

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

D.C., Appellant)	
)	
and)	Docket No. 16-1756
)	Issued: November 18, 2016
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Dallas, TX, Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On September 2, 2016 appellant filed a timely appeal from an August 12, 2016 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 this case.

ISSUE

The issue is whether appellant met his burden of proof to establish that he sustained an injury causally related to factors of his federal employment.

FACTUAL HISTORY

On December 29, 2015 appellant, then a 58-year-old mail processing clerk, filed an occupational disease claim (Form CA-2) for a left hand/thumb injury that allegedly arose in the

¹ 5 U.S.C. § 8101 *et seq.*

performance of duty on or about August 18, 2015. He attributed his claimed condition to pulling mail trays from sleeves, lifting mail trays, and grasping mail to load on the machine. Appellant did not stop work. Additionally, he did not submit any medical evidence with his December 29, 2015 Form CA-2.

In a January 19, 2016 letter, OWCP advised appellant of the type of factual and medical evidence necessary to establish his occupational disease claim.

Appellant submitted an attending physician's report (Form CA-20) dated December 28, 2015 in which Dr. Gregory Gardner, an attending osteopath and Board-certified emergency medicine physician, listed the date of injury as August 18, 2015, the history of injury as work injury to left hand/thumb with repetitive use, and the diagnosis as left thumb strain. Dr. Gardner checked a "Yes" box to indicate that the condition was caused or aggravated by an employment activity. He added the notation, "Occurred within scope of employment." Dr. Gardner also provided a December 28, 2015 narrative report noting that appellant described a gradual onset of pain in his left hand/thumb while working for the employing establishment. In a December 28, 2015 duty status report (Form CA-17), he indicated that appellant could return to work with a 20-pound lifting/carrying restriction. Dr. Gardner also imposed a two-hour limit on simple grasping. He provided similar Form CA-20s, narrative reports, and Form CA-17s dated January 13 and 27, 2016.

A February 1, 2016 left hand magnetic resonance imaging (MRI) scan showed arthritic changes throughout all the metacarpophalangeal joints.

By decision dated February 22, 2016, OWCP found that appellant had not established fact of injury. Appellant failed to establish that the employment exposure occurred as alleged and also failed to submit medical evidence identifying an employment-related diagnosis. Consequently, OWCP denied appellant's occupational disease claim.

Appellant timely requested a review of the written record by an OWCP hearing representative. He also submitted additional medical evidence.

Dr. Eddie Joslin, a Board-certified internist, provided treatment notes from August 18 and October 30, 2015. Appellant initially complained of bilateral hand/thumb pain of several weeks' duration (two to three weeks). He advised Dr. Joslin that he used his hands repetitively at work. Dr. Joslin diagnosed thumb pain, likely secondary to repetitive use. He indicated that he suspected a degree of tendinitis and/or arthritis. Dr. Joslin prescribed Naprosyn and advised appellant to try to decrease repetitive activities. When appellant returned on October 30, 2015, his chief complaint was pain in the left palm and thumb. A left thumb x-ray obtained that day revealed arthritis at the proximal interphalangeal (PIP) joint.

In a December 8, 2015 report, Dr. Marc A. Roux, a Board-certified orthopedic surgeon, diagnosed left thumb trigger and discussed with appellant the possibility of undergoing a trigger thumb release.

Dr. Robert Ippolito, a Board-certified hand surgeon, examined appellant on February 16, 2016 for left thumb complaints. He diagnosed "right" thumb carpometacarpal (CMC)

osteoarthritis. Dr. Ippolito noted that appellant “works as a clerk,” but he did not otherwise discuss appellant’s particular job duties.

Dr. Gardner provided Form CA-20s, narrative medical reports, and Form CA-17s for appellant’s visits on February 5, March 2, 30, April 27, May 25, and July 22, 2016 that are substantially similar to his prior reports.

In a February 17, 2016 report, Dr. Gardner indicated that he had been asked to provide a medical opinion regarding causation and the treatment provided with respect to appellant’s August 18, 2015 work-related injury. He indicated that it was his understanding that appellant worked as a letter carrier for over 32 years and had been required to grip and grasp to deliver mail for 8 to 10 hours a day, 5 to 6 days a week. Dr. Gardner diagnosed left thumb strain and left thumb osteoarthritis and noted:

“After examining [appellant] it is my impression that he does have left thumb strain and left thumb osteoarthritis as a result of his work injury of August 18, 2015. In my medical opinion, the work injury of August 18, 2015 was a substantial factor in bringing about these conditions.... In my medical opinion based on reasonable medical probability, the constant gripping and grasping to deliver mail over 32 years while working as a letter carrier produced the acute left thumb strain and the left thumb osteoarthritis. Therefore, it is my medical opinion based on reasonable medical probability that the August 18, 2015 workers’ compensation injury produced the left thumb strain and the left thumb osteoarthritis.”

In an August 12, 2016 decision, the hearing representative affirmed OWCP’s February 22, 2016 decision denying appellant’s occupational disease claim. She similarly found that appellant had not provided a detailed description of the employment-related activities he believed contributed to his claimed left hand/thumb condition. The hearing representative further found that Dr. Gardner did not provide adequate medical rationale in support of his opinion on causal relationship. She noted that Dr. Gardner mistakenly identified appellant as a letter carrier, rather than a mail processing clerk.

