United States Department of Labor
Employees' Compensation Appeals Board

C.H., Appellant	)	
and	)	**Docket No. 12-350**
	)	**Issued: June 7, 2012**
DEPARTMENT OF THE AIR FORCE, ROBINS AIR FORCE BASE, GA, 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
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On December 8, 2011 appellant filed a timely appeal from the Office of Workers' Compensation Programs' (OWCP) October 21, 2011 merit decision denying her an occupational disease claim. 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 this case.[2]

ISSUE

The issue is whether appellant met her burden of proof to establish that she sustained an injury causally related to factors of her federal employment.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that appellant submitted additional evidence after OWCP rendered its October 21, 2011 decision. The Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its final decision. Therefore, this additional evidence cannot be considered by the Board. 20 C.F.R. § 501.2(c); *Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952). Appellant may submit this evidence to OWCP, together with a request for reconsideration, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606(b)(2).

FACTUAL HISTORY

On August 19, 2011 appellant, then a 57-year-old management analyst, filed an occupational disease claim (Form CA-2) alleging that she sustained injuries to her right wrist due to repetitive use of a manual hole puncher between July 27 and August 1, 2011.[3]

In a letter dated August 26, 2011, OWCP informed appellant that the evidence submitted was insufficient to establish her claim. It advised her to submit details regarding the employment duties she believed caused or contributed to her claimed condition, as well as a comprehensive medical report from a treating physician, which contained symptoms, a definitive diagnosis and an opinion with an explanation as to the cause of her diagnosed condition.

In a statement dated August 9, 2011, appellant noted that her wrist condition occurred as a result of extreme and repetitive use of two- and three-hole punches while preparing "Smart Books" for an inspection from July 7 through August 5, 2011. Her current wrist pain was different from that experienced pursuant to her past episodes of transient carpal tunnel syndrome (CTS). Appellant submitted a position description for a management analyst and a notification of personnel action reflecting a step increase in pay.

The record contains a chronological record of medical care dated August 9 to 10, 2011. On August 9, 2011 Dr. Anna M. Abrigo, a treating physician, noted that appellant had right wrist pain and tenderness with repetitive use of the hand. X-rays reflected fragments projecting at the base of the trapezium that "may represent avulsion of unknown age."

In an August 17, 2011 report, Dr. Marvin Taylor, an employing establishment physician, noted by marking a circle that an occupational incident had occurred on August 5, 2011. He restricted appellant from use of the right hand or arm until August 31, 2011, at which time she was permitted to return to full duty.

On August 23, 2011 the employing establishment controverted appellant's claim on the grounds that she had failed to establish fact of injury and had not submitted rationalized medical evidence. In a statement dated August 15, 2010, Wendy Kane of the employing establishment noted that appellant had gone shooting on the weekend prior to reporting her alleged injury and that she had experienced no pain while using the hole punches.

In an August 18, 2011 e-mail to base liason, appellant stated that her initial diagnosis on August 9, 2011 was tendinitis pending x-rays. The x-rays allegedly showed a fracture of the scaphoid bone. She stated that the tenderness was a result of the repetitive use of her hands, but the break apparently happened on August 5, 2011.

[3] Appellant's prior claims include a September 7, 1998 occupational disease claim for Achilles tendinitis and plantar fibromatosis (File No. xxxxxx934); a February 4, 2009 occupational disease claim for bilateral lower extremity injuries (File No. xxxxxx754); and a December 3, 2010 occupational disease claim for tendinitis of the left shoulder (File No. xxxxxx579).

Appellant submitted an unsigned medical report dated August 30, 2011 reflecting that she was treated for right hand pain.[4] She attributed her pain to a work injury incurred after repetitive use of a three-hole punch. On the day of injury, August 5, 2011, appellant was using a hole punch and felt a pop in her wrist and experienced severe pain. Examination of the right hand and wrist revealed indentations from the tightness of a splint she had been wearing. The preparer of the report opined that appellant had full range of motion of the wrist, although she complained of pain along the volar radial side which allegedly limited full range of motion. Manipulation of the thumb CMC joint revealed no crepitus and no significant pain. Appellant was nontender to palpation of the first dorsal extensor compartment and had no significant tenderness in the anatomical snuffbox. X-rays revealed either small calcifications or ossifications on the volar aspect of the wrist just distal to the scaphoid volar pole and proximal to the trapezium. There were no obvious bony defects, but there was some deformity of the very palmar hole of the distal scaphoid. The preparer stated:

> "I think it would be very unusual for the patient's activities that actually caused a fracture of the trapezium of the distal pole of the scaphoid. The patient may have had old injury in this area and could certainly have aggravated that. It's possible but unlikely she may have some calcific tendinitis as well."

