United States Department of Labor
Employees' Compensation Appeals Board

P.R., Appellant	)	
and	)	**Docket No. 18-0188**
	)	**Issued: September 6, 2018**
U.S. POSTAL SERVICE, PARKVILLE POST OFFICE, Baltimore, MD, 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:
CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On November 3, 2017 appellant, through counsel, filed a timely appeal from an August 16, 2017 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 the claim.

[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 her burden of proof to establish a recurrence of disability commencing January 1, 2013 causally related to her accepted October 15, 2005 employment injury.

FACTUAL HISTORY

On October 15, 2005 appellant, then a 35-year-old full-time letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on that date a dog charged at her as she was delivering mail. She explained that she sustained injuries to her right arm and wrist when she stepped backwards and fell over a brick wall. On November 18, 2005 OWCP accepted appellant's claim for fracture of right distal radius.

On November 23, 2005 Dr. W. Hugh Baugher, a Board-certified orthopedic surgeon, performed an OWCP-approved open reduction internal fixation of appellant's wrist. Appellant received continuation of pay until November 29, 2005. OWCP paid disability compensation on the supplemental rolls from November 29, 2005 to January 21, 2006 and on the periodic rolls from January 22 through May 13, 2006. On May 13, 2006 appellant returned to work full time with restrictions and her wage-loss compensation on the periodic rolls ended. However, she still received intermittent supplemental compensation.

On March 13, 2007 appellant filed claims for compensation (Form CA-7) for the period October 14, 2006 to January 19, 2007 due to de Quervain's tendinitis, which was not an accepted condition.

In a medical report dated January 31, 2007, Dr. Baugher noted that appellant was post-injection for de Quervain's tendinitis. He provided her restrictions indicating that she could frequently lift only 5 to 10 pounds, she could lift occasionally up to 20 pounds with both hands, and the maximum that she could occasionally carry with the right hand was 12 pounds. Dr. Baugher opined that these restrictions would be permanent and were the direct result of her employment injury. He noted that appellant had been unable to work starting October 22, 2006 due to her de Quervain's tendinitis. Dr. Baugher noted that, after her injections, she was able to return to work on January 15, 2007. He discharged her and advised her to return as necessary.

By decision dated March 26, 2007, OWCP determined that appellant sustained a recurrence as of October 23, 2006. It expanded acceptance of the claim to include de Quervain's tendinitis.

In a May 15, and June 5 and 29, 2007 reports, Dr. Baugher noted that appellant had prior injections for her de Quervain's tendinitis and that it still was bothersome. He recommended a first dorsal compartmental release. Dr. Baugher noted that he was awaiting authorization.

On June 20, 2007 OWCP approved surgery for the removal of appellant's right support implant and right incision of tendon sheath. On August 2, 2007 Dr. Baugher noted that appellant had recovered from her July 11, 2007 surgical procedure. He recommended that appellant remain on light duty.

On January 22, 2008 appellant accepted an offer of limited-duty employment from the employing establishment. In a March 4, 2008 report, Dr. Baugher indicated that he saw no reason that appellant could not continue to work light duty.

On June 17, 2013 Dr. Ibrahim Elsamanoudi, a Board-certified anesthesiologist, noted that appellant had a flare up of sympathetic mediated pain, and that he performed a right stellate ganglion block for appellant's complex regional pain syndrome of her right upper limb. He noted that appellant will follow up with a hand surgeon for evaluation of the recent onset of pain at the carpometacarpal joint. In the meantime, Dr. Elsamanoudi recommended that appellant continue with the same limitations set by Dr. Baugher. Appellant had previously received multiple injections from Dr. Elsamanoudi, including those administered on April 19, May 17, June 1 and 15, 2006, April 7, 2009, and September 27, 2011.

On July 11, 2013 appellant underwent a magnetic resonance imaging (MRI) scan of her right wrist. Dr. Robert VanBesien, a Board-certified radiologist, found deformity of the distal radial metaphysis with irregularity of the articular surface which was consistent with an old healed fracture. He also noted a narrowing of the radiocarpal joint consistent with secondary degenerative change. Dr. VanBesien noted no avascular necrosis of the scaphoid or lunate, and no bone marrow edema to suggest acute fracture. He also noted mild degeneration of the triangular fibrocartilage complex without definite tear, distal radioulnar joint intact, and no definite tear of the scapholunate or lunotriquetral ligament.

