United States Department of Labor
Employees' Compensation Appeals Board

E.C., Appellant	)	
and	)	**Docket No. 16-0925**
	)	**Issued: March 3, 2017**
U.S. POSTAL SERVICE, POST OFFICE, Coram, NY, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On April 1, 2016, appellant filed a timely appeal from a March 7, 2016 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 established a recurrence of disability beginning on December 26, 2012 causally related to her November 26, 2012 injury.

FACTUAL HISTORY

OWCP accepted that on November 26, 2012 appellant, then a 40-year-old, "PSE" clerk, sustained an injury in the performance of duty when her right wrist was pinned between a cart

[1] 5 U.S.C. § 8101 *et seq.*

and support beam. After development, OWCP accepted the claim for contusion of the right wrist.[2] Appellant returned to full-duty work on November 27, 2012.

On January 4, 2013 appellant filed a claim for a recurrence of disability (Form CA-2a) commencing December 26, 2012. She indicated that she continued to work although her hand and wrist was swollen and painful. Appellant noted that she saw her physician on December 26, 2012 and she was put off work at that time. She advised that her claim was not a recurrence because "the pain and swelling never went away. I continued to work because I needed the money. However, the pain became unbearable." Appellant argued that there were no other injuries as her hand had never healed. The employing establishment advised that appellant returned to work and "appeared to be ok and is now stating that it is not a recurrence, but that it never got better after the original injury."

Initial treatment notes, dated November 26, 2012, from Dr. John Paul Blaber, Board-certified in emergency medicine and an attending physician, revealed that appellant was diagnosed with a right wrist contusion and no fracture. Dr. Blaber also advised that he had completed a work release form. A November 26, 2012 right wrist x-ray read by Dr. Douglas Dougherty, a Board-certified neuroradiologist, was normal.

In a December 21, 2012 report, Dr. Regis Renard, a Board-certified orthopedic surgeon, noted appellant's history of injury and treatment, which included a right carpal tunnel release prior to her injury. He examined the right wrist and diagnosed crushing injury of wrist. Dr. Renard noted that appellant had pain that was somewhat improved and he would treat her with a splint; however, she still had significant pain.

In a December 26, 2012 duty status report, a nurse diagnosed right wrist trauma, and advised that appellant could not work. He explained that appellant was right handed and had pain, sensitivity, and decreased range of motion in the right wrist. The nurse also provided a disability certificate of the same date and indicated no work until appellant was evaluated on January 9, 2013.

In a January 8, 2013[3] disability certificate, Dr. Hilton C. Adler, a Board-certified plastic surgeon, advised "due to injury [appellant] cannot work until [January 28, 2013]." In a duty status report also dated January 8, 2013, he advised that appellant could return to light duty on January 28, 2013. Dr. Adler noted that his clinical findings included a crush injury to the right hand and wrist. In a January 23, 2013 report, he described a severe crushing injury to the right hand with color changes which were painful to touch. Dr. Adler responded "no" with regard to whether appellant could return to work. In a January 29, 2013 treatment note, he advised that appellant was able to return to work without restrictions.

In a January 23, 2013 report, Dr. Steven J. Litman, Board-certified in anesthesiology and pain medicine, noted appellant's history of injury and her medical treatment. He examined her

[2] Appellant's claim was initially denied on March 15, 2013. However, in an October 24, 2014 decision, OWCP found that the case was accepted for right wrist contusion and payment of related medical expenses. On November 6, 2014 it accepted contusion of the right wrist.

[3] The report actually indicates 2012, but it appears to be a typographical error.

right hand and found hyperpathia in the dorsal aspect of the right hand. Dr. Litman noted that she was able to flex and extend her wrist approximately 30 degrees with pain. He found numbness into the third and fourth fingers of the right hand. Dr. Litman related that a magnetic resonance imaging (MRI) scan of the right wrist demonstrated second and third extensor compartment tenosynovitis, mostly post-traumatic in nature, extensor carpi ulnaris tenosynovitis, no acute fracture. He diagnosed right hand pain and recommended a right stellate ganglion block. Dr. Litman completed a duty status report and indicated that appellant was unable to return to work.

In a letter dated February 12, 2013, OWCP advised appellant of the additional factual and medical information needed to establish her claim for a recurrence and requested that she submit such evidence within 30 days.

