

ISSUES

The issues are: (1) whether appellant met her burden of proof to establish an injury causally related to an accepted July 24, 2014 employment incident; and (2) whether OWCP properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On July 24, 2014 appellant, then a 47-year-old postal support employee (PSE) distribution clerk, filed a traumatic injury claim (Form CA-1) alleging that on that same day she hit her left hand between a metal bar and a delivery point sequence (DPS) tray causing her thumb to become swollen from the lower knuckle to the wrist and for a large knot to form on top of her left hand. She stopped work on July 24, 2014 and returned on July 25, 2014.

In a July 24, 2014 duty status report (Form CA-17), Suzanne Goodnight, a certified physician assistant, diagnosed of left thumb tenosynovitis. She authorized appellant to return to work on July 25, 2014 with restrictions of no use of the left hand and only four hours of sitting, standing, walking, kneeling, bending, stooping, twisting, and pushing and pulling.

Appellant provided an employing establishment accident report dated July 31, 2014.

A Form CA-16, authorization for examination and/or treatment, was issued by the employing establishment on August 4, 2014. On the form appellant noted a date of injury of July 24, 2014 and indicated that her left thumb and wrist were swelling.

By letter dated August 4, 2014, the employing establishment controverted appellant's claim because it contended that the injury may have occurred outside the performance of duty. It also noted that the only medical report submitted was by a physician assistant who was not considered a "physician" within the meaning of FECA.

On August 14, 2014 OWCP received a July 24, 2014 emergency room report from Ms. Goodnight, who indicated that appellant complained of left-hand pain and swelling. Ms. Goodnight reported that appellant worked at the employing establishment and performed repetitive activities throughout the day. Appellant related having bilateral hand numbness and tingling for the last nine months. Upon physical examination, Ms. Goodnight observed tenderness through the thumb extensor tendon and positive Phalen's test for neuritis of the left hand. She related that an x-ray scan of appellant's left hand showed mild-to-moderate degenerative changes of the first metatarsal phalangeal joint and no evidence of acute fracture or dislocation. Ms. Goodnight diagnosed left thumb extensor tenosynovitis, left wrist carpal tunnel, and left wrist pain. She indicated that appellant could return to modified duty.

By letter dated August 5, 2014, OWCP advised appellant that the evidence of record was insufficient to establish her claim. It requested that she respond to the attached questionnaire in order to substantiate the factual element of her claim and provide a narrative medical report to establish a medical condition causally related to the alleged employment incident. Appellant was afforded 30 days to submit the additional evidence.

In an August 8, 2014 attending physician's report, Ms. Goodnight again noted a history of acute onset of left hand pain and swelling at work when appellant hit her hand while moving objects. She also reported that appellant had a history of bilateral hand numbness and tingling for the past nine months and of mild-to-moderate degenerative changes in the first metacarpal phalangeal joint. Ms. Goodnight checked a box marked "yes" indicating that appellant's condition was caused or aggravated by her employment. She authorized appellant to return to light duty with restrictions of limited-to-no use of the left hand.

Appellant also submitted a July 24, 2014 left hand x-ray diagnostic examination by Dr. Philip Baker, a Board-certified diagnostic radiologist, who noted no evidence of fracture or dislocation, but reported mild-to-moderate degenerative changes of the first metatarsal phalangeal joint.

OWCP denied appellant's claim in a decision dated September 18, 2014. It found that the evidence of record was insufficient to establish that the July 24, 2014 incident occurred as alleged. OWCP also determined that the medical evidence of record failed to establish a diagnosed condition causally related to the alleged employment incident.

On September 19, 2014 OWCP received an August 28, 2014 report by Dr. Kim-Chi Vu, a Board-certified plastic surgeon, in which he related that appellant had sustained a traumatic injury on July 24, 2014 while at work. She described that appellant took off her gloves at the end of the day and noticed the area was swollen. Dr. Vu noted that, during the day, appellant had been working with some DPS tray when her hand got caught and was hit between a metal bar and the DPS tray. Appellant experienced immediate increased pain and swelling to her hand. She tried to continue her work, but the pain and swelling worsened so she went to the emergency room for treatment. Dr. Vu reviewed appellant's history and conducted an examination. She observed a gross visibility of a probable bump on the dorsal surface of her first carpometacarpal (CMC) joint region and unstable CMC joint. Sensation was intact. Dr. Vu reported that appellant was able to flex and extend all the joints, but with the pain reproducible with thumb opposition. She related that x-ray scans showed some degenerative changes with regards to the joint surface. Dr. Vu diagnosed sprain of the CMC, mild-to-moderate degenerative changes of the first metatarsal phalangeal joint, and no evidence of fracture or dislocation of the left hand. She recommended that appellant continue restricted duty and obtain a magnetic resonance imaging (MRI) scan.

