United States Department of Labor
Employees' Compensation Appeals Board

D.H., Appellant	)	
and	)	**Docket No. 17-0520**
	)	**Issued: April 23, 2018**
DEPARTMENT OF THE ARMY, ANNISTON ARMY DEPOT, Anniston, AL, 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
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On January 9, 2017 appellant filed a timely appeal from a November 22, 2016 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 the claim.

ISSUE

The issue is whether appellant met her burden of proof to establish an injury causally related to the accepted March 17, 2016 employment incident.

FACTUAL HISTORY

On March 21, 2016 appellant, then a 39-year-old painter, filed a traumatic injury claim (Form CA-1) alleging that on March 17, 2016 she injured her right wrist while in the performance

[1] 5 U.S.C. § 8101 *et seq.*

of duty. She noted that she was painting inside a tank and felt a pop in her right wrist. Appellant did not stop work.

An authorization for examination and/or treatment, Form CA-16, was issued by the employing establishment on March 21, 2016.

On March 21, 2016 a physician assistant indicated that appellant was seen in June 2015 and diagnosed with tenosynovitis, but never followed up with orthopedics. He noted the history of the March 17, 2016 employment incident and diagnosed radial styloid tenosynovitis (de Quervain's) injury. Appellant was released to work with restrictions. The report was later cosigned by Dr. Aatif M. Hayat, Board-certified in occupational medicine, on March 24, 2016.

In a March 29, 2016 report, Dr. Michael R. Wiedmer, a Board-certified orthopedic surgeon, indicated that appellant felt a pop at the base of the thumb while working about two weeks ago. Prior to that, her hand had been going numb and waking her up at night. An assessment of right de Quervain's tendinitis and right carpal tunnel syndrome was provided. Dr. Wiedmer released appellant to light duty for three days. He opined, in a March 29, 2016 attending physician's report, by checking a box marked "yes" that the diagnosed right de Quervain's tendinitis and right carpal tunnel syndrome conditions were caused or aggravated by her employment activity. Dr. Wiedmer released appellant to work with no restrictions on May 20, 2016.

On May 10, 2016 Dr. Anthony J. Esposito, a Board-certified neurologist, indicated that the nerve conduction studies revealed evidence of a moderate right carpal tunnel syndrome. He released appellant to work without restrictions on May 11, 2016.

Forms CA-7 (claim for compensation) and CA-7a (time analysis form) for the intermittent period May 10 to 20, 2016 were also submitted.

By development letter dated May 26, 2016, OWCP advised appellant that the evidence of record was insufficient to support her claim. It indicated that a physician's opinion supported by a medical explanation as to how the reported work incident caused or aggravated the claimed injury was needed. OWCP afforded appellant 30 days to submit the requested information.

In response, OWCP received: a duplicative copy of the May 10, 2016 electrodiagnostic report; a June 9, 2016 Form CA-3 (report of work status); and clinic passes dated June 16 and August 24, 2016 from the employing establishment which noted Dr. Wiedmer had released appellant to light duty with no use of right hand. The provider who signed the June 16, 2016 clinic pass is unknown, while the August 24, 2016 clinic pass was signed by a registered nurse.

In a May 20, 2016 note, Dr. Wiedmer noted that appellant had elbow pain and the electromyogram (EMG) revealed significant carpal tunnel at the wrist. An assessment of right carpal tunnel syndrome and lateral epicondylitis was provided. Dr. Wiedmer recommended right carpal tunnel release and injection of the elbow. A May 31, 2016 request for authorization was attached. Dr. Wiedmer released appellant to light duty in a note dated June 8, 2016.

By decision dated July 6, 2016, OWCP denied appellant's claim for compensation. It found that the incident occurred as alleged, but that appellant had not submitted medical evidence

establishing that the accepted employment incident of March 17, 2016 caused or aggravated her diagnosed conditions of right carpal tunnel and right de Quervain's tendinitis.

On July 12, 2016 OWCP received appellant's July 11, 2016 request for an oral hearing before an OWCP hearing representative.[2] On August 29, 2016 it received appellant's July 11, 2016 request for reconsideration.

In letters dated August 9 and 10, 2016, appellant advised that she was requesting reconsideration. Multiple copies of her July 28, 2016 statement discussing her work injury were submitted, along with copies her July 11, 2016 request for reconsideration.

By letter dated September 12, 2016, OWCP informed the employing establishment of appellant's reconsideration request. In response, a representative from the employing establishment submitted a September 20, 2016 letter indicating that appellant's physician had indicated in an August 22, 2016 report that she was capable of working light duty with no use of the right hand. A copy of Dr. Wiedmer's August 22, 2016 note was attached, which indicated that appellant was released to light duty with no use of the right hand.

