United States Department of Labor
Employees' Compensation Appeals Board

M.M., Appellant	)	
and	)	**Docket No. 17-1641**
	)	**Issued: February 15, 2018**
DEPARTMENT OF HOMELAND SECURITY, CITIZENSHIP & IMMIGRATION SERVICES, Middletown, CT, 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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On July 24, 2017 appellant, through counsel, filed a timely appeal from a May 5, 2017 merit decision by 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 this case.

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[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.*

ISSUE

The issue is whether appellant has met her burden of proof to establish carpal tunnel syndrome causally related to factors of her federal employment.

FACTUAL HISTORY

On August 20, 2014 appellant, then a 52-year-old immigration service officer, filed an occupational disease claim (Form CA-2) alleging that she developed carpal tunnel syndrome as a result of factors of her federal employment. Appellant alleged that management deliberately assigned her additional duties which increased the use and repetitive movement of her arms. She contended that the employing establishment ignored her request for a reasonable accommodation. In a statement on the reverse side of the claim form, the employing establishment indicated that appellant was originally accommodated with light duty in customer service and that in January 2014 she was transitioning back to original duties when her pain was exacerbated. The employing establishment noted that appellant was returned to customer service for temporary light duty, but would now be placed back in her full-duty position with modification.[3]

In support of her claim, appellant submitted an October 24, 2013 note by Dr. Laura Crandall, a Board-certified internist. Dr. Crandall indicated that appellant was experiencing symptoms of pain and neuropathy in the left upper extremity, which were exacerbated by the type of work she performed. She recommended that appellant be switched to lighter-duty work that would require her to process only 50 percent of the paperwork she currently handled.

In a December 6, 2013 response to questions from the employing establishment regarding appellant's duty status, Dr. Crandall noted that appellant's left lateral epicondylitis had the potential to improve with ergonomic accommodations as well as further physical therapy. With regard to appellant's left rotator cuff tendinitis, she noted that further assessment required additional imaging studies. However, Dr. Crandall concluded that it was likely that management of appellant's symptoms of pain and weakness would improve with reduction in the physical demands placed on her left upper extremity. With regard to appellant's left carpal tunnel syndrome and possible cubital tunnel syndrome, she determined that appellant's prognosis for this condition depended on her ability to minimize repetitive trauma to the left upper extremity by reduction of fine manipulative movement such as grasping, filing, and typing. Dr. Crandall recommended that appellant be given a chair that did not require her arm to be in a position that exacerbated her symptoms of pain numbness, tingling, or weakness. She further recommended that appellant not be required to process the amount of paperwork that would exacerbate her symptoms.

In an April 28, 2014 note, Dr. Crandall indicated that appellant continued to experience left upper extremity pain, neuropathy, and limited range of motion which had not improved since

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[3] Appellant filed a previous claim with OWCP for an injury on February 16, 2012 when she hit her elbow on an elevator frame while entering an elevator. OWCP accepted this claim for lateral epicondylitis. OWCP File No. xxxxxx774.

her original injury over a year ago. She opined that appellant had not reached maximum medical improvement and had been referred for further testing.

In a June 24, 2014 letter, Dr. Crandall indicated that after reviewing the duty status report (Form CA-17), she was of the opinion that appellant could handle the type of work and amount of hours per day for each activity. She further indicated that her recommended restriction was for appellant to be allowed twice as much time to complete typing, grasping, filing, twisting, and lifting. Dr. Crandall indicated that by allowing appellant twice as much time to complete each task, it would effectively require her to have to process only 50 percent of the paperwork she was expected to handle in her regular-duty assignment, before being switched to lighter duty.

A May 14, 2014 electromyography (EMG) study was interpreted by Dr. Marina Zaretskaya Fuchs, a Board-certified psychiatrist and neurologist, as raising the possibility of chronic, left-sided C6-C7 radiculopathy, and suggesting the presence of mild-degree, left-sided median sensory neuropathy at the wrist as seen in carpal tunnel syndrome.

