United States Department of Labor
Employees' Compensation Appeals Board

D.L., Appellant	)	
and	)	**Docket No. 15-0866**
	)	**Issued: November 23, 2015**
U.S. POSTAL SERVICE, POST OFFICE, Hopewell Junction, NY, Employer	)	

Appearances:
Paul Kalker, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 9, 2015 appellant, through counsel, filed a timely appeal from September 23, 2014 and February 4, 2015 merit decisions of the Office of Workers' Compensation Programs (OWCP). 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.

ISSUE

The issue is whether appellant established lateral epicondylitis of her right elbow in the performance of duty on December 2, 2013.

On appeal, counsel contends that the medical evidence firmly supports that appellant suffered from lateral epicondylitis causally related to the December 2, 2013 accepted incident of employment. He argued that OWCP had improperly adopted an adversarial posture and placed on appellant an unreasonably high burden of proof, requiring her to establish causal relationship beyond all reasonable doubt.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On December 12, 2013 appellant, then a 50-year-old rural carrier, filed a traumatic injury claim alleging that on December 2, 2013, she was reaching to place a large bundle of mail in the mailbox when she suffered a sharp pain in her right elbow. The employing establishment controverted the claim.

Appellant submitted a December 3, 2013 report from Alan Glickman, a nurse practitioner, at Anderson Medical Center, which diagnosed unspecified (uns.) synovitis/tenosynovitis, and found that appellant, could return to work on December 6, 2013 without restrictions.

In a December 23, 2013 report, Dr. Adam Rubinstein, a Board-certified internist, with Hudson Valley Primary Care, assessed appellant with lateral epicondylitis, and indicated that he treated her with a Celestone injection.

On December 27, 2013 OWCP advised appellant that the evidence she had submitted to date was insufficient to establish her claim. Appellant was advised that she should submit further evidence to establish that she actually experienced the alleged incident, as well as a medical report from a qualified physician which substantiated that her diagnosed condition was caused or aggravated by the December 2, 2013 employment incident.

By decision dated January 31, 2014, OWCP denied appellant's claim, finding that she had not established that the incident occurred as alleged. It noted that, even if she had established that the event occurred as alleged, she also had failed to submit medical evidence to establish that the diagnosed medical condition of lateral epicondylitis was causally related to the alleged work incident.

On March 11, 2014 OWCP received additional evidence. In a December 3, 2013 duty status report, Mr. Glickman found appellant able to return to unrestricted duty as of December 6, 2013. He diagnosed unspecified synovitis/tenosynovitis, and noted that the injury occurred when she delivered mail to a mailbox. In a different duty status report of the same date, Mr. Glickman found that appellant had increased pain in her right elbow which he believed was aggravated by her employment, diagnosed tendinitis, and opined that she was totally disabled from December 3 to 6, 2013, after which she could resume regular work.

Appellant submitted return to work notes from Dr. Rubinstein. In the note from a visit on December 23, 2013, Dr. Rubinstein indicated that appellant would be able to return to work on December 30, 2013. On January 22, 2014 he advised that she was to remain off work until further notice.

In a January 22, 2014 report, Dr. Rubinstein noted that he saw appellant for a follow up. He diagnosed joint and forearm pain. Dr. Rubinstein noted other medical conditions of asthma, plantar fascial fibromatosis, nevus, nonneoplastic, encounter for long-term (current) use of other medications, cerebrovascual accident, and migraine headache.

In a January 24, 2014 report, Dr. Joseph Antonio, a Board-certified diagnostic radiologist, interpreted a magnetic resonance imaging (MRI) scan of that date as evidencing a

tiny osteochondral lesion of the distal articular surface of the lateral humeral epicondyle slightly posteriorly. He noted that the MRI scan was otherwise unremarkable.

In February 6 and 25, 2014 reports, Dr. David DiMarco, a Board-certified surgeon, noted that he saw appellant with regard to a December 2, 2013 employment incident. Appellant advised him that, while delivering mail, she had straightened her arm out to put mail in a box and it started to hurt. Dr. DiMarco noted that Naproxen and physical therapy had not helped. He conducted a physical examination and reviewed appellant's medical history. Dr. DiMarco noted joint pain, localized in the elbow, and listed his impression as lateral epicondylitis right elbow with underlying synovitis and possible chondral lesion capitellum. He stated that given appellant's history to be correct, her ongoing symptoms were definitely related to the accident of December 2, 2013 while at work. Dr. DiMarco requested authorization for an arthroscopic debridement right elbow and open release right lateral epicondylitis.

