United States Department of Labor
Employees' Compensation Appeals Board

D.C., Appellant	)	
	)	**Docket No. 17-0690**
and	)	**Issued: July 19, 2017**
	)	
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Melville, NY, 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 6, 2017 appellant filed a timely appeal from a January 6, 2017 merit decision 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 has met her burden of proof to establish a right wrist condition causally related to factors of her federal employment.

On appeal appellant contends that she sustained a right wrist injury due to her repetitive work duty.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On October 6, 2016 appellant, then a 22-year-old postal support employee (PSE) mail processing clerk, filed an occupational disease claim (Form CA-2) alleging that she developed pain, weakness, and swelling in her right wrist after three to four hours of repeatedly flipping boxes of mail onto a machine at work. She first became aware of her condition and of its relationship to her federal employment on September 29, 2016. Appellant stopped work on October 5, 2016. On the reverse side of the claim form, the employing establishment controverted her claim. It indicated that it received notice of the claim on October 5, 2016. Appellant was seen by a physician on October 4 and 5, 2016 and the employing establishment accommodated her for one day on October 4, 2016 to work in manual flats lifting handfuls of flats and sorting them into cases. She was sent home on October 6, 2016 due to the fact that no work was available. The employing establishment contended that between September 29 and October 4, 2016 appellant did not say anything and did not report her claimed injury until October 5, 2016.

In an October 6, 2016 narrative statement, appellant further described the development of her right wrist condition. After a few hours into her shift on September 29, 2016, appellant experienced pain in her right wrist. Appellant knew the pain began at work because she never had that pain before and it started in the middle of continuously flipping boxes of mail onto a machine which involved repetitive twisting of her wrist. She pushed through her pain at work. During the next few days, appellant wore a wrist support band and thought her wrist would improve. However, she experienced pain, weakness, stiffness, and swelling for which she sought medical treatment twice. Appellant related that her physician found that she had a repetitive strain injury and may need to be evaluated by an orthopedic specialist. Her wrist was placed in a splint for better support and she was prescribed medication for swelling. Appellant maintained that she never had any prior problems with her wrists or hands.

In an October 20, 2016 note, appellant related that she was also employed at Sears where she only worked one day a week, for five hours.

Appellant submitted a position description for a PSE mail processing clerk. Her duties and responsibilities included: (1) making one or more sortations of outgoing and/or incoming mail using appropriate sort program or manual distribution scheme; (2) loading mail onto automated equipment, pulling out nonprocessable items, entering sort plan and starting equipment, monitoring flow of mail to ensure continuous feed, sweeping separated mail from bins stackers, and stopping equipment when distribution run or operation was completed on a rotational basis; (3) running machine report, clearing jams, contacting maintenance for assistance when required, preparing work area, and ensuring all necessary support equipment and materials, including labels, trays, and other containers were in place; (4) removing sorted mail from bins or separations and placing into appropriate trays or containers for further processing or dispatch based on knowledge of operating plans and dispatch schedules or at the instruction of supervisors or expediters, and possibly riffling or verifying mail to ensure sortation accuracy as needed; (5) possibly providing service at public window for nonfinancial transactions, maintaining records of mails, examining balances in advance deposit accounts, and recording and billing mail requiring special service; (6) following established safe work methods, procedures, and safety precautions while performing all duties; and (7) performing other duties as assigned.

Appellant also submitted a summary of visit and a postinjury evaluation form dated October 4 and 5, 2016 from Dr. Attia Hussain, a Board-certified internist, and Dr. Steve Jacobs, a family practitioner, respectively. Drs. Hussain and Jacobs noted date of injury as September 29, 2016 and their diagnoses of work-related right wrist pain and repetitive strain injury. The physicians indicated that appellant's right wrist pain was secondary to repetitive use. Drs. Hussain and Jacobs advised that she could return to work eight hours a day with partial restrictions. Dr. Hussain indicated that appellant's work restrictions were for seven days and recommended a follow-up evaluation on October 11, 2016.

In an October 12, 2016 postinjury evaluation form, Dr. Russell Flood, a physician Board-certified in emergency medicine, listed the date of injury as September 29, 2016. He diagnosed de Quervain's tenosynovitis and advised that appellant could not work because she still had wrist pain.

