

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

V.T., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Bergenfield, NJ, Employer**

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**Docket No. 18-0881
Issued: November 19, 2018**

Appearances:

James D. Muirhead, Esq., for the appellant¹

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On March 19, 2018 appellant, through counsel, filed a timely appeal from a February 13, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the case.

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.*

ISSUE

The issue is whether appellant has met his burden of proof to establish left thumb arthritis and de Quervain's tenosynovitis causally related to the accepted factors of his federal employment.

FACTUAL HISTORY

On November 17, 2016 appellant, then a 57-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that he had developed left thumb and hand arthritis and de Quervain's syndrome due to carrying mail in his left hand for almost 30 years. He noted that he first became aware of his claimed conditions on June 1, 2014 and first realized their relation to his federal employment on September 12, 2016. Appellant did not stop work.

By development letter dated December 14, 2016, OWCP requested that appellant provide additional factual and medical evidence in support of his claim. More specifically, it requested a medical report from his physician which set forth an opinion, supported by a medical explanation as to how work activities in his federal employment caused, contributed to, or aggravated his medical conditions. OWCP afforded him 30 days for a response.

Appellant provided a narrative statement and explained that as a letter carrier, he needed to carry envelopes in his left hand while delivering the mail. He described gripping a pile of envelopes in his left hand throughout his workday. Appellant alleged that he developed pain and weakness in his left hand as a result of this work activity and that he was diagnosed with arthritis and de Quervain's syndrome.

On March 20, 2015 Dr. Jen F. Lee, a Board-certified orthopedic surgeon, performed a left thumb carpometacarpal (CMC) joint arthroplasty, transfer of the flexor carpi radialis tendon, de Quervain tendon release, and tenosynovectomy of the extensor tendon.

By decision dated February 3, 2017, OWCP accepted that the claimed employment factors occurred as alleged, but denied appellant's occupational disease claim finding that he had not submitted medical evidence establishing causal relationship between his diagnosed conditions and the accepted factors of his federal employment.

Counsel requested an oral hearing before an OWCP hearing representative on February 10, 2017.

Appellant testified at the July 26, 2017 hearing and described his employment duties. He alleged that to case mail he was required to hold between four and six inches of mail in his left hand at all times. Appellant noted this stretched his hand and required him to use pressure to hold the mail while placing it in the appropriate case. He then sorted the mail held in his left hand with his right. Appellant performed this duty for three hours a day. He also noted that to deliver the mail, hand bundles were required to be between four and six inches and he was also required to hold between four and six inches of magazines with his left arm.

In a report dated March 22, 2017, Dr. David Weiss, an osteopath Board-certified in orthopedic surgery, noted appellant's diagnosed conditions of left thumb CMC joint arthritis and de Quervain's tendinitis in his left extensor tendon. On physical examination he found no thenar

or hypothenar atrophy, normal fist presentation, and no carpal instability on the left. Dr. Weiss diagnosed cumulative and repetitive trauma disorder, aggravation of age-related CMC joint arthropathy to the left thumb, and de Quervain's tenosynovitis of the left thumb with resulting surgeries. He opined that the cumulative and repetitive occupational trauma sustained by appellant was the competent producing factor for his diagnosed conditions.

By decision dated August 31, 2017, OWCP's hearing representative affirmed the denial of appellant's occupational disease claim, finding that Dr. Weiss' report did not provide medical rationale supporting his opinion that appellant's diagnosed conditions were the result of his employment duties. He noted that Dr. Weiss made general reference to work tasks, but did not explain how specific work factors caused or aggravated the diagnosed conditions.

On November 17, 2017 appellant, through counsel, requested reconsideration of the August 31, 2017 decision and submitted a report from Dr. Weiss dated November 6, 2017. Dr. Weiss diagnosed osteoarthritis and degenerative joint disease of the left thumb CMC joint. He reported that osteoarthritis was believed to be caused by a mechanical stress on a joint and low grade inflammatory process. Dr. Weiss noted that osteoarthritis was characterized by worn cartilage and was a degenerative "wear and tear" process. He opined that it was reasonable to assume the more wear and tear on a joint, the greater the risk of osteoarthritis. Dr. Weiss explained that trauma and overuse could cause rapid development of osteoarthritis and that activities and jobs that placed high stress on the thumb joint were a noted risk factor for osteoarthritis at the base of the thumb. He noted that repetitive activities such as pinching and grasping could wear out the joint and cause an increase in inflammation leading to osteoarthritis. Dr. Weiss concluded that appellant experienced work-related injuries to his left thumb due to his work duties of casing mail with repetitive pinching and grasping.

