

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

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T.R., Appellant)	
)	
and)	Docket No. 14-882
)	Issued: March 11, 2015
DEPARTMENT OF VETERANS AFFAIRS,)	
VETERANS HEALTH ADMINISTRATION)	
MEDICAL CENTER, Gainesville, FL, Employer)	
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Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge

JURISDICTION

On March 10, 2014 appellant filed a timely appeal from a January 21, 2014 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 this case.

ISSUE

The issue in this case is whether appellant met her burden of proof to establish a traumatic injury in the performance of duty on September 23, 2011.

FACTUAL HISTORY

On September 26, 2011 appellant, then a 32-year-old nursing assistant, filed a traumatic injury claim (Form CA-1) alleging a right wrist sprain when transferring a patient from a

¹ 5 U.S.C. § 8101 *et seq.*

wheelchair to a bed with the help of another employee on September 23, 2011. A supervisor noted that appellant gave notice of this injury on the same date and that her injury occurred in the performance of duty.

Appellant had a prior diagnosis of chronic extensor carpi ulnaris (ECU) tenosynovitis of the right wrist. In an operative report dated May 27, 2011, Dr. Rodger D. Powell, a Board-certified orthopedic surgeon, described performing an ECU tenosynovectomy on her right wrist. The procedure was completed without complications.

In a functional capacity evaluation dated September 1, 2011, a physical therapist evaluated appellant's ability to tolerate work tasks involving her upper extremities. She wrote, "Results obtained indicate this client did not perform with determined consistent effort and demonstrated inappropriate pain behaviors. Results obtained should therefore be interpreted as a minimal level of function only and do not represent potentially true capabilities."

In progress notes dated September 26, 2011, Dr. John C. Charnas, Board-certified in preventative medicine, stated that appellant presented for a follow-up of her right wrist. He noted that she had surgery two months ago and returned to full duty on September 19, 2011. Dr. Charnas noted that appellant began noticing increasing pain in her right wrist on September 20, 2011, which progressed over the week without new injury or incident. He stated his impression of right wrist strain.

On October 11, 2011 Dr. James B. Slattery, a Board-certified orthopedic surgeon, examined the results of nerve conduction studies to the right upper extremity. He stated that the findings were consistent with a very mild sensory carpal tunnel syndrome with no evidence of other peripheral neuropathy or radiculopathy.

In a report dated October 24, 2011, Dr. Powell stated that appellant continued to have pain in her right wrist, but that it was minimal compared to what it was before surgery. He stated that his impression of very mild right carpal tunnel syndrome and mild persistence of extensor ECU tenosynovitis. Dr. Powell noted that he thought he had done everything he could do for appellant and did not know why she was having the problems she did. He suggested that OWCP obtain a second opinion. In a work capacity evaluation for musculoskeletal conditions of the same date, Dr. Powell stated that appellant was unable to perform her usual job and that maximum medical improvement had not been reached.

In progress notes dated December 15, 2011, Dr. Charnas saw appellant for a follow-up and stated his impression of a right wrist strain. Appellant noted that her pain had been increasing. In a duty status report of the same date, Dr. Charnas stated that she could return to duty on December 16, 2011 with restrictions of no lifting over five pounds and that she should be off work on December 15, 2011.

In a duty status report dated October 16, 2012, Dr. Powell stated that appellant had possible right carpal tunnel syndrome. He recommended that she could perform full-time regular work on October 24, 2012.

Appellant submitted a duty status report dated November 5, 2012, which contained restrictions of no lifting over five pounds, no more than three hours a day of pulling/pushing, no

more than five hours a day of fine manipulation, and no reaching above the shoulder. However, the physician's signature on this report was illegible.

On May 25, 2012 Dr. Charnas noted that appellant was working limited duty, and that her pain increased by the end of the day. He observed swelling remaining over the dorsum of the right wrist and recommended that she wear a splint and take medication for pain. In a duty status report of the same date, Dr. Charnas stated that appellant should be off work on May 25, 2012 and could return to work the next day.

By letter dated August 13, 2013, OWCP informed appellant of the evidence needed to support her claim. It advised her that the claim had been reopened because she may be entitled to compensation for wage loss. OWCP noted that Dr. Charnas had stated in his September 26, 2011 report that appellant's pain had increased over the course of a week without new injury or incident. It afforded appellant 30 days to submit additional evidence. No response was received.

By decision dated September 16, 2013, OWCP denied appellant's claim for compensation. It found that she had not established that her condition of wrist strain was caused or aggravated by an incident on September 23, 2011. OWCP accepted that appellant was a federal civilian employee who filed a timely claim; that the incident occurred; that a medical condition had been diagnosed; and that she was within the performance of duty.

By letter received on December 19, 2013, appellant requested reconsideration of her claim. She also submitted several time analysis forms claiming wage loss and an authorization request for orthopedic surgery.

In a duty status report dated September 19, 2011, a person with an illegible signature stated that appellant could return to work on that date at full duty.

In progress notes dated November 1, 2012, Dr. Marissa Olegario-Nebel examined the results of several electromyographic studies of appellant's right hand and wrist.² She stated an impression of findings consistent mild carpal tunnel syndrome and mild right demyelinating ulnar nerve focal neuropathy.

By letter dated January 3, 2014, OWCP informed appellant that her claim for compensation for the period January 12 through June 19, 2013 could not be processed because the forms were incomplete.

