United States Department of Labor
Employees' Compensation Appeals Board

L.A., Appellant	)	
and	)	**Docket No. 17-0842**
	)	**Issued: May 16, 2018**
U.S. POSTAL SERVICE, POST OFFICE, San Diego, CA, 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 March 6, 2017 appellant filed a timely appeal from a September 9, 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 the claim.

ISSUE

The issue is whether appellant has met her burden of proof to establish bilateral upper extremity conditions causally related to the accepted factors of her federal employment.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case has previously been before the Board.[2] The facts of the case as presented in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On October 24, 2013 appellant, then a 50-year-old rural carrier, filed an occupational disease claim (Form CA-2) alleging that she sustained bilateral medial epicondylitis while in the performance of her federal job duties. She stated that she first became aware of this condition on January 29, 2001, and first realized that it was caused or aggravated by factors of her federal employment on September 11, 2013.[3] The employing establishment controverted appellant's claim, contending that medical documentation appellant had provided since December 2012 precluded her from work due to a psychiatric condition. It explained that she had not provided any medical documentation concerning an epicondylitis condition until she was presented with a removal request to terminate her employment.

By decision dated December 11, 2013, OWCP denied the claim, finding that the evidence of record was insufficient to establish fact of injury. Specifically, it found that appellant had not provided sufficient explanation regarding the nature, duration, and frequency of her alleged employment duties.

On December 23, 2013 counsel requested a telephonic hearing before an OWCP hearing representative, which was held on June 10, 2014. By decision dated July 21, 2014, OWCP's hearing representative modified the prior decision to accept fact of injury in appellant's regular rural carrier duties since March 2009 and that she has not worked since April 2012. The hearing representative, however, affirmed the denial of appellant's claim as appellant failed to establish an injury causally related to the established employment exposure from March 2009 through April 2012.

On August 19, 2014 appellant, through counsel, timely appealed to the Board. In a September 25, 2015 decision, the Board affirmed the July 21, 2014 OWCP decision, finding that appellant had not met her burden of proof to establish bilateral medial epicondylitis causally related to her rural carrier duties from March 2009 to April 2012. The Board noted appellant's prior claim under OWCP File No. xxxxxx245 for a January 29, 2001 traumatic injury, wherein she alleged that she strained both forearms. The Board found that there was no rationalized medical opinion evidence of record explaining how appellant's bilateral medial epicondylitis condition was causally related to the employment exposure from March 2009 to April 2012.

[2] Docket No. 14-1818 (issued September 25, 2015).

[3] Appellant has a prior claim under OWCP File No. xxxxxx245 for a traumatic injury on January 29, 2001 when she strained both forearms when lifting flats, and casing and boxing mail. The claim was allowed for payment of limited medical expenses without formal adjudication. The last medical documentation in that claim was dated August 6, 2002 for treatment of bilateral overuse tendinitis of the forearms. In January 2001 appellant was a part-time carrier, working as needed, with no regular workdays. In March 2009 she became a full-time rural carrier. Appellant stopped work on April 12, 2012 due to a nonwork-related knee condition. Although she was subsequently provided medical work restrictions concerning her knee condition, she did not return to work and in October 2012 she became totally disabled due to a psychiatric condition. In November 2013 the employing establishment terminated appellant's employment due to her being in a leave-without-pay status for more than 365 days.

On August 11, 2016 appellant requested reconsideration. In an August 1, 2016 narrative statement, she noted a correction regarding her age, presented a list of her work history and income from 1996 to 2013 with the employing establishment, and discussed occurrences in her personal life which affected the medical reporting of her upper extremity conditions. Appellant noted the physicians she saw for the overuse syndrome of her arms from January 2001 to August 2002. She described her employment duties as a part-time rural route carrier prior to 2009 and alleged that she performed the same duties and repetitive upper extremities activities as a part-time rural route carrier, as she had in her full-time position after 2009. OWCP also received additional medical evidence.

An April 2, 2012 report from a certified physician assistant noted that appellant had experienced a situation which she was anxious about, and which had affected her ability to work. The physician assistant diagnosed abdominal pain, right lower quadrant, gastroesophageal reflux disease, and anxiety state, unspecified.