On July 21, 2014 appellant filed a notice of recurrence (Form CA-2a) dated July 10, 2014. She alleged that the recurrence occurred on January 1, 2013, but that she had been in pain since the original injury and that this pain was becoming more frequent and severe.

By development letter dated August 27, 2014, OWCP informed appellant that further medical evidence was necessary to support her recurrence claim. It afforded her 30 days to submit the necessary evidence.

In a statement received by OWCP on October 8, 2014, appellant alleged that her symptoms had "come and gone," but that they have been more frequent over the last two years. In further response, she submitted copies of medical evidence from periods prior to the alleged recurrence. Appellant also submitted reports of physicians already in the record and submitted reports relating that she had multiple right stellate ganglion blocks.

In reports dated from January 20 through September 29, 2014, Dr. Brian Janz, a Board-certified plastic surgeon specializing in hand surgery, noted that appellant had a complicated history involving her right wrist. He indicated that she had an open reduction and internal fixation of a distal radius facture followed by hardware removal and what sounded like de Quervain's release. Dr. Janz noted that appellant was then followed by Drs. Fisher and Baugher, who treated her for continued wrist pain with conservative treatment, light duty, and anti-inflammatories. He noted that despite the fact that appellant had been placed on long-term light duty a number of years ago, her pain involving the upper extremity had worsened. Dr. Janz conducted a physical examination and noted appellant's range of motion findings. He noted that appellant did have pain with manipulation of the radiocarpal joint. Dr. Janz concluded that appellant has radiocarpal arthritis which was inhibiting her function. He noted that appellant had, by her account, received

over 10 injections with little relief, and that she would like to proceed with a wrist fusion to decrease the pain. Dr. Janz further noted that appellant's MRI scan showed radiocarpal arthritis. He indicated that appellant did not have a dorsal or volar intercolated segment deformity on the MRI scan, but that the radiocarpal arthritis was fairly significant, and that appellant's x-rays showed mild-to-moderate radiocarpal arthritis. In a September 29, 2014 report, Dr. Janz noted that appellant's radiocarpal arthritis had progressed and was symptomatic. He opined that appellant was a candidate for a wrist fusion, which he believed was her best option.

By decision dated May 15, 2015, OWCP denied appellant's claim for a recurrence. It determined that she failed to establish that she was further disabled due to a material change or worsening of her accepted condition. OWCP noted that there was no medical evidence provided to bridge the gap of medical treatment from September 27, 2011 to July 11, 2013.

On April 18, 2016 appellant requested reconsideration.

In a July 8, 2013 report, Dr. Stephen N. Fisher, an orthopedic surgeon, noted that he had given appellant a right wrist corticosteroid injection. In a September 26, 2013 report, he noted that appellant came in for a follow up, and that the corticosteroid injection had given her very brief relief of symptoms. Dr. Fisher noted that appellant's right wrist had ongoing significant limitation in motion. In a July 29, 2013 report, he noted that appellant's MRI scan was reviewed, and that there was a scapholunate diastasis. Dr. Fisher noted severe degenerative changes between the lunate and radius with cystic changes. He also noted that there appeared to be some volar subluxation of the lunate with volar intercalated segment instability. The distal radial ulnar joint, otherwise, appeared intact. In a January 23, 2014 report, Dr. Fisher noted that he saw appellant for a follow up, and that she was experiencing tingling over the dorsum of the right hand and pain over the radial aspect of the wrist extending into the thumb. On physical examination he noted that appellant had a positive Finkelstein's test on the right side, and tenderness over the first extensor compartment. Dr. Fisher noted no extensor subluxation. He further noted a positive Tinel's over the radial sensory nerve near the prior right wrist *de Quervain's* release incision. In an August 1, 2014 report, Dr. Fisher noted that appellant had radiocarpal arthritis which was inhibiting her function. He noted that appellant was scheduled for a wrist fusion, and will follow up as needed for either injections or conservative management until she had surgery. Dr. Fisher noted that appellant's multiple injections had not helped her pain.

In a January 20, 2015 report, Dr. Janz noted that appellant was still having pain involving the radiocarpal joint and also had some generalized pain involving the upper extremity in that area of the dorsal mid-forearm and also along the ulnar aspect. He noted that the vast majority of appellant's pain was in the area of the radiocarpal joint with manipulation and that appellant was currently waiting for approval of a wrist fusion.

By decision dated May 15, 2015, OWCP denied appellant's claim for a recurrence. It determined that the evidence did not establish that she had a return or increase of disability due to a change/worsening of her accepted work-related conditions because she did not submit medical evidence addressing her gap in treatment, and there was no medical evidence as to how her work injury of October 5, 2005 caused her alleged recurrence in 2013.

