

**United States Department of Labor
Employees' Compensation Appeals Board**

V.R., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Sparks, NV, Employer**

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**Docket No. 17-1166
Issued: October 24, 2017**

Appearances:

Alan J. Shapiro, Esq., for the appellant¹

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge

COLLEEN DUFFY KIKO, Judge

ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On May 8, 2017 appellant, through counsel, filed a timely appeal from a January 27, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (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 permanent impairment of the left upper extremity causally related to her accepted employment injury.

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 August 16, 2010 appellant, then a 48-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that she developed bilateral medial epicondylitis due to repetitive work duties. OWCP accepted bilateral medial epicondylitis and paid wage-loss compensation for total disability beginning October 18, 2010.

On August 18, 2011 appellant elected to receive retirement benefits from the Office of Personnel Management in lieu of workers' compensation. She filed a claim for a schedule award (Form CA-7) on November 16, 2011.

In a report dated December 3, 2012, Dr. Kenneth J. Matteoni, an orthopedic surgeon, indicated that appellant sought treatment for her left elbow on that date after an extended absence. He related, "According to [her] she injured the elbow approximately [six] weeks ago. [Appellant] states she was pouring spaghetti sauce into a baggie at home and she felt a 'ripping' sensation in the left elbow. She had some immediate pain and discomfort." Dr. Matteoni noted that appellant's pain occurred over the medial epicondyle. He interpreted x-rays as showing a "very small bony avulsion" and diagnosed left medial epicondylitis of the elbow.

Dr. Matteoni, in a January 14, 2013 progress report, discussed appellant's continued left elbow pain. He recommended surgery.

On February 21, 2013 Dr. James Christensen, a Board-certified orthopedic surgeon, performed a left debridement and repair of the flexor origin and a debridement of the medial epicondyle.

In a progress report dated April 3, 2013, Dr. Christensen reviewed the December 2012 and January 2013 reports from Dr. Matteoni, noting that he was treating appellant for "a severely symptomatic left medial epicondylitis...." He indicated that Dr. Matteoni was "treating her for a work-related problem, and the problem we were treating her for was the same problem that Dr. Matteoni was seeing her for."³

Dr. Aubrey A. Swartz, a Board-certified orthopedic surgeon and OWCP referral physician, performed an impairment evaluation on May 23, 2013 to determine the extent of any permanent impairment of the right upper extremity. Based on his report, by decision dated July 19, 2013, OWCP granted appellant a schedule award for one percent permanent impairment of the right upper extremity.

On August 7, 2013 appellant, through counsel, requested a telephone hearing before an OWCP hearing representative.

In an October 16, 2013 impairment evaluation, Dr. Michael E. Hebrard, a Board-certified physiatrist, noted that appellant had a history of "cumulative trauma to her elbows, first the right and then the left" as a result of performing her job duties. He advised that she also injured her left elbow "in her kitchen while tipping a pan. She felt something 'grip' and burn in her elbow."

³ Dr. Christensen also provided progress reports describing appellant's surgical recovery on March 6 and May 15, 2013.

Dr. Hebrard diagnosed chronic right medial epicondylitis and status post left flexor tendon exploratory surgery at the medial epicondyle region with continued symptoms. He attributed the diagnosed conditions to appellant's employment, noting that repetitive activities weakened "the flexor tendon which controls the flexion of the wrists, resulting in scarring and edema. In the course of her activities of daily living, [she] suffered an acute aggravation of this preexisting condition that she acquired from her years working for the [employing establishment]." Dr. Hebrard opined that appellant had two percent permanent impairment of the right upper extremity due to medial epicondylitis. For the left upper extremity, he determined that she had seven percent impairment due to a "painful injury."

Following a January 15, 2014 telephone hearing, by decision dated March 26, 2014, OWCP's hearing representative vacated the July 19, 2013 decision. He found that the opinion of Dr. Hebrard was sufficient to warrant further development regarding the extent of impairment of the right arm. The hearing representative further determined that OWCP should evaluate whether appellant's left arm condition was employment related and, if so, whether any impairment would warrant a schedule award.

By decision dated March 28, 2014, OWCP granted appellant a schedule award for an additional one percent for right upper extremity permanent impairment.

In July 2014 letters, counsel requested that OWCP issue a schedule award for the left arm. OWCP, in response, noted that after July 2011 she had not sought treatment for a left shoulder condition until December 3, 2012, when she sustained a nonemployment-related injury. It advised that the medical evidence was insufficient to demonstrate that appellant's left elbow injury occurred as a direct and natural consequence of her accepted injury. OWCP requested that she submit additional factual and medical evidence, including a medical report addressing the causal relationship between her current condition and the initial and intervening injury.