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 the 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.² To establish fact of injury, an employee must submit sufficient evidence to establish that he or she experienced a specific event, incident, or exposure occurring at the time, place, and in the manner alleged.³ An employee must also establish that

² 5 U.S.C. § 8101(1); *B.B.*, 59 ECAB 234 (2007); *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *J.C.*, Docket No. 16-0057 (issued February 10, 2016); *E.A.*, 58 ECAB 677 (2007).

such event, incident, or exposure caused an injury.⁴ 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.⁵

OWCP regulations define the term “[o]ccupational disease or illness” as a condition produced by the work environment over a period longer than a single workday or shift.⁶ To establish that an injury was sustained in the performance of duty in an occupational disease claim, an employee must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.⁷

The medical evidence required to establish causal relationship generally is rationalized medical opinion evidence.⁸ 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 established employment factors.⁹

ANALYSIS

On December 29, 2015 appellant filed a Form CA-2 claiming that he sustained an injury to his left hand and thumb due to pulling mail trays from sleeves, lifting mail trays, and grasping mail to load on the machine. He indicated that he first became aware of his employment-related condition on August 18, 2015.

The Board finds that appellant failed to establish that he sustained an injury in the performance of duty on or about August 18, 2015.

Dr. Joslin examined appellant on August 18 and October 30, 2015. He initially suspected tendinitis and/or arthritis and commented that appellant’s pain was likely secondary to repetitive use. A subsequent left thumb x-ray revealed PIP joint arthritis. Although Dr. Joslin surmised that appellant’s hand/thumb pain was likely due to repetitive use, he did not identify appellant’s specific employment duties and did not provide an explanation of how those activities either

⁴ *Id.*

⁵ *R.H.*, 59 ECAB 382 (2008); *Ellen L. Noble*, 55 ECAB 530 (2004).

⁶ 20 C.F.R. § 10.5(q); *see also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.2b (June 2011).

⁷ *D.H.*, Docket No. 15-1876 (issued January 29, 2016); *D.I.*, 59 ECAB 158 (2007); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁸ *F.S.*, Docket No. 15-1052 (issued July 17, 2015); *Tomas Martinez*, 54 ECAB 623 (2003).

⁹ *P.K.*, Docket No. 08-2551 (issued June 2, 2009); *John W. Montoya*, 54 ECAB 306 (2003).

caused or contributed to his diagnosed left thumb arthritis.¹⁰ Consequently, his opinion is insufficient to meet appellant's burden of proof.

In a December 8, 2015 report, Dr. Roux diagnosed left thumb trigger, but did not address the cause of appellant's condition.

Dr. Ippolito examined appellant on February 16, 2016 for left thumb complaints and inadvertently diagnosed "right" thumb CMC osteoarthritis. Although he noted that appellant worked as a clerk, Dr. Ippolito did not discuss appellant's particular job duties or whether his employment as a clerk either caused or contributed to his diagnosed CMC joint osteoarthritis.

Appellant submitted several Form CA-20s dated between December 2015 and July 2016 in which Dr. Gardner, an attending physician, listed the date of injury as August 18, 2015, the history of injury as work injury to left hand/thumb with repetitive use, and the diagnosis as left thumb strain. Dr. Gardner checked a "Yes" box to indicate that the condition was caused or aggravated by an employment activity. He added the notation, "Occurred within scope of employment."

The Board finds that the submission of these reports would not establish appellant's claim for an occupational disease because Dr. Gardner did not provide medical rationale in support of his opinion on causal relationship. Dr. Gardner merely noted that appellant's injury was due to repetitive use and that it occurred within the scope of employment. The Board has consistently held that merely placing a mark in the "Yes" box on question 8 (Form CA-20) will not suffice for purposes of establishing causal relationship.¹¹ In this instance, Dr. Gardner added the notation that appellant's injury occurred within the scope of employment. However, he did not describe appellant's job duties in any detail or explain how they could have contributed to the diagnosed condition. Appellant's burden includes the necessity of furnishing an affirmative opinion from a physician who supports his or her conclusion with sound medical reasoning.¹²

In a February 17, 2016 report, Dr. Gardner indicated that appellant worked as a letter carrier for over 32 years and had been required to grip and grasp to deliver mail for 8 to 10 hours a day, 5 to 6 days a week. He diagnosed left thumb strain and left thumb osteoarthritis and noted both that "the work injury of August 18, 2015 was a substantial factor in bringing about these conditions" and that "the constant gripping and grasping to deliver mail over 32 years while working as a letter carrier produced the acute left thumb strain and the left thumb osteoarthritis."

This report is of limited probative value with respect to appellant's occupational disease claim for several reasons. Dr. Gardner still has not described appellant's work duties in any detail and, in fact, his opinion is based on an improper factual history as he identified appellant as having been a letter carrier rather than a mail processing clerk.¹³ In addition, he provided

¹⁰ A physician's opinion on causal relationship must be based on a complete factual and medical background. *Victor J. Woodhams, supra* note 7.

¹¹ See *D.D.*, 57 ECAB 734, 739 (2006); *Deborah L. Beatty*, 54 ECAB 340, 341 (2003).

¹² *Lillian M. Jones*, 34 ECAB 379, 381 (1982).

¹³ *John W. Montoya, supra* note 9.

conflicting statements regarding the mechanism of injury, noting both that appellant sustained a left thumb strain and left thumb osteoarthritis on August 18, 2015 and that he sustained these same conditions over the course of 32 years.

Appellant attributed his condition to pulling mail trays from sleeves, lifting mail trays, and grasping mail to load on the machine. The above-noted reports from Dr. Joslin, Dr. Roux, Dr. Ippolito, and Dr. Gardner all fail to establish a causal relationship between appellant's diagnosed left hand/thumb condition and his employment as a mail processing clerk.

CONCLUSION

The Board finds that appellant failed to establish that he sustained an injury causally related to factors of his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the August 12, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 18, 2016
Washington, DC

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

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

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