In a July 9, 2015 report, Dr. Janz noted that appellant had symptomatic radiocarpal arthritis and had a long course of conservative management, light duty, and the use of anti-inflammatories. In a November 4, 2015 report, he noted that she was doing well and improving and could return to work light duty. Dr. Janz noted that, if appellant continued to have pain and discomfort about the upper extremity beyond the acute injury with the sprain, then he would proceed with a right wrist MRI scan.

In a March 21, 2016 report, Dr. Janz noted that appellant had an acute-on-chronic injury involving the wrist with MRI scan showing arthrosis and irregularities involving the radius with loss of cartilage, that appellant was symptomatic on a daily basis, and that she would benefit from a wrist fusion. He noted that she would lose some extension and flexion, but that she did not have great extension and flexion at this point. Dr. Janz opined that appellant would be able to do her daily activities and return to normal activity with regard to her job without restrictions. He noted that he would schedule a wrist fusion.

On April 18, 2016 appellant requested reconsideration. In an accompanying letter, she stated that, since her initial injury, her doctor had related that the damage was irreversible and that she could either live with the pain or get a fusion. Appellant noted that she decided to live with pain. She noted that she tried a second opinion and Dr. Fisher recommended a "wrist replacement."

By decision dated May 13, 2016, OWCP denied modification. It determined that the medical evidence of record did not explain how specific activities of appellant's employment on October 15, 2005 caused her condition of radiocarpal arthritis, which was not an accepted condition.

On May 31, 2016 appellant requested reconsideration. She attached a copy of her letter, previously received by OWCP on April 18, 2016. Appellant attached a copy of a previously unreviewed October 15, 2015 report wherein Dr. Janz noted that she had a history of radiocarpal arthritis and recently had a fall involving the wrist. Dr. Janz also noted that appellant would be off work for several weeks while she recovered from the fall.

By decision dated June 14, 2016, OWCP determined that appellant's reconsideration request neither raised a substantive legal question nor included new and relevant evidence and was, therefore, insufficient to warrant review of the May 13, 2016 decision.

On May 11, 2017 appellant, through counsel, requested reconsideration. In support thereof, he submitted a May 10, 2017 report wherein Dr. Janz related that appellant's postoperative arthritis in her wrist was directly related to her employment injury of October 15, 2005. Counsel noted that appellant objectively underwent a right wrist MRI scan on February 2, 2016 which showed a deformity and prior surgery of the distal radius with narrowing of the radial carpal joint. He noted that there were signs of osteoarthritis involving the joint shown on the MRI scan. Dr. Janz noted that biomechanically appellant had arthrosis from the irregularities involving the joint from the joint fracture, which led to irregularities in the radial carpal joint which caused appellant pain and discomfort. He noted that these fractures could have arisen from the employment injury of October 15, 2005 as this was an intra-articular fracture. Dr. Janz indicated that it did not appear that other medical problems that she had or other injuries had contributed to

her injury in October 2005. He noted that biomechanically the irregularities of the joint wore down the cartilage within the radial carpal joint, causing the arthritis and the advancement of the discomfort and pain that appellant was currently experiencing. Dr. Janz opined that the objective changes seen on appellant's MRI scan were directly related to appellant's injuries. He concluded that in the setting of no other injuries occurring to the wrist with regard to fractures, or dislocations, the irregularities and advancement of the arthritis were directly related to appellant's employment injury which occurred on October 15, 2005. In a May 10, 2017 follow up, Dr. Janz again opined that appellant's postoperative arthritis involving her wrist was directly related to appellant's October 15, 2005 employment injury.

In a handwritten note received by OWCP on May 18, 2017, appellant requested reconsideration. She contended that OWCP was ignoring the medical opinions of three different doctors.

By decision dated August 16, 2017, OWCP determined that the evidence of record was insufficient to modify the decision dated May 13, 2016 because the medical evidence of record did not support that appellant sustained a recurrence of disability as a result of a spontaneous change or worsening of the accepted condition. The decision noted that the evidence reviewed in support of the reconsideration request included medical reports from Dr. Janz dated May 10, 2017 and October 15, 2015, a letter from counsel dated May 11, 2017, a letter from appellant dated May 18, 2017, and medical restriction notes dated March 21 and June 17, 2016.

