United States Department of Labor
Employees' Compensation Appeals Board

T.S., Appellant	)	
and	)	**Docket No. 17-0111**
	)	**Issued: June 12, 2018**
U.S. POSTAL SERVICE, POST OFFICE, West Dennis, MA, Employer	)	

Appearances:
Appellant, pro se
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 October 25, 2016 appellant filed a timely appeal from an October 5, 2016 merit 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 this case.[2]

ISSUE

The issue is whether appellant has met her burden of proof to establish that a right hand condition is causally related to the accepted April 12, 2016 employment incident.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The record provided to the Board includes evidence received after OWCP issued its October 5, 2016 decision. The Board's jurisdiction is limited to the evidence that was before OWCP at the time of its final decision. Therefore, the Board is precluded from reviewing this additional evidence for the first time on appeal. 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

On April 12, 2016 appellant, then a 66-year-old rural carrier, filed a traumatic injury claim (Form CA-1), alleging that she injured her right hand that day when pulling the door shut and releasing the break on her long-life vehicle (LLV) while in the performance of duty. She noted that the LLV was parked up-hill. Appellant did not stop work at the time of the alleged injury.

In an April 12, 2016 report, Dr. Jacob G. Crowell, an emergency medicine specialist, diagnosed right hand tendon cyst and asserted that appellant had a sudden onset of pain while "closing sliding door in car." He indicated that appellant's pain over the third metacarpal of the right hand happened while she was at work.

In a duty status report (Form CA-17) dated April 12, 2016, Dr. Crowell diagnosed a tendon cyst due to an injury sustained that day and asserted that appellant "hurt [her] hand while closing vehicle door."

On April 14, 2016 a nurse practitioner diagnosed other bursal cyst, right hand, and elevated blood pressure.

In a May 18, 2016 report, Dr. Brian C. Najarian, a Board-certified orthopedic hand surgeon, diagnosed a mass of right hand and noted that appellant noticed it at work while lifting/pulling the door of a mail truck on April 12, 2016. He opined that appellant's "right palmar mass may have preceded her workplace injury, although the act of hitting it while lifting/pulling the heavy door may have aggravated/caused the onset of her current pain." Dr. Najarian further opined that it was most likely a benign mass such as a cyst or fibrous nodule.

On June 1, 2016 Dr. Najarian reiterated that appellant was seen for right hand swelling/nodule noticed at work while opening a mail truck door on April 12, 2016. He continued to find a subcutaneous nodule/mass in the right palm and reported that appellant did not have any relief of pain from her cortisone injection and wished to proceed with surgery.

In a June 1, 2016 work status form, Dr. Najarian continued to diagnose right hand subcutaneous mass and advised that appellant was capable of working without restrictions until her surgery.

In a June 22, 2016 development letter, OWCP indicated that when appellant's claim was received it appeared to be a minor injury that resulted in minimal or no lost time from work and, based on these criteria and because the employing establishment did not controvert continuation of pay or challenge the case, payment of a limited amount of medical expenses was administratively approved. It further indicated that it had reopened the claim for consideration because appellant requested authorization for right hand surgery. OWCP requested additional evidence and afforded appellant 30 days to respond.

Appellant subsequently submitted a June 28, 2016 narrative statement reiterating the factual history of the claim.

By decision dated July 27, 2016, OWCP accepted that the April 12, 2016 employment incident occurred as alleged and that a medical condition had been diagnosed. However, it denied

the claim, finding that the medical evidence of record failed to establish causal relationship between appellant's diagnosed condition and the accepted April 12, 2016 work incident.

Appellant timely requested an oral hearing before a representative of OWCP's Branch of Hearings and Review, which she subsequently withdrew.

On August 25 and September 26, 2016 appellant requested reconsideration. She argued that the growth of her fibrous nodules on her right hand were the direct result of her work-related duties, which included constant and repetitive motion of opening and closing a 150-pound door on the LLV, especially on inclines. Appellant further contended that the constant and repetitive motion of setting and releasing the high-tension emergency brake either caused or exacerbated her condition.

In an August 30, 2016 report, Dr. Najarian found that appellant had formed a second small nodule in her palm, adjacent to the first. In addition, he found that appellant continued to have pain directly at those locations after her day of work as a mail carrier. Dr. Najarian opined that "while it [was] remotely possible that the trauma to her hand at work caused these nodules to form, mostly likely the work trauma was not the proximate cause of what [was] suspected to be benign fibrous nodules." He further opined that "the repetitive work [appellant] did with her hands may be aggravating the pain in her palm due to the masses."

