

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

S.K., Appellant)
and) Docket No. 11-1171
U.S. POSTAL SERVICE, POST OFFICE,) Issued: December 19, 2011
Park Forest, IL, Employer)

)

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 6, 2011 appellant filed a timely appeal from an October 15, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (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 an occupational disease in the performance of duty.

FACTUAL HISTORY

On September 29, 2008 appellant, then a 58-year-old senior mail processor, filed an occupational disease claim alleging that she injured her right ring finger. She became aware of her condition on July 27, 2008. Appellant did not incur anytime loss from work.

¹ 5 U.S.C. § 8101 *et seq.*

In a July 29, 2008 treatment note, Dr. Jacqueline C. Payne, an employing establishment osteopath specializing in occupational medicine, specified that the date of injury was unknown. On examination, she observed limited extension of the right ring finger at the metacarpophalangeal joint. Dr. Payne diagnosed ruptured extensor tendon and notified appellant that "this may not qualify as a workman's comp[ensation] injury without an identifiable injury." In a July 30, 2008 duty status report, she released appellant to modified duty effective July 29, 2008.

OWCP informed appellant in an August 7, 2008 letter that additional evidence was needed to establish her claim. It gave her 30 days to submit a factual statement describing the employment activities that contributed to the right finger injury and a physician's comprehensive report explaining how exposure to these activities caused her condition.

Appellant clarified in an August 28, 2008 statement that she worked for the employing establishment since 1975 and most of her job activities involved repetitive grasping and fine manipulation. Her primary duty was operating and maintaining a carrier sequence barcode sorter that processed an average of 7,200 pounds of mail each workday. Appellant also ordered office supplies, paid bills and manually distributed flats, bundles and parcels. She first noticed that she was unable to lift her finger on July 27, 2008. Appellant denied having any preexisting injuries.

An August 9, 2008 treatment note from Dr. Payne advised that appellant punctured the base of her right ring finger on that day.

By decision dated October 14, 2008, OWCP denied appellant's claim, finding the medical evidence insufficient to demonstrate that the accepted employment factors caused a right finger condition.

Appellant requested a telephonic hearing, which was held on February 5, 2009. She testified that she sustained a separate work-related injury to her right ring finger on August 9, 2008 in addition to the ruptured tendon.

In a February 2, 2009 report, Dr. Christine M. Marcotte, an osteopath specializing in family medicine, noted that appellant sustained dropped finger of the right fourth digit "presumably due to an injury at work" and later experienced symptoms in her third, fourth and fifth digits. In a follow-up report dated February 19, 2009, she related that appellant was placing bundled newspapers into a parcel container when she caught her right ring finger in the plastic straps, was nearly dragged into the container and sustained a puncture wound. Dr. Marcotte advised that job duties, namely operating a carrier sequence barcode sorter and handling mail, further aggravated this condition.

On April 17, 2009 OWCP's hearing representative affirmed the October 14, 2008 decision.

Appellant requested reconsideration on July 20, 2009. By decision dated September 18, 2009, OWCP denied her request on the grounds that she did not raise substantive legal questions or present pertinent new evidence warranting further merit review.

Appellant requested reconsideration on October 1, 2009 and submitted additional evidence. In a May 4, 2009 report, Dr. Marcotte detailed that appellant cut her right ring finger while bundling mail in July 2008 and was thereafter unable to extend her right index, long, ring and little fingers. On examination, she observed extensor lags at the right long, ring and little fingers and slight dorsal swelling of the wrist around the extensor retinaculum. Dr. Marcotte diagnosed multiple extensor tendon ruptures and advised appellant to stop work.

A series of May 8, 2009 magnetic resonance imaging (MRI) scans obtained by Dr. Stephanie L. Van Colen, an osteopath specializing in radiology, exhibited mild degenerative changes and effusions in the carpal and distal radioulnar joints and other findings consistent with mild tenosynovitis of the extensor carpi radialis brevis and longus tendons.

In a May 20, 2009 note, Dr. Paschal J. Panio, a hand surgeon, noted the results of the May 8, 2009 MRI scans and ruled out multiple extensor tendon ruptures. He recommended a dorsiflexion orthosis and determined that appellant should remain off duty. In a July 15, 2009 note, Dr. Panio commented that appellant appeared to have multiple extensor tendon ruptures clinically notwithstanding the prior MRI scan findings. On examination, he observed a swollen extensor tendon of the index finger.²

A July 30, 2009 MRI scan report from Dr. Gregory A. Henkle, a Board-certified diagnostic radiologist, did not reveal any abnormalities.

