

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

W.T., Appellant

and

**DEPARTMENT OF DEFENSE, EDUCATION
ACTIVITY, Fort Knox, KY, Employer**

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**Docket No. 14-1729
Issued: June 9, 2015**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 7, 2014 appellant filed a timely appeal from a July 16, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ Pursuant to the Federal Employees' Compensation Act² (FECA) and 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 OWCP properly acted within its discretion denying appellant's request for surgery to repair/graft a ruptured tendon of the right finger and/or transplant hand tendon.

On appeal appellant argues that she has presented medical evidence establishing an uncontroverted inference of a causal relationship between her accepted injury and the tenosynovitis and ruptured tendon in her right finger.

¹ Appellant has not appealed from the May 12, 2014 schedule award of 53 percent impairment of her right first finger. Thus, it is not before the Board at this time. See 20 C.F.R. §§ 501.2(c) and 501.3(a).

² 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On September 5, 2012 appellant, then a 55-year-old first grade teacher, filed a traumatic injury claim alleging that on September 4, 2012, while opening the classroom door, her wrist popped and began to swell. On February 6, 2013 OWCP accepted appellant's claim for right wrist sprain and tenosynovitis of the right hand and wrist.

In a March 27, 2013 note, Dr. Huey-Yuan Tien, a Board-certified surgeon with a Board-certified subspecialty in hand surgery, indicated that appellant was unable to work on March 28, 2013 due to a tendon rupture in her right index finger. Under history of present illness, he indicated that appellant had been unable to fully extend her right index finger for four days, but that there was no pain or swelling. Dr. Tien also requested authorization to repair the tendon rupture.

In a May 7, 2013 report, Dr. Tien noted that appellant sustained an employment-related work injury on September 4, 2012 when, while turning a door knob, she felt a "pop." He indicated that since that time appellant has continued to have pain, swelling, and weakness on the dorsal right wrist. Dr. Tien noted that on appellant's March 27, 2013 office visit, she was not able to fully extend her right index finger. He stated that the examination at that time was highly suspicious for right index finger extensor tendon rupture. Dr. Tien opined that considering the initial symptoms from September 4, 2012, appellant surely developed tenosynovitis around the area. He noted that it is also possible that appellant may have had a partial tear of the extensor tendon which was not picked up initially. Dr. Tien noted that persistent synovitis can cause attrition and weakness of the tendon substance. He noted, "I feel her left index finger extensor tendon rupture can be related to her work-related injury which occurred on September 4, 2012."

By decision dated June 7, 2013, OWCP denied appellant's claim for surgery to repair a right index finger rupture and transplant hand tendon because the requested surgery did not appear to be medically necessary and/or was not causally related to the accepted conditions.³

On June 24, 2013 appellant requested review of the written record by an OWCP hearing representative. In support thereof, appellant submitted a June 19, 2013 letter to OWCP wherein Dr. Tien asked that the diagnoses of rupture extensor tendon and synovial cyst be approved as accepted conditions relating to the work injury of September 4, 2012 and the initial diagnosis of tenosynovitis. Dr. Tien also requested approval of the requested surgical procedure as medically necessary in relation to her employment injury. He noted that the initial diagnosis was tenosynovitis which is the inflammation of the fluid-filled sheath that surrounds the tendon, and that symptoms of tenosynovitis include pain, swelling, and difficult movement. Dr. Tien noted that tendon ruptures can occur due to the slow attrition and weakness of the tendon caused by persistent tenosynovitis. He explained that the formation of a synovial cyst is due to the leakage of synovial fluid as a result of inflammation. Dr. Tien noted that, although appellant reported a falling incident in January 2013, her symptoms prior to this fall were consistent with the above-described conditions, and that therefore appellant's diagnosis of extensor tendon rupture of the

³ OWCP issued a second June 7, 2013 decision denying appellant's claim for wage-loss compensation for 11.5 hours of leave used during the period March 26 to 27, 2013. As this decision was issued more than 180 days from the date of the filing of the Board appeal on August 7, 2014, the Board has no jurisdiction to review the decision. See 20 C.F.R. § 501.3(e).

index finger and synovial cyst formation are related to her employment injury of September 4, 2012.

By decision dated October 31, 2013, OWCP hearing representative affirmed OWCP's June 7, 2013 decision denying the requested surgery.

On March 26, 2014 appellant requested reconsideration of the October 31, 2013 decision. She contended that the reports of Dr. Tien dated March 27, May 7, and June 19, 2013 raised an uncontroverted inference of causal relationship between the employment injury of September 4, 2012 and the diagnosed condition of right index finger tendon rupture, and that accordingly, OWCP had the responsibility to further develop the issue.

By decision dated April 8, 2014, OWCP denied appellant's reconsideration request as the evidence was insufficient to warrant review of the October 31, 2013 decision.

On April 24, 2014 appellant again requested reconsideration of the October 31, 2013 decision. In support thereof, she submitted an April 21, 2014 report wherein Dr. Tien opined that appellant's initial employment injury caused partial injury to the tendon and tenosynovitis. Dr. Tien explained that appellant's tenosynovitis caused erosion of the tendon and eventual rupture of the tendon. He concluded that the right index finger rupture would be causally related to the injury of September 4, 2012.