On February 28, 2014 appellant requested a review of the written record by an OWCP hearing representative.

By decision dated September 23, 2014, the hearing representative found that appellant established that the incident occurred as alleged. However, she denied appellant's claim as appellant had failed to establish that her diagnosed medical condition, right elbow lateral epicondylitis, was caused or aggravated by the accepted incident.

By letter dated October 31, 2014, appellant's newly appointed counsel requested reconsideration. He contended that the reports of Dr. DiMarco clearly established a causal relationship between appellant's injury-related condition of lateral epicondylitis and the employment event of December 2, 2013. Counsel asked that OWCP vacate the January 31 and September 23, 2014 decisions, and award wage loss and other compensation to appellant.

New medical evidence received by OWCP in support of appellant's reconsideration request included a September 7, 2014 report wherein Dr. DiMarco summarized his treatment of appellant. Dr. DiMarco noted that appellant was first seen in his office on February 6, 2014, with a primary complaint of pain in the right elbow. He noted that the problem began on December 2, 2013 when she was delivering mail, straightened out her arm to put mail in a box, and experienced elbow pain. Dr. DiMarco noted that, prior to presentation at his office, appellant had been on oral anti-inflammatories including Naprosyn, attended formal physical therapy, and received cortisone injections, all without relief. He diagnosed lateral epicondylitis of the right elbow with underlying synovitis and possible chondral lesion to the capitellum. In support of this diagnosis, Dr. DiMarco noted that his examination was remarkable for right upper extremity at the elbow/forearm, noting tenderness to palpatation in the area of the common extensor mass at the lateral epicondylar area, and tenderness into the radial gutter. He also reviewed appellant's MRI scan of January 24, 2014, and noted that it did reveal an osteochrondral lesion to the capitellum consistent with lateral column overloading. Dr. DiMarco further noted that the MRI scan revealed some synovitis in the joint, but no obvious tear to the common extensor. He indicated that appellant failed to respond to conservative management, and that his findings were consistent with the history provided of the December 2, 2013 injury, including overpowering the extensor mechanism to the right elbow, and the chondral damage to the radial capitellar articulation and subsequent development of the lateral epicondylitis.

Dr. DiMarco then concluded, "Therefore, there was definitely a causal relationship between the accident of record and her symptoms." He further noted that appellant returned to his office on February 25, 2014. Dr. DiMarco explained that she failed to respond to conservative treatment, and noted that her examination again revealed sensitivity to the lateral epicondylar region of the elbow, that was further exacerbated by resisted dorsiflexion to the wrist. He noted that appellant was unable to even pick up five pounds with her dominant right hand. Therefore, Dr. DiMarco repeated his request for authorization for an arthroscopy of the right elbow with open release of lateral epicondylitis. He submitted a subsequent progress report discussing his examination of appellant on September 30, 2014, wherein he again noted lateral epicondylitis of the elbow and noted that she remained incapable of returning to work.

By decision dated February 4, 2015, OWCP evaluated the evidence on the merits, but denied modification of its September 23, 2014 decision.

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 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 and/or specific condition for which compensation is claimed are 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]

In order 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 or exposure, which is alleged to have occurred.[3] In order to meet his or her burden of proof to establish the fact that he or she sustained an injury in the performance of duty, an employee must submit sufficient evidence to establish that he or she actually experienced the employment injury or exposure at the time, place, and in the manner alleged.[4]

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.[5] The medical evidence required to establish causal relationship is usually rationalized medical evidence. 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

[2] *Jussara L. Arcanjo*, 55 ECAB 281, 283 (2004).

[3] *See Elaine Pendleton*, 40 ECAB 1143 (1989).

[4] *Linda S. Jackson*, 49 ECAB 486 (1998).