Dr. Christensen, in a January 29, 2013 progress report, received by OWCP on January 26, 2015, discussed appellant's history of bilateral tendinitis of the medial epicondyle, noting that she had no further right elbow problems since she stopped work. He indicated that in November 2012 she experienced a tearing sensation in her left elbow after lifting and twisting a pan filled with spaghetti. Dr. Christensen advised that x-rays obtained on December 3, 2012 showed some mild left elbow arthritis. He diagnosed medial epicondylitis of the left elbow.

By decision dated March 17, 2016, OWCP denied appellant's claim for a schedule award for the left upper extremity. It found that the medical evidence then of record failed to establish a permanent impairment of the left upper extremity due to her accepted work injury. OWCP determined that appellant had not demonstrated that the October 2012 injury to her left elbow was a consequence of the accepted employment injury.

On March 24, 2016 appellant, through counsel, requested a telephone hearing before an OWCP hearing representative. At the telephone hearing, held on November 15, 2016, she related that in 2012, subsequent to her employment injury, she splintered the bone and detached a tendon from her left elbow. Appellant maintained that the 2012 injury was to the same area of the body as previously injured and alleged that the work injury had weakened her elbow. The hearing representative informed her that her attending physician should explain whether the additional injury would have occurred absent her employment injury.

In a report dated December 8, 2016, Dr. Christensen discussed appellant's work history and related:

“[Appellant] states that she had bilateral medial epicondylitis and that this was work related, but I do not have any records that indicate it was or was not work related. I saw her in February 2013 with chronic left medial elbow pain. [Appellant] had been unresponsive to conservative measures. At one time, she lifted a heavy pan at home and dropped it because of sharp medial elbow pain.”

Dr. Christensen indicated that he performed a debridement of the medial epicondyle and repair of the flexor origin of the left elbow with good results. He advised:

“I do not have records that indicate whether or not that was part of a prior work-related problem, and if it was, then I think her surgery should be covered under her [w]orkers' [c]ompensation, as it was a continuation of the medial epicondylitis which, according to [appellant] had never resolved since she quit working on disability.”

By decision dated January 27, 2017, OWCP's hearing representative affirmed the March 17, 2016 decision. She found that the medical evidence was insufficient to establish that appellant's left elbow condition after October 2012 was the direct and natural result of her work injury. The hearing representative thus concluded that she had not established a left upper extremity impairment causally related to her employment injury.

LEGAL PRECEDENT

A schedule award can be paid only for a condition related to an employment injury. The claimant has the burden of proving that the condition for which a schedule award is sought is causally related to his or her employment.⁴ The evidence generally required to establish causal relationship is rationalized medical opinion evidence. The claimant must submit a rationalized medical opinion that supports a causal connection between her current condition and the employment injury.⁵ The medical opinion must be based on a complete factual and medical background with an accurate history of the claimant's employment injury and must explain from a medical perspective how the current condition is related to the injury.⁶

The general rule respecting consequential injuries is that, when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent intervening cause, which is attributable to the employee's own intentional conduct.⁷ The subsequent injury is compensable if it is the direct and natural result of a compensable primary injury. With respect to consequential injuries, the Board has stated that, where an injury

⁴ See *Veronica Williams*, 56 ECAB 367 (2005); *Annette M. Dent*, 44 ECAB 403 (1993).

⁵ *Manuel Gill*, 52 ECAB 282 (2001).

⁶ *Yvonne R. McGinnis*, 50 ECAB 272 (1999).

⁷ See *C.L.*, Docket No. 16-1567 (issued May 19, 2017).

is sustained as a consequence of an impairment residual to an employment injury, the new or second injury, even though not related to employment, is deemed, because of the chain of causation to arise out of and in the course of employment and is compensable.⁸ A claimant bears the burden of proof to establish a claim for a consequential injury through the submission of rationalized medical evidence.⁹

ANALYSIS

OWCP accepted that appellant sustained bilateral medial epicondylitis as a result of factors of her federal employment. She received wage-loss compensation from OWCP from October 18, 2010 until she retired in August 2011. On November 16, 2011 appellant filed a claim for a schedule award for the upper extremities. In October 2012 she injured her left elbow pouring spaghetti sauce out of a pan at home.

OWCP had previously granted appellant schedule awards for a total of two percent permanent impairment of the right upper extremity. In July 2014 counsel requested that OWCP adjudicate whether appellant was also entitled to a schedule award for the left upper extremity.

