United States Department of Labor
Employees' Compensation Appeals Board

M.M., Appellant	)	
and	)	**Docket No. 16-1751**
	)	**Issued: December 27, 2016**
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Providence, RI, Employer	)	

Appearances:
John L. Whitehouse, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 30, 2016 appellant, through counsel, timely appealed from the August 19, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (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 a left upper extremity condition causally related to the June 22, 2015 employment incident.

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On June 28, 2015 appellant, then a 56-year-old mobile unit driver (mail handler), filed an occupational disease claim (Form CA-2) alleging that on June 22, 2015 he injured his left upper extremity in the performance of duty. He subsequently clarified that he was claiming a traumatic injury. Appellant explained that he was pulling a bulk mail container (BMC) with both hands when he felt pain shoot up his left arm. The pain reportedly extended from his forearm to his elbow and bicep. Appellant further explained that it was quite painful to make a fist.[3] He continued to work following the June 22, 2015 incident. Appellant indicated that he reported the injury to his supervisor, T.R. He did not submit any medical evidence with his June 28, 2015 claim.

On July 22, 2015 OWCP informed appellant of the type of evidence needed to support his claim. It noted, among other things, that the record did not include a diagnosis of a medical condition resulting from the alleged employment incident. Appellant was afforded at least 30 days to submit the requested information.

In a July 29, 2015 statement, T.R., a distribution operations supervisor, indicated that he agreed with appellant's statements regarding the June 22, 2015 incident. He noted that appellant told him he was pulling an extremely heavy BMC off the line when he felt a sharp pain in his left arm. T.R. further stated that mobile drivers push and pull various types of equipment to be attached to their units. He also indicated that these activities continued throughout an 8-hour shift. T.R. stated that when he asked appellant if he could continue to do his job, appellant replied that he wanted to try. Appellant began to wear a Velcro brace just below his left elbow and T.R. explained that it seemed that appellant was favoring the left arm and using his right arm more.

Although OWCP received additional factual information regarding the June 22, 2015 employment incident, it did not receive any medical evidence during the allotted 30-day development period.

By decision dated August 27, 2015, OWCP denied appellant's claim as he had failed to establish fact of injury. The record established that appellant pulled heavy BMCs off the dock with a mobile unit. However, OWCP found that it had not received any medical evidence demonstrating that he sustained a medical condition as a result of this incident.

On September 29, 2015 appellant requested reconsideration.

OWCP received various reports and treatment notes from Dr. Leonard F. Hubbard, a Board-certified orthopedic surgeon. In a July 22, 2015 note, Dr. Hubbard advised that appellant came in with a recurrence of his previous injury. He noted that appellant was pulling a "bullet" weighing about 2,000 pounds when he felt a sudden onset of pain. Dr. Hubbard provided findings for the left arm, which were essentially normal with full range of motion and some tenderness over the lateral condyle aspect and over the radial tunnel. He opined that appellant had a recurrence of the previous injury and recommended that he stay out of work and get a

[3] Appellant has an accepted occupational disease claim for bilateral carpal tunnel syndrome, left lateral epicondylitis, and left radial nerve lesion under OWCP File No. xxxxxx698 with a July 12, 2011 date of injury. He reported that his current left arm complaints felt similar to when he previously tore a tendon in his left arm.

splint. Dr. Hubbard explained that the current injury was "causally related to the injury as described." He also advised that appellant would be out until July 27, 2015.

In his August 12, 2015 notes, Dr. Hubbard indicated that appellant had persistent pain in the elbow after his recent re-injury. He found that the elbow revealed full range of motion, but there was considerable tenderness over the radial tunnel and lateral epicondyle. Dr. Hubbard indicated that appellant could return to employment in approximately one month, but only if he was able to utilize a splint to protect his dominant right hand.

Dr. Hubbard also provided an August 28, 2015 disability certificate, advising appellant could return to light-duty work only with a splint.

In a September 9, 2015 duty status (Form CA-17) report, the physician reported clinical findings of chronic pain and indicated that appellant could resume work as of September 14, 2015 with restrictions. Appellant was limited to off-belt work picking up letters behind the advanced facer-canceller ("AFC").

In an October 7, 2015 report, Dr. Hubbard explained that appellant previously underwent work-related surgery for left elbow lateral epicondylitis. He noted that appellant did quite well and was able to return to the workforce. Dr. Hubbard advised that on June 22, 2015 appellant had a recurrence of that injury when he was pulling a heavy bullet at work, which resulted in precisely the same symptoms he previously had. Those symptoms had since ameliorated and appellant was at the point where he could return to work in a light-duty capacity. Dr. Hubbard provided a duty status report with restrictions. He again noted that appellant was limited to off-belt work picking up letters behind the AFC.

In an October 14, 2105 decision, OWCP denied modification. The decision noted that, while Dr. Hubbard reported that appellant was experiencing pain, he did not provide a firm diagnosis.

On July 11, 2016 counsel requested reconsideration.

OWCP received additional evidence from Dr. Hubbard, which included several treatment notes dating from October 7, 2015 to June 20, 2016. In his October 7, 2015 note, Dr. Hubbard indicated that appellant continued to have pain in the left elbow, but was back at work. He recommended continued light duty.

Dr. Hubbard saw appellant on January 18, 2016 and diagnosed lateral epicondylitis. He continued appellant with light duty. On April 4, 2016 Dr. Hubbard explained that appellant was able to do modified duty, but remained restricted with regard to more vigorous activities. He again diagnosed lateral epicondylitis and continued modified duty. In a June 20, 2016 treatment note, Dr. Hubbard reiterated his diagnosis of left lateral epicondylitis.

