

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

E.M., Appellant)
and) Docket No. 13-383
DEPARTMENT OF VETERANS AFFAIRS,) Issued: April 25, 2013
BONHAM VETERANS ADMINISTRATION)
MEDICAL CENTER, Bonham, TX, Employer)

)

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On December 6, 2012 appellant filed a timely appeal of the September 7, 2012 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 has met her burden of proof to establish a traumatic injury in the performance of duty.

¹ 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

On March 9, 2011 appellant, then a 27-year-old nursing assistant, filed a traumatic injury claim alleging that on March 6, 2011 she injured her right wrist and hand as a result of patient care. She did not stop work.

Appellant was treated on April 28, 2011 by a provider whose signature is illegible for a right wrist injury. The provider noted findings of tenderness over the volar wrist laterally and carpal tunnel and a small ganglion cyst. An x-ray was negative. Appellant was diagnosed with wrist sprain and a ganglion cyst and referred to an orthopedic hand specialist. On June 28, 2012 Dr. Mark Buckner, Board-certified in emergency medicine, treated appellant for right wrist pain for which she had been treated by a hand specialist a year prior. He diagnosed right hand pain and right upper extremity paresthesia. Dr. Buckner recommended a splint and referred appellant to a hand surgeon. In an anatomy sheet, he noted findings of tenderness and swelling in the right hand and referred appellant for a magnetic resonance imaging (MRI) scan. In a physician history and physical report, Dr. Buckner noted that appellant injured her hand and upper extremity. He noted findings of swelling and limited range of motion, pain and tenderness and decreased sensation to light touch of the right hand and right upper extremity. Dr. Buckner diagnosed right hand pain, edema and right upper extremity pain and paresthesia. In a Texas Workers' Compensation Work Status Report dated June 28, 2012, he indicated that appellant was injured on March 6, 2011. Dr. Buckner advised that appellant had work restrictions from June 28 to July 28, 2012 of no use of the right hand and wrist. He diagnosed right hand pain, edema and right upper extremity paresthesia.

On July 25, 2012 appellant filed a Form Ca-2a, notice of recurrence of disability, alleging that on June 27, 2012 she had a recurrence of right wrist pain due to pulling and pushing patients causally related to the March 6, 2011 injury. She submitted a May 27, 2004 chest x-ray which revealed no abnormalities.

By letter dated August 3, 2012, OWCP advised appellant that her claim was originally received as a simple, uncontested case which resulted in minimal or no time loss from work. It indicated that her claim was administratively handled to allow payment of a limited amount of medical expenses. OWCP stated, however, that the merits of the claim had not been formally adjudicated. It advised that, because appellant had filed a recurrence of disability, her claim would be formally adjudicated. OWCP requested that she submit a comprehensive medical report from her treating physician which included a reasoned explanation as to how the specific work factors or incidents identified by her had contributed to her claimed right hand and wrist injury. It also requested that appellant clarify whether she sustained a traumatic injury or occupational disease and provided definitions of both.

In an August 7, 2012 statement, appellant indicated that on March 6, 2011 she was pushing and pulling a patient while performing patient care when her right hand pain occurred. She stated that she informed her supervisor of her injury and was referred to an employing establishment physician who performed an x-ray. Appellant noted using a splint and Biofreeze for pain; however, her hand pain did not resolve. She further indicated that she did not sustain another injury after March 6, 2011 and never had a prior problem. Appellant was unsure whether she had a traumatic injury or occupational disease. She submitted an April 28, 2011

Texas Workers' Compensation Work Status Report prepared by a provider whose signature was illegible, who treated her for a right wrist condition. Appellant was returned to work without restrictions. She was diagnosed with wrist sprain and was referred to a hand specialist.

In a decision dated September 7, 2012, OWCP denied appellant's claim on the grounds that the medical evidence was insufficient to establish that a medical condition was related to the established work-related events.

