United States Department of Labor
Employees' Compensation Appeals Board

N.C., Appellant	)	
and	)	**Docket No. 17-0425**
	)	**Issued: June 21, 2018**
U.S. POSTAL SERVICE, POST OFFICE, Albany, NY, 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:
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On December 19, 2016 appellant, through counsel, filed a timely appeal from an August 22, 2016 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 over the merits of this case.

ISSUE

The issue is whether appellant met her burden of proof to establish left hand and wrist conditions causally related to an accepted August 19, 2015 employment incident.

[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 August 21, 2015 appellant, a 44-year-old rural carrier, filed a traumatic injury claim (Form CA-1), alleging that she sustained an injury to her left hand and wrist on August 19, 2015 as a result of picking up a bundle of mail. She stated that she picked up a bundle of mail with her left hand with straps under her fingers and then felt sharp, continuous pain through the hand and wrist. Appellant stopped work on August 20, 2015.

On August 20, 2015 Ingrid Martinez, a nurse practitioner, excused appellant from work from August 20 and 21, 2015 due to illness/injury.

In an August 24, 2015 report, Kathleen McDonnell, also a nurse practitioner, released appellant to work effective August 25, 2015. On August 31, 2015 she diagnosed pain joint hand and tenosynovitis hand and wrist.

In a September 15, 2015 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 stated that it had reopened the claim for consideration because she had not returned to work in a full-time capacity. OWCP requested additional evidence and afforded appellant 30 days to respond to its inquiries.

Appellant subsequently submitted physical therapy reports dated September 14, 2015 and reports dated August 31 and September 10, 2015 from Ms. McDonnell.

On October 6, 2015 Dr. Carmen Federico, a Board-certified family practitioner, diagnosed left wrist pain and left hand synovitis/tenosynovitis. He indicated that appellant presented with a work-related injury which occurred on August 19, 2015 as a result of lifting up bundles of mail with her left hand and wrist. In response to Dr. Frederico's duty status report (Form CA-17) dated October 6, 2015, indicating a release to full-time, regular-duty work without restrictions, appellant returned to work on October 9, 2015.

Appellant returned to full-time, regular-duty work without restrictions on October 9, 2015.

By decision dated October 19, 2015, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish causal relationship between her diagnosed conditions and the accepted August 19, 2015 employment incident.

On October 29, 2015 counsel requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. Appellant submitted physical therapy reports dated September 14, 2015 and an x-ray of the left hand which demonstrated mild multilevel degenerative changes and no acute fractures.

In an October 9, 2015 report, Dr. Federico reiterated his diagnosis of pain and tenosynovitis and reported that appellant still had pain in her wrist that radiated to her left thumb.

On November 24, 2015 Dr. Federico reiterated the factual history of the claim and indicated that appellant was still working and used a wrist brace to help decrease the pain. He asserted that she constantly used her hands and wrists at work and still worked with both hands.

In a January 20, 2016 report, Dr. Federico asserted that, on August 19, 2015, appellant reported a sharp pain in her left wrist while in the process of performing her job sorting the mail. He opined that her tenosynovitis of the left wrist was directly and proximately caused by her work activity of August 19, 2015. Dr. Federico asserted that appellant's physical findings were consistent with the diagnosis as she had swelling and tenderness along the radial side of her wrist radiating to her thumb. He found that her pain was worsened with lateral extension of her wrist and x-rays revealed mild osteoarthritic changes in the thumb.

A telephonic hearing was held before an OWCP hearing representative on July 7, 2016. Appellant provided testimony and the hearing representative held the case record open for 30 days for the submission of additional evidence. No additional evidence was received.

By decision dated August 22, 2016, OWCP's hearing representative affirmed the October 19, 2015 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, 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[4] was sustained in the performance of duty, as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.[5]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether fact of injury has been established. A fact of injury determination is based on two elements. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time and place, and in the manner alleged. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury. An employee may establish that the employment incident occurred as alleged, but fail to show that the claimed condition relates to the employment incident.[6]

[3] *Id.*

[4] OWCP regulations define a traumatic injury as a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected. 20 C.F.R. § 10.5(ee).

[5] *See T.H.*, 59 ECAB 388 (2008).

[6] *Id.*

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.[7]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish causal relationship between the conditions for which compensation is claimed and the accepted August 19, 2015 employment incident.

In his reports, Dr. Federico diagnosed left wrist pain and left hand synovitis/ tenosynovitis. He asserted that on August 19, 2015 appellant reported a sharp pain in her left wrist while in the process of performing her job sorting the mail. Dr. Federico opined that her tenosynovitis of the left wrist was directly and proximately caused by her work activity of August 19, 2015. He asserted that appellant's physical findings were consistent with the diagnosis as she had swelling and tenderness along the radial side of her wrist radiating to her thumb. Dr. Federico found that her pain was worsened with lateral extension of her wrist and x-rays revealed mild osteoarthritic changes in the thumb. On November 24, 2015 he reiterated the factual history of the claim and asserted that appellant constantly used her hands and wrists at work. The Board finds that Dr. Federico failed to provide sufficient medical rationale explaining the mechanism of how picking up a bundle of mail at work on August 19, 2015 caused or aggravated her left hand and wrist conditions. Dr. Federico noted that appellant's conditions occurred while she was at work, but such generalized statements do not establish causal relationship because they merely repeat her allegations and are unsupported by adequate medical rationale explaining how her physical activity at work actually caused or aggravated the diagnosed conditions.[8] His opinion was based, in part, on temporal correlation. However, the Board has held that neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.[9] Dr. Federico did not otherwise sufficiently explain the reasons why diagnostic testing and examination findings led him to conclude that the accepted August 19, 2015 incident at work caused or contributed to the diagnosed conditions. Thus, the Board finds that the reports from Dr. Federico are insufficient to establish that appellant sustained an employment-related injury.

Appellant also submitted evidence from nurse practitioners and physical therapists. These documents do not constitute competent medical evidence because neither nurse

[7] *Id.*

[8] *See K.W.*, Docket No. 10-0098 (issued September 10, 2010).

[9] *See E.J.*, Docket No. 09-1481 (issued February 19, 2010).

practitioners nor physical therapists are considered "physicians" as defined under FECA.[10] As such, this evidence is also insufficient to meet appellant's burden of proof.

Other medical evidence of record, including diagnostic test reports, is of limited probative value and insufficient to establish the claim as it does not specifically address whether appellant's diagnosed conditions are causally related to the accepted August 19, 2015 work incident.[11]

The Board finds that appellant has not submitted rationalized medical evidence sufficient to establish that she sustained an injury causally related to the accepted August 19, 2015 employment incident and, thus, failed to meet her burden of proof.

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 left hand and wrist conditions causally related to the accepted August 19, 2015 employment incident.

[10] 5 U.S.C. § 8101(2); *Paul Foster*, 56 ECAB 208 (2004) (nurse practitioners); *Jennifer L. Sharp*, 48 ECAB 209 (1996) (physical therapists). *See also Gloria J. McPherson*, 51 ECAB 441 (2000); *Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (a medical issue such as causal relationship can only be resolved through the submission of probative medical evidence from a physician).

[11] *See K.W.*, 59 ECAB 271 (2007); *A.D.*, 58 ECAB 149 (2006); *Linda I. Sprague*, 48 ECAB 386 (1997) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

ORDER

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

Issued: June 21, 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