By decision dated October 21, 2011, OWCP denied appellant's claim on the grounds that she had not provided a definitive diagnosis that could be causally related to accepted work-related events.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of establishing the essential elements of her claim, including the fact that an injury was sustained in the performance of duty as alleged[5] and that any disability and/or specific condition for which compensation is claimed is causally related to the employment injury.[6]

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying the employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.[7]

[4] The identity of the individual who performed the examination of appellant and prepared the report is not reflected on the report itself.

[5] *Joseph W. Kripp*, 55 ECAB 121 (2003); *see also Leon Thomas*, 52 ECAB 202, 203 (2001). "When an employee claims that she sustained injury in the performance of duty she must submit sufficient evidence to establish that she experienced a specific event, incident or exposure occurring at the time, place and manner alleged. She must also establish that such event, incident or exposure caused an injury." *See also* 5 U.S.C. § 8101(5) ("injury" defined); 20 C.F.R. § 10.5(q) and (ee) (2002) ("Occupational disease or Illness" and "Traumatic injury" defined).

[6] *Dennis M. Mascarenas*, 49 ECAB 215, 217 (1997).

[7] *Michael R. Shaffer*, 55 ECAB 386 (2004). *See also Solomon Polen*, 51 ECAB 341, 343 (2000).

The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence, *i.e.*, medical evidence presenting a physician's well-reasoned opinion on how the established factor of employment caused or contributed to claimant's diagnosed condition. To be of probative value, the opinion of the physician must be based on a complete factual and medical background of the claimant, 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]

An award of compensation may not be based on appellant's belief of causal relationship. Neither the mere fact that a disease or condition 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 a causal relationship.[9]

ANALYSIS

The Board finds that the medical evidence submitted by appellant is insufficient to establish that she sustained a right wrist condition due to the accepted employment activities. Therefore, appellant failed to meet her burden of proof.

The medical evidence of record includes records of medical care dated August 9 to 10, 2011. Dr. Abrigo noted that appellant had right wrist pain and tenderness with repetitive use of the hand. X-rays reflected fragments projecting at the base of the trapezium that "may represent avulsion of unknown age." Dr. Abrigo did not provide a complete factual and medical background, a definitive diagnosis or an opinion on the cause of appellant's condition. Therefore, this evidence is of limited probative value.[10]

In an August 17, 2011 report, Dr. Taylor indicated by check mark that an occupational incident had occurred on August 5, 2011. Although he recommended work restrictions, he did not provide a firm diagnosis or any opinion on the cause of appellant's right wrist condition. Therefore, Dr. Taylor's report is of diminished probative value. The Board notes that his reference to a specific event that occurred on August 5, 2011, rather than over a period longer than a single workday or shift, is not consistant with appellant's occupational disease claim.[11]

Appellant also submitted an unsigned, unidentified report dated August 30, 2011 reflecting that she was treated for right hand pain. 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 under FECA.[12] Additionally, the report does not provide a

[8] *Leslie C. Moore*, 52 ECAB 132, 134 (2000); *see also Ern Reynolds*, 45 ECAB 690, 695 (1994).

[9] *Phillip L. Barnes*, 55 ECAB 426 (2004); *see also Dennis M. Mascarenas*, *supra* note 6 at 218.

[10] The Board has long held that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship. *Supra* note 5.

[11] 20 C.F.R. § 10.5(q) (2011).

[12] 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).

diagnosis or a definitive opinion as to the cause of appellant's wrist condition. The August 30, 2011 report is of limited probative value and is insufficient to establish appellant's claim.

Appellant expressed her belief that her alleged condition resulted from her employment duties. The Board has held, however, that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.[13] Neither the fact that the condition became apparent during a period of employment, nor the belief that the condition was caused or aggravated by employment factors or incidents, is sufficient to establish causal relationship.[14] Causal relationship must be substantiated by reasoned medical opinion evidence, which it is appellant's responsibility to submit. Therefore, appellant's belief that her condition was caused by the alleged work activities is not determinative.

OWCP advised appellant that it was her responsibility to provide a comprehensive medical report which described her symptoms, test results, diagnosis, treatment and a physician's opinion, with medical reasons, on the cause of her condition. Appellant failed to do so. She has not met her burden of proof to establish that she sustained an occupational disease in the performance of duty causally related to factors of employment.

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.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that she sustained an injury in the performance of duty.

[13] *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

[14] *Id.*

ORDER

IT IS HEREBY ORDERED THAT the October 21, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 7, 2012
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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