A physical therapy note dated September 16, 2014 indicated that appellant had been diagnosed with sprain of the first CMC joint.

On September 30, 2014 appellant requested a review of the written record before an OWCP hearing representative. She resubmitted Dr. Baker's July 24, 2014 x-ray examination report.

Dr. Kevin G. Semonsen, a Board-certified diagnostic radiologist, provided a left hand MRI scan report dated September 12, 2014. He indicated that findings were consistent with advanced degenerative joint disease at the first CMC joint space and a small joint effusion. Dr. Semonsen also noted a small joint effusion and multiple surrounding small fluid ganglion cysts.

In a September 16, 2014 report, Dr. Vu indicated that appellant had been off work for a few days and her hand and thumb symptoms had improved. She related that, when she returned to work, the pain and swelling had returned even though she wore a splint and had work restrictions. Upon physical examination, Dr. Vu observed tenderness to palpation over the base of the CMC joint of appellant's thumb. She reported that appellant was able to flex and extend the thumb, but had pain on manipulation. Dr. Vu indicated that she reviewed the MRI scan, which was consistent with advanced degenerative joint disease of the first CMC joint. She diagnosed left thumb CMC joint sprain and degenerative joint disease. Dr. Vu explained that appellant "on a more probable basis or not already has some degenerative joint diseases going on and then her injury that she sustained was what caused aggravate or initiate the pain." She indicated that the July 24, 2014 injury aggravated the pain at this present time. Dr. Vu restricted appellant from any use of her left hand.

Appellant provided various witness statements. In a September 25, 2014 statement, an employee with an illegible signature indicated that he was in the breakroom with appellant when she removed her gloves and he saw that her left thumb and palm were swollen and bruised. Appellant informed him that she thought she hit her hand between a metal bar on the JP and the DPS tray. In a September 25, 2014 statement cosigned by appellant and Sharma Dalgat, appellant explained that she normally worked by DPS by herself, but occasionally another clerk helped out. She indicated that on July 24, 2014 Mr. Dalgat came to help out on the side and he saw that she had hit her thumb between a metal bar on the JP and the DPS tray.

In September 25, 2014 statements, appellant explained that as a PSE distribution clerk she hashed out parcels, magazine bundles, tubs, and DPS. She indicated that on July 24, 2014 she injured her left thumb area between the knuckle and the wrist. Appellant noted that she was hashing DPS trays when she hit a top of her thumb area on a metal bar of the JP. She reported that she was able to finish her work, but when she took her last break and removed her gloves she saw that her thumb and palm were swollen and bruised and she had a large knot on top of her hand between her thumb and wrist. Appellant requested that OWCP review the new medical reports because she had not been able to be examined by a physician until August 28, 2014.

Dr. Vu continued to treat appellant. In reports dated October 9, 2014 to January 8, 2015, She related appellant's continued complaints of left hand pain with any kind of repetitive use of activity. Upon physical examination, Dr. Vu observed tenderness to palpation over the base of the CMC joint of appellant's thumb and well-maintained flexion and extension. She diagnosed sprain of the CMC joint, osteoarthritis, and tendinitis. Dr. Vu recommended that appellant continue modified light duty.

By decision dated February 23, 2015, an OWCP hearing representative affirmed the September 18, 2014 decision with modification. He determined that appellant had established that the incident occurred as alleged and had established a diagnosed thumb condition, but denied her claim because the medical evidence of record was insufficient to establish that the left thumb condition was causally related to the accepted July 24, 2014 employment incident.

Appellant submitted a February 5, 2015 report by Dr. Vu, who related appellant's complaints of generalized pain and achiness with regards to her thumb. Upon physical examination, Dr. Vu observed palpability of the subluxations of the metacarpal CMC joint

region and found tenderness could be reproduced in the CMC joint. She diagnosed sprain of the CMC. Dr. Vu reported that appellant had a “severe complex injury associated with [appellant’s] left hand first CMC joint.” Appellant also resubmitted Dr. Vu’s reports dated August 28, 2014 to January 8, 2015.

A March 16, 2015 left hand x-ray examination report by Dr. Andrew Cox showed degenerative changes involving the CMC joint of the thumb similar to the hand radiographs performed on July 24, 2014.