OWCP received January 8, 2013 treatment notes from Dr. Adler, who noted appellant's history of injury and treatment. Dr. Alder examined her right wrist and found a slight degree of swelling with hypersensitivity localized in the dorsal wrist as well as Volar pain. He diagnosed crush injury to right wrist -- rule out neuropraxia versus generalized reflex sympathetic dystrophy. Dr. Adler recommended the use of a splint for two weeks and diagnostic testing.

A January 9, 2013 MRI scan of the right wrist, read by Dr. Albert Pradeep, a Board-certified diagnostic radiologist, revealed second and third extensor compartment tenosynovitis likely post-traumatic in nature, extensor carpi ulnaris tenosynovitis, and no evidence of fracture.

In a July 22, 2014 letter, appellant's then counsel indicated that he was providing new medical evidence from Dr. Zena Joseph, a Board-certified family practitioner. He referred to a May 8, 2014 report. However, the only report dated May 8, 2014 was from a physician assistant. OWCP also received copies of previous reports.

A May 20, 2015 x-ray of the right wrist read by Dr. Brett Silverman, Board-certified in physical medicine and rehabilitation, revealed no acute fracture or dislocation, some subchondral sclerosis consistent with early arthritis, and questionable lunate small erosion.

In a May 20, 2015 report, Dr. Silverman noted appellant's history of injury and treatment and reviewed the x-rays of the right wrist. He diagnosed right wrist pain/strain and indicated that appellant had a history of carpal tunnel release, with complaints of hand paraesthesias.

In a letter dated June 24, 2015, appellant noted that she was submitting additional evidence in support of her claim. She noted that the new evidence supported causation due to her time off from work and her continued absence due to her disabling condition.

On June 25, 2015 appellant filed a claim for leave without pay for the period February 9 to July 24, 2013.

A June 15, 2015 MRI scan of the right wrist read by Dr. Seema Meraj, a Board-certified diagnostic radiologist, revealed a full thickness tear of the membranous component of the scapholunate ligament sprain and partial tearing of the volar component and mild fraying of the triangular fibrocartilage, and no focal full thickness tear.

In reports dated June 18 and 19, 2015, Dr. Silverman noted that appellant had her right hand crushed between a cart and a wall and a preexisting right carpal tunnel surgery in 2001. He diagnosed scapholunate ligament tear and checked the box "yes" in response to whether he believed the conditions were caused or aggravated by an employment activity. Dr. Silverman indicated that appellant was disabled from December 26, 2012 to the present and was unable to return to work. He also submitted nerve conduction studies from June 11, 2015.

In a June 22, 2015 report, Dr. Joseph noted that appellant's right hand and wrist was jammed between a cart and pole while at work. She diagnosed a contusion and checked the box "yes" in response to whether she believed the conditions were caused or aggravated by an employment activity. Dr. Joseph advised that appellant was disabled from December 26, 2012 to the present and was unable to return to work as it was possible that she had permanent effects from the injury including decreased strength and chronic pain.

A July 20, 2015 report from Dr. Ather Mirza, a general surgeon, contained diagnoses which included: internal derangement of the right wrist; ulnar impaction syndrome; and tear of the scapholunate ligament. Dr. Mirza also provided an August 20, 2015 arthrogram.

On August 20, 2015 OWCP received the May 8, 2014 report from Dr. Joseph. Dr. Joseph noted that appellant had an injury to her right hand and wrist on November 26, 2012, in which her hand became caught between a mail cart and support beam while at work. She explained that x-rays were negative. Dr. Joseph indicated that appellant tried to return to work, but was unable to continue working due the pain and numbness. She explained that appellant was first seen in his office for the injury on December 26, 2012 and was referred to a hand specialist. Dr. Joseph indicated that an MRI scan revealed second and third extensor compartment tenosynovitis which was "likely post-traumatic in nature." She advised that it also showed extensor carpi ulnaris tenosynovitis. Dr. Joseph explained that appellant was seen by a hand specialist one time, but has been unable to return to him as he did not take her insurance and her claim was denied. She recommended further testing and noted that appellant was "unable to return to work due to the continuing pain, paresthesia's, decreased range of motion and decreased strength in her right hand and wrist." Dr. Joseph diagnosed right hand and wrist pain, 2 and 3 extensor compartment tenosynovitis, and opined they were "POST TRAUMATIC IN NATURE and paresthesia."

In decisions dated August 21 and 29, 2015, OWCP denied appellant's claim for a recurrence of disability. It found that the evidence failed to establish that appellant was disabled, or further disabled, due to a material change of the accepted conditions.

On September 8, 2015 appellant requested a review of the written record. She argued that her lost time from work was due to her work-related injuries. Appellant also noted that her physicians supported her time off from work. Regarding her symptoms, she explained that they did not come and go, but were continuous.