Appellant alleged a consequential injury to her left elbow at home in either October or November 2012 and that she had a permanent left arm impairment. As discussed, she has the burden to establish an employment-related permanent impairment of her left upper extremity for schedule award purposes.¹⁰ Appellant must submit rationalized medical evidence establishing a diagnosed condition as a direct and natural result of the accepted work injury.¹¹

In an October 16, 2013 impairment evaluation, Dr. Hebrard reviewed appellant's history of bilateral elbow trauma that arose from the performance of her work duties and a left elbow injury that occurred when she tipped a pan in her kitchen. He diagnosed chronic right medial epicondylitis and status post left elbow surgery at the medial epicondyle region. Dr. Hebrard attributed the diagnosed conditions to appellant's employment, advising that repetitive work duties weakened and scarred the flexor tendon, and that performing daily living resulted in an aggregation of the preexisting condition. He found that she had seven percent impairment of the left upper extremity due to a "painful injury." While Dr. Hebrard noted that appellant's work duties had weakened her tendon, he did not explain, with reference to the specific mechanism of injury, how appellant's left elbow pain after lifting a pan in October or November 2012 occurred as a natural consequence of the earlier work injury as opposed to an injury that occurred independently.¹² As such, his opinion is thus insufficient to meet her burden of proof.

Dr. Christensen, in a January 29, 2013 evaluation, discussed appellant's history of bilateral tendinitis at the medial epicondyle and of feeling a tear in her left elbow in

⁸ See *S.S.*, 59 ECAB 315 (2008); *Debra L. Dillworth*, 57 ECAB 516 (2006).

⁹ *Charles W. Downey*, 54 ECAB 421 (2003)

¹⁰ *Id.*

¹¹ See *S.S.*, *supra* note 8.

¹² See *M.K.*, Docket No. 09-2150 (issued August 3, 2010).

November 2012 after lifting and “twisting a pan of spaghetti.” He diagnosed medial epicondylitis of the left elbow. As Dr. Christensen did not address whether the current condition of left elbow medial epicondylitis resulted from the accepted work injury, his report is of diminished probative value.¹³ Dr. Christensen performed a surgical repair of the flexor origin and a medial epicondyle debridement on February 21, 2013. On April 3, 2013 he discussed Dr. Matteoni’s treatment of appellant for a work injury, and advised that he was treating her for the same condition. Dr. Christensen, however, did not evince a complete knowledge of her employment injury or explain how or why her current left elbow condition was a consequence of her accepted work injury, and thus his report is of little probative value.¹⁴ Such explanation is particularly necessary as the record is devoid of evidence showing that appellant sought medical treatment for her left elbow from July 2011 until December 2012.

Dr. Christensen, in a December 8, 2016 report, advised that appellant related that she sustained employment-related bilateral medial epicondylitis and also experienced medial elbow pain after lifting a pan at home. He noted that he did not have records supporting that she had a work-related elbow condition. Dr. Christensen related that if she had an employment-related elbow condition, her surgery should be covered by workers’ compensation as it was a continuation of the condition of medial epicondylitis. His opinion that appellant’s left elbow surgery should be covered by workers’ compensation, if appellant actually experienced a work injury, is equivocal in nature and thus of diminished probative value.¹⁵ Dr. Christensen further did not medically explain how her current left elbow condition was related to her employment injury.¹⁶ Medical evidence which provides a conclusion, but not a reasoned medical explanation, is of limited probative value.¹⁷

On December 3, 2012 Dr. Matteoni evaluated appellant after a long absence from treatment for left elbow pain. He noted that she described an injury to her elbow about six weeks earlier after pouring spaghetti sauce into a baggie. Dr. Matteoni diagnosed medial epicondylitis. On January 13, 2013 he recommended surgery. Dr. Matteoni did not relate the diagnosed condition of left elbow medial epicondylitis to the prior work injury. Thus, his opinion is insufficient to meet appellant’s burden of proof.¹⁸

Appellant has not submitted evidence from a physician who, based on an accurate factual history, found her left elbow condition subsequent to October 2012 was a consequence of her accepted employment injury and supported the opinion with sound medical reasoning.¹⁹ She has

¹³ See *C.L.*, Docket No. 17-0249 (issued June 22, 2017).

¹⁴ See *D.E.*, Docket No. 16-1604 (issued February 1, 2017).

¹⁵ See *D.D.*, 57 ECAB 734 (2006) (medical opinions that are speculative or equivocal in character are of diminished probative value).

¹⁶ See *Elba Vivas*, Docket No. 99-0515 (issued March 26, 2001).

¹⁷ See *M.A.*, Docket No. 15-1956 (issued February 3, 2017).

¹⁸ See *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *A.D.*, 58 ECAB 149 (2006).

¹⁹ See *W.M.*, Docket No. 16-1658 (issued May 3, 2017).

thus not met her burden of proof to show that she had an employment-related impairment of the left upper extremity.²⁰

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 and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not established that she sustained a permanent impairment of the left upper extremity causally related to her accepted employment injury.

ORDER

IT IS HEREBY ORDERED THAT the January 27, 2017 merit decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 24, 2017
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

²⁰ See *B.W.*, Docket No. 13-0039 (issued February 7, 2013).