In an April 7, 2015 report, Dr. Vu indicated that appellant’s hand began to flare up again and was starting to bother her. Upon examination, she observed pain along the base of appellant’s CMC joint as well as some subluxation. Dr. Vu related that she reviewed appellant’s pathology of her initial July 24, 2014 initial injury and how it happened, as well as appellant’s employment history at the employing establishment. She noted that, based on appellant’s mechanism of injury and clinical condition, appellant had a work-related injury associated with her left hand from the trauma on July 24, 2014 and CMC arthritis. Dr. Vu further reported that, on more probable than not basis, appellant’s occupational exposure while working at the employing establishment was the origin of her progressively developing arthritis to the CMC joint, but she remained asymptomatic up until the July 24, 2014 injury. Dr. Vu concluded that appellant’s July 24, 2014 injury was what aggravated and caused the progression of worsening of the conditions and symptoms associated with the osteoarthritis, which ultimately led her to have severe degenerative osteoarthritic changes involving the CMC joint.

Dr. Vu diagnosed sprain of the carpometacarpal. She requested that appellant’s osteoarthritis condition be accepted.

On May 22, 2015 appellant requested reconsideration.

In a decision dated July 25, 2016, OWCP denied modification of the February 23, 2015 decision. It found that the medical evidence of record was insufficient to establish a causal relationship between appellant’s left thumb condition and the accepted July 24, 2014 employment incident. OWCP determined that Dr. Vu had not supported appellant’s opinion on causal relationship with medical rationale.

On October 3, 2016 appellant, through counsel, requested reconsideration. Counsel alleged that on July 24, 2014 appellant had sustained a left thumb injury when it was struck between a metal bar and a DPS tray. He noted that diagnostic testing showed that appellant had mild-to-moderate changes in the first metacarpal phalangeal joint. Counsel noted that Dr. Vu had concluded that appellant’s alleged July 24, 2014 work injury caused a permanent worsening of appellant’s preexisting degenerative condition in the CMC thumb joint by increasing the inflammation and hastening the degenerative process.

Counsel provided a letter dated September 14, 2016 where he had provided a series of leading questions to Dr. Vu and allowed her the option of replying “yes” or “no” to the questions. Dr. Vu signed and checked lines marked “yes” to the series of questions.

By decision dated October 14, 2016, OWCP denied modification of the July 25, 2016 decision. It found that the medical evidence of record failed to establish a causal relationship between appellant's thumb condition and the accepted July 24, 2014 employment incident.

On November 4, 2016 appellant again requested reconsideration. Counsel asserted that OWCP should have found that Dr. Vu's report was sufficient to constitute a reasoned medical report to establish causal relationship. He alleged that each statement to which Dr. Vu agreed by checking a box marked "yes" should be considered a competent medical opinion. Counsel noted that he was attaching a new October 25, 2016 report by Dr. Vu as evidence not previously submitted to support appellant's reconsideration request. He contended that Dr. Vu's opinion clearly established that the alleged July 24, 2014 work injury caused a permanent worsening of appellant's preexisting degenerative thumb condition.

In the October 25, 2016 report, Dr. Vu described that on July 24, 2014 appellant hit her left hand between a metal bar and a tray while at work. She explained that x-rays of appellant's left hand showed mild narrowing of the first carpal metacarpal joint of the left thumb with moderate osteophyte, which suggested that appellant had mild-to-moderate degenerative changes in the first metacarpal phalangeal joint. Dr. Vu reported that the degenerative changes, reflected in the diagnostic testing, had developed over time and were likely caused by the repetitive and hand-intensive work she did at the employing establishment. She explained:

“[T]he repetitive use of her left hand from occupational exposure likely caused damage or injury to the ligaments, tendons, and muscles in the carpal metacarpal joint in the left thumb. The repetitive use would cause overstretching and tearing of ligaments with resultant inflammation in the thumb joint that was never given an opportunity to heal, and would wear down the ligaments and muscles in the joint, causing the narrowing revealed in the x-rays.”

Dr. Vu further reported that when appellant injured her left thumb in July 2014, “that added trauma caused the previously asymptomatic degenerative condition to worsen and become symptomatic, and likely worsened the inflammation by causing further tearing and straining of the ligaments and muscles in the carpal metacarpal joint of the thumb.” She indicated that appellant had a degree of degenerative joint disease in the carpal metacarpal joint in the left thumb that had developed over time from her work at the employing establishment, but noted that appellant's degenerative condition was asymptomatic before her July 2014 work injury. Dr. Vu opined that “the injury in July 2014 caused more tearing and wrenching to the ligaments in the thumb joint, thereby causing inflammation and resulting pain and discomfort that did not exist before the July 2014 injury.” She reported that following the July 2014 injury the increased tearing of the ligaments and resultant inflammation caused appellant's disability and need for medical treatment.

