

On appeal counsel contends that the impartial medical examiner did not address appellant's current claim and that his report is of no probative value.

FACTUAL HISTORY

This case has previously been before the Board.³ The facts and circumstances set forth in the Board's prior decisions are incorporated by reference. The relevant facts are as follows.

OWCP accepted under OWCP File No. xxxxxx799 that on October 25, 2010 appellant, then a 42-year-old rural mail carrier, sustained a right thumb sprain when she jammed her thumb while putting a mail tray in a postal truck. She stopped work and returned to full duty on November 12, 2010. In another claim, assigned File No. xxxxxx741, OWCP accepted that on June 7, 2011 appellant sustained right thumb tenosynovitis when she shifted mail trays in the performance of duty. She stopped work and returned to full duty on June 29, 2011.

On January 26, 2012 appellant filed a recurrence of disability claim (Form CA-2a) in OWCP File No. xxxxxx799, alleging that she continued to feel pain in her thumb since the original October 25, 2010 employment injury. She stopped work and submitted a claim for wage-loss compensation (Form CA-7) for disability beginning January 26, 2012. In an April 27, 2012 decision, OWCP denied appellant's claim for recurrence of disability, finding that the medical evidence of record failed to establish that she was unable to work beginning January 26, 2012 as a result of the October 25, 2010 employment injury.

On May 14, 2012 appellant, through counsel, requested an oral hearing, which was held on August 13, 2012. She described her duties as a rural carrier and the October 25, 2010 and June 7, 2011 injuries. Appellant noted that she returned to full duty, but she still experienced pain and swelling in her right hand. She noted that she requested light duty, but the employing establishment was unable to accommodate her request. Appellant explained that in the week leading up to January 26, 2012 the pain in the right hand and elbow increased. She described the medical treatment she received and noted that a hand specialist prescribed a brace for her to wear because a ligament in her right thumb had moved.

By decision dated September 26, 2012, an OWCP hearing representative affirmed the April 27, 2012 decision. Appellant appealed to the Board. By decision dated June 19, 2013,⁴ the Board found that appellant had not established a recurrence of disability on or after January 26, 2012 due to her accepted October 25, 2010 employment injury.

On November 19, 2012 appellant filed an occupational disease claim (Form CA-2) alleging right hand, wrist, arm, shoulder, elbow and neck conditions due to her work duties. The claim was assigned, OWCP File No. xxxxxx540.⁵ Appellant noted sustaining a right thumb injury on October 5, 2010 and thereafter wearing a splint on her right hand and wrist. She also noted that she continued to perform her full rural carrier duties. Appellant first became aware of

³ Docket No. 13-0711 (issued June 19, 2013); Docket No. 15-0433 (issued April 28, 2015).

⁴ Docket No. 13-0711 *id.*

⁵ The present claim, File No. xxxxxx540 is a subsidiary of File No. xxxxxx799.

her condition on January 26, 2012 and first attributed it to factors of her federal employment on November 6, 2012.

Dr. George C. Alber, a Board-certified orthopedic surgeon, examined appellant on June 2, 2011 and noted her history of injury on October 25, 2010. He diagnosed osteoarthritis of the hand, aggravation of joint arthritis, and sprain of carpometacarpal joint of the hand and right thumb. On June 14, 2011 Dr. Alber examined appellant's shoulder and noted that her range of motion was normal. He repeated his diagnoses. Dr. Nikhil Parikh, a Board-certified internist, examined appellant on January 26, 2012 and diagnosed carpal tunnel syndrome and right lateral epicondylitis. He indicated with a checkmark "yes" that appellant's condition was due to her employment. On January 31, 2012 Dr. Salvatore Pepe, Board-certified in emergency medicine, examined appellant due to right thumb and hand pain which she experienced since January 25, 2012. Appellant reported pain extending from her hand up into her right shoulder.

Appellant underwent a magnetic resonance imaging (MRI) scan of her right hand on February 3, 2012 which did not demonstrate a ligament or tendon tear in the hand and did not demonstrate a recent fracture or bony lesion. She underwent a cervical MRI scan on February 3, 2012 which revealed multilevel disc desiccation and bulges, central disc protrusion at C4-5 and C5-6, and disc protrusion at C6-7.