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 filed within the applicable time limitation of FECA, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed is causally related to the employment injury. 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.²

To determine whether an employee actually sustained an injury in the performance of duty, OWCP 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 actually experienced the employment incident which is alleged to have occurred.³ The second component of fact of injury is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.⁴

Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized 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 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.⁵ The weight of medical evidence is determined by its reliability, its

² *Gary J. Watling*, 52 ECAB 357 (2001).

³ *Michael E. Smith*, 50 ECAB 313 (1999).

⁴ *Id.*

⁵ *Leslie C. Moore*, 52 ECAB 132 (2000).

probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.⁶

ANALYSIS

In the instant case, it is not disputed that appellant worked as a nursing assistant and that her duties included pushing and pulling patients while providing medical care. It is also not disputed that she was diagnosed with a right wrist and hand sprain and ganglion cyst. However, appellant has not submitted sufficient medical evidence to establish that her right wrist and hand sprain and ganglion cyst are causally related to the March 6, 2011 work incident. On August 3, 2011 OWCP advised her of the type of medical evidence needed to establish her claim. Appellant did not submit a rationalized medical report from a physician sufficiently explaining how the March 6, 2011 incident caused or aggravated a diagnosed medical condition.

Appellant submitted a June 28, 2012 report from Dr. Buckner who diagnosed right hand pain and right upper extremity paresthesia. She reported seeing a hand specialist a year prior. In an anatomy sheet, Dr. Buckner noted findings of tenderness and swelling in the right hand. Similarly, in a physician history and physical report, he noted findings of swelling and limited range of motion, pain and tenderness and decreased sensation to light touch of the right hand and right upper extremity. Dr. Buckner diagnosed right hand pain and edema and right upper extremity pain and paresthesia. However, these notes are insufficient to establish the claim as Dr. Buckner did not provide a history of injury or specifically address whether appellant's employment activities had caused or aggravated a diagnosed medical condition.⁷ Likewise, in a Texas Workers' Compensation Work Status Report dated June 28, 2012, he noted that appellant was injured on March 6, 2011. Dr. Buckner diagnosed right hand pain, edema and right upper extremity paresthesia and returned to work with restrictions. However, as noted above, he did not provide a history of injury or specifically address whether appellant's employment activities had caused or aggravated a diagnosed medical condition.⁸

Other treatment records included two reports dated April 28, 2011, from a provider with an illegible signature. However, a medical report may not be considered as probative medical evidence if there is no indication that the person completing the report qualifies as a "physician" as defined in 5 U.S.C. § 8102(2). The Board has found that reports lacking proper identification, such as unsigned treatment notes, do not constitute probative medical evidence.⁹ Thus, these reports are of no probative medical value.

The remainder of the medical evidence, including an x-ray of the chest failed to provide an opinion on the causal relationship between appellant's job and her diagnosed right wrist and

⁶ *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value); *Jimmie H. Duckett*, 52 ECAB 332 (2001).

⁷ *A.D.*, 58 ECAB 149 (2006) (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).

⁸ *Id.*

⁹ *R.M.*, 59 ECAB 690 (2008).

upper extremity sprain and ganglion cyst. For this reason, this evidence is not sufficient to meet appellant's burden of proof.

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. Causal relationships must be established by rationalized medical opinion evidence.¹⁰ Appellant failed to submit such evidence, and OWCP therefore properly denied appellant's claim for compensation.

On appeal appellant asserted that she submitted sufficient evidence to establish that she sustained a work-related right hand injury. The Board notes that she failed to submit sufficient evidence to establish that her right hand and upper extremity sprain and ganglion cyst were causally related to the accepted work-related duties.

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 did not meet her burden of proof to establish that her claimed conditions were causally related to her employment.

¹⁰ See *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

ORDER

IT IS HEREBY ORDERED THAT the September 7, 2012 decision of the Office of the Workers' Compensation Programs is affirmed.

Issued: April 25, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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