United States Department of Labor
Employees' Compensation Appeals Board

P.L., Appellant	)	
and	)	**Docket No. 12-771**
	)	**Issued: August 14, 2012**
U.S. POSTAL OFFICE, PROCESSING & DISTRIBUTION CENTER, Louisville, KY, 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
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On February 23, 2012 appellant filed a timely appeal of a January 18, 2012 Office of Workers' Compensation Programs' (OWCP) merit decision denying her traumatic injury claim. Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c)(1) and 501.3, the Board has jurisdiction to consider the merits of the case.

ISSUE

The issue is whether appellant has met her burden of proof in establishing that she sustained a right arm injury in the performance of duty on March 13, 2011.

FACTUAL HISTORY

On March 13, 2011 appellant, then a 46-year-old mail handler technician, filed a traumatic injury claim alleging that on that date she strained her right lower arm pushing trailer

[1] 5 U.S.C. § 8101 *et seq.*

doors up. She stated that she felt a pop in her right forearm followed by pain. In support of her claim, appellant submitted a note dated March 14, 2011 from Dr. Matthew D. Rassi, a physician Board-certified in emergency medicine, diagnosing right forearm injury.

OWCP requested additional factual and medical evidence in support of appellant's claim by letter dated March 22, 2011 and allowed appellant 30 days for a response. An x-ray dated March 14, 2011 from Dr. Rassi found no acute abnormalities. Appellant submitted work restriction notes. On March 24, 2011 a workers' compensation note diagnosed acute right forearm pain. On March 23, 2011 a note signed by a physician's assistant described appellant's previous right rotator cuff tear and reconstruction of the forearm tendon. The diagnoses included right forearm pain, possible tendinitis, tendon tear or separation.

By decision dated April 26, 2011, OWCP denied appellant's claim finding that she had not submitted medical evidence diagnosing a compensable condition.

Dr. Akbar Nawab, a Board-certified orthopedic surgeon, completed a note on April 26, 2011 and described appellant's history as "[a]ccording to the patient she was pushed up March 30, 2011 and there was sharp elbow and palm pain." He noted that she had previously undergone elbow surgery and had experienced pain since this surgery. Dr. Nawab stated that appellant's entire forearm was tender. He found no conditions on x-ray and opined that her pain was likely due to her surgery. Dr. Nawab also stated that appellant was overusing her forearm and developed tendinitis in the flexor digitorum superficialis as well as extensor tendon. He stated that he informed her that her pain could be referred from her elbow or that she was compensating for her elbow condition with her forearm.

A registered nurse signed a note on March 13, 2011 and diagnosed a right forearm injury. In a note dated April 1, 2011, a review of the magnetic resonance imaging (MRI) scan by the physician's assistant revealed a partial thickness scapholunate ligament tear.

Appellant underwent a right forearm MRI scan on March 31, 2011 which demonstrated a partial thickness tear of scapholunate ligament in its dorsal portion. An MRI scan of her right elbow was normal. A separate MRI scan of the right forearm dated March 31, 2011 found an unremarkable MRI scan of the right forearm. Dr. Nawab completed a note reviewing MRI scans and finding a partial thickness tear of the scapholunate in its dorsal section.

Dr. John Markert, a Board-certified family practitioner, examined appellant on April 11, 2011 and found a partial thickness tear of the scapholunate in its dorsal section which were confirmed by a two-millimeter distance between the scapholunate joint on x-rays. He stated, "It appears that [appellant's] exam[ination] findings and history with her scapholunate partial tear is related causally to her work-related injury."

Appellant requested a review of the written record by an OWCP hearing representative on May 23, 2011. She submitted a narrative statement asserting that as she lifted a tractor trailer door on March 13, 2011 she felt something like a rubber band snap in her lower forearm. Appellant noted that she had previously undergone four surgeries on her right arm. The employing establishment submitted an authorization for examination or treatment (Form CA-16)

on March 13, 2011. Appellant altered her request to a request for an oral hearing on December 1, 2011.

