United States Department of Labor
Employees' Compensation Appeals Board

C.J., Appellant	)	
and	)	**Docket No. 18-0298**
	)	**Issued: October 3, 2018**
U.S. POSTAL SERVICE, POST OFFICE, Riverton, UT, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On November 27, 2017 appellant filed a timely appeal from a September 20, 2017 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.

ISSUE

The issue is whether appellant has met her burden of proof to establish intermittent periods of total disability from September 7 through December 3, 2016 due to the accepted employment injury.

FACTUAL HISTORY

On September 2, 2016 appellant, then a 70-year-old rural carrier, filed an occupational disease claim (Form CA-2) alleging that she developed tendinitis in her wrist and thumb as a result

[1] 5 U.S.C. § 8101 *et seq.*

of grasping letters and lifting trays at work. She first became aware of her condition and its relationship to her federal employment on July 15, 2016.

A Family and Medical Leave Act (FMLA) certification of health care provider form dated September 20, 2016 and completed by Dr. Joyce A. Pritchard, an attending Board-certified family practitioner, was received. Dr. Pritchard diagnosed left radial styloid tenosynovitis that caused pain and weakness along the thumb with repetitive use or any significant weight. She also diagnosed severe tendinitis of the thumb. Dr. Pritchard checked a box marked "yes" indicating that appellant was unable to perform certain job functions due to the conditions. She advised that appellant was incapacitated on September 7 and 9, 2016 and from September 20 through October 16, 2016.

OWCP, in an October 19, 2016 development letter, advised appellant of the deficiencies in her claim and requested that she submit additional medical and factual evidence. In a separate letter dated October 19, 2016, it requested that the employing establishment respond to her allegations and provide information regarding her workplace exposure and medical evidence, if she had been treated at its medical facility. OWCP afforded appellant and the employing establishment 30 days to submit the requested information.

On October 31, 2016 the employing establishment responded that appellant's statements were accurate and that she cased mail and lifted packages at work. It noted that training was provided to her to minimize the effects of her exposure. The employing establishment submitted an official description of a rural carrier position.

An October 25, 2016 return to work form from Bryan Bernhardt, a certified physician assistant, indicated that appellant had a left wrist diagnosis and that she could return to work without restrictions on November 1, 2016.

On November 2, 2016 appellant responded to OWCP's October 19, 2016 development letter. She described her work duties as including sorting and casing letters and flats and delivering mail. Appellant also provided a history of injury. In mid-July 2016 she began feeling pain and discomfort in her left hand while grasping and lifting mail. Appellant's symptoms gradually worsened to include weakness, decreased strength, an inability to grasp with her hand and thumb, limited lifting ability, and pain when she attempted to perform her described work duties. She noted a history of her medical treatment, which included physical therapy and a cortisone shot. Appellant did not recall having any other similar condition.

Appellant submitted reports of intermittent dates from September 12 through 29, 2016 from occupational therapists regarding the treatment of her diagnoses of left wrist tendinitis and de Quervain's syndrome. She also submitted Disabilities of the Arm, Shoulder, and Hand (DASH) questionnaires dated September 12 and 19, 2016 from a physical therapy clinic which assessed her functional ability.

Appellant further submitted an October 11, 2016 medical report by Mr. Bernhardt and reviewed by Dr. Steven B. Huish, an attending Board-certified orthopedic surgeon, but not signed, a September 20, 2016 progress note from Dr. Pritchard, and an October 25, 2016 report from

Mr. Bernhardt, who diagnosed left wrist de Quervain's tenosynovitis and opined that the diagnosed condition was causally related to her rural carrier duties.

On December 2, 2016 OWCP accepted appellant's claim for left radial styloid tenosynovitis (de Quervain).

In a December 8, 2016 statement, appellant noted that she was out of work on November 25, 26, 29, and 30 and December 3, 2016 due to left wrist pain. She noted that her December 7, 2016 surgery was cancelled and that it would probably take place on December 12, 2016.