By decision dated January 21, 2014, OWCP reviewed the merits of appellant's claim and denied modification of the decision dated January 19, 2013. It noted that she had not submitted any opinion from a physician explaining how the claimed injury of September 23, 2011 caused or aggravated her diagnosed conditions.

² Dr. Olegario-Nebel's Board certification could not be confirmed with the American Board of Medical Specialties or the American Osteopathic Association.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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; that an injury was sustained while in the performance of duty as alleged and that any disability and/or specific condition 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 on a traumatic injury or an occupational disease.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.⁶ First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged.⁷ 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.⁸

The claimant has the burden of establishing by the weight of reliable, probative, and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of employment.⁹ 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.¹⁰

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.¹¹ Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and

³ *Supra* note 1.

⁴ *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364, 366 (2006).

⁵ *S.P.*, 59 ECAB 184, 188 (2007); *Joe D. Cameron*, 41 ECAB 153, 157 (1989).

⁶ *B.F.*, Docket No. 09-60 (issued March 17, 2009); *Bonnie A. Contreras*, *supra* note 4.

⁷ *D.B.*, 58 ECAB 464, 466 (2007); *David Apgar*, 57 ECAB 137, 140 (2005).

⁸ *C.B.*, Docket No. 08-1583 (issued December 9, 2008); *D.G.*, 59 ECAB 734, 737 (2008); *Bonnie A. Contreras*, *supra* note 4.

⁹ *Roma A. Mortenson-Kindschi*, 57 ECAB 418, 428 n.37 (2006); *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

¹⁰ *P.K.*, Docket No. 08-2551 (issued June 2, 2009); *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

¹¹ *Y.J.*, Docket No. 08-1167 (issued October 7, 2008); *A.D.*, 58 ECAB 149, 155-56 (2006); *D'Wayne Avila*, 57 ECAB 642, 649 (2006).

compensable employment factors.¹² The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.¹³

ANALYSIS

OWCP found that the September 23, 2011 incident involving transferring a patient from a wheelchair to a bed occurred as alleged. The Board affirms this fact of injury and it also finds that the medical evidence submitted by appellant is insufficient to establish that this incident caused a medical condition.

On September 26, 2011 Dr. Charnas stated that appellant presented for a follow-up on her right wrist. He noted that she had surgery two months prior and had returned to full duty on September 19, 2011. Dr. Charnas noted that appellant began noticing increasing pain in her right wrist on September 20, 2011, which progressed over the week without new injury or incident. As his report positively states that appellant's symptoms progressed over the course of the week of September 20, 2011 without new injury or incident, his report does not offer an explanation of how the claimed work event caused or aggravated appellant's claimed condition. Rather, Dr. Charnas' report is supportive of the opposite proposition, that appellant's condition was not caused or aggravated by the claimed work event, as it progressed without new injury or incident. Medical evidence submitted to support a claim for compensation should reflect a correct history and the physician should offer a medically sound explanation of how the claimed work event caused or aggravated the claimed condition.¹⁴ Lacking such an explanation, this report is not sufficient to establish a causal relationship between the event of September 23, 2011 and appellant's diagnosed conditions.

In a report dated May 27, 2011, Dr. Powell described performing an ECU tenosynovectomy on appellant's right wrist. The procedure was completed without complications. On October 24, 2011 Dr. Powell stated that appellant continued to have pain in her right wrist, but that it was minimal compared to what it was before surgery. He stated that his impression of very mild right carpal tunnel syndrome and mild persistence of ECU tenosynovitis. On October 11, 2011 Dr. James B. Slattery, a Board-certified orthopedic surgeon, examined the results of nerve conduction studies to the right upper extremity. Dr. Powell noted that he thought he had done everything he could do and suggested a second opinion. In progress notes dated December 15, 2011, Dr. Charnas saw appellant for a follow-up and stated his impression of a right wrist strain. On May 25, 2012 he noted that she was working limited duty, and that her pain increased by the end of the day. Dr. Charnas observed swelling remaining over the dorsum of the right wrist and recommended that appellant wear a splint and take medication for pain. In a duty status report dated October 16, 2012, Dr. Powell stated that she had possible right carpal tunnel syndrome. He recommended that appellant could perform full-time regular

¹² *J.J.*, Docket No. 09-27 (issued February 10, 2009); *Michael S. Mina*, 57 ECAB 379, 384 (2006).

¹³ *I.J.*, 59 ECAB 408, 415 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

¹⁴ *D.D.*, Docket No. 13-1517 (issued April 14, 2014).

work on October 24, 2012. In progress notes dated November 1, 2012, Dr. Olegario-Nebel examined the results of several electromyographic studies of appellant's right hand and wrist.

These reports do not provide a clear statement of opinion as to the causation of appellant's condition. Instead, they merely report on her surgery and her condition of mild right carpal tunnel syndrome, without offering a history of injury related to an event on September 23, 2011 or an opinion on causal relationship. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹⁵ Hence, these reports are not sufficient to establish appellant's claim.

As appellant has not submitted any rationalized medical evidence to support her allegation that she sustained an injury causally related to a September 23, 2011 employment incident, she has not met her burden of proof to establish a claim.

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 a traumatic injury in the performance of duty on September 23, 2011.

¹⁵ See *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

ORDER

IT IS HEREBY ORDERED THAT the January 21, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 11, 2015
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board