In an October 24, 2016 narrative medical report, Dr. Peyton L. Hays, an orthopedic surgeon, indicated that appellant presented with right wrist pain. She informed him that approximately three weeks earlier, on September 29, 2016, she began to experience pain diffusely throughout her right wrist while performing a repetitive task at work that involved flipping heavy boxes of mail to empty them. When appellant's pain failed to improve, she sought treatment from an urgent care center and was provided with a splint. Dr. Hays noted a history of her medical, social, and family background. He discussed findings on physical and x-ray examination and provided an impression of right wrist pain with likely tenosynovitis, resolving. Dr. Hays recommended that appellant return to her regular work and continue to wear a thumb spica splint as needed and a splint at work to avoid aggravation of her wrist.

In an October 24, 2016 x-ray report, Dr. William A. Weiner, a Board-certified radiologist, found no fracture of the right wrist.

In an October 6, 2016 e-mail, the employing establishment again controverted the claim, contending that appellant worked from September 29 to October 3, 2016 and did not report her claimed injury to her supervisors until October 5, 2016.

By letter dated November 17, 2016, OWCP informed appellant that the evidence of record was insufficient to support her claim. It provided a questionnaire for completion and advised her to describe in detail the employment-related activities which she believed contributed to her condition, how often she performed the activities described, for how long on each occasion, and all activities and hobbies outside of her federal employment. OWCP also requested that appellant submit medical evidence, including a detailed narrative report from her physician, which included a history of the injury and a medical explanation with objective evidence of how the reported work activities caused, contributed to, or aggravated the claimed condition. She was afforded 30 days to submit the requested information.

In support of her claim, appellant submitted progress notes dated October 4 and 5, 2016 from Drs. Hussain and Jacobs, respectively. The physicians reported a history of injury that five to six days earlier appellant developed right wrist pain due to repetitively pulling and flipping boxes of mail during her shifts at work. Drs. Hussain and Jacobs noted findings on physical

examination and reiterated their prior assessments of work-related right wrist pain and repetitive strain injury.

In an October 12, 2016 progress note, Dr. Flood indicated that appellant was seen on October 4 and 5, 2016 for right wrist strain from repetitive use while working at the employing establishment. He discussed findings on examination and assessed work-related right wrist pain and de Quervain's tendinitis.

In a November 9, 2016 ancillary medical report, Dr. Weiner diagnosed right wrist pain.

By decision dated January 6, 2017, OWCP denied appellant's claim, finding that she had failed to establish fact of injury. Specifically, it found that she failed to establish the factual portion of her claim as she had not responded to the questions contained in the November 17, 2016 development questionnaire. Additionally, OWCP further found that appellant failed to submit rationalized medical evidence explaining how the diagnosed medical condition was caused by the work injury or event.

LEGAL PRECEDENT

An employee seeking benefits under FECA[2] has the burden of proof to establish 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 filed within the applicable time limitation; that an 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.[3] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[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 medical evidence required to establish causal relationship is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable certainty, and must be supported by

[2] *Supra* note 1.

[3] *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[4] *S.P.*, 59 ECAB 184 (2007); *Victor J. Woodhams*, 41 ECAB 345 (1989); *Joe D. Cameron*, 41 ECAB 153 (1989).

medial rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.[5]

An employee's statement that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.[6] Moreover, an injury does not have to be confirmed by eyewitnesses. The employee's statement, however, must be consistent with the surrounding facts and circumstances and her subsequent course of action. An employee has not met his or her burden of proof to establish the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim. Circumstances such as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury, and failure to obtain medical treatment may, if otherwise unexplained, cast doubt on an employee's statement in determining whether a *prima facie* case has been established.[7]

ANALYSIS

Appellant filed an occupational disease claim alleging a right wrist injury due to repeatedly flipping boxes of mail onto a machine as part of her federal employment duties. OWCP denied her claim finding that the evidence of record was insufficient to establish that she performed the duties alleged. The Board finds that the evidence establishes that appellant, as a PSE mail processing clerk, engaged in duties related to this position.