Appellant submitted an October 11, 2016 return to work form from Mr. Bernhardt who reiterated his prior diagnosis of left wrist de Quervain's tenosynovitis. Mr. Bernhardt advised that appellant could return to work the next day with restrictions. Appellant, in a handwritten note on the return to work form, related that the employing establishment would not provide light-duty work until workers' compensation had approved an injury.

In a December 5, 2016 return to work form, Dr. Huish advised that appellant could not return to work in any capacity from December 6, 2016 through January 4, 2017, a period of four weeks after her surgery.

On December 9, 2016 appellant filed a claim for compensation (Form CA-7) for leave without pay (LWOP) for intermittent periods of disability from September 7 to December 9, 2016. In attached time analysis forms (Form CA-7a) dated December 13, 2016, she requested LWOP for 304 hours.

In a December 16, 2016 statement, appellant indicated that on December 12, 2016 she returned to light-duty work at the employing establishment because her surgery did not take place and was rescheduled for December 19, 2016.

In a development letter dated December 22, 2016, OWCP advised appellant that the evidence submitted was insufficient to establish her claim for compensation for the period September 7 through December 9, 2016. It requested that she provide additional medical and factual evidence. OWCP noted that pain was a symptom and not a valid diagnosis. It further noted that a physician assistant was not considered a "physician" as defined by FECA. OWCP afforded appellant 30 days to submit the requested information. It sent a copy of its development letter to the employing establishment.

A November 22, 2016 report from Mr. Bernhardt was received in which he added an impression of continued left de Quervain's syndrome despite conservative treatment and recommended a left first dorsal compartment release. He advised that appellant would need three to four weeks off work for recovery before returning to full duty.

On December 28, 2016 the employing establishment responded to OWCP's December 22, 2016 development letter. It noted appellant's work restrictions and explained that light-duty work was not provided to a rural carrier due to union contract provisions. Limited-duty work could be provided when a claim had been adjudicated by OWCP. The employing establishment noted that an October 25, 2016 medical document released appellant to return to full duty with no restrictions

as of November 1, 2016. It maintained that the medical documentation it had was vague as to why she sometimes worked and sometimes had not worked.

Appellant, on January 4, 2017, also responded to OWCP's December 22, 2016 development letter. She noted that she returned to light-duty work after the employing establishment postmaster mistakenly told her that he had to wait until OWCP accepted her claim before she could do so. Appellant noted that she did not undergo surgery on December 19, 2016 because OWCP had not authorized the surgery at that time.[2]

Appellant submitted an unsigned return to work form dated January 4, 2017, which indicated that she could not return to work in any capacity through February 1, 2017 and that surgery approval was still pending. The form listed her work restriction for a four-week duration.

An additional report dated September 19, 2016 from appellant's occupational therapist addressed the treatment of her left wrist tenosynovitis and de Quervain's syndrome.

On February 16, 2017 OWCP authorized appellant's left wrist surgery.

A further return to work form dated February 15, 2017 from Dr. Huish again indicated that appellant could not return to work in any capacity as of that day. He related that she was awaiting surgery approval.

In a March 14, 2017 return to work form, Mr. Bernhardt noted that appellant underwent left wrist surgery on March 6, 2017. He requested that she be excused from work from the date of surgery through March 31, 2017. Mr. Bernhardt reported that appellant could return to work with restrictions on March 31, 2017.

By decision dated March 16, 2017, OWCP denied appellant's claim for total disability compensation for the period September 7 to December 9, 2016. It found that the medical evidence of record failed to establish that she was disabled as a result of her accepted employment injury.

In a letter and appeal request form received on June 30, 2017, appellant requested reconsideration of the March 16, 2017 decision. She contended that accompanying documents established that she was unable to perform her job and that the employing establishment failed to accommodate her with limited-duty work. Appellant provided a timeline of her medical treatment and time off work from September 7, 2016 through May 23, 2017.

Appellant submitted the employing establishment's grievance guide regarding the withdrawal or failure to provide limited duty and additional medical evidence, which included progress notes from her occupational therapists who addressed the treatment of her left wrist tendinitis and de Quervain's syndrome on September 12, 19, 23, and 29 and October 4, 2016.