Dr. Manish K. Singh, a Board-certified neurologist of professorial rank, examined appellant on July 10, 2012 and described her initial right thumb injury on October 25, 2010. He diagnosed cervicobrachial plexus traction injury, mechanical neck pain, and bilateral cervical pain worse on the right. Dr. Singh opined that appellant's work activities would aggravate her right upper extremity pain.

In support of her claim, appellant submitted reports from Dr. John M. Bednar, a Board-certified orthopedic surgeon, dated August 6 and 27, 2012 diagnosing chronic ulnar collateral ligament injury, metacarpal phalangeal joint right thumb, and pain in right upper extremity. He opined that appellant's symptoms were the result of compression at her cervical spine.

OWCP requested additional factual and medical evidence in support of appellant's claim by letter dated December 6, 2012. Appellant described her employment duties of casing mail, small parcels, and big parcels including constant use of her right hand to reach above her head. She noted the big parcels weighed between 2 to 70 pounds, that buckets of small parcels could weigh up to 25 pounds, and that she lifted three or four a day. Appellant also lifted trays of mail weighing approximately 20 pounds. She then loaded her truck and delivered the mail. Appellant noted that it took her approximately seven hours to complete her route.

By decision dated January 9, 2013, OWCP denied appellant's claim, finding that she had not submitted sufficient medical evidence to establish causal relationship between her conditions and factors of her federal employment. On January 16, 2013 counsel requested an oral hearing before OWCP's Branch of Hearings and Review.

In a report dated November 6, 2012, Dr. Scott Fried, an osteopath, described appellant's work duties and noted her October 25, 2010 employment injury to her thumb. He noted that appellant worked with a splint and developed pain in the arm, forearm, and neck. Dr. Fried

diagnosed ulnar collateral ligament injury right thumb, right arm sympathetically medicated pain syndrome, disc bulges at C4-5, C5-6, and C6-7 with radiculopathy, right shoulder rotator cuff tendinitis and capsulitis, cervical radiculopathy, as well as median and radial neuropathy. He noted that appellant's use of the splint resulted in abnormal use injury in the right upper extremity, which exacerbated her underlying carpal tunnel and median nerve problems and caused overuse at the elbow and forearm resulting in strain through the elbow and upper arm. Dr. Fried noted that abnormal posturing of the arm, head, and neck exacerbated an underlying cervical degenerative process which caused a cervical radicular injury. He noted that appellant was disabled and had developed moderate sympathetic pain syndrome. Dr. Fried examined appellant on February 18 and 27, 2013 and repeated his diagnoses. On February 13 and March 19, 2013 he again examined her.

During the oral hearing held on April 10, 2013 and contended that Dr. Fried's reports established appellant's claim. Appellant underwent a functional capacity evaluation on December 28, 2012 which found that she could perform sedentary work lifting up to 10 pounds and walking and standing on occasion.

By decision dated June 12, 2013, OWCP's hearing representative reviewed appellant's prior claim and found that Dr. Fried's reports raised an uncontroverted inference of causal relationship between appellant's work duties with a splint and her diagnosed condition. He remanded the case for OWCP to combine appellant's claims and refer appellant to a second opinion physician to determine if appellant's work activities from June 29, 2011 until January 25, 2012 caused or contributed to her current condition.

Dr. Fried performed a neuromusculoskeletal ultrasound on April 25, 2013 and found perineural scarring about the brachial plexus with evidence of a traction fixation neuropathy, substantial swelling and hypoechoic changes.

OWCP referred appellant for a second opinion evaluation with Dr. Stanley R. Askin, a Board-certified orthopedic surgeon, on June 26, 2013. In a report dated July 19, 2013, Dr. Askin noted appellant's history of injury on October 25, 2010. He noted that appellant reported pain in her right thumb with sporadic pain in her right elbow and shoulder that spread up to her neck. Dr. Askin found that appellant did not have a frozen shoulder based on her range of motion and noted that scapulothoracic motion was without winging and crepitation. He noted that appellant's claim was accepted for right thumb sprain and opined that appellant had no objective condition from her work activities or prior injury. Dr. Askin opined that appellant had no objective determinable reason for her complaints and no objective findings of a condition. He noted that there were no physical limitations from her work-related injury and that appellant had no disability.