[5] *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

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.[6]

ANALYSIS

OWCP accepted that an incident had occurred in the course of appellant's federal employment on December 2, 2013, when reaching to place a large bundle of mail in the mailbox, and suffered a sharp pain in her right elbow. It denied her claim, however, as the medical evidence failed to establish causal relationship between the diagnosed condition and the accepted incident. The Board finds that appellant has not established lateral epicondylitis of the right elbow due to her employment.

The Board finds that the February 6, 25, and September 7, 2014 reports from Dr. DiMarco are not sufficient to establish causal relationship. Dr. DiMarco discussed appellant's medical history and his findings on examination. He diagnosed lateral epicondylitis to the right elbow with underlying synovitis and possible chondral lesion to the capitellum. Dr. DiMarco supported this diagnosis by noting that appellant's examination was at the elbow/forearm, was tender to palpation in the area of the common extensor mass at the lateral epicondylar area and into the radial gutter. He also noted that her MRI scan showed an osteochondral lesion to the capitellum consistent with lateral column overloading and also noted some synovitis in the joint. Dr. DiMarco opined that findings on examination were consistent with the history provided of the December 2, 2013 injury, including overpowering the extensor mechanism to the right elbow, including the chondral damage to the radial capitellar articulation and subsequent development of lateral epicondylitis. He concluded that there was definitely a causal relationship between the accident of record and appellant's symptoms. Although Dr. DiMarco's opinion generally supported causal relationship between her accepted employment incident and her diagnosed condition, he did not provide sufficient rationale explaining this conclusion. His opinion is largely based on appellant's opinion as to what caused her injury rather than by his independent analysis of the cause of the condition. Dr. DiMarco did not explain the process by which appellant's employment incident caused or contributed to the diagnosed condition or state why such condition could not have been caused by nonwork factors.[7] A mere conclusion without the necessary rationale explaining how and why the physician believes that a claimant's accepted incident resulted in the diagnosed condition is not sufficient to meet appellant's burden of proof.[8]

With regard to the other medical evidence submitted by appellant, the Board notes that the report from Dr. Rubinstein assessed appellant with lateral epicondylitis, but also does not discuss its relationship to appellant's accepted employment incident. Dr. Antonio interpreted appellant's MRI scan as evincing a tiny osteochondral lesion of the distal articular surface of the

[6] *Judith A. Peot*, 46 ECAB 1036 (1995); *Ruby I. Fish*, 46 ECAB 276 (1994).

[7] *See J.S.*, Docket No. 14-818 (issued August 7, 2014).

[8] *G.M.*, Docket No. 14-2057 (issued May 12, 2015).

lateral humeral epicondyle slightly posteriorly, but also makes no statement with regard to causal relationship. In order for a physician to establish causal relationship, his opinion must accurately describe appellant's work duties and medically explain the pathophysiological process by which these duties would have caused or aggravated her condition.[9] As the reports of Drs. Rubinstein and Antonio do not discuss the causal relationship between appellant's employment incident and his medical diagnoses, these reports are insufficient to meet her burden on proof. The Board further notes that reports by Mr. Glickman have no probative medical value as a nurse practitioner is not a physician as defined under FECA.[10]

The Board finds that the medical evidence does not establish right elbow lateral epicondylitis was the result of the accepted employment incident. The medical reports failed to provide sufficient medical rationale explaining how the conditions were caused or aggravated by the accepted incident of December 2, 2013.

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 established lateral epicondylitis to her right elbow in the performance of duty on December 2, 2013, as alleged.

[9] *Solomon Polen*, 51 ECAB 341 (2000) (rationalized medical evidence must relate specific employment factors identified by the claimant to the claimant's condition, with stated reasons by a physician). *See also G.G.*, Docket No 15-234 (issued April 9, 2015).

[10] The term physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. 5 U.S.C. § 8102(2); *L.D.*, 59 ECAB 648 (2008) (a nurse practitioner is not a physician as defined under FECA).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated February 4, 2015 and September 4, 2014 are affirmed.[11]

Issued: November 23, 2015
Washington, DC

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

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

[11] James A. Haynes, Alternate Judge, participated in the original decision but was no longer a member of the Board effective November 16, 2015.