United States Department of Labor
Employees' Compensation Appeals Board

V.G., Appellant	)	
and	)	**Docket No. 17-1425**
	)	**Issued: February 16, 2018**
U.S. POSTAL SERVICE, POST OFFICE, Philadelphia, PA, Employer	)	

Appearances:
Russell T. Uliase, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On June 16, 2017 appellant, through counsel, filed a timely appeal from a March 31, 2017 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 to consider the merits of this case.

ISSUE

The issue is whether appellant met her burden of proof to establish total disability for the period June 7 to September 2, 2016 causally related to her accepted employment conditions.

[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 19, 2016 appellant, then a 55-year-old vehicle maintenance clerk, filed an occupational disease claim (Form CA-2), alleging that she developed right and left trigger fingers as a result of performing repetitive data entry and writing in the performance of duty. She stated that she first became aware of her condition on December 10, 2015 and realized that it was causally related to factors of her federal employment on the same date. Appellant stopped work on February 17, 2016.

OWCP received reports from Dr. David J. Bozentka, a Board-certified orthopedist, beginning December 10, 2015, who noted referring appellant for therapy following right trigger thumb release. Dr. Bozentka also diagnosed acquired trigger finger and right carpal tunnel syndrome. On February 4, 2016 he treated appellant for bilateral finger complaints. Dr. Bozentka diagnosed acquired trigger finger. On April 8, 2016 he diagnosed bilateral long trigger fingers and bilateral trigger thumbs. Dr. Bozentka noted previously performing a left trigger thumb release on February 17, 2014 and right trigger thumb and carpal tunnel release on July 29, 2015. He opined that the bilateral trigger thumbs and bilateral long trigger fingers were directly caused by repetitive activities required by appellant's position as a senior clerk over the past 14 years. Dr. Bozentka indicated that the trigger fingers and thumbs were related to tendinitis which causes pain and locking with flexion-extension of the digits. He opined that the repetitive activities required in appellant's position led to the development of the nodule and symptoms of pain, locking, and triggering. Dr. Bozentka indicated that she had been off work due to the bilateral long trigger fingers since January 25, 2016, noting that the pain associated with the digits led her to be unable to perform her activities required in her job. He advised that appellant had reached maximum medical improvement with regard to nonoperative treatment. Dr. Bozentka recommended surgical release of the trigger digits.

Appellant also provided treatment records for anxiety from Dr. Shormeh Yeboah, a Board-certified family practitioner, dated January 25 to April 11, 2016. Dr. Yeboah reported treating appellant since November 27, 2013 for work-related injuries and stress.

On May 17, 2016 OWCP accepted appellant's claim for right and left trigger thumb and right and left middle finger trigger finger. It informed her of the steps to take if she wished to claim wage-loss compensation.

In an attending physician's report (Form CA-20) dated June 16, 2016, Dr. Bozentka noted appellant's history was significant for overuse since October 2015 and diagnosed bilateral thumb and middle finger trigger. He checked a box marked "yes" that her condition was caused or diagnosed by an employment activity and advised that she was totally disabled from February 4 to September 16, 2016. In a duty status report (Form CA-17) dated June 16, 2016, Dr. Bozentka diagnosed trigger finger and noted that appellant could not resume work.

Appellant filed Form CA-7 claims for compensation, for leave without pay (LWOP) due to total disability from work from June 7 to 24, 2016; June 25 to July 8, 2016; July 9 to 22, 2016; and July 23 to August 5, 2016.

In an August 4, 2016 letter, OWCP requested that appellant submit additional medical evidence to support her claim for compensation beginning June 7, 2016.

Appellant submitted additional treatment records from Dr. Bozentka. On February 4, 2016 Dr. Bozentka noted findings on examination of tenderness about the volar metacarpophalangeal (MCP) region and bilateral long fingers and limitation in full flexion of the thumb. He diagnosed bilateral trigger fingers and limitation of the right thumb flexion. Dr. Bozentka performed an injection and indicated that appellant was disabled from work. On March 18, 2016 he treated appellant for persistent triggering of the right thumb and bilateral long fingers with locking with flexion. Dr. Bozentka noted findings on examination of palpable nodules at the flexor tendon at the volar MCP region with catching of the right thumb and bilateral long fingers. He diagnosed right trigger thumb and bilateral long trigger fingers. Dr. Bozentka recommended surgery. He returned appellant to work subject to the restriction of no repetitive activities. In July 14 and 28, 2016 reports, Dr. Bozentka who diagnosed bilateral long trigger fingers. He noted triggering of the fingers with flexion, and tenderness about the volar MCP joint of the bilateral long fingers. Dr. Bozentka recommended surgical release of the bilateral long trigger fingers to relieve the pain, locking and triggering of the bilateral long fingers. He opined that the development of the trigger fingers was related to the activities appellant performed at work. Dr. Bozentka advised that she was partially disabled since January 25, 2016 related to the bilateral trigger fingers.