By decision dated January 11, 2010, OWCP denied modification of the April 17, 2009 decision.

Appellant requested reconsideration on March 22, 2010 and submitted additional evidence. In a March 12, 2010 statement, she remarked that she hurt her ring finger while in the performance of duty on or around July 8, 2008, which developed into dropped finger at the end of the month. On August 9, 2008 appellant injured the same finger when it was pierced by the sharp metal corner of a moving hamper. She remained off work since May 4, 2009.

Results of an April 8, 2010 electromyogram obtained by Dr. Young-II Ro, a Board-certified neurologist, were consistent with peripheral neuropathy and possible bilateral carpal tunnel syndrome.³

On October 15, 2010 OWCP denied modification of the January 11, 2010 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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 FECA, that the claim was timely filed within the applicable time

² The case record also contains Dr. Panio's illegible handwritten notes from June 3, 24, August 5 and 19, 2009.

³ Appellant also submitted employing establishment documents indicating that she was in the process of filing a (Form CA-1). The record contains a Form CA-1, dated March 23, 2010, which pertains to the alleged injury of July 8, 2008.

limitation period, that an injury was sustained in the performance of duty as alleged and that any disabilities and/or specific conditions for which compensation is claimed are causally related to the employment injury.⁴ 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.⁵

Whether an employee actually sustained an injury in the performance of duty begins with an analysis of whether fact of injury has been established.⁶ To establish fact of injury in an occupational disease claim, an employee must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.⁷

Causal relationship is a medical issue and the evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is evidence which includes a physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. 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.⁸

ANALYSIS

The evidence of record supports that appellant operated and maintained a carrier sequence barcode sorter, ordered office supplies, paid bills and manually distributed flats, bundles and parcels. Appellant was diagnosed with ruptured extensor tendon of the right ring finger. The Board finds that she did not meet her burden of proof because the medical evidence did not sufficiently establish that these accepted employment factors caused or contributed to her condition.

The Board notes that appellant has filed a separate traumatic injury claim alleging that she sustained a right ring finger injury on July 8, 2008 when her hand was caught between plastic mail straps. Appellant also has an accepted claim for right ring finger injury, which occurred on August 9, 2008 when her right ring finger was pierced by a sharp object. These injuries are separate from the instant claim.

⁴ *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁶ See S.P., 59 ECAB 184, 188 (2007).

⁷ See *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); R.R., Docket No. 08-2010 (issued April 3, 2009).

⁸ I.J., 59 ECAB 408 (2008); *Woodhams*, *supra* note 5.

In a February 2, 2009 report, Dr. Marcotte stated that appellant sustained dropped finger of the right fourth digit “presumably due to an injury at work.” She later specified in a February 19, 2009 report that operating a carrier sequence barcode sorter and handling mail aggravated this condition. Dr. Marcotte’s opinion, however, did not sufficiently establish causal relationship because she failed to explain how operating a carrier sequence barcode sorter and handling mail pathophysiologically caused appellant’s ruptured extensor tendon.⁹ The Board further points out that her February 19 and May 4, 2009 reports, as well as Dr. Payne’s August 9, 2008 treatment note, detailed a separate traumatic event in July or August 2008 that resulted in a puncture wound to the right ring finger. As these medical records were consistent with a claim for an injury sustained during a single workday or shift rather than over a period of time,¹⁰ they were irrelevant with respect to the instant occupational disease claim.

The remaining medical evidence from Drs. Henkle, Panio, Payne, Ro and Van Colen offered limited probative value on the issue of causal relationship as none of these physicians addressed how appellant’s federal employment caused or contributed to a right ring finger condition.¹¹ In the absence of rationalized medical opinion evidence, appellant failed to meet her burden.

Appellant contends on appeal that she retired effective July 2, 2010 and her injury warranted disability benefits. As noted, the medical evidence was insufficient to establish that her right ring finger condition was causally related to her federal employment.

The Board points out that appellant submitted new evidence on appeal. The Board lacks jurisdiction to review evidence for the first time on appeal.¹² However, 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.

CONCLUSION

The Board finds that appellant did not establish that she sustained an occupational disease in the performance of duty.

⁹ *Joan R. Donovan*, 54 ECAB 615, 621 (2003); *Ern Reynolds*, 45 ECAB 690, 696 (1994).

¹⁰ See 20 C.F.R. § 10.5(q),(ee).

¹¹ *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

¹² 20 C.F.R. § 501.2(c).

ORDER

IT IS HEREBY ORDERED THAT the October 15, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 19, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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

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