By decision dated October 5, 2016, OWCP denied modification of its prior decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] 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 that an injury was sustained in the performance of duty as alleged, and that any specific condition or disability claimed is causally related to the employment injury.[4]

To determine if an employee sustained a traumatic 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 that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.[5] The second component is whether the employment incident caused a personal injury.[6] An employee may establish that an injury occurred in the performance of duty as alleged, but fail to establish that the disability or specific condition for which compensation is being claimed is causally related to the injury.[7]

[3] *See supra* note 1.

[4] 20 C.F.R. § 10.115(e), (f); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

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

[6] *John J. Carlone*, 41 ECAB 354 (1989).

[7] *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

Causal relationship is a medical question that generally requires rationalized medical opinion evidence to resolve the issue.[8] A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.[9] Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s).[10]

Certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered "physician[s]" as defined under FECA.[11] Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits[12] as the reports do not constitute probative medical evidence.[13]

ANALYSIS

OWCP accepted that the April 12, 2016 employment incident occurred as alleged, and also accepted that there was a medical diagnosis in connection with the employment incident. However, it denied appellant's traumatic injury claim on the basis that the medical evidence was insufficient to establish causal relationship between the diagnosed condition and the accepted employment incident. The Board finds that appellant has not met her burden of proof to establish causal relationship.

Dr. Crowell diagnosed right hand tendon cyst and opined that appellant had a sudden onset of pain at work while closing a vehicle door. He noted that appellant sustained an injury on April 12, 2016 during work-related activities. However, such generalized statements do not establish causal relationship because they merely repeat appellant's allegations and are unsupported by adequate medical rationale explaining how her physical activity actually caused the diagnosed condition.[14] Thus, Dr. Crowell's reports are of limited probative value and insufficient to establish that appellant sustained an employment-related injury on April 12, 2016.

In his reports, Dr. Najarian diagnosed right hand subcutaneous mass and indicated that appellant noticed it at work while lifting/pulling the door of a mail truck on April 12, 2016. He opined that appellant's "right palmar mass may have preceded her workplace injury, although the

[8] *Robert G. Morris*, 48 ECAB 238 (1996).

[9] *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[10] *Id.*

[11] 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).

[12] *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006). A report from a physician assistant or certified nurse practitioner will be considered medical evidence if countersigned by a qualified physician. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013).

[13] *A.F.*, Docket No. 17-1514 (issued April 10, 2018).

[14] *See K.W.*, *supra* note 12.

act of hitting it while lifting/pulling the heavy door may have aggravated/caused the onset of her current pain." On August 30, 2016 Dr. Najarian found that appellant had formed a second small nodule in her palm, adjacent to the first. In addition, he found that appellant continued to have pain directly at those locations after her day of work as a mail carrier. Dr. Najarian opined that "while it [was] remotely possible that the trauma to her hand at work caused these nodules to form, most likely the work trauma was not the proximate cause of what [was] suspected to be benign fibrous nodules." He further opined that "the repetitive work [appellant] did with her hands may be aggravating the pain in her palm due to the masses." The Board finds that Dr. Najarian's opinion regarding the cause of appellant's right hand condition is speculative and equivocal in nature.[15] As such, his opinion is of limited probative value.

The record also includes April 14, 2016 treatment notes from a nurse practitioner. Nurse practitioners are not considered "physicians" as defined under FECA.[16] Consequently, this evidence will not suffice for purposes of establishing entitlement to FECA benefits[17] as it does not constitute probative medical evidence.[18]

The fact that a condition manifests itself during a period of employment is not sufficient to establish causal relationship.[19] Temporal relationship alone will not suffice.[20] Entitlement to FECA benefits may not be based on surmise, conjecture, speculation, or on the employee's own belief of causal relationship.[21]

As appellant has not submitted any rationalized medical evidence to support her claim that she sustained a right hand injury causally related to the accepted April 12, 2016 employment incident, she has failed to meet her burden of proof to establish entitlement to FECA benefits.

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 that her right hand condition is causally related to the accepted April 12, 2016 employment incident.

[15] Medical opinions that are speculative or equivocal in character are of little probative value. *See Kathy A. Kelley*, 55 ECAB 206 (2004).

[16] 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).

[17] *See supra* note 12.

[18] *See A.F., supra* note 13.

[19] 20 C.F.R. § 10.115(e).

[20] *See D.I.*, 59 ECAB 158, 162 (2007).

[21] *See M.H.*, Docket No. 16-0228 (issued June 8, 2016).

ORDER

IT IS HEREBY ORDERED THAT the October 5, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 12, 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