

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

A.J., Appellant)	
)	
and)	Docket No. 16-0678
)	Issued: October 4, 2016
DEPARTMENT OF THE NAVY, CUSTOMER)	
SERVICE DESK, Monterey, CA, 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
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On February 22, 2016 appellant filed a timely appeal of a September 21, 2015 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 to consider the merits of the case.²

ISSUE

The issue is whether appellant has met her burden of proof to establish a right hand condition causally related to factors of her federal employment.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that appellant submitted additional evidence after OWCP rendered its September 21, 2015 decision. The Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its final decision. Therefore the Board lacks jurisdiction to review this additional evidence on appeal. 20 C.F.R. § 501.2(c)(1). Appellant may submit this or any evidence to OWCP, together with a formal request for reconsideration, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606(b)(2).

FACTUAL HISTORY

On August 4, 2015 appellant, then a 71-year-old transportation assistant, filed an occupational disease claim (Form CA-2) alleging that she developed a right hand condition including sharp pain and tenderness in the thumb and joint while grasping and holding objects. She indicated that her job required her to pull junk file jackets each month out of the file cabinets and rearrange them back into the cabinets based on the monthly roster. Appellant indicated that she first became aware of her condition and first attributed the condition to her employment on January 1, 2013. On the reverse side of the claim form, appellant's supervisor provided the information that appellant had resigned, effective October 17, 2014.

In a letter dated August 13, 2015, OWCP requested that appellant provide additional factual and medical evidence in support of her occupational disease claim. It noted that she resigned from her position effective October 17, 2014. OWCP requested medical evidence of a diagnosed condition and allowed appellant 30 days to submit the requested information.

Appellant submitted a series of notes Access Family Healthcare, signed by a physician assistant whose signature is illegible. Dr. Warren D. Turner, a physician Board-certified in emergency medicine, completed treatment notes beginning November 23, 2009 through December 20, 2011 addressing appellant's ongoing knee conditions. He described appellant's chronic back pain beginning on January 24, 2012. On May 20, 2013 Dr. Turner noted that appellant underwent knee surgery in November 2010 but continued to experience bilateral knee and back pain.

Dr. Stephen Saglio, a Board-certified family practitioner, first examined appellant on November 26, 2012 due to essential hypertension. He listed her problems at that time to include low back pain, thumb pain, and wrist pain. Appellant continued to seek treatment from Dr. Saglio from December 27, 2012 through January 7, 2014 for conditions not related to her occupational disease claim.

On February 14, 2014 Dr. Saglio examined appellant due to thumb and wrist pain. He noted that appellant had pain with resisted thumb flexion and diagnosed thumb pain and thumb flexor tendinitis. In a note dated August 22, 2014, Dr. Saglio described appellant's complaints of right hand pain near the base of the thumb. He noted that her pain was worse when she gripped and had been bothering appellant for one year. Dr. Saglio examined appellant on September 17, 2014 and reported that appellant attended hand therapy and also noted findings of thumb pain. He diagnosed thumb pain. On September 29, 2014 Dr. Saglio found right wrist pain located laterally on the radial side. He noted that appellant had an orthotic crafted and requested x-rays. Dr. Saglio diagnosed wrist pain. Appellant underwent hand and wrist x-rays on September 30, 2014. On October 8, 2014 Dr. Saglio noted appellant's complaints of thumb and wrist pain. A note dated June 10, 2015 includes a list of current problems including thumb pain. Appellant submitted a referral from Duluth Family Medicine dated September 11, 2015 diagnosing right hand pain and carpal tunnel syndrome.³

On September 15, 2014 Susan Trinity, an occupational therapist, treated appellant for right thumb flexor tendinitis.

³ The signature on this note is illegible.

By decision dated September 21, 2015, OWCP denied appellant's claim for an occupational disease as she failed to submit medical evidence of a diagnosed condition and also failed to submit medical evidence attributing her condition to her employment.

LEGAL PRECEDENT

OWCP regulations define an occupational disease as “a condition produced by the work environment over a period longer than a single workday or shift.”⁴ To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant 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 employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon a complete factual and medical background, showing a causal relationship between the claimed condition and identified factors. The belief of a claimant that a condition was caused or aggravated by the employment is not sufficient to establish causal relation.⁵

ANALYSIS

The Board finds that appellant has not submitted sufficient medical evidence to establish her occupational disease claim.

Dr. Saglio diagnosed, among other maladies, thumb flexor tendinitis on February 14, 2014.⁶ Appellant has submitted medical evidence of a diagnosed condition. She also provided factual evidence in support of her claim as she attributed her right hand and thumb condition to pulling junk jackets out of filing cabinets and on a monthly basis since 2012. Appellant resigned from the employing establishment effective October 17, 2014. The Board finds, however, that the medical evidence submitted fails to establish a causal relationship between appellant's diagnosed condition and her accepted employment activities.

Dr. Turner did not provide a diagnosis of a right hand or thumb condition. His reports, therefore, cannot meet appellant's burden of proof to establish an occupational disease resulting in a right hand condition. Dr. Saglio indicated on August 22, 2014 that appellant's right thumb pain due to her diagnosed condition of thumb flexor tendinitis was worse when she gripped and had been bothering appellant for one year. While this note implicates appellant's employment activity, he did not offer any opinion regarding the relationship between appellant's employment and her condition.

⁴ 20 C.F.R. § 10.5(q).

⁵ *Lourdes Harris*, 45 ECAB 545, 547 (1994).

⁶ The Board notes that the majority of the medical records address appellant's hand and thumb pain. The Board has held that the mere diagnosis of “pain” does not constitute the basis for payment of compensation. *Robert Broome*, 55 ECAB 339 (2004).

Appellant also provided treatment notes from an occupational therapist and a physician assistant. Certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered physicians as defined under FECA.⁷ Consequently, their medical findings will not suffice for purposes of establishing entitlement to FECA benefits.⁸ There is no other medical evidence of record addressing appellant's diagnosed right hand or thumb condition and her employment, appellant has failed to meet her burden of proof to establish her occupational disease 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 submitted the necessary medical opinion evidence to establish a causal relationship between her diagnosed right thumb flexor tendinitis and her implicated employment duties. Due to this deficiency, appellant has failed to meet her burden of proof in establishing her occupational disease claim.

ORDER

IT IS HEREBY ORDERED THAT the September 21, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 4, 2016
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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

⁸ *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006).