By decision dated July 16, 2014, OWCP denied modification of the October 31, 2013 decision.

LEGAL PRECEDENT

Section 8103(a) of FECA provides that the United States shall furnish to an employee who is injured while in the performance of duty the services, appliances, and supplies prescribed or recommended by a qualified physician that the Secretary of Labor considers likely to cure, give relief, reduce the degree or the period of any disability, or aid in lessening the amount of any monthly compensation.⁴ OWCP must therefore exercise discretion in determining whether the particular service, appliance, or supply is likely to affect the purposes specified in FECA.⁵ The only limitation on OWCP's authority is that of reasonableness.⁶ Abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgement, or actions taken which are contrary to both logic and probable deductions from established facts. It is not enough to merely show that the evidence could be construed so as to produce a contrary factual conclusion.⁷

While OWCP is obligated to pay for treatment of employment-related conditions, appellant has the burden of establishing that the expenditure is incurred for treatment of the

⁴ 5 U.S.C. § 8103(a).

⁵ *F.S.*, Docket No. 14-972 (issued October 15, 2014).

⁶ *Daniel J. Perea*, 42 ECAB 214 (1999).

⁷ *See Minnie B. Lewis*, 53 ECAB 606 (2002).

effects of an employment-related injury or condition.⁸ Proof of causal relationship in a case such as this must include supporting rationalized medical evidence.⁹ Therefore, in order to prove that the surgical procedure is warranted, appellant must submit evidence to show that the procedure was for a condition causally related to the employment injury and that the surgery was medically warranted. Both of these criteria must be met in order for OWCP to authorize payment.¹⁰

ANALYSIS

OWCP accepted that appellant sustained a right wrist sprain and tenosynovitis of the right hand and wrist causally related to her accepted September 4, 2012 employment injury. It issued a schedule award for 53 percent impairment to appellant's right index finger. OWCP declined appellant's subsequent request for surgery to repair a ruptured tendon of the right index finger and/or transplant a hand tendon. It determined that the medical evidence was insufficient to establish that appellant's ruptured tendon in her right finger was causally related to the accepted employment injury.

The Board finds that OWCP acted within its discretion when it denied appellant's request for surgery to repair a ruptured tendon of her right index finger. The Board notes that Dr. Tien does not discuss the cause of appellant's right finger tendon rupture in his March 27, 2013 note. In his May 7, 2013 opinion, Dr. Tien noted that it was possible that appellant may have had a partial tear of the extensor tendon that was not picked up at the time of her initial injury. He further noted that persistent synovitis can cause attrition and weakness of the tendon substance and that the ruptured tendon could be related to appellant's employment injury. Although Dr. Tien provides additional commentary in his June 19, 2013 report, he still opined that tendon ruptures can occur due to slow attrition and weakness of the tendon caused by persistent tenosynovitis. These opinions are thus speculative. The Board has held that medical opinions which are speculative or equivocal in character have little probative value.¹¹

Dr. Tien's subsequent opinion of April 21, 2014 provides additional commentary as to causation. In this report, Dr. Tien opined that appellant's initial employment injury caused a partial injury to the tendon and tenosynovitis, and that the tenosynovitis further caused erosion of the tendon and eventual rupture of the tendon, and that therefore the right index finger rupture would be causally related to the injury of September 4, 2012. However, Dr. Tien's opinion was speculative because he did not explain the mechanism of a one-time incident of turning a door handle could cause tenosynovitis. Further, he has not provided a rationalized explanation of why it took over six months to diagnose this particular condition when appellant's other conditions were diagnosed at the time of the injury. Dr. Tien's reports therefore are found to lack objective findings to support that appellant's injury to her right index finger was causally related to the accepted injury.

⁸ See *Kennett O. Collins, Jr.*, 55 ECAB 648 (2004); *Debra S. King*, 44 ECAB 203, 209 (1992).

⁹ *K.H.*, Docket No. 15-148 (issued February 24, 2015); see also *M.B.*, 58 ECAB 588 (2007); *Bertha L. Arnold*, 38 ECAB 282 (1986).

¹⁰ See *R.C.*, 58 ECAB 238 (2006); *Cathy B. Millin*, 51 ECAB 331, 333 (2000).

¹¹ *K.M.*, Docket No. 14-1691 (issued November 18, 2014).

Based on the evidence of record, the Board finds that OWCP did not abuse its discretion by denying the proposed surgical procedure. As noted above, the only restriction on OWCP's authority to authorize medical treatment is one of reasonableness.¹² Absent sufficient explanation as to causal relationship, the Board finds that OWCP acted reasonably in denying appellant's request for surgery.¹³

Appellant may submit new evidence or argument as part of 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 OWCP properly acted within its discretion when it denied appellant's request for surgery to repair/graft a ruptured tendon of the right finger and/or transplant hand tendon.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 16, 2014 is affirmed.

Issued: June 9, 2015
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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

¹² A. W., Docket No. 14-708 (issued January 2, 2015).

¹³ See F.S., Docket No. 14-972 (issued October 15, 2014).