Appellant also submitted further DASH questionnaires dated September 19, 26, and 29, 2016 from a physical therapy clinic and an operative note dated March 6, 2017 in which Dr. Huish

[2] The record indicates that OWCP initially authorized appellant's request for left wrist surgery on December 20, 2016.

performed left first dorsal compartment release for her preoperative and postoperative diagnoses of left de Quervain's syndrome.

Mr. Bernhardt, in a May 23, 2017 report, indicated that appellant was doing well following her March 6, 2017 surgery, although she had lingering swelling and flare-ups of pain in the CMC joint of her left thumb. He completed FMLA paperwork indicating that she could have flare-ups of arthritis and overuse twice a month.

By decision dated September 18, 2017, OWCP vacated its March 15, 2017 decision, finding that the evidence of record was sufficient to establish that appellant was totally disabled from work from September 7 through December 9, 2016 due to her accepted employment injury. However, in a September 20, 2017 cover letter, it advised her that the attached September 20, 2017 decision superseded its September 18, 2017 decision, which had vacated its March 15, 2017 decision. OWCP found that the medical evidence of record was sufficient to establish that appellant was totally disabled from work from September 23 through 30, 2016 and October 4 through 27, 2016, on October 29 and November 22, 2016, and from December 7 through 9, 2016 due to her accepted employment injury. It further found, however, that the medical evidence of record was insufficient to establish that she was totally disabled from work on September 7 and 9 and November 12 and 16, 2016, from November 25 through 30, 2016, and on December 3, 2016 due to her accepted work injury. Accordingly, OWCP vacated in part, modified in part, and affirmed in part its March 15, 2017 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 that any disability or specific condition for which compensation is claimed is causally related to the employment injury.[4] The term disability is defined as the incapacity because of an employment injury to earn the wages the employee was receiving at the time of the injury.[5]

Whether a particular injury causes an employee to be disabled from employment and the duration of that disability are medical issues which must be proved by a preponderance of the reliable, probative, and substantial medical evidence.[6] Findings on examination are generally needed to support a physician's opinion that an employee is disabled for work.

The Board will not require OWCP to pay compensation for disability in the absence of any medical evidence addressing the specific dates of disability for which compensation is claimed.

[3] *Supra* note 1.

[4] *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[5] 20 C.F.R. § 10.5(f); *see e.g., Cheryl L. Decavitch*, 50 ECAB 397 (1999).

[6] *Amelia S. Jefferson*, 57 ECAB 183 (2005); *William A. Archer*, 55 ECAB 674 (2004).

To do so would essentially allow an employee to self-certify his or her disability and entitlement to compensation.[7]

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence.[8] Rationalized medical evidence is medical evidence which includes a physician's detailed medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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.[9] Neither the 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.[10]

ANALYSIS

The Board finds that appellant has failed to establish that she was totally disabled from work during intermittent periods from September 7 through December 3, 2016 due to the accepted employment injury.

OWCP accepted appellant's claim for left radial styloid tenosynovitis (de Quervain's syndrome). Appellant stopped work on September 7, 2016 and claimed that she sustained total disability between that day and intermittently until December 9, 2016 due to her accepted employment injury.[11] By decision dated September 20, 2017, OWCP found that the medical evidence of record was sufficient to establish a causal relationship between her claimed total disability from September 23 through 30, 2016 and October 4 through 27, 2016, on October 29 and November 22, 2016, and from December 7 through 9, 2016 and the accepted employment injury. It found, however, that the medical evidence of record was insufficient to establish a causal relationship between appellant's claimed total disability on September 7 and 9 and November 12 and 16, 2016, from November 25 through 30, 2016, and on December 3, 2016 and the accepted work injury.

Appellant has the burden of proof to establish by the weight of the substantial, reliable, and probative evidence, a causal relationship between her claimed disability for that period and the

[7] *Amelia S. Jefferson, id*.

[8] *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[9] *Leslie C. Moore*, 52 ECAB 132 (2000).