By decision dated December 15, 2016, OWCP denied appellant's request for reconsideration, finding that she failed to submit any evidence sufficient to warrant further merit review under 5 U.S.C. § 8128(a). It found that Dr. Vu's October 25, 2016 report was duplicative of her previous reports.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA³ has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence⁴ including that he or she sustained an injury in the performance of duty and that any specific condition or disability for work for which he or she claims compensation is causally related to that employment injury.⁵

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether “fact of injury” has been established.⁶ There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that she actually experienced the employment incident at the time, place, and in the manner alleged.⁷ Second, the employee must submit evidence, generally only in the form of probative medical evidence, to establish that the employment incident caused a personal injury.⁸ An employee may establish that the employment incident occurred as alleged, but fail to show that his or her disability or condition relates to the employment incident.⁹

Whether an employee sustained an injury in the performance of duty requires the submission of rationalized medical opinion evidence.¹⁰ 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.¹¹ The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician’s opinion.¹²

³ *Id.*

⁴ *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

⁵ *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁶ *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

⁷ *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

⁸ *David Apgar*, 57 ECAB 137 (2005); *John J. Carlone*, 41 ECAB 354 (1989).

⁹ *T.H.*, 59 ECAB 388 (2008); *see also Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006).

¹⁰ *See J.Z.*, 58 ECAB 529 (2007); *Paul E. Thams*, 56 ECAB 503 (2005).

¹¹ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

¹² *James Mack*, 43 ECAB 321 (1991).

While the claimant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence and to see that justice is done.¹³

ANALYSIS -- ISSUE 1

Appellant filed a traumatic injury claim alleging a left thumb injury on July 24, 2014 in the performance of duty. OWCP accepted that on July 24, 2014 she hit her hand between a metal bar and a DPS tray at work and that she was diagnosed with left thumb CMC joint sprain and degenerative joint disease. It denied appellant's claim, however, because the medical evidence of record failed to establish how the accepted July 24, 2014 employment incident caused the diagnosed conditions.

The Board finds that this case is not in posture for decision.

Appellant submitted various reports by Dr. Vu dated from August 28, 2014. The Board finds that the September 16, 2014 and April 7, 2015 reverse order reports of Dr. Vu provide medical rationale explaining how the accepted employment incident caused or contributed to an aggravation of appellant's degenerative joint disease condition and they strongly suggest and support a relationship between the accepted July 24, 2014 incident and her left thumb condition.¹⁴ While the reports from Dr. Vu are not completely rationalized, they are consistent in indicating that appellant sustained an exacerbation of her degenerative joint condition and are not contradicted by any substantial medical or factual evidence of record.¹⁵

It is well-established that proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter.¹⁶ While the claimant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence and to see that justice is done.¹⁷ Thus, the Board will remand the case to OWCP for further development to obtain a rationalized medical opinion as to whether appellant's condition is causally related to the employment incident and issue a *de novo* decision on whether she sustained an injury causally related to the July 24, 2014 employment incident, as alleged.¹⁸

¹³ *Donald R. Gervasi*, 57 ECAB 281, 286 (2005); *Jimmy A. Hammons*, 51 ECAB 219 (1999); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983).

¹⁴ *See L.F.*, Docket No. 14-1906 (issued August 13, 2015) (the Board determined that while reports by a claimant's treating physician were not completely rationalized to establish a work-related injury they strongly supported a relationship between the employment incident and diagnosed condition and remanded the case for OWCP to further develop the medical evidence).

¹⁵ *See E.J.*, Docket No. 09-1481 (issued February 19, 2010). *Richard E. Simpson*, 55 ECAB 490, 500 (2004); *John J. Carlone*, 41 ECAB 354, 360 (1989).

¹⁶ *See Vanessa Young*, 56 ECAB 575 (2004).

¹⁷ *Supra* note 13.

¹⁸ Because of the disposition of the first issue, the second nonmerit issue is moot.

CONCLUSION

The Board finds that this case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the October 14, 2016 decision of the Office of Workers' Compensation Programs is set aside and the case remanded to OWCP for further action consistent with this decision of the Board.¹⁹

Issued: December 15, 2017
Washington, DC

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

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

¹⁹ Colleen Duffy Kiko, Judge, participated in the original decision, but was no longer a member of the Board effective December 11, 2017.