By decision dated November 22, 2016, OWCP denied modification of its July 6, 2016 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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]

In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.[5] The second component is whether the

[2] On July 21, 2016 appellant requested authorization to see a Dr. Sauer. In an August 19, 2016 letter, OWCP advised appellant that it was unable to authorize any treatment at this time and that she could follow her appeal rights attached to the July 6, 2016 decision.

[3] *Joe D. Cameron*, 41 ECAB 153 (1989).

[4] *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

[5] *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

employment incident caused a personal injury and generally can be established only by medical evidence.[6]

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.[7]

ANALYSIS

The Board finds that appellant has not submitted sufficient medical evidence to establish that the March 17, 2016 accepted employment incident caused or aggravated her diagnosed conditions.

In a March 21, 2016 report, later cosigned by Dr. Hayat, a physician assistant noted the history of the March 17, 2016 employment incident and diagnosed radial styloid tenosynovitis (de Quervain's) injury. He released appellant to work with restrictions. However, Dr. Hayat offered no opinion regarding the cause of appellant's diagnosed condition and resultant disability. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value.[8]

In a March 29, 2016 report, Dr. Wiedmer noted the history of the March 17, 2016 employment incident and that her hand had been going numb and waking her up at night before the reported incident. He provided an assessment of right de Quervain's tendinitis and right carpal tunnel syndrome and released her to light duty for three days. Dr. Wiedmer opined, in a March 29, 2016 attending physician's report, by checking a box marked "yes" that the diagnosed right de Quervain's tendinitis and right carpal tunnel syndrome conditions were caused or aggravated by her employment activity. A report that addresses causal relationship with a check mark, without medical rationale explaining how the employment incident caused or aggravated the alleged injury, is of diminished probative value and insufficient to establish causal relationship.[9] Dr. Wiedmer failed to provide a rationalized opinion explaining the causal relationship between the diagnosed conditions and the accepted employment incident.[10]

[6] *See Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *see also P.W.*, Docket No. 10-2402 (issued August 5, 2011).

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

[8] *M.M.*, Docket No. 16-1180 (issued October 26, 2016).

[9] *See R.U.*, Docket No. 17-0168 (issued January 9, 2018).

[10] *I.J.*, 59 ECAB 408, 415 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

In a May 20, 2016 note, Dr. Wiedmer provided an assessment of right carpal tunnel syndrome and lateral epicondylitis and recommended right carpal tunnel release and injection of the elbow. In numerous notes, he also released appellant to light duty either with or without restrictions. However, Dr. Wiedmer did not offer any medical opinion addressing whether the diagnosed conditions or her disability were caused or aggravated by the accepted March 17, 2016 employment incident.[11] Therefore, his reports are insufficient to meet appellant's burden of proof.

On May 10, 2016 Dr. Esposito indicated that the nerve conduction studies revealed evidence of a moderate right carpal tunnel syndrome. He released appellant to work with no restrictions on May 11, 2016. However, Dr. Esposito offered no opinion regarding the cause of appellant's diagnosed condition and resultant disability. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value.[12]

The August 24, 2016 report from a registered nurse is of no probative medical value. Registered nurses are not considered physicians as defined under FECA.[13]

The diagnostic testing of record is of diminished probative value and is insufficient to establish appellant's claim as it does not provide a physician's explanation regarding the causal relationship between appellant's diagnosed conditions and the March 17, 2016 employment incident.[14]

The Board notes that a Form CA-16, authorization for examination and/or treatment, was issued by the employing establishment on March 21, 2016. When the 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, the Form CA-16 creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP.[15]

Therefore, the Board finds that the medical evidence of record is insufficient to establish that appellant's diagnosed conditions are causally related to the accepted March 17, 2016 employment incident.

[11] *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

[12] *M.M.*, Docket No. 16-1180 (issued October 26, 2016).

[13] 5 U.S.C. § 8101(2) provides that a physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law. *E.B.*, Docket No. 17-1862 (issued January 12, 2018) (a nurse is not considered a physician under FECA); *see also G.A.*, Docket No. 09-2153 (issued June 10, 2010) (evidence from a registered nurse has no probative medical value as a nurse is not a physician as defined under FECA).

[14] *See K.E.*, Docket No. 17-1216 (issued February 22, 2018*); see also C.P.*, Docket No. 15-0600 (issued June 2, 2015).

[15] *See* 20 C.F.R. § 10.300(c); *Tracy P. Spillane*, 54 ECAB 608, 610 (2003).

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 injury causally related to the accepted March 17, 2016 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 22, 2016 is affirmed.

Issued: April 23, 2018
Washington, DC

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

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

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