On her Form CA-2, appellant explained that her injury was caused by repeatedly flipping boxes of mail onto a machine for three to four hours. A description of her PSE mail processing clerk position included loading mail onto automated equipment. The employing establishment did not dispute that appellant performed this work duty. Instead, it contended that she provided late notification of injury as she did not report her injury until October 5, 2016. Appellant's notification of injury on that date was provided only six days after she became aware of her injury and its relationship to her employment on September 29, 2016. This alone does not constitute late notification of injury. The Board finds that appellant has sufficiently identified and established the work factor that she believed caused an employment injury.[8]

The Board finds, however, that appellant has submitted insufficient medical evidence to establish that her repetitive work duty caused or aggravated a right wrist injury.[9]

Appellant was treated by Drs. Hussain, Jacobs, and Flood who prepared reports and progress notes on October 4, 5, and 12, 2016 and noted that appellant had work-related right wrist pain, repetitive strain injury, and de Quervain's tendinitis secondary to repetitive use.

[5] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams, id.*

[6] *R.T.*, Docket No. 08-408 (issued December 16, 2008); *Gregory J. Reser*, 57 ECAB 277 (2005).

[7] *Betty J. Smith*, 54 ECAB 174 (2002); *L.D.*, Docket No. 16-0199 (issued March 8, 2016).

[8] *See Louise F. Garnett*, 47 ECAB 639 (1996); *Loise G. Moore*, 20 ECAB 165 (1968).

[9] *E.M.*, Docket No. 15-1120 (issued January 13, 2016).

While these physicians attributed the diagnosed conditions to appellant's employment, they failed to explain how her established repetitive work duty caused or aggravated her right wrist conditions. The Board has found that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale.[10] The Board finds that the lack of medical rationale diminishes the probative value of the opinions of Drs. Hussain, Jacobs, and Flood.[11]

Appellant was treated by Dr. Hays on October 24, 2016 for right wrist pain she developed after repeatedly emptying heavy boxes of mail by flipping them on September 29, 2016. He reported findings on physical and x-ray examination. Dr. Hays' diagnosis of right wrist pain with likely tenosynovitis is speculative and fails to establish a firm medical diagnosis.[12] Furthermore, he did not provide medical reasoning to explain how work duties caused or aggravated her medical condition.[13]

In a November 9, 2016 report, Dr. Weiner indicated that appellant had right wrist pain. The Board has held that pain is a symptom, not a compensable medical diagnosis.[14] Dr. Weiner's October 24, 2016 x-ray report noted that appellant did not have a right wrist fracture. He did not provide a diagnosis that was caused or contributed to by the established work factor. For the stated reasons, the Board finds that Dr. Weiner's reports are insufficient to establish appellant's claim.

The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference of causal relation.[15] An award of compensation may not be based on surmise, conjecture, speculation, or upon appellant's own belief that there was a causal relationship between his or her condition and his or her employment.[16] Causal relationship must be based on rationalized medical opinion evidence.[17] A physician must accurately describe appellant's work duties and medically explain the pathophysiological process by which these duties would have caused or aggravated her condition.[18] As appellant did not

[10] *T.M.*, Docket No. 08-075 (issued February 6, 2009); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

[11] *Deborah L. Beatty*, 54 ECAB 340 (2003) (where the Board found that in the absence of a medical report providing a diagnosed condition and a reasoned opinion on causal relationship with the employment incident, appellant did not meet her burden of proof).

[12] *K.W.*, Docket No. 12-1467 (issued April 5, 2013).

[13] *See supra* note 9.

[14] *K.W.*, Docket No. 12-1590 (issued December 18, 2012).

[15] *L.D.*, Docket No. 09-1503 (issued April 15, 2010); *D.I.*, 59 ECAB 158 (2007); *Daniel O. Vasquez*, 57 ECAB 559 (2006).

[16] *Patricia J. Glenn*, 53 ECAB 159, 160 (2001).

[17] *M.E.*, Docket No. 14-1064 (issued September 29, 2014).

[18] *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).

submit a rationalized medical opinion supporting that her diagnosed conditions were causally related to the established employment factor, she did not meet her burden of proof.

On appeal, appellant contends that she sustained a right wrist injury due to her repetitive work duty. As discussed above, none of the medical reports submitted by appellant contain an opinion or explanation as to how her right wrist conditions were caused or aggravated by the established employment factor.

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 failed to meet her burden of proof to establish a right wrist condition causally related to factors of her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the January 6, 2017 decision of the Office of Workers' Compensation Programs is affirmed, as modified.

Issued: July 19, 2017
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