By decision dated February 13, 2018, OWCP denied modification of its prior decision, finding that appellant had not provided rationalized medical opinion evidence sufficient to establish that the accepted factors of his federal employment caused or aggravated his diagnosed medical conditions. It therefore denied his claim.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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, 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.⁴ These are the essential elements of every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁵

³ *Id.*

⁴ *Kathryn Haggerty*, 45 ECAB 383, 388 (1994).

⁵ *K.B.*, Docket No. 17-1997 (issued July 27, 2018).

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."⁶ 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.

The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon a complete factual and medical background, showing a causal relationship between the claimed condition and identified factors. The belief of a claimant that a condition was caused or aggravated by the employment is not sufficient to establish causal relation.⁷ A medical report is of limited probative value on a given medical question if it is unsupported by medical rationale.⁸ Medical rationale includes a physician's rationalized 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.⁹

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish that left thumb arthritis and de Quervain's tenosynovitis are causally related to the accepted factors of his federal employment.

In support of his claim, appellant provided reports from Dr. Weiss. In his March 22, 2017 report, Dr. Weiss attributed appellant's diagnosed left thumb conditions to the cumulative and repetitive occupational trauma sustained by appellant. In this report he failed to identify the specific employment activities that he felt caused or contributed to appellant's diagnosed conditions. Dr. Weiss also failed to provide a medically sound explanation of how the specific employment factors, physiologically, caused appellant's conditions.¹⁰ As such this report is insufficient to establish appellant's claim.

⁶ 20 C.F.R. § 10.5(q).

⁷ *Lourdes Harris*, 45 ECAB 545, 547 (1994).

⁸ *T.F.*, 58 ECAB 128 (2006).

⁹ *A.D.*, 58 ECAB 149 (2006).

¹⁰ *W.S.*, Docket No. 17-1769 (issued July 26, 2018).

In his November 6, 2017 report, Dr. Weiss noted that repetitive activities such as pinching and grasping could wear out the joint and cause an increase in inflammation leading to osteoarthritis. He concluded that appellant experienced work-related injuries to his left thumb due to his work duties of casing mail with repetitive pinching and grasping. Dr. Weiss further noted that osteoarthritis was believed to be caused by a mechanical stress on a joint and low grade inflammatory process and opined that it was reasonable to assume the more wear and tear on a joint, the greater the risk of osteoarthritis. His opinions in this report are speculative as he generally noted that repetitive activities “could” cause inflammation and that it was reasonable to “assume” that repetitive activities would result in a greater risk of osteoarthritis. The opinion of a physician supporting causal relationship must not be speculative or equivocal.¹¹ Dr. Weiss’ statement on causation also failed to provide a sufficient explanation as to the mechanism of injury pertaining to this occupational disease claim as alleged by appellant, namely, how specific duties of a letter carrier would cause and or aggravate the osteoarthritis in appellant’s left thumb CMC joint as opposed to the natural progression of the preexisting conditions.¹² As he failed to provide a medically-sound explanation of how the specific employment factors, in particular physiologically, caused or aggravated appellant’s left hand conditions, this report is also insufficient to establish appellant’s claim.¹³

Appellant also submitted a report from Dr. Lee, which related that he had undergone a left thumb carpometacarpal joint arthroplasty, transfer of the flexor carpi radialis tendon, de Quervain tendon release, and tenosynovectomy of the extensor tendon on March 20, 2015. However, this report from Dr. Lee lacks probative value. The Board has explained that medical evidence that does not offer an opinion regarding the cause of an employee’s condition is of no probative value on the issue of causal relationship.¹⁴

As appellant has not submitted rationalized medical opinion evidence sufficient to establish causal relationship, he has not met his burden of proof.¹⁵

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.

¹¹ *K.R.*, Docket No. 18-0711 (issued September 6, 2018); *see also D.D.*, 57 ECAB 734, 738 (2006); *Kathy A. Kelley*, 55 ECAB 206 (2004).

¹² *Id.*

¹³ *Id.*

¹⁴ *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁵ *Id.*

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish left thumb arthritis and de Quervain's tenosynovitis causally related to the accepted factors of his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the February 13, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 19, 2018
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board