By development letter to appellant dated September 22, 2014, OWCP indicated that further information was necessary to support her claim. Appellant was afforded 30 days to submit the required evidence.

In a response received by OWCP on November 4, 2014, appellant alleged that she was treated improperly with regard to her leave requests. She alleged that she received disparate treatment from the employing establishment. Appellant argued that she experienced hostility and discrimination due to her age and race. She further noted that she asked for a reasonable accommodation for her physical injuries.

By decision dated March 9, 2015, OWCP denied appellant's claim as she failed to establish that her medical condition was causally related to the accepted employment factors. It also advised appellant that, if she wished to make a claim for an emotional condition, she must file a separate claim.

By letter received by OWCP on March 19, 2015, appellant, through counsel, requested a telephonic hearing before an OWCP hearing representative.

In a May 11, 2015 procedure note, Dr. John Marino, a Board-certified physiatrist, interpreted an electromyogram (EMG) as evidencing mild left carpal tunnel syndrome.

In an April 6, 2015 progress note, Dr. John M. Aversa, a Board-certified orthopedic surgeon, diagnosed carpal tunnel syndrome as well as probable flexor tenosynovitis, exacerbated by her work. He also noted that appellant demonstrated early carpal tunnel syndrome and C7 radiculopathy. In a June 16, 2015 note, Dr. Aversa indicated that appellant should minimize use of her hands for typing due to bilateral hand pain.

In a June 27, 2015 note, appellant alleged that she was denied a request for work accommodation, and that, if she had received the accommodation, she would not have needed to file the second claim.

At the hearing held on October 13, 2015, appellant testified that she worked for the employing establishment for 24 years. She noted that her job duties required her to do repetitive typing and grasping. Appellant also discussed her medical treatment. The record was kept open for 30 days to provide appellant the opportunity to submit a more detailed medical report.

In a November 14, 2015 letter, Dr. Crandall indicated that appellant's first work-related injury was carpal tunnel syndrome which caused upper extremity pain, numbness, and tingling. She reported that this caused and exacerbated her duties at work including carrying files, typing, grasping, and filing. Dr. Crandall noted that her other work-related injury was left lateral epicondylitis which was caused by an elbow injury sustained at work. She reported that the injury caused pain which was exacerbated by carrying files, typing, and filing. Dr. Crandall noted that appellant's current work duties included sitting, lifting, carrying, standing, walking, twisting, pulling, pushing, fine manipulation, simple grasping, reaching above the shoulder, kneeling, bending, stooping, and operating machinery. She opined that appellant was capable of performing all of her duties, but at a slower pace because of the repetitive nature of these tasks and the strain on her upper extremity, which exacerbated the symptoms of her injuries. Dr. Crandall recommended that appellant be restricted from lifting over 10 pounds.

On December 3, 2015 appellant submitted earlier reports by Dr. Crandall. In an April 23, 2014 note, Dr. Crandall diagnosed hypertension and radiculopathy. In a May 19, 2014 report, she again diagnosed radiculopathy and hypertension. In a February 26, 2015 note, Dr. Crandall noted that appellant had worsening carpal tunnel syndrome and hypertension.

By decision dated December 22, 2015, the hearing representative affirmed the March 9, 2015 decision. She determined that appellant had not established causal relationship between the claimed condition and factors of her federal employment. The hearing representative concluded that the medical evidence of record failed to provide anything other than a very general description of what appellant's job duties were, but failed to explain that a diagnosed condition had been caused by that activity.

On December 6, 2016 appellant, through counsel, requested reconsideration of the December 22, 2015 decision.

In a July 13, 2016 note, Dr. Crandall indicated that appellant was to be excused from work through July 15, 2016 due to illness for which she was receiving treatment.

In a July 18, 2016 note, Kevin Pasley, a physician assistant, indicated that appellant had a diagnosis of lumbar radiculopathy and was excused from work until follow up later this week. Appellant also submitted copies of prescriptions.