By decision dated September 9, 2013, OWCP denied appellant's claim based on Dr. Askin's report. Counsel requested an oral hearing before OWCP's Branch of Hearings and Review on September 12, 2013.

In a note dated June 9, 2014, Dr. Fried opined that appellant had ongoing symptoms in her right plexus, hand, wrist, and thumb. He noted that appellant's ultrasound findings were

consistent with ongoing work-related thumb and tendon sheath injuries on the right. Dr. Fried opined that appellant was disabled from her regular duties.

Counsel appeared at the oral hearing before OWCP's hearing representative on June 12, 2014 and argued that Dr. Fried's November 6, 2012 report was entitled to the weight of the medical evidence.

By decision dated August 22, 2014, OWCP's hearing representative affirmed OWCP's September 9, 2013 decision, finding that Dr. Askin's report was entitled to the weight of the medical evidence. Appellant subsequently appealed to the Board. In an April 28, 2015 decision,⁶ the Board found an unresolved conflict of medical opinion evidence between Drs. Fried and Askin and remanded the claim for OWCP to refer the case to an appropriate a Board-certified physician to determine whether appellant's work activities on or after June 2011 resulted in a diagnosed condition and, if so, any period of disability.

On remand from the Board's April 28, 2015 decision, OWCP referred appellant, a statement of accepted facts (SOAF), and a list of specific questions for an impartial medical examination with Dr. Ian Fries, a Board-certified orthopedic surgeon.

In his April 8, 2016 report, Dr. Fries reviewed the SOAF and medical records. He examined appellant and found decreased range of motion in head movement, vague right anterior shoulder, forearm, and thumb pains while placing her hands overhead or behind her back with full thoracoscaphular and glenohumeral motion. Dr. Fries reported that appellant noted right posterior olecranon and right thenar discomfort, but full range of motion of the elbows. He noted palmar wrist flexion caused left lateral elbow pain and right anterior shoulder pain and that appellant had decreased range of motion in her wrists. Dr. Fries found radial base of the thumb pain in double Phalen's position. He noted that piano key sign was negative, Watson catchup click was negative, and that there was no tenderness in palpation of the carpal bones, radius, or ulna. Dr. Fries found that appellant had some increased right thenar pain on Tinel's testing and carpal compression, but no paresthesia. Regarding appellant's right thumb, she had mild tenderness over the dorsal and ulnar metacarpophalangeal joint, as well as tenderness along the entire radial shaft and thenar eminence. Dr. Fries diagnosed history of a right thumb sprain and tenosynovitis and mild cervical degenerative spondylosis. He found that appellant's right thumb sprain had resolved and that she had no current findings of tenosynovitis. Dr. Fries determined that appellant's MRI scan findings were consistent with age-related cervical degeneration. He opined that appellant had no measurable work or nonwork-related diagnosis. Dr. Fries found that there were no conditions currently active and none causing objective symptoms. In response to an OWCP inquiry, he opined that appellant had no objective findings or disability after June 29, 2011 and that she currently had no objective findings or disability. Dr. Fries noted that appellant's subjective findings of right thumb pain and swelling were not confirmed by objective findings. He found that appellant had no current disability from work, no ongoing work-related conditions, and could perform her regular work duties with no restrictions. Dr. Fries concluded that protracted, unwarranted, and nonorthodox treatment had hindered her recovery.

⁶ Docket No. 15-0433 (issued April 28, 2015).

By decision dated May 12, 2016, OWCP denied appellant's occupational disease claim finding that Dr. Fries' report was entitled to special weight and established that appellant had no employment-related conditions or disability.

Counsel requested an oral hearing on May 18, 2016. During the oral hearing held on September 27, 2016 counsel contended that there was no conflict of medical opinion evidence requiring referral to Dr. Fries. He opined that Dr. Fries' reports constituted the weight of the medical evidence and that Dr. Fries should have been designated as a second opinion physician rather than an impartial medical examiner. Counsel further contended that Dr. Fries' report did not address the central issue of an occupational disease arising after June 29, 2011.

