United States Department of Labor
Employees' Compensation Appeals Board

J.H., Appellant	)	
and	)	**Docket No. 17-0248**
	)	**Issued: May 10, 2017**
SMITHSONIAN INSTITUTION, MUSEUM SUPPORT CENTER, Suitland, MD, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
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
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On November 14, 2016 appellant, through counsel, filed a timely appeal from a September 19, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant met her burden of proof to establish an occupational disease claim due to factors of her federal employment.

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.; see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On February 13, 2015 appellant then a 58-year-old lead security guard, filed an occupational disease claim (Form CA-2) alleging that she developed carpal tunnel syndrome as a result of typing on an elevated desk at work all day. She first became aware of her condition on September 29, 2014 and realized that it was causally related to her work on October 2, 2014. Appellant stopped work on January 16, 2015 and had carpal tunnel surgery.

Appellant submitted a January 9, 2015 report from Dr. Sabine Balzora, a Board-certified internist, who diagnosed right trigger thumb, bilateral carpal tunnel syndrome, osteoarthritis of the knees, and joint pain. Dr. Balzora recommended use of a thumb splint for 12 to 22 hours per day and a cane to prevent falls due to knee pain. In another January 9, 2015 report, she noted being appellant's primary care physician and advised that appellant had conditions involving the ligaments of her right thumb and carpal tunnel syndrome of her right hand and wrist. Dr. Balzora advised that, due to these acute medical conditions and upcoming surgery, appellant was unable to safely carry or operate her weapon for the next four weeks. In a verification of treatment form dated February 12, 2015, she noted that appellant was on acetaminophen-codeine for pain.

Appellant submitted a verification of treatment form dated December 19, 2014, from Dr. Sidney G. Chetta, a Board-certified orthopedist, who noted that she was scheduled to have surgery on January 16, 2015 and would be unable to work for approximately three to four weeks to allow adequate recovery time. On January 30, 2015 Dr. Chetta saw her in follow-up after surgery. In a verification of treatment form dated January 30, 2015, he noted having treated appellant on January 16 and 30, 2015. Dr. Chetta indicated that she could return to office work on February 16, 2015, but was unable to carry a weapon for eight weeks. In an attending physician's report (Form CA-20) dated February 13, 2015, he diagnosed carpal tunnel syndrome and right trigger thumb. Dr. Chetta noted that appellant had carpal tunnel release on January 16, 2015 and was undergoing postoperative care. He advised that she was totally disabled from January 16 to February 16, 2015 and could return to work on February 17, 2015. In a Form CA-16 dated February 13, 2015, Dr. Chetta diagnosed carpal tunnel syndrome and right trigger thumb. He noted that appellant had a right carpal tunnel release on January 16, 2015 and was undergoing postoperative care. Dr. Chetta noted that she was totally disabled from work during the period January 16 to February 16, 2015. In a verification of treatment form dated February 17, 2015, he indicated that appellant could return to work on February 23, 2015.

By letter dated April 30, 2015, OWCP advised appellant of the type of evidence needed to establish her claim. It particularly requested that she submit additional information including a comprehensive medical report from her treating physician containing a reasoned explanation as to how the specific work factors had contributed to her claimed injury.

Appellant provided a January 16, 2015 operative report from Dr. Chetta, who performed a carpal tunnel release of the right wrist and A1 pulley release of the right thumb. Dr. Chetta diagnosed carpal tunnel syndrome right wrist and trigger finger right thumb. In a progress note dated January 30, 2015, he indicated that appellant was status post right carpal tunnel release on January 16, 2015. Dr. Chetta indicated that the incision was clean and dry without drainage, the radial, medial, and ulnar motor strength was intact, and numbness and tingling in the medial

distribution was resolving. In a February 10, 2015 duty status report, he diagnosed right carpal tunnel syndrome and indicated that appellant could return to work on May 1, 2015 subject to restrictions. In a treatment verification form dated April 30, 2015, Dr. Chetta treated her on February 17, 2015 and noted that she could resume light-duty work until May 13, 2015. Appellant also submitted evidence from a nurse practitioner and physical therapy records.