OWCP also received physical therapy treatment records from September 11, 2015 and July 22, 2016.

By decision dated August 19, 2016, OWCP modified the October 14, 2015 decision to reflect that the attending physician had provided a diagnosis of left lateral epicondylitis.

However, it further found that the claim remained denied as the medical evidence was insufficient to establish causal relationship.

LEGAL PRECEDENT

A claimant seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence, including that an injury was sustained in the performance of duty as alleged and that any specific condition or disability claimed is causally related to the employment injury.[4]

To determine if an employee sustained a traumatic 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 that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.[5] The second component is whether the employment incident caused a personal injury.[6] An employee may establish that an injury occurred in the performance of duty as alleged, but fail to establish that the disability or specific condition for which compensation is being claimed is causally related to the injury.[7]

Certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered "physician[s]" as defined under FECA.[8] Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.[9]

ANALYSIS

In this case, appellant alleged that on June 22, 2015 he sustained an injury to his left upper extremity in the performance of duty. OWCP accepted that the June 22, 2015 employment incident occurred as alleged and that he received a diagnosis of left lateral epicondylitis. However, it denied appellant's traumatic injury claim because the medical evidence failed to

[4] 20 C.F.R. § 10.115(e), (f); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

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

[6] *John J. Carlone*, 41 ECAB 354 (1989). Causal relationship is a medical question that generally requires rationalized medical opinion evidence to resolve the issue. *Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s). *Id.*

[7] *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

[8] 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).

[9] *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006). A report from a physician assistant or certified nurse practitioner will be considered medical evidence if countersigned by a qualified physician. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013).

establish a causal relationship between the accepted June 22, 2015 employment incident and his left upper extremity condition.

Dr. Hubbard provided several reports dating from July 22, 2015 to June 20, 2016. In an initial July 22, 2015 note, he advised that appellant came in with recurrence of his previous injury. Dr. Hubbard noted that appellant was pulling a bullet weighing about 2,000 pounds when he felt a sudden onset of pain. He provided findings for the left arm, which were essentially normal, with full range of motion and some tenderness over the lateral condyle aspect and over the radial tunnel. Dr. Hubbard opined that appellant had a recurrence of the previous injury and it was recommended that he stay out of work and get a splint. He explained that the current injury was "causally related to the injury as described." The Board initially notes that other than a diagnosis of pain, Dr. Hubbard is relating the condition to a previous injury. The Board finds that this opinion lacks probative value as it did not provide a firm diagnosis, is vague, and failed to explain the causal relationship between appellant's condition and any work-related exposures.[10]

Dr. Hubbard also treated appellant on August 12 and 28, 2015 and advised that he could not return to full duty. In his August 12, 2015 notes, he indicated that appellant had persistent pain in the elbow after his recent reinjury, and on his August 28, 2015 disability certificate, he noted that appellant could return to light-duty work only with a splint. In September 9 and October 7, 2015 duty status reports, Dr. Hubbard noted clinical findings of chronic pain and indicated that appellant could resume light duty on September 14, 2015 with restrictions. However, as noted above, other than noting appellant's chronic pain, Dr. Hubbard did not diagnose a specific condition or address causal relationship by explaining how a specific activity at work on June 22, 2015 either caused or contributed to appellant's left upper extremity condition.[11]

In an October 7, 2015 report, Dr. Hubbard explained that appellant previously underwent work-related surgery for left lateral epicondylitis. He advised that on June 22, 2015, appellant had a "recurrence" of that injury when he was pulling a heavy bullet at work, which resulted in precisely the same symptoms appellant previously experienced. Dr. Hubbard advised that appellant was able to return to work in a light-duty capacity. While he opined that appellant had a recurrence of a prior injury at work due to the incident of June 22, 2015, the Board notes that it is unclear to which prior injury he is referring or how the incident of June 22, 2015 resulted in the diagnosed condition of left lateral epicondylitis. A medical opinion not fortified by rationale is of little probative value.[12]

In an April 4, 2016 report, Dr. Hubbard diagnosed lateral epicondylitis, but he did not provide an opinion on causal relationship. As such, this report is of limited probative value on the issue of causal relationship.

In a June 20, 2016 treatment note, Dr. Hubbard advised that appellant was in for further clarification regarding the origin of his injury. He repeated the diagnosis of left lateral

[10] *See Michael E. Smith*, 50 ECAB 313 (1999).

[11] *Id*.

[12] *Annie L. Billingsley*, 50 ECAB 210 (1998); *supra* note 10.

epicondylitis, but did not otherwise elaborate on the cause of appellant's left upper extremity condition. Accordingly, this report is of limited probative value.

Appellant also submitted copies of physical therapy notes. However, reports from physical therapist do not rise to the level of competent medical opinion evidence under FECA as physical therapists are not physicians under FECA.[13]

Because the medical evidence of record does not address how the June 22, 2015 employment incident either caused or contributed to appellant's claimed left upper extremity condition, appellant failed to establish causal relationship. On appeal, counsel argues that OWCP should at least refer appellant for a second opinion examination. The Board found that appellant has not demonstrated a *prima facie* case of entitlement under FECA. Accordingly, the Board finds that he has failed to meet his burden of proof.

CONCLUSION

Appellant failed to establish that his claimed left upper extremity condition is causally related to the June 22, 2015 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the August 19, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 27, 2016
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

[13] *See supra* notes 8 and 9.