

**United States Department of Labor
Employees' Compensation Appeals Board**

M.B., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Oklahoma City, OK, Employer**

)
)
)
)
)
)
)
)
)
)
)
)

**Docket No. 17-2007
Issued: March 1, 2018**

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 September 27, 2017 appellant filed a timely appeal from a September 5, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (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 his burden of proof to establish a right wrist condition causally related to the accepted May 11, 2017 employment incident.

FACTUAL HISTORY

On May 16, 2017 appellant, then a 60-year-old carrier technician, filed a traumatic injury claim (Form CA-1), alleging that on May 11, 2017 he sprained his left wrist while closing a door

¹ 5 U.S.C. § 8101 *et seq.*

on a long life vehicle (LLV).² He stopped work on May 12, 2017. Appellant's supervisor noted on the reverse side of the claim form that appellant was in the performance of duty at the time of his claimed injury.

Appellant submitted a work release form from a registered nurse dated May 13, 2017 who verified that appellant was seen and treated in the emergency department on May 12, 2017 and could return to full-duty work on May 16, 2017.

By letter dated May 24, 2017, OWCP advised appellant of the type of evidence needed to establish his claim, particularly requesting that he submit a physician's reasoned opinion addressing the relationship between his claimed condition and specific employment incident.

Appellant was treated in the emergency room by Dr. Timothy Toole, a Board-certified emergency room physician, on May 12, 2017, for right hand swelling and pain. He reported working as a postal employee and frequently using his right hand to open and close the door on his LLV. Dr. Toole noted findings of intact range of motion, intact sensation, mild swelling to the dorsum of the right hand, slight tenderness to palpation of the second and third metacarpals, and no lesion or laceration. He opined that the injury may be secondary to overuse, ligamentous injury, ruptured cyst, or hairline fracture. Dr. Toole noted x-rays of the right hand revealed no significant radiographic abnormality or effusion. He diagnosed right hand pain. Dr. Toole wrapped appellant's right hand in an Ace bandage and prescribed anti-inflammatories and rest for three to four days.

In a June 28, 2017 decision, OWCP denied the claim, finding that appellant failed to submit medical evidence establishing that a medical condition was diagnosed in connection with the accepted work incident. As the medical component was not satisfied, it found that appellant had not established that he sustained an injury as defined by FECA.

In an undated appeal form received on July 18, 2017, appellant requested reconsideration. He submitted emergency room medical records from Dr. Toole dated May 12, 2017, a May 12, 2017 x-ray of the right hand, and a work release form from a registered nurse dated May 13, 2017, all previously of record.

In a decision dated September 5, 2017, OWCP denied modification of its June 28, 2017 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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 of FECA, that an injury was sustained in the performance of duty as alleged, and that

² This appears to be a typographical error and should be right wrist as the medical records provided reference a right wrist injury.

³ *Supra* note 1.

any disability or specific condition for which compensation is claimed is causally related to the employment injury. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged. Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.⁵

Rationalized medical opinion evidence is generally required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, 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.⁶

ANALYSIS

It is undisputed that on May 11, 2017 appellant closed an LLV door while performing his carrier technician duties. However, the Board finds that he has failed to submit sufficient medical evidence to establish that this accepted work incident caused or aggravated his right wrist condition. In a letter dated May 24, 2017, OWCP requested that appellant submit a comprehensive medical report from his treating physician which included a reasoned explanation as to how the accepted work incident had caused his claimed injury.

Appellant was treated in the emergency room by Dr. Toole on May 12, 2017 for right hand swelling and pain. He reported working as a postal employee and frequently used his right hand to open and close his truck door. Dr. Toole noted findings of mild swelling to the dorsum of the right hand and slight tenderness to palpation of the second and third metacarpals. He noted x-rays of the right hand revealed no significant radiographic abnormality. Dr. Toole diagnosed right hand pain. He wrapped appellant's right hand in an Ace bandage, prescribed anti-inflammatories, and rest. Dr. Toole opined that the injury may be secondary to overuse, ligamentous injury, ruptured cyst, or hairline fracture. However, he merely repeated the history of injury as reported by appellant without providing his own opinion regarding whether his condition was work related. To the extent that Dr. Toole is providing his own opinion, he failed to provide a rationalized opinion regarding the causal relationship between appellant's right hand condition and the accepted work incident.⁷ Additionally, the Board notes that Dr. Toole's report is speculative with regard to the cause of appellant's right wrist condition noting that his "injury

⁴ *Gary J. Watling*, 52 ECAB 357 (2001).

⁵ *T.H.*, 59 ECAB 388 (2008).

⁶ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁷ *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).

may be secondary to overuse, ligamentous injury, ruptured cyst, or hairline fracture.” Therefore, this report is insufficient to meet appellant’s burden of proof.⁸

Appellant was treated by a registered nurse on May 12 and 13, 2017 who provided a work release form. The Board has held that treatment notes signed by a nurse⁹ are not considered medical evidence as a nurse is not a physician under FECA¹⁰ and is not competent to render a medical opinion under FECA. Thus, this evidence is insufficient to meet appellant’s burden of proof.

The remainder of the medical evidence, including an x-ray of the right hand, is of limited probative value. As a diagnostic test, it fails to provide a physician’s reasoned opinion on the causal relationship between appellant’s accepted work incident and his diagnosed right hand condition.¹¹ For this reason, this evidence is insufficient to meet his burden of proof.

An award of compensation may not be based on surmise, conjecture, or speculation. Neither the fact that appellant’s condition became apparent during a period of employment, nor the belief that his condition was caused, precipitated, or aggravated by his employment is sufficient to establish causal relationship. Causal relationship must be established by rationalized medical opinion evidence.¹² Appellant failed to submit such evidence and therefore he has not met his burden of proof.

On appeal appellant reiterated the factual elements of his claim. He indicated that he hurt his hand while delivering mail and reported the injury to his supervisor on the same day. Appellant noted treatment at the emergency room. As found above, the medical evidence does not establish that he has a diagnosed medical condition that is causally related to his accepted work incident. Appellant has not submitted a physician’s report which sufficiently explains how the incident on May 11, 2017 caused or aggravated his diagnosed medical 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.

⁸ Medical opinions that are speculative or equivocal in character are of diminished probative value. *D.D.*, 57 ECAB 734 (2006).

⁹ *B.B.*, Docket No. 09-1858 (issued April 16, 2010) (nurse’s reports have no probative value as nurses are not considered physicians under FECA).

¹⁰ 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).

¹¹ See *S.E.*, Docket No. 08-2214 (issued May 6, 2009) (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).

¹² See *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a right wrist condition causally related to the accepted May 11, 2017 employment incident.

ORDER

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

Issued: March 1, 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