

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

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**S.E., Appellant** )

**and** )

**DEPARTMENT OF VETERANS AFFAIRS, )  
WEST LOS ANGELES VETERANS )  
ADMINISTRATION MEDICAL CENTER, )  
Los Angeles, CA, Employer** )

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**Docket No. 09-2047  
Issued: April 14, 2010**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On August 11, 2009 appellant filed a timely appeal of the February 23 and June 17, 2009 merit decisions of the Office of Workers' Compensation Programs finding that she did not sustain an injury while in the performance of duty. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant has established that she sustained a right thumb injury or condition on February 1, 2006, as alleged.

On appeal, appellant contends that her right thumb injury continues to prevent her from pushing heavy carts and gripping trays as required by her job.

## **FACTUAL HISTORY**

On February 8, 2006 appellant, then a 32-year-old food service worker, filed a traumatic injury claim alleging that on February 1, 2006 she bruised her right thumb. When pushing a cart into a refrigerator, the refrigerator door closed smashing her right thumb. Appellant stopped work for one hour on February 1, 2006.

In a January 12, 2009 disability certificate, Dr. Richard Kay, an attending Board-certified internist, advised that appellant sustained de Quervain's tendinitis and osteoarthritis of the right thumb and that she was totally disabled for work from January 13 to February 1, 2009. Dr. Kay added that appellant could return to light-duty work on February 2, 2009.

On January 16, 2009 appellant filed a claim alleging that she sustained a recurrence of disability on December 18, 2008 due to her February 1, 2006 injury.

By letter dated January 23, 2009, the Office requested that appellant submit factual and medical evidence, including a rationalized medical report from an attending physician which described a history of injury, provided a firm diagnosis, findings, symptoms and test results together with an opinion with medical reasons on why the diagnosed condition was caused or aggravated by the February 1, 2006 incident.<sup>1</sup> It explained that since it had not adjudicated the merits of the case when it administratively paid for medical treatment in 2006, it had to make a formal decision on both her original claim for injury on February 1, 2006 and her claim for a recurrence of disability.

In a January 29, 2009 disability certificate, Dr. Kay reiterated his diagnoses of de Quervain's tendinitis of the right thumb and finding that appellant was totally disabled from January 13 to February 1, 2009. Appellant required physical restrictions until February 28, 2009. In a January 27, 2009 employing establishment form, Dr. Kay reviewed a history of the February 1, 2006 incident and opined that appellant's de Quervain's tendinitis of the right thumb was caused by the accepted incident. Appellant was temporarily disabled from March 13 to April 13, 2009.

A February 6, 2006 progress note from Elnora Cunningham, a physician's assistant, advised that appellant could continue performing light-duty work with restrictions until February 21, 2006. In a March 30, 2006 note, Ms. Cunningham advised that appellant could return to work on that date with no restrictions.

By decision dated February 23, 2009, the Office denied appellant's claims. It found that the medical evidence was insufficient to establish that she sustained an injury or condition, specifically de Quervain's tenosynovitis or osteoarthritis, or a recurrence of disability causally related to the accepted February 1, 2006 employment incident.

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<sup>1</sup> In the January 23, 2009 developmental letter, the Office indicated that appellant's claim was originally received as a simple and uncontroverted case resulting in minimal or no time lost from work. It paid appellant compensation for limited medical expenses without formal adjudication of her claim.

On March 12, 2009 appellant requested a review of the written record by an Office hearing representative. In a February 24, 2009 statement, she alleged that on September 24, 2009 she cut her right thumb on the sharp edge of a metal cabinet while at work.

In a February 26, 2009 disability certificate and March 5, 2009 report, Dr. Kay reiterated the diagnosis of de Quervain's tendinitis of the right thumb. He advised that appellant could perform light-duty work from February 2 through August 2, 2009.

In a February 2, 2006 progress note, Ms. Cunningham stated that appellant sustained a possible right thumb contusion. She could continue to perform light-duty work through February 21, 2006. In an April 3, 2006 progress note, Ms. Cunningham stated that appellant sustained a possible right thumb strain. She was released to full-duty work.