In a July 25, 2016 narrative statement, appellant noted that her injuries were caused by performing repetitive duties as a clerk for 15 years including repetitive handwriting and data entry. Her left thumb condition began on July 19, 2013 and her right thumb and carpal tunnel syndrome on October 10, 2014. Appellant returned to work in November 2015 and performed repetitive handwriting and data entry for parts, bills for fuel, oil, and emissions. She noted not working due to wrist, hand, and thumb symptoms. Appellant sought authorization for surgery. She indicated that she did not have any other injuries and did not participated in any hobbies, activities or another job since developing carpal tunnel and trigger thumbs.

Appellant was treated by Dr. Yeboah on July 29, 2016. Dr. Yeboah noted that appellant's hand injuries caused significant impairment and disability including an anxiety disorder. She noted that the primary trigger for appellant's anxiety was her hand injuries which were caused and accelerated by the requirements of her job.

In a letter dated August 1, 2016, appellant, through counsel, indicated that she used sick and annual leave after she stopped work and began using LWOP on June 7, 2016. Counsel indicated that she was not claiming lost wages or leave buy back for any time prior to February 4, 2016 when her orthopedist gave her cortisone injections and advised that she could no longer work due to her bilateral hand conditions.

On August 10, 2016 appellant indicated that her annual and sick leave was exhausted effective June 6, 2016 and she was claiming compensation beginning June 7, 2016. She sought medical attention for anxiety from the physical pain she had in both hands, but was not seeking a claim for compensation for anxiety. Appellant sought treatment for both hands. On August 8 and September 13, 2016, she filed claims for compensation (Form CA-7), for LWOP for total disability for the period August 6 to 19, 2016.

Appellant submitted an operative report from Dr. Bozentka dated September 7, 2016 who performed release of the bilateral long trigger finger and diagnosed bilateral long trigger fingers.[3] In an attending physician's report (Form CA-20) dated September 15, 2016, Dr. Bozentka diagnosed bilateral long trigger fingers by checking a box marked "yes" that her condition was aggravated by placing pressure on her bilateral palms and volar MCP joint. He that noted appellant was disabled from work February 4 to October 19, 2016.

In a decision dated September 28, 2016, OWCP denied appellant's claim for compensation for total disability for the period June 7 to September 2, 2016. It advised that the evidence of record failed to establish work-related disability during the period claimed.

On October 4, 2016 counsel requested an oral hearing before an OWCP hearing representative which was held on January 19, 2017.

Appellant submitted additional records from Dr. Bozentka. In a different July 28, 2016 report, Dr. Bozentka treated her for right carpal tunnel syndrome. He noted reviewing the job description provided by appellant for a position she performed from 2001 to the present time which noted extensive repetitive activities required. Dr. Bozentka noted that she had left trigger thumb release on February 17, 2014 and right trigger thumb and carpal tunnel release on July 29, 2015. He diagnosed right carpal tunnel syndrome by electromyogram. Dr. Bozentka opined that the right carpal tunnel syndrome was caused and accelerated by the employment conditions described by appellant including extensive repetitive activities with her hands as a senior clerk for 14 years. He advised that she was taken out of work on February 4, 2016 related to persistent symptoms about her hands. Dr. Bozentka recommended limiting appellant's repetitive activities.

On August 23, 2016 Dr. Bozentka treated appellant for triggering of the bilateral long fingers. He diagnosed trigger finger and recommended surgery. On October 25, 2016 Dr. Bozentka advised that appellant was totally disabled since February 4, 2016. He noted that she had bilateral trigger finger release on September 7, 2016 which was due to a work injury. Dr. Bozentka advised that appellant required therapy after surgery and would reach maximum medical improvement three months after surgery. In an October 25, 2016 attending physician's report (Form CA-20), he diagnosed bilateral thumbs and middle finger trigger. Dr. Bozentka noted by checking a box marked "yes" that appellant's condition was caused or aggravated by an employment activity and advised that she was totally disabled from February 4 to December 6, 2016. In an October 25, 2016 duty status report (Form CA-17), he diagnosed trigger finger and noted that she could not work.