By decision dated December 6, 2016, OWCP's hearing representative⁷ affirmed the May 12, 2016 OWCP decision, finding that Dr. Fries' report was entitled to special weight and noted no objective evidence of any condition related to her employment.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁸ has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁹

OWCP's regulations define an occupational disease as "a condition produced by the work environment over a period longer than a single workday or shift."¹⁰ 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 On December 13, 2016 counsel requested an oral hearing from the December 6, 2016 decision. By decision dated December 20, 2016, OWCP denied this request as appellant had already received a hearing on the same issue from OWCP's Branch of Hearings and Review. Counsel has not appealed this decision and therefore it is not before the Board at this time. 20 C.F.R. § 501.3(c)(5).

⁸ *Supra* note 2.

⁹ *Kathryn Haggerty*, 45 ECAB 383, 388 (1994).

¹⁰ 20 C.F.R. § 10.5(q).

A medical report is of limited probative value on a given medical question if it is unsupported by medical rationale.¹¹ Medical rationale includes a physician's detailed opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment activity. The opinion of the physician must be based on a complete factual and medical background of the claim, 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 specific employment activity or factors identified by the claimant.¹² The belief of a claimant that a condition was caused or aggravated by the employment is insufficient to establish causal relation.¹³

In situations where there are opposing medical reports of virtually equal weight and rationale, and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.¹⁴

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish an occupational disease causally related to factors of her federal employment.

Appellant filed the present occupational disease claim in 2013 for right hand, wrist, arm, shoulder, elbow, and neck conditions which she believed were due to her employment duties. Her physicians diagnosed a variety of conditions including ulnar collateral ligament injury right thumb, right arm sympathetically medicated pain syndrome, disc bulges C4-5, C5-6, and C6-7 with radiculopathy, right shoulder rotator cuff tendinitis and capsulitis, cervical radiculopathy, and median and radial neuropathy as well as moderate sympathetic pain syndrome. The Board reviewed appellant's claim and found a conflict of medical opinion evidence between appellant's physicians and Dr. Askin, OWCP's second opinion physician. Contrary to counsel's contentions before OWCP's hearing representative, based on the Board's decision, OWCP properly designated Dr. Fries as an impartial medical examiner.

As noted above, Dr. Fries' report, if based on a proper factual background and supported with medical reasoning, is entitled to special weight.¹⁵ He relied on the SOAF and described appellant's accepted conditions and medical treatment. Dr. Fries' report, therefore, is based on a proper factual background. He provided findings on examination and explained that appellant had no objective findings supporting any ongoing work-related condition. Dr. Fries noted that appellant had age-related cervical degeneration, but found no other diagnosable condition and no condition which was causally related to appellant's employment on or after June 2011. He found

¹¹ *T.F.*, 58 ECAB 128 (2006).

¹² *A.D.*, 58 ECAB 149 (2006).

¹³ *Lourdes Harris*, 45 ECAB 545, 547 (1994).

¹⁴ *Nathan L. Harrell*, 41 ECAB 401, 407 (1990).

¹⁵ *Id.*

that appellant's right thumb sprain had resolved and that she had no current findings of tenosynovitis. Dr. Fries opined that appellant had no measurable work or nonwork-related diagnosis. He also determined that appellant had no current disability for work, no ongoing work-related conditions, and could perform her regular work duties with no restrictions. The Board finds that Dr. Fries clearly explained that appellant had no current work-related diagnosis and that his report represents the special weight of the medical evidence.¹⁶

As Dr. Fries resolved the conflict of medical opinion evidence, finding that appellant had no current or on-going work-related condition, the Board finds that appellant has not met her burden of proof to establish an occupational disease causally related to factors of her federal employment.

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 occupational disease causally related to factors of her federal employment.

¹⁶ S.R., Docket No. 16-1790 (issued June 8, 2017).

ORDER

IT IS HEREBY ORDERED THAT the December 6, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 16, 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