previously scheduled for surgery but was apparently denied on the causation question from workers' compensation. He continued to opine that appellant has right de Quervain's tenosynovitis with failed conservative treatment. Appellant consented to surgical treatment. Dr. Papierski further diagnosed thumb arthritis and stated treatment would be discussed postoperatively. He also provided reports with work restrictions. On November 20, 2013 Dr. Papierski performed surgical release of right de Quervains. He provided postsurgical reports on appellant's status, additionally diagnosing right middle trigger finger acquired. Dr. Papierski opined that she could resume work on December 2, 2013 with a splint.

In a December 3, 2013 report, Dr. David Grosburg<sup>2</sup> noted that appellant's right wrist became swollen on October 17, 2012, she was assisting with a spinal cord patient before that, and injured her wrist because of the position of the patient. He opined that appellant injured her wrist by work activity and diagnosed cellulitis.

By decision dated March 24, 2014, OWCP modified its prior decision to reflect that the fact of injury had been established but denied the claim on the grounds that causal relationship had not been established.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA has the burden of proof to establish 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.<sup>3</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.<sup>4</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a fact of injury has been established. A fact of injury determination is based on two elements. 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. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury. An employee may establish that the employment incident occurred as alleged but fail to show that his or her condition relates to the employment incident.<sup>5</sup>

Whether an employee sustained an injury in the performance of duty requires the submission of rationalized medical opinion evidence.<sup>6</sup> 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 the specific employment factors identified by the employee.<sup>7</sup> The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.<sup>8</sup> Neither the mere fact that a disease or condition

---

<sup>2</sup> Dr. Grosburg's credentials are not of record.

<sup>3</sup> C.S., Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

<sup>4</sup> *S.P.*, 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>5</sup> See *Shirley A. Temple*, 48 ECAB 404, 407 (1997); *John J. Carlone* 41 ECAB 354, 356-57 (1989).

<sup>6</sup> See *J.Z.*, 58 ECAB 529, 531 (2007); *Paul E. Thams*, 56 ECAB 503, 511 (2005).

<sup>7</sup> *I.J.*, 59 ECAB 408, 415 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>8</sup> *James Mack*, 43 ECAB 321, 329 (1991).

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.<sup>9</sup>

### ANALYSIS

OWCP denied appellant's claim on the grounds there was insufficient medical evidence to establish that her diagnosed right hand conditions were caused or aggravated by either an incident with a spinal patient on October 17, 2012 or by her work activities of assisting a left-handed dentist. The Board affirms the decision.

Appellant alleged on her claim form that she experiences weakness of her right arm and hand every time she works with a left-handed dentist. She attributed her condition to positioning her suction when the left-handed dentist works on the patient's left side of the mouth. Despite OWCP's request for further factual information, appellant did not provide further detail of the duties she was required to perform and how often this occurred and if it only occurs while working with a left-handed dentist. While Dr. Papierski provided a history of right wrist and forearm pain, much worse since October 2011 and noted that appellant has worked as a dental assistant for many years and cleans various kinds of equipment, he does not appear to be aware of appellant's complaints of experiencing right arm and hand pain every time she works with a left-handed dentist. Thus, while he opined that appellant had right de Quervain's tenosynovitis most likely related to her general job activities, his opinion is not based on an accurate factual background and is equivocal in nature.<sup>10</sup> Furthermore, Dr. Papierski's report lacks adequate medical rationale as to how appellant's work with a left-handed dentist or her work as a dental assistant could result in the diagnosed condition of right de Quervain's tenosynovitis.<sup>11</sup> Thus, Dr. Papierski's reports are of little probative value in establishing appellant's claim.

Dr. Grosburg noted in his December 3, 2013 report that appellant's right wrist became swollen on October 17, 2012 while assisting a spinal cord patient and diagnosed cellulitis. However, there is no statement from appellant with regard to that event and, even if accepted as factual, Dr. Grosburg provides no explanation in detail of how appellant's condition physiologically resulted from appellant's assistance of a spinal cord patient.

---

<sup>9</sup> *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

<sup>10</sup> *D.F.*, Docket No. 09-1080 (issued December 7, 2009); *Michael R. Shaffer*, 55 ECAB 386 (2004).

<sup>11</sup> *See I.J.*, *supra* note 6; *Victor J. Woodhams*, *supra* note 7.

The physical therapy reports and reports from an occupational therapist are also insufficient to establish appellant's claim. Physical therapists and occupational therapists are not a physician and a physical therapist's or occupational therapist's opinion regarding diagnosis or causal relationship is of no probative value.<sup>12</sup>

The Board finds that the medical evidence does not establish that appellant sustained a medical condition causally related to her federal employment. An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that her condition was caused, precipitated or aggravated by her employment, is sufficient to establish causal relationship.<sup>13</sup> Causal relationships must be established by rationalized medical opinion evidence. As noted, the medical evidence is insufficient to establish appellant's claim. Consequently, OWCP properly found that appellant did not meet her burden of proof in establishing her claim.

On appeal, appellant's attorney argued that the decision is contrary to fact and law. As noted above, the medical evidence does not establish that appellant's diagnosed conditions are causally related to the accepted October 17, 2012 event of assisting a spinal cord patient, working with a left handed dentist, or the dental assistance duties. Reports from appellant's physicians failed to provide sufficient medical rationale based on a complete factual background explaining the reasons why her diagnosed conditions were caused or aggravated by particular employment duties. The need for such rationale is particularly important in view of the fact appellant provided a vague description of her work activities and how long and often she was required to perform them.

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.

---

<sup>12</sup> A medical report may not be considered as probative medical evidence if there is no indication that the person completing the report qualifies as physician as defined in 5 U.S.C. § 8101(2). Section 8101(2) of FECA provides as follows: (2) physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law. *See Merton J. Sills*, 39 ECAB 572, 575 (1988).

<sup>13</sup> *Supra* note 9.

**CONCLUSION**

The Board finds that appellant did not meet her burden of proof to establish that she sustained a medical condition causally related to her employment or the accepted October 17, 2012 incident.

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 24, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 3, 2014  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

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

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