On November 7, 2016 the employing establishment forwarded to OWCP a notice of recurrence (Form CA-2a), of disability alleging that appellant had a recurrence of disability on September 7, 2016 causally related to her accepted employment conditions. Appellant stopped work on September 7, 2016 to undergo bilateral hand surgery.

In a November 8, 2016 report, Dr. Bozentka noted that appellant was status post-release of the bilateral long trigger fingers on September 7, 2016. He reported treating her on

[3] On November 17, 2016 OWCP authorized the September 7, 2016 surgery.

October 25, 2016 and noted discomfort about the scars and difficulty fully extending the right long finger. Dr. Bozentka recommended bilateral hand therapy and advised that appellant was unable to work due to scar discomfort, lack of extension, and strength. In a December 6, 2016 attending physician's report (Form CA-20), he noted a history of injury of overuse since October 2015. Dr. Bozentka diagnosed bilateral thumbs and middle finger trigger and indicated that appellant's condition was caused or aggravated by work activity. He noted that she was totally disabled beginning February 4, 2016. Appellant also submitted physical therapy records.

On January 12, 2017 OWCP accepted appellant's claim for recurrence of disability. It noted that disability beginning September 7, 2017 was payable once it received appropriate pay rate information from the employing establishment.

In a January 17, 2017 report, Dr. Bozentka treated appellant for pain and swelling in her hands. He noted an essentially normal examination and returned her to work with restrictions of no repetitive activities. In a letter dated January 17, 2017, Dr. Bozentka noted that it was his medical opinion and definitive diagnosis that the bilateral trigger thumbs and bilateral trigger fingers were directly caused by repetitive activities appellant was required to perform over the past 14 years. He advised that the bilateral trigger thumbs and bilateral trigger fingers left her totally disabled from June 7 to September 2, 2016. In an attending physician's report (Form CA-20) dated January 17, 2017, Dr. Bozentka noted that appellant's history was significant for overuse since October 2015. He diagnosed bilateral thumbs and middle finger trigger and indicated that her condition was caused or aggravated by work activity. Dr. Bozentka noted that appellant was totally disabled from February 4, 2016 to January 17, 2017. In a work capacity evaluation (OWCP-5c) dated January 17, 2017, he noted that she could return to her usual job for eight hours a day with restrictions. Dr. Bozentka advised that appellant had reached maximum medical improvement and could work in a sedentary position.

By decision dated March 31, 2017, an OWCP hearing representative affirmed the decision dated September 28, 2016.

LEGAL PRECEDENT

Section 8102(a) of FECA[4] sets forth the basis upon which an employee is eligible for compensation benefits. That section provides: "The United States shall pay compensation as specified by this subchapter for the disability or death of an employee resulting from personal injury sustained while in the performance of his duty...." In general, the term "disability" under FECA means "incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of injury."[5] This meaning, for brevity, is expressed as disability from work.[6]

[4] 5 U.S.C. § 8102(a).

[5] 20 C.F.R. § 10.5(f). *See also William H. Kong,* 53 ECAB 394 (2002); *Donald Johnson,* 44 ECAB 540, 548 (1993); *John W. Normand,* 39 ECAB 1378 (1988); *Gene Collins,* 35 ECAB 544 (1984).

[6] *See Roberta L. Kaaumoana,* 54 ECAB 150 (2002).

For each period of disability claimed, the employee has the burden of proving that he or she was disabled from work as a result of the accepted employment injury.[7] Whether a particular injury caused an employee to be disabled from employment and the duration of that disability are medical issues which must be proved by the preponderance of the reliable, probative, and substantial medical evidence.[8]

ANALYSIS

OWCP accepted appellant's claim for right and left trigger thumb and right and left middle finger trigger finger. Appellant filed claims for compensation for LWOP for total disability for the period June 7 to September 2, 2016. The Board finds that the medical evidence of record is insufficient to establish total disability during the claimed period causally related to her accepted employment condition.