In a February 1, 2006 progress note, Michael Steinberg, a physician's assistant, reviewed a history of the February 1, 2006 employment incident. He also reviewed a February 1, 2006 x-ray which revealed no evidence of an acute right hand osseous injury or significant degenerative disease. In a September 24, 2006 progress note, Jean H. Chang, a registered nurse, indicated that appellant received a tetanus shot for a skin tear.

By decision dated June 17, 2009, an Office hearing representative affirmed the February 23, 2009 decision. The hearing representative found the medical evidence insufficient to establish that appellant sustained a right thumb injury or condition, consisting of right thumb de Quervain's tenosynovitis or osteoarthritis of the right thumb causally related to the February 1, 2006 employment incident.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation Act<sup>2</sup> 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 the Act, that the claim was filed within 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 of an occupational disease.<sup>4</sup>

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

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>4</sup> *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999); *Elaine Pendleton*, *supra* note 3.

actually experienced the employment incident or exposure, which is alleged to have occurred.<sup>5</sup> 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.<sup>6</sup>

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.<sup>7</sup> 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.<sup>8</sup> The belief of the claimant that a condition was caused or aggravated by the employment is insufficient to establish a causal relationship.<sup>9</sup>

### ANALYSIS

The Office accepted that appellant pushed a cart into a refrigerator which closed on her right thumb on February 1, 2006 while working as a food service worker. The Board finds that the medical evidence of record is insufficient to establish that her right thumb condition was caused or aggravated by the February 1, 2006 employment incident.

Dr. Kay provided reports which found that appellant sustained de Quervain's tendinitis and osteoarthritis of the right thumb. He advised that she was totally disabled for work from January 13 to February 1, 2009. Dr. Kay stated that appellant could perform light-duty work from February 2 through August 2, 2009. This evidence, however, does not discuss how the diagnosed conditions were caused or contributed to by the accepted February 1, 2006 employment incident. This is important as the accepted incident took place some three years prior to his examination. Dr. Kay failed to explain how the refrigerator door closing on appellant's thumb would cause or contribute to the diagnosed de Quervain's tendinitis or osteoarthritis of appellant's right thumb. His opinion is insufficient to establish that she sustained an employment injury causally related to the accepted employment incident.<sup>10</sup> Dr. Kay reiterated in a January 27, 2009 employing establishment form that appellant's de Quervain's tendinitis of the right thumb was caused by the February 1, 2006 employment incident and that she was temporarily disabled from March 13 to April 13, 2009. This report, however, does not cure the deficiencies in rationale explaining the mechanism of injury and causal relationship. The Board finds that Dr. Kay's opinion is insufficient to establish appellant's claim.

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<sup>5</sup> See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803(2)(a) (June 1995).

<sup>6</sup> *Linda S. Jackson*, 49 ECAB 486 (1998).

<sup>7</sup> *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).

<sup>8</sup> *Lourdes Harris*, 45 ECAB 545 (1994); see *Walter D. Morehead*, 31 ECAB 188 (1979).

<sup>9</sup> *Charles E. Evans*, 48 ECAB 692 (1997).

<sup>10</sup> See *Willie M. Miller*, 53 ECAB 697 (2002).

The progress notes from Ms. Cunningham and Mr. Steinberg, physician's assistants, and Ms. Chang, a registered nurse, have no probative medical value in establishing appellant's claim. Physician's assistants and registered nurses are not physicians as defined under the Act.<sup>11</sup>

The Board finds that there is insufficient rationalized medical evidence of record to establish that appellant sustained a right thumb injury causally related to the accepted February 1, 2006 employment incident. Appellant did not meet her burden of proof.

**CONCLUSION**

The Board finds that appellant has failed to establish that she sustained right thumb injury or condition in the performance of duty on February 1, 2006, as alleged.<sup>12</sup>

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 17 and February 23, 2009 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: April 14, 2010  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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

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<sup>11</sup> *Roy L. Humphrey*, 57 ECAB 238, 242 (2005); 5 U.S.C. § 8101(2).

<sup>12</sup> In view of the disposition of this appeal, the issue of whether appellant established a recurrence of disability causally related to the February 1, 2006 employment incident, as addressed by the district Office in its February 23, 2009 decision, is moot.