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

[11] Appellant returned to limited-duty work on December 12, 2016 while awaiting surgery approval.

accepted conditions.[12] The Board finds that she has failed to submit sufficient medical evidence to establish employment-related disability for the period claimed due to her accepted injury.[13]

Appellant submitted a September 20, 2016 FMLA certification of health care provider form from Dr. Pritchard. The Board finds that the opinion of Dr. Pritchard is not well rationalized. She diagnosed left radial styloid tenosynovitis that caused pain and weakness along the thumb with repetitive use or any significant weight and severe tendinitis of the thumb. Dr. Pritchard checked a box marked "yes" indicating that appellant's incapacity to perform certain job duties on September 7 and 9, 2016 and from September 20 through October 16, 2016 was due to the conditions for which compensation was claimed. The Board has held that a report that addresses causal relationship with a checkmark on a form report, without medical rationale explaining how the conclusion was reached, is of diminished probative value and insufficient to establish causal relationship.[14] As Dr. Pritchard did not explain why appellant was disabled during the dates in question, and the causal relationship between appellant's disability and the accepted employment injury, her form report is insufficient to meet appellant's burden of proof.

Appellant also submitted Dr. Huish's December 5, 2016 and February 15, 2017 return to work forms in which he advised that she could not return to work in any capacity from December 6, 2016 through January 4, 2017, and as of February 15, 2017, respectively. While Dr. Huish addressed her total disability from work, he did not directly address the specific dates in question.[15] Likewise, he did not address the specific dates in question in his March 6, 2017 operative note.[16] Thus, the Board finds that Dr. Huish's form reports and operative note are insufficient to meet appellant's burden of proof.

The reports and DASH questionnaires from Mr. Bernhardt, a certified physician assistant, and appellant's occupational therapists, have no probative medical value. Neither a physician assistant nor an occupational therapist is considered a physician as defined under FECA and, therefore, their opinions are of no probative medical value.[17]

The January 4, 2017 unsigned return to work form indicated that appellant could not work through February 1, 2017. The Board has held that unsigned reports and reports that bear illegible

[12] *Amelia S. Jefferson, supra* note 6.

[13] *Alfredo Rodriguez,* 47 ECAB 437 (1996).

[14] *See Elmer C. Campbell,* Docket No. 94-1267 (issued March 5, 1996).

[15] *M.C.*, Docket No. 12-1895 (issued April 18, 2013); *M.F.*, Docket No. 08-1927 (issued April 16, 2009).

[16] *Id.*

[17] 5 U.S.C. § 8101(2) provides that a physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law. *See Sean O Connell,* 56 ECAB 195 (2004) (physician assistant); and *E.R.*, Docket No. 16-1634 (issued May 25, 2017) (occupational therapist)*; 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).

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

signatures cannot be considered probative medical evidence because they lack proper identification.[18] Thus, this form report is of no probative value.

As noted, appellant must submit reasoned medical evidence directly addressing the specific dates of disability for work for which she claims compensation.[19] She did not provide medical evidence containing a rationalized opinion supporting that she could not work during intermittent periods from September 7 through December 3, 2016 due to her accepted condition, and thus did not meet her burden of proof.

On appeal, appellant expresses her dissatisfaction with an examination performed by her physician assistant and a nurse who had difficulty obtaining authorization for her left wrist surgery. She contends that her disability from work was due to work stress and an incomplete surgery. The Board finds these arguments without merit. For the reasons stated above, the Board finds that the weight of the medical evidence of record does not establish that appellant was totally disabled from work during intermittent periods from September 7 through December 3, 2016 due to her accepted employment injury.

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 failed to meet her burden of proof to establish intermittent periods of total disability from September 7 through December 3, 2016 due to the accepted July 15, 2016 employment injury.

[18] *See R.M.*, 59 ECAB 690 (2008); *D.D.*, 57 ECAB 734 (2006); *Richard J. Charot*, 43 ECAB 357 (1991).

[19] *See K.A.*, Docket No. 16-0592 (issued October 26, 2016).

ORDER

IT IS HEREBY ORDERED THAT the September 20, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 3, 2018
Washington, DC

Christopher J. Godfrey, 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