OWCP received copies of previously submitted reports.

Dr. Joseph also provided a June 11, 2013 attending physician's certification. She diagnosed a crush injury to the right wrist. Dr. Joseph responded "yes" that the injuries were the

direct result of an accident of external causation and placed restrictions of no lifting and no pulling and no use of right hand or wrist on appellant.

In a February 12, 2016 agency response, Caroline Kuil, a health and resources manager with the employing establishment, noted that appellant was terminated on July 24, 2013 due to the expiration of her one-year noncareer appointment from the employing establishment. She indicated that appellant was released to full duty on November 27, 2012 and she continued to work. Ms. Kuil also noted that appellant indicated that her claim was not a recurrence, but that her original injury "never got better." She also indicated that appellant saw several physicians and subsequently filed her claim for a recurrence on January 19, 2013.

By decision dated March 7, 2016, OWCP's hearing representative affirmed the August 29, 2015 decision.

LEGAL PRECEDENT

Section 10.5(x) of OWCP's regulations provide that a recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.[4]

An individual who claims a recurrence of disability resulting from an accepted employment injury has the burden of establishing that the disability is related to the accepted injury. This burden requires furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and who supports that conclusion with sound medical reasoning.[5]

Appellant has the burden of establishing that she sustained a recurrence of a medical condition[6] that is causally related to her accepted employment injury. To meet her burden, she must furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury and supports that conclusion with sound medical rationale.[7] Where no such rationale is present, the medical evidence is of diminished probative value.[8]

An award of compensation may not be based on surmise, conjecture, or speculation. Neither the fact that appellant's claimed condition became apparent during a period of

[4] 20 C.F.R. § 10.5(x); *see Theresa L. Andrews*, 55 ECAB 719 (2004).

[5] *Dennis E. Twardzik*, 34 ECAB 536 (1983); *Max Grossman*, 8 ECAB 508 (1956); 20 C.F.R. § 10.104.

[6] 20 C.F.R. § 10.5(y) (2002).

[7] *Ronald A. Eldridge*, 53 ECAB 218 (2001).

[8] *Mary A. Ceglia*, 55 ECAB 626 (2004); *Albert C. Brown*, 52 ECAB 152 (2000).

employment nor her belief that her condition was aggravated by her employment is sufficient to establish causal relationship.[9]

ANALYSIS

Appellant sustained an accepted employment injury on November 26, 2012. Her claim was accepted for contusion of the right wrist and elbow on November 16, 2014. Appellant returned to regular duty on November 27, 2012. On December 26, 2012 she stopped work completely and alleged a recurrence of total disability on that date. On February 12, 2013 OWCP advised appellant of the type of medical and factual evidence needed to establish her claim for a recurrence of disability. However, there is no rationalized medical opinion which sufficiently explains why appellant had a recurrence of disability on December 26, 2012 causally related to her November 26, 2012 injury.

Dr. Adler provided several reports dated January 8, 2013. He diagnosed a crush injury to the right wrist and opined that "due to injury [appellant] cannot work until [January 28, 2013]." The Board notes that the November 26, 2012 right wrist x-ray was normal and there was no fracture. Furthermore, the claim was only accepted for a contusion of the right wrist. It is unclear what the physician is referring to with regard to a crush injury. Dr. Adler saw appellant on January 23 and 29, 2013 and opined that appellant was unable to return to work without restrictions. Additionally, he did not offer an opinion regarding whether appellant had a recurrence of disability beginning December 26, 2012 causally related to her accepted employment injury. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[10]

In a January 23, 2013 report, Dr. Litman diagnosed right hand pain and indicated that appellant was unable to return to work. However, other than a diagnosis of pain, he did not diagnose a specific condition or specifically address causal relationship by stating how she was disabled due to a worsening of her accepted work-related conditions. Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[11]

Dr. Joseph also provided a June 11, 2013 attending physician's certification, diagnosed a crush injury to the right wrist and responded by checking a box marked "yes" that the injuries were the direct result of an accident of external causation. However, as indicated above, the claim is only accepted for a contusion and a crush injury is not a diagnosis. Furthermore, the Board has held that, when a physician's opinion on causal relationship consists only of checking "yes" to a form question, without explanation or rationale, that opinion has little probative value and is insufficient to establish a claim.[12]

[9] *Walter D. Morehead*, 31 ECAB 188 (1986).