By decision dated January 18, 2012, OWCP's hearing representative reviewed the written record and found that appellant had established that the employment incident occurred as alleged. However, the hearing representative found that appellant failed to submit a medical report which included the history of injury as well as a diagnosis and medical opinion regarding the causal relationship between her diagnosed condition and her history of injury. The hearing representative affirmed OWCP's April 26, 2011 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[2] has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence, including the fact that the individual is an "employee of the United States" within the meaning of FECA and that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.[3] 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.[4]

OWCP defines a traumatic injury as, "[A] condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain which is identifiable as to time and place of occurrence and member or function of the body affected."[5] 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. First the employee must submit sufficient evidence to establish that he and she actually experienced the employment incident at the time, place and in the manner alleged.[6] 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.[7]

ANALYSIS

Appellant alleged that she injured her right forearm lifting the door of a tractor trailer in the performance of duty. OWCP accepted that this incident occurred as alleged. However, it found that appellant had not submitted sufficiently detailed medical evidence to establish a

[2] *Id*. at §§ 8101-1893.

[3] *Kathryn Haggerty*, 45 ECAB 383, 388 (1994); *Elaine Pendleton*, 41 ECAB 1143 (1989).

[4] *Victor J. Woodhams*, 41 ECAB 345 (1989).

[5] 20 C.F.R. § 10.5(ee).

[6] *John J. Carlone*, 41 ECAB 354 (1989).

[7] *J.Z.*, 58 ECAB 529 (2007).

causal relationship between her accepted employment incident and a diagnosed medical condition.

Appellant initially submitted hospital reports from Dr. Rassi diagnosing right forearm injury. While Dr. Rassi supported that she sustained an injury, he did not provide a clear diagnosis and did not offer medical reasoning explaining how the injury occurred. Dr. Nawab provided a different description of appellant's employment incident and attributed her current condition to her previous surgeries rather than the employment incident of March 13, 2011. He diagnosed tendinitis in the flexor digitorum superficialis as well as extensor tendon due to overuse as well as referred pain. In a separate note, Dr. Nawab diagnosed a partial thickness tear of the scapholunate in its dorsal section. These reports are not sufficient to meet appellant's burden of proof as neither Dr. Rassi nor Dr. Nawab provided a clear and detailed history of injury with a diagnosis of a new condition and supported that diagnosis with an explanation attributing the condition to appellant's accepted employment incident of March 13, 2011.

Dr. Markert examined appellant on April 11, 2011 and found a partial thickness tear of the scapholunate in its dorsal section which were confirmed by a two-millimeter distance between the scapholunate joint on x-rays. He stated, "It appears that her exam[ination] findings and history with her scapholunate partial tear is related causally to her work-related injury." While Dr. Markert offered an opinion that appellant's current condition was due to work, he did not provide a history of injury including the March 13, 2011 employment incident. As appellant has several other claims for right arm injury, the medical evidence must attribute her current condition to the March 13, 2011 claim.

Appellant also submitted medical reports signed by a nurse and a physician's assistant. She also submitted several physical therapy notes. Neither a nurse nor a physician's assistant are considered a physician under FECA.[8] As these notes were not signed by the physician the notes have no probative value in establishing appellant's claim.

The Board finds that appellant has not submitted the necessary medical evidence including a history of injury, a diagnosed condition and an opinion on the relationship between her employment incident and current diagnosis to establish that she sustained a traumatic injury on March 13, 2011. 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.

OWCP did not specifically address the issue of appellant's entitlement to medical expenses. It is required by section 8103 of FECA[9] to provide all medical care necessary as a result of an employment injury. OWCP has broad discretionary authority in the administration of FECA and must, in fact, exercise such discretion to achieve the objective of section 8103. Ordinarily, when an employee sustains a job-related injury which may require medical treatment, the designated agency official shall promptly authorize such treatment by giving the employee a

[8] 5 U.S.C. §§ 8101-8193, 8101(2); *Thomas R. Horsefall*, 48 ECAB 180 (1996).

[9] *Id.* at § 8103.

properly executed Form CA-16 authorizing medical treatment and expenses within four hours.[10] The employing establishment did so in this case. OWCP should determine the reimbursable medical expenses as a result of this authorized treatment.

CONCLUSION

The Board finds that appellant did not submit the necessary medical opinion evidence to establish that she sustained a traumatic injury on March 13, 2011.

ORDER

IT IS HEREBY ORDERED THAT the January 18, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 14, 2012
Washington, DC

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

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

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

[10] 20 C.F.R. § 10.300(b).