By decision dated June 26, 2015, OWCP accepted that appellant did engage in the noted employment factors, but denied the claim as the medical evidence of record failed to establish an injury or medical condition causally related to the accepted work factors.

On June 21, 2016 appellant, through counsel, requested reconsideration. She submitted a June 9, 2016 report from Dr. Neil Allen, a Board-certified neurologist and internist. Dr. Allen did not examine appellant, but reviewed her medical records. He noted that she had reported being employed as an armed security guard which required typing on an elevated desk which forced flexion of her wrists, lifting up to 15 pounds and grasping, eight hours per day. Appellant noted that after two years in the job she noticed gradually worsening soreness on the inside of the right wrist, with grip strength weakness, and tingling in the palm of the hand. Dr. Chetta treated her, diagnosed carpal tunnel syndrome, and performed a carpal release on January 16, 2015. Appellant's current symptoms were intermittent pain and difficulty making a closed fist. Dr. Allen opined that her right wrist injury was work related and her case should be accepted for right carpal tunnel syndrome. He advised that appellant denied any symptoms related to carpal tunnel syndrome before her work as a security guard for the employing establishment.

In support of his causation opinion, Dr. Allen cited the *Merck Manual* which noted that the compression of the carpal tunnel produces paresthesia in the radial-palmar aspect of the hand plus pain in the wrist, in the palm, or sometimes proximal to the compression site in the forearm, and sensory deficit in the palmar aspect of the first three digits and/or weakness of thumb opposition. He noted that appellant's symptoms were consistent with the *Merck Manual*. Dr. Allen noted that the *Merck Manual* described possible etiologies related to carpal tunnel syndrome and occupations that require repeated forceful wrist flexion, violent muscular activity or forcible overextension of a joint, and mechanical stress like typing in a biomechanically unsound setting. He indicated that in appellant's case her elevated desk would produce repetitive, forceful wrist flexion. Dr. Allen also cited the A.M.A., *Guides to the Evaluation of Disease and Injury Causation* which indicated that occupations requiring repetitive hyperflexion and twisting of wrists increases the risk of carpal tunnel syndrome twofold. He noted other risk factors included manual handling, repetitive work, sustained forceful movement and repetitive work, force and duration of wrist flexion, and sustained forceful movement. Dr. Allen opined that for those reasons appellant's work duties led to the development of carpal tunnel syndrome in the right wrist due to repetitive activity.

In a decision dated September 19, 2016, OWCP denied modification of the decision dated June 26, 2015.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim. When an employee claims an injury in the performance of

duty, the employee must submit sufficient evidence to establish that she experienced a specific event, incident, or exposure occurring at the time, place, and in the manner alleged. The employee must also establish that such event, incident, or exposure caused an injury.[3]

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) 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 generally rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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 claimant.[4]

ANALYSIS

It is undisputed that appellant's work duties as a lead security guard involved typing on an elevated desk for prolonged periods of time, lifting up to 15 pounds, and grasping. However, the Board finds that she has submitted insufficient medical evidence to establish that her diagnosed conditions are causally related to specific employment factors.

Appellant submitted a June 9, 2016 report from Dr. Allen, who had not examined her, but had reviewed her medical records. Dr. Allen generally noted appellant's job duties, her medical history, and reported symptoms. He advised that her reported symptoms and work factors were consistent with the *Merck Manual's* description of possible etiologies for carpal tunnel syndrome. Dr. Allen also referenced the A.M.A., *Guides to the Evaluation of Disease and Injury Causation,* as supporting that appellant's condition was contributed to by work duties that involved repetitive activity. He opined that her right wrist injury was work related and her case should be accepted for right carpal tunnel syndrome. Although Dr. Allen supported causal relationship, he did not provide sufficient medical rationale explaining the basis of his conclusory opinion regarding the causal relationship between appellant's diagnosed conditions and her work duties.[5] He did not explain how or why typing on an elevated desk would have

[3] *See Walter D. Morehead,* 31 ECAB 188, 194 (1979) (occupational disease or illness); *Max Haber*, 19 ECAB 243, 247 (1967) (traumatic injury). *See generally John J. Carlone*, 41 ECAB 354 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[4] *Solomon Polen*, 51 ECAB 341 (2000).