[10] *See J.F.*, Docket No. 09-1061 (issued November 17, 2009) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

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

[12] *Deborah L. Beatty*, 54 ECAB 340 (2003).

In a May 8, 2014 report, Dr. Joseph noted that appellant had an injury to her right hand and wrist on November 26, 2012, in which her hand became caught between a mail cart and support beam while at work. She explained that x-rays were negative. Dr. Joseph indicated that appellant tried to return to work, but was unable to continue working due to the pain and numbness. She indicated that an MRI scan revealed second and third extensor compartment tenosynovitis which was "likely post-traumatic in nature." Dr. Joseph recommended further testing and noted that appellant was "unable to return to work due to the continuing pain, paresthesia's, decreased range of motion, and decreased strength in her right hand and wrist." She diagnosed right hand and wrist pain, 2 and 3 extensor compartment tenosynovitis, and opined they were "POST TRAUMATIC IN NATURE and paresthesia." However, these conditions were not accepted conditions and Dr. Joseph did not explain how they were subsequently attributed to the November 26, 2012 incident such that appellant was unable to work on or after December 26, 2012.

In a June 22, 2015 report, Dr. Joseph noted that appellant's right hand and wrist was jammed between a cart and pole while at work. She diagnosed a contusion and checked the box "yes" in response to whether she believed the conditions were caused or aggravated by an employment activity. Dr. Joseph advised that appellant was disabled from December 26, 2012 to the present and was unable to return to work. She opined that it was possible that appellant had permanent effects from the injury including decreased strength and chronic pain. However, as previously indicated, an opinion that consists of a response which includes checking "yes" to a form question, without explanation or rationale, has little probative value and is insufficient to establish a claim.[13] Furthermore, it is speculative in nature.[14]

In a May 20, 2015 report, Dr. Silverman diagnosed right wrist pain/strain and indicated that appellant had a history of carpal tunnel release, with complaints of hand paraesthesias. The Board notes that the only condition accepted by OWCP is a right wrist contusion. Furthermore, Dr. Silverman did not indicate that appellant was disabled commencing December 26, 2012. In reports dated June 18 and 19, 2015, he diagnosed scapholunate ligament tear and checked the box "yes" in response to whether he believed the conditions were caused or aggravated by an employment activity. Dr. Silverman indicated that appellant was disabled from December 26, 2012 to the present and was unable to return to work. The Board again notes these are not accepted conditions and merely checking a box marked "yes" without further rationale is insufficient support a recurrence of disability on December 26, 2012 causally related to the November 26, 2012 injury.[15]

A July 20, 2015 report from Dr. Mirza contained diagnoses which included: internal derangement of the right wrist; ulnar impaction syndrome; and tear of the scapholunate ligament. The Board notes that these are not accepted conditions and he did not attribute any increased disability to the accepted contusions.

[13] *Id.*

[14] *See Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962) (where the Board held that medical opinions based upon an incomplete history or which are speculative or equivocal in character have little probative value).

[15] *Supra* note 12.

OWCP received several diagnostic reports, including reports from Drs. Pradeep, Silverman, and Meraj, are also insufficient to establish appellant's claim. While they provide findings related to appellant's wrist condition, none of the physicians provided any opinion on whether appellant's current condition was causally related to the original November 26, 2012 employment injury and resulted in her inability to work from December 26, 2012. The Board has found that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[16]

OWCP received nurses' notes dated December 26, 2012. However, nurses are not physicians under FECA and are not competent to render a medical opinion.[17]

Accordingly, the Board finds that appellant has not met her burden of proof in this case as she has not submitted sufficiently reasoned medical opinion explaining why her recurrence of disability beginning December 26, 2012 was caused or aggravated by the accepted November 26, 2012 injury employment injury.

On appeal appellant argued that the employing establishment accepted her claim for a recurrence which they approved for continuation of pay. She also indicated that her union disability insurance approved the loss of work from December 2012 through August 2013 and she was seeking payment for the time from February to August 2013. Appellant noted that it was documented that she saw her physician each month. Furthermore, there was a gap of two years as her claim was denied. However, as found above, the record contains insufficient medical reasoning to support her 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 established that she sustained a recurrence of disability beginning on December 26, 2012 causally related to her November 26, 2012 injury.

[16] *R.E.*, Docket No. 10-679 (issued November 16, 2010); *K.W.*, 59 ECAB 271 (2007).

[17] *G.G.*, 58 ECAB 389 (2007).

ORDER

IT IS HEREBY ORDERED THAT the March 7, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 3, 2017
Washington, DC

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

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

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