United States Department of Labor
Employees' Compensation Appeals Board

N.W., Appellant	)	
and	)	**Docket No. 17-1415**
	)	**Issued: November 7, 2017**
U.S. POSTAL SERVICE, POST OFFICE, Atlanta, GA, 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 June 13, 2017 appellant filed a timely appeal from a January 31, 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.[2]

ISSUE

The issue is whether appellant has established a recurrence of employment-related total disability commencing June 7, 2016.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that appellant submitted additional evidence on appeal. The Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its final decision. Therefore, this additional evidence cannot be considered by the Board for the first time on appeal. *See* 20 C.F.R. § 501.2(c)(1); *Sandra D. Pruitt,* 57 ECAB 126 (2005).

FACTUAL HISTORY

On July 1, 2006 appellant, then a 66-year-old building equipment mechanic, filed an occupational disease claim (Form CA-2) alleging that he sustained bilateral wrist osteoarthritis as a result of his federal employment. He wrote on the claim form that working with hand tools at work had contributed to his condition. OWCP accepted the claim on February 5, 2007 for severe bilateral wrist osteoarthritis. The record does not establish that any wage-loss compensation was paid at the time of injury.

By decision dated November 18, 2008, OWCP issued a schedule award for 17 percent right upper extremity permanent impairment and 13 percent left upper extremity permanent impairment. The period of the award was 93.60 weeks commencing September 19, 2008.

OWCP issued an additional schedule award by decision dated July 7, 2010. It found appellant was entitled to an additional six percent for the right upper extremity and four percent for the left upper extremity. The period of the award was 31.20 weeks from July 7, 2010.

In an October 14, 2015 report, Dr. Carlos Giron, a pain medicine specialist, provided results on examination. He indicated that appellant was working light duty with restrictions of 15 pounds lifting, no grasping, and no use of force with hands or wrists.

On August 1, 2016 appellant filed a claim for a recurrence of disability (Form CA-2a). On the claim form he wrote that his condition had worsened over the past several years. Appellant indicated that the date of the recurrence of disability was June 7, 2016.

Appellant submitted a note dated June 8, 2016 from Dr. Nicholas Pietrzak, a Board-certified family practitioner, indicating that appellant could return to work on June 18, 2016. The record also contains a June 8, 2016 report from a nurse practitioner and a June 9, 2016 form report with an illegible signature. The June 9, 2016 report notes that appellant injured his right wrist at work on June 6, 2016, while placing papers in folders.

In a June 13, 2016 note, Dr. Pietrzak wrote that appellant could return to work on June 14, 2016, with restrictions that included no use of force with wrists or hands. In a brief report dated June 13, 2016, a nurse practitioner opined that use of vibrating equipment had caused progressive deterioration of the wrists.

The employing establishment offered appellant a light-duty job as a modified equipment mechanic effective July 27, 2016. Appellant accepted the position on that date.

Appellant submitted an August 24, 2016 statement, explaining that he was called to work in an employing establishment office on June 6, 2016 and used his wrists with repetitive motion putting in file protectors.

In a report dated August 19, 2016, Dr. Pietrzak wrote that appellant had cystic/erosive arthritis and osteoarthritis of the hands, wrists, and fingers. He opined that this condition was likely the result of a repetitive work injury that first manifested in 2006. Dr. Pietrzak reported that his degenerative joint disease had worsened as of June 7, 2016. He determined that appellant could not lift more than 15 pounds with no repetitive work with his hands. Dr. Pietrzak

wrote that he knew of no reason for appellant's condition to have become so severe except from repetitive use of the hands.

By decision dated October 11, 2016, OWCP denied the claim for compensation. It found the medical evidence was insufficient to establish the claim.

On October 25, 2016 appellant requested a review of the written record before an OWCP hearing representative. He submitted an October 18, 2016 report from Dr. Pietrzak. In this report, Dr. Pietrzak repeated his comments from the August 19, 2016 report.

By decision dated January 31, 2017, the hearing representative affirmed the October 11, 2016 OWCP decision. He found that the medical evidence of record was insufficient to establish employment-related disability as of June 6, 2016. The hearing representative also found that the medical evidence of record did not establish a new injury based on June 6, 2016 work activity.

LEGAL PRECEDENT

OWCP's regulations define the term recurrence of disability as follows:

> "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. This term also means an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his or her work-related injury or illness is withdrawn or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations."[3]

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he or she can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative, and substantial evidence a recurrence of total disability and show that he cannot perform such light duty. As part of this burden, the employee must show either a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty requirements.[4] To establish a change in the nature and extent of the injury-related condition, there must be probative medical evidence of record. The evidence must include a medical opinion, based on a complete and accurate factual and medical history, and supported by sound medical reasoning, that the disabling condition is causally related to employment factors.[5]

[3] 20 C.F.R. § 10.5(x).