[5] *Franklin D. Haislah,* 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value); *Jimmie H. Duckett,* 52 ECAB 332 (2001).

caused or aggravated the diagnosed conditions. Instead Dr. Allen cited medical literature. The Board has held that excerpts from publications have little probative value in resolving medical questions unless a physician shows the applicability of the general medical principles discussed in the articles to the specific factual situation in a case.[6] Here, Dr. Allen provided little medical rationale to explain how the medical journals applied to appellant's particular situation. He also noted that appellant denied carpal tunnel symptoms prior to her employment for the employing establishment. The Board, however, has held that an opinion that a condition is causally related to an employment injury because the employee was asymptomatic before the injury is insufficient, without supporting rationale, to support a causal relationship.[7] Therefore, the report of Dr. Allen is insufficient to meet appellant's burden of proof.[8]

Appellant submitted reports and treatment notes from Dr. Chetta. Dr. Chetta noted appellant's status, findings, diagnoses, and recommended treatment. However, these reports are insufficient to establish the claim as he did not provide a history of injury[9] or specifically address whether appellant's employment activities had caused or aggravated a diagnosed medical condition.[10] Likewise, reports from Dr. Balzora on January 9, 2015, who noted treating appellant, are also insufficient to establish the claim as she did not address whether appellant's employment activities had caused or aggravated a diagnosed medical condition.[11]

The record also contains evidence from a nurse practitioner and a physical therapist. The Board has held that treatment notes signed by nurse practitioners or physical therapists are not considered medical evidence as these providers are not considered physicians under FECA.[12]

The remainder of the medical evidence does not provide an opinion on the causal relationship between appellant's job and her diagnosed carpal tunnel syndrome. For this reason, this evidence is not sufficient to meet appellant's burden of proof.[13]

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[6] *Roger G. Payne*, 55 ECAB 535 (2004).

[7] *Kimper Lee*, 45 ECAB 565 (1994).

[8] *See L.D.*, Docket No. 09-1503 (issued April 15, 2010) (the fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two).

[9] *Frank Luis Rembisz*, 52 ECAB 147 (2000) (medical opinions based on an incomplete history or which are speculative or equivocal in character have little probative value).

[10] *A.D.*, 58 ECAB 149 (2006) (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] *See id.*

[12] *See David P. Sawchuk*, 57 ECAB 316 (2006) (lay individuals such as physicians assistants, nurses, and physical therapists are not competent to render a medical opinion under the FECA); 5 U.S.C. § 8101(2) (this subsection defines a "physician" as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law). *See also Paul Foster*, 56 ECAB 208 (2004).

[13] *See supra* note 10.

The employing establishment issued appellant a Form CA-16 authorizing medical treatment. The Board has held that where an employing establishment properly executes a Form CA-16, which authorizes medical treatment as a result of an employee's claim for an employment-related injury, it creates a contractual obligation, which does not involve the employee directly, to pay the cost of the examination or treatment regardless of the action taken on the claim.[14] Although OWCP denied appellant's claim for an injury, it did not address whether she would be entitled to reimbursement of medical expenses pursuant to the Form CA-16. Upon return of the case record, OWCP should further address this matter.

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 met her burden of proof to establish an occupational disease claim due to factors of her employment.

ORDER

IT IS HEREBY ORDERED THAT the September 19, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 10, 2017
Washington, DC

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

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

[14] *See D.M.*, Docket No. 13-535 (issued June 6, 2013). *See also* 20 C.F.R. §§ 10.300, 10.304.