A November 20, 2013 letter from the employing establishment indicated that appellant would be separated from employment on November 30, 2013 as she was physically unable to meet the requirements of her position.

In a June 1, 2015 electromyogram (EMG) and nerve conduction velocity (NCV) study report, Dr. John Ravitis, a neurologist, indicated that there was evidence of mild right and moderate left ulnar neuropathy at the elbows near the ulnar groove with axonal loss in the left arm. However, there was no sign of carpal tunnel syndrome, brachial plexopathy or cervical radiculopathy in the right upper limb.

In a June 24, 2015 report, Dr. Mohammad Ali Farkhondehpour, an internist, noted that appellant reported forearm swelling/pain with numbness and tingling radiating to the whole hand in 2000, which she attributed to her job as a postal worker, which required repetitive work with her hands. The neuropathy persisted and she tried physical therapy without significant benefit. In May 2015, appellant's symptoms worsened. Physical therapy again offered little relief. Dr. Farkhondehpour noted that the May 2015 EMG study indicated bilateral ulnar neuropathy and ulnar nerve entrapment (cubital tunnel syndrome).

In a June 29, 2015 report, Dr. Reid Allen Abrams, a Board-certified orthopedic surgeon, noted that appellant had a provisional diagnosis of ulnar neuropathy after June 1, 2015 electrodiagnostic studies were performed. He indicated that her history started about 2001 when she was diagnosed with bilateral overuse syndrome after working at the employing establishment. Since 2013, appellant developed hand tingling and weakness. Dr. Abrams stated that appellant was a difficult historian. He also noted that she had a nonanatomical physical examination. Dr. Abrams indicated that there was no compressive neuropathy that would elicit appellant's symptoms. However, he indicated that she may have atypical carpal tunnel syndrome with negative electrodiagnostic studies associated with cubital tunnel syndrome. Dr. Abrams recommended and provided appellant with a carpal tunnel injection.

In a June 4, 2016 report, Dr. Christopher T. Behr, a Board-certified orthopedic surgeon, reported that appellant had been employed by the employing establishment in several different capacities. He noted that from 2009 through 2012 she had worked as a rural route carrier driver

and described her duties. Dr. Behr also noted that she stopped working on April 11, 2012 due to a nonindustrial knee injury and was separated from her employment in November 2013. He noted appellant's history of illness, as reported by appellant, and provided examination findings. Dr. Behr noted that there was tenderness over the medial epicondyle and positive Tinel's sign bilaterally over the cubital tunnels. He opined that, although appellant had reported that her symptoms and medical treatment began after she had stopped working for the employing establishment, her current bilateral upper extremity symptoms arose, in part, out of and in the course of her employment. Dr. Behr indicated that the description of a rural carrier required extensive repetitive activities of bilateral upper extremities. Also, appellant had objective evidence of bilateral cubital tunnel syndrome, condition whereby the ulnar nerve at the elbow becomes compressed as a result of repetitive activities and, in the vast majority of cases, was not due to a single incident or a single activity. Dr. Behr stated that there was nothing in her personal life that would explain this condition absent her employment. Further, had appellant not worked for the employing establishment, she would not have bilateral cubital tunnel syndrome. Dr. Behr further stated that appellant has had unfortunate occurrences in her personal life, which caused the delay in the medical reporting of her medical condition.

By decision dated September 9, 2016, OWCP denied modification.[4] It found that the medical evidence submitted was insufficient to establish right upper extremity conditions causally related to the accepted factors of her federal employment.[5]

LEGAL PRECEDENT

An employee seeking benefits under FECA[6] 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 an 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. 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.

Whether an employee actually sustained an injury in the performance of duty begins with an analysis of whether fact of injury has been established. To establish an occupational disease claim, an employee must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.

[4] The September 9, 2016 decision notes that OWCP denied modification of the Board's September 25, 2015 decision. OWCP is not authorized to review Board decisions. Although the September 25, 2015 decision was the last merit decision, the July 21, 2014 decision is the appropriate subject of possible modification by OWCP. *See* 20 C.F.R. § 501.6(d).

[5] The September 9, 2016 decision did not specifically limit the accepted period of employment as 2009 to 2012.

[6] *Supra* note 1.