Appellant submitted multiple reports from Dr. Bozentka. In July 14 and 28, 2016 reports, Dr. Bozentka diagnosed bilateral long trigger fingers, opined that this condition was related to work activities, and advised that she was partially disabled since January 25, 2016.[9] On January 17, 2017 he opined that appellant's bilateral trigger thumbs and bilateral trigger fingers were employment related and left appellant totally disabled from June 7 to September 2, 2016. Although Dr. Bozentka supported causal relationship, he did not provide medical rationale explaining the basis of his conclusory opinion regarding the causal relationship between the accepted conditions and the claimed period of disability.[10] He did not explain how the accepted conditions would have caused appellant to be disabled from work during the claimed period. This report is, therefore, insufficient to establish appellant's claim.

Similarly, in reports dated October 25 and November 8, 2016, Dr. Bozentka noted appellant's treatment and advised that she was totally disabled since February 4, 2016. Appellant also provided several attending physician's reports from June 16 to January 17, 2017 which supported that she had an employment-related condition and that she was disabled. While Dr. Bozentka indicated in these that she was totally disabled from work he did not specifically explain how any accepted condition caused or contributed to the period of disability beginning June 7, 2016. Part of appellant's burden of proof includes submitting rationalized medical

[7] *See William A. Archer*, 55 ECAB 674 (2004).

[8] *See Fereidoon Kharabi*, 52 ECAB 291, 292 (2001).

[9] In a different July 28, 2016 report, Dr. Bozentka attributed appellant's diagnosed right carpal tunnel syndrome and associated disability to appellant's employment. The Board notes that OWCP has not accepted carpal tunnel syndrome as employment related. *See T.M.*, Docket No. 08-0975 (issued February 6, 2009) (where a claimant claims that a condition not accepted or approved by OWCP was due to an employment injury, the claimant bears the burden of proof to establish that the condition is causally related to the employment injury through the submission of rationalized medical evidence).

[10] *See T.M., id.*, (a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

evidence which supports a causal relationship between the period of disability and the accepted injury.[11] Therefore, these reports are insufficient to meet her burden of proof.

On April 8, 2016 Dr. Bozentka diagnosed bilateral long trigger fingers and bilateral trigger thumbs, noted appellant's treatment, and supported that her diagnosed conditions were employment related. He indicated that she had been out of work due to the bilateral long trigger fingers since January 25, 2016 noting that the pain associated with the digits led her to be unable to perform her activities. However, this report predates the period of wage loss at issue. Dr. Bozentka did not otherwise explain the reasons why appellant's wage loss beginning June 7, 2016 was attributable to her accepted employment conditions.[12] Similarly, other reports from him are of limited probative value as they either predate the period of claimed disability or they do not specifically attribute the period of claimed disability to the accepted conditions.[13]

Appellant was also treated by Dr. Yeboah, who provided evidence including a July 29, 2016 report noting that appellant's hand injuries caused significant impairment and disability including triggering an anxiety disorder. Dr. Yeboah noted that the primary trigger for appellant's anxiety was her hand injuries which were caused and accelerated by the requirements of her job. This report is insufficient to meet appellant's burden of proof as Dr. Yeboah attributed appellant's disability in part due to anxiety disorder. However, OWCP has not accepted that appellant developed an anxiety disorder as a result of her clerk duties[14] and Dr. Yeboah has not otherwise explained how the accepted hand conditions caused the claimed disability.

The record also contains physical therapy reports. However, the Board has held that treatment notes signed by physical therapists[15] have no probative value as these providers are not considered physicians under FECA[16] and are not competent to render a medical opinion under FECA.

On appeal appellant asserts that she submitted sufficient medical evidence supporting disability for the period claimed. The Board finds that she failed to submit rationalized medical

[11] *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).

[12] *See George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

[13] *See M.C.*, Docket No. 15-1762 (issued August 26, 2016) (medical reports are of limited probative value where they either predate the claimed period of disability or do not specifically address whether the claimed disability is causally related to the accepted condition).

[14] *Alice J. Tysinger*, 51 ECAB 638 (2000).

[15] *V.W.*, Docket No. 16-1444 (issued March 14, 2017) (where the Board found that physical therapy reports do not constitute competent medical evidence because a physical therapist is not a "physician" as defined under FECA).

[16] *See David P. Sawchuk*, 57 ECAB 316 (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).

evidence establishing a causal relationship between the specific period of claimed disability and the accepted conditions.

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 failed to establish total disability for the period June 7 to September 2, 2016 causally related to the accepted employment conditions.

ORDER

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

Issued: February 16, 2018
Washington, DC

Patricia H. Fitzgerald, Deputy 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