By decision dated May 5, 2017, OWCP reviewed appellant's case on the merits, but denied modification of the December 22, 2016 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[4] 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 the 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.[5] 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.[6]

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) a 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.[7]

Causal relationship is a medical issue and the evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence must include 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.[8]

ANALYSIS

The Board finds that appellant has not established carpal tunnel syndrome causally related to the accepted factors of her federal employment.

Dr. Crandall opined that appellant's left carpal tunnel syndrome was caused and exacerbated by her work duties including carrying files, typing, grasping, and lifting. Although this opinion is generally supportive of causal relationship, she did not provide adequate medical rationale explaining the basis of the opinion, did not explain the process by which these duties caused appellant's carpal tunnel syndrome, and did not explain why the condition was not related

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[4] *Supra* note 2.

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

[6] *See Irene St. John*, 50 ECAB 521 (1999).

[7] *C.L.*, Docket No. 17-1137 (issued September 14, 2017).

[8] *Id.*

to nonwork factors.[9] A mere conclusory opinion provided by a physician without the necessary rationale explaining how and why the incident or work factors were sufficient to result in the diagnosed medical condition is insufficient to meet a claimant's burden of proof to establish a claim.[10]

Similarly, Dr. Aversa diagnosed carpal tunnel syndrome as well as probable flexor tenosynovitis, exacerbated by her work. He also noted that appellant demonstrated early carpal tunnel syndrome and C7 radiculopathy. However, Dr. Aversa also did not provide a clear opinion, supported by medical rationale, explaining how physiologically appellant's employment duties caused her diagnosed conditions.[11]

Various physicians interpreted diagnostic studies. Dr. Fuchs found electrical evidence that raised the possibility of chronic left-sided C6-7 radiculopathy, and additional electrical evidence to suggest the presence of mild degree, left-sided median sensory neuropathy at the wrist as seen in carpal tunnel syndrome. Dr. Marino interpreted an EMG as evincing mild left carpal tunnel syndrome. However, these diagnostic studies are of limited probative value as they do not address whether appellant's federal employment caused the diagnosed conditions.[12]

Finally, appellant submitted reports by Mr. Pasley, a physician assistant. However, the Board has held that reports by a physician assistant are not considered medical evidence as physician assistants are not considered physicians under FECA.[13]

The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference of causal relation.[14] An award of compensation may not be based on surmise, conjecture, speculation, or upon appellant's own belief that there was a causal relationship between her condition and her employment.[15] Causal relationship must be based on rationalized medical opinion evidence.[16] A physician must accurately describe appellant's work duties and medically explain the physiological process by which these duties

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[9] *S.C.*, Docket No. 16-1322 (issued January 18, 2017).

[10] *J.D.*, Docket No. 14-2061 (issued February 27, 2015).

[11] *See S.F.,* Docket No. 17-0463 (issued September 8, 2017).

[12] *G.M.,* Docket No. 14-2057 (issued May 12, 2015).

[13] *See David P. Sawchuk*, 57 ECAB 316, 320 n. 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).

[14] *L.D.*, Docket No. 09-1503 (issued April 15, 2010); *D.I.*, 59 ECAB 158 (2007); *Daniel O. Vasquez*, 57 ECAB 569 (2006).

[15] *Patricia J. Glenn*, 53 ECAB 159, 160 (2001).

[16] *M.E.*, Docket No. 14-1064 (issued September 29, 2014).

would have caused or aggravated her condition.[17] As appellant has failed to submit a rationalized medical opinion supporting that her medical condition was causally related to the accepted factors of her federal employment, she did not meet her burden of proof to establish her claim.

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 that she suffered from carpal tunnel as causally related to factors of her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 5, 2017 is affirmed.

Issued: February 15, 2018
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

[17] *Solomon Polen*, 51 ECAB 341 (2000) (rationalized medical evidence must relate specific employment factors identified by the claimant to the claimant's condition, with stated reasons by a physician). *See also G.G.*, Docket No. 15-0234 (issued April 9, 2015).