[4] *Albert C. Brown*, 52 ECAB 152 (2000); *Mary A. Howard*, 45 ECAB 646 (1994); *Terry R. Hedman*, 38 ECAB 222 (1986).

[5] *Maurissa Mack* 50 ECAB 498 (1999).

ANALYSIS

In the present case, OWCP accepted that appellant sustained bilateral wrist osteoarthritis as a result of his federal employment. Appellant was working light duty. On August 1, 2016 he filed a claim for a recurrence of total disability as of June 7, 2016.

It is appellant's burden of proof to establish a recurrence of total disability. The Board finds that he did not meet his burden of proof in this case.

Dr. Pietrzak submitted a brief note dated June 8, 2016 relating that appellant was disabled until June 18, 2016, with no further explanation. The Board has long held that medical conclusions unsupported by rationale are of diminished probative value and insufficient to establish causal relationship.[6] It is appellant's burden of proof to submit the necessary medical evidence to establish a claim for recurrence. The medical evidence must include rationale explaining how the physician reached his or her conclusion.[7] As this report from Dr. Pietrzak lacked medical rationale, it is of diminished probative value.

In an August 19, 2016 report, Dr. Pietrzak diagnosed cystic/erosive arthritis and osteoarthritis of the hands, wrists, and fingers, and opined that it was related to a repetitive work injury. OWCP has accepted bilateral wrist osteoarthritis. The issue in the case is whether appellant had employment-related disability on or about June 7, 2016 causally related to the diagnosed conditions. A conclusion without the necessary medical rationale explaining how and why the physician believes that a claimant's accepted exposure would result in the diagnosed conditions is insufficient to meet the claimant's burden of proof.[8]

In this regard Dr. Pietrzak did make a brief reference to appellant reporting that work on June 7, 2016 had worsened his conditions. A recurrence of disability, as noted above, is a change in the work-related condition without intervening injury or new work factors.[9] Dr. Pietrzak did not support a recurrence of disability on or about June 7, 2016.

It is well established that, if new work factors or exposure are alleged, this would constitute a new injury even if it involves the same part of the body previously injured.[10] The hearing representative made a brief finding that appellant had not established a new injury in this case. Dr. Pietrzak referred to work on June 7, 2016, without further explanation. Appellant asserted in an August 24, 2016 statement that on June 6, 2016 he used his wrists in repetitive

[6] *N.C.*, Docket No 10-1444 (issued March 2, 2011).

[7] *See Albert C. Brown*, 52 ECAB 152 (2000).

[8] *Cecelia M. Corley*, 56 ECAB 662 (2005).

[9] *Supra* note 4.

[10] *See R.M.*, Docket No. 08-1870 (issued January 15, 2009).

motion putting in file protectors. If he is claiming a disabling injury based on work incidents on June 6 or 7, 2016, he may pursue the issue with OWCP."[11]

The only other evidence of record pertaining to appellant's alleged period of recurrence of disability were reports from a nurse practitioner and a report with an illegible signature. The Board has held that treatment notes signed by nurse practitioners[12] have no probative value as these providers are not considered physicians under FECA.[13] Thus, the treatment notes of record from the nurse practitioner are of no probative medical value in establishing appellant's claim. Regarding the report with the illegible signature, it is unknown whether the author of the report is a physician. The Board has held that a report bearing an illegible signature lacks proper identification and cannot be considered probative medical evidence.[14] Thus, that report is of no probative value.

Based on the medical evidence of record, the Board finds appellant has not established an employment-related disability commencing June 7, 2016.

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 a recurrence of total disability commencing June 7, 2016.

[11] Appellant would have to provide a clear statement describing the alleged incidents, as well as medical evidence on causal relationship between a disabling condition and the identified employment incidents. *See John W. Montoya*, 54 ECAB 306 (2003).

[12] *Paul Foster*, 56 ECAB 208 (2004) (a nurse practitioner is not a physician pursuant to FECA).

[13] *See David P. Sawchuk*, 57 ECAB 316, 320n.11 (2006) (lay individuals such as physician assistants, nurses and physical therapists are not competent to render a medical opinion under 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); *A.L.*, Docket No. 16-1707 (issued August 17, 2017) (nurse practitioners are not considered physicians as defined under FECA).

[14] *I.L.*, Docket No. 16-1668 (issued September 8, 2017).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 31, 2017 is affirmed.

Issued: November 7, 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