Causal relationship is a medical issue and the evidence generally required to establish causal relationship is rationalized medical opinion evidence. 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. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion. 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 causal relationship.

ANALYSIS

The Board finds that appellant has failed to submit the necessary rationalized medical opinion evidence sufficient to establish that her diagnosed upper extremity conditions were caused or aggravated by factors of her federal employment duties.

The Board previously found that appellant had performed full-time rural carrier duties from March 2009 through April 2012, but had failed to establish that her bilateral medial epicondylitis condition was causally related to the factors of her federal employment. Findings made in prior Board decisions are *res judicata* absent any further review by OWCP under section 8128 of FECA. The Board will, therefore, not review the evidence addressed in the prior appeal.

In his June 23, 2015 report, Dr. Farkhondehpour noted appellant's history of her upper extremity symptoms and that her symptoms worsened in May 2015. While he stated that the May 2015 electromyelogram study indicated bilateral ulnar neuropathy and ulnar nerve entrapment (cubital tunnel syndrome), he did not address the cause of the diagnosed conditions. Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[7] Similarly, in his June 29, 2015 report, Dr. Abrams indicated that appellant may have atypical carpal tunnel syndrome with negative electrodiagnostic studies associated with cubital tunnel syndrome. His report lacks probative value as it provides a speculative medical diagnosis and lacks an opinion on causal relationship.[8]

In his June 4, 2016 report, Dr. Behr noted appellant's work history at the employing establishment, which he indicated required extensive repetitive activities of bilateral upper extremities. He stated that, although appellant had reported that her symptoms and medical treatment began after she had stopped working for the employing establishment, it was his medical opinion that her current bilateral upper extremity symptoms arose, in part, out of and in the course of her employment. The reason for his opinion was that she had objective evidence of bilateral cubital tunnel syndrome, which he explained was a condition which occurred as a result of repetitive activities. Also, there was nothing in her personal life that would explain this

[7] *A.D.*, 58 ECAB 149 (2006).

[8] *Id.*

condition and had she not worked for the employing establishment, she would not have bilateral cubital tunnel syndrome. Thus, Dr. Behr concluded that her work duties caused the bilateral cubital tunnel syndrome.

The Board finds that, although Dr. Behr supported causal relationship, he did not provide medical rationale explaining the basis of his opinion regarding causal relationship between appellant's bilateral cubital tunnel condition and the factors of her federal employment. For example, Dr. Behr did not explain how appellant's work duties would have caused or aggravated the diagnosed condition, and why such condition would have worsened after she stopped work.[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] 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 her condition was caused, precipitated or aggravated by her employment, is sufficient to establish causal relationship. Causal relationship must be established by rationalized medical opinion evidence.[11] Therefore, this report is insufficient to meet appellant's burden of proof.

The remaining medical evidence of record is also insufficient to establish appellant's claim. Dr. Ravitis' June 1, 2015 EMG/NCV study report only interpreted imaging studies related to the shoulders and provided no opinion on the cause of appellant's claimed employment injury.[12] Without any mention of the repetitive employment duties and any discussion of causal relationship, his report is of limited probative value.[13]

The July 2, 2012 report by a physician assistant is also insufficient to establish her claim. Reports from physician assistants do not constitute competent medical evidence because physician assistants are not considered physicians as defined under FECA.[14]

As appellant failed to submit rationalized medical opinion evidence sufficient to establish her claim, the Board finds that she has not met her burden of proof.

On appeal, appellant argues that she has permanent damage to both arms, which started with her employment at the employing establishment and was initially documented under File

[9] *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).

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

[11] *See Dennis M. Mascarenas,* 49 ECAB 215 (1997).

[12] *D.H.*, Docket No. 11-1739 (issued April 18, 2012).

[13] *S.Y.*, Docket No. 11-1816 (issued March 16, 2012).

[14] *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); *Sean O Connell*, 56 ECAB 195 (2004) (physician assistants).

No. xxxxxx245. Her honest belief that her occupational employment duties caused her medical injury, however sincerely held, does not constitute the medical evidence necessary to establish causal relationship.[15]

Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's 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 bilateral upper extremity conditions causally related to the accepted factors of her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the September 9, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 16, 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

[15] *See B.H.*, Docket No. 16-1553 (issued March 27, 2017).