LEGAL PRECEDENT

A recurrence of disability means an inability to work after an employee has returned to work caused by a spontaneous change in a medical condition which resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.[3] Recurrence of disability also means an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his or her work-related injury or illness is withdrawn or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.[4]

Absent a change or withdrawal of a light duty-assignment, a recurrence of disability following a return to light duty may be established by showing a change in the nature and extent of the injury-related condition such that the employee could no longer perform the light-duty assignment.[5]

It is an accepted principle of workers' compensation law that, when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent

[3] 20 C.F.R. § 10.5(x).

[4] *Id.*

[5] *Theresa L Andrews*, 55 ECAB 719, 722 (2004); *see also C.S.*, Docket No. 17-1345 (issued May 24, 2018).

intervening cause which is attributable to the employee's own intentional conduct.[6] In discussing the range of compensable consequences, once the primary injury is causally connected with the employment, then a subsequent injury, whether an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury.[7]

When an employee claims a recurrence of disability due to an accepted employment-related injury, he or she has the burden of establishing that the recurrence is causally related to the original injury.[8] This burden includes the necessity of furnishing evidence from a qualified physician who concludes that the condition is causally related to the employment injury.[9] The physician's opinion must be based on a complete and accurate factual and medical history and supported by sound medical reasoning.[10]

ANALYSIS

The Board finds that this case is not in posture for decision.

On November 18, 2005 OWCP accepted appellant's claim for a fracture of the right distal radius as a result of an October 15, 2005 employment incident. Appellant underwent an open reduction internal fixation of the wrist on November 23, 2005. On March 26, 2007 OWCP accepted her claim for a recurrence as of October 23, 2006. At that time, it expanded acceptance of appellant's claim to include the condition of de Quervain's tendinitis. On July 11, 2007 appellant underwent surgery by Dr. Baugher for the removal of her right support implant and right incision of the tendon sheath. On January 22, 2008 she accepted an offer of limited-duty employment from the employing establishment.

Appellant filed a notice of a recurrence as of January 1, 2013, alleging that her accepted injury had caused continued pain and limitation of her right wrist. Essentially, she claimed that she developed right wrist radiocarpal arthritis as a consequence of the accepted injury.

There are notes indicating that Dr. Elsamanoudi administered numerous injections for the treatment of appellant's right wrist conditions from April 19, 2006 through June 17, 2013. In his June 17, 2013 report, Dr. Elsamanoudi recommended that she follow up with a hand surgeon due to pain in the carpometacarpal joint. He also recommended that appellant continue with the same work limitations as set by Dr. Baugher. Dr. Fisher also provided injections for appellant starting July 8, 2013. On July 11, 2013 Dr. VanBesien reviewed appellant's right wrist MRI scan and found deformity of the distal radial metaphysis with irregularity of the articular surface consistent with old healed fracture. He also noted a narrowing of the radiocarpal joint consistent with secondary degenerative change. In an August 1, 2014 report, Dr. Fisher noted that appellant had

[6] *Albert F. Ranieri*, 55 ECAB 598, 602 (2004); A Larson, *The Law of Workers' Compensation* § 10.01 (2000).

[7] *Charles W. Downey*, 54 ECAB 421, 422-23 (2003).

[8] 20 C.F.R. § 10.104(b); *see* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.5 and Chapter 2.1500.6 (June 2013).

[9] *See S.S.*, 59 ECAB 315, 318-19 (2008).

[10] *Id.* at 319.

radiocarpal arthritis which was inhibiting her function. There is therefore objective medical evidence of record that appellant's right wrist condition worsened.[11]

Dr. Janz started treating appellant on January 20, 2014. In an October 15, 2015 report, he noted that she had a history of radiocarpal arthritis. In a March 21, 2016 report, Dr. Janz noted that appellant had an acute-on-chronic injury involving the wrist with a right wrist MRI scan showing arthrosis and irregularities involving the radius with loss of cartilage, that appellant was symptomatic on a daily basis, and that she would benefit from a wrist fusion. In a May 10, 2017 report, he opined that appellant's arthritis in her wrist was directly related to the injury of October 15, 2005. Dr. Janz noted that appellant's February 2, 2016 MRI scan showed a deformity and prior surgery of the distal radius with narrowing of the radial carpal joint. He noted that there were signs of osteoarthritis involving the joint shown on the MRI scan. Dr. Janz noted that biomechanically the irregularities of the joint wore down the cartilage within the radial carpal joint, causing the arthritis and the advancement of the discomfort and pain that appellant was currently having. He opined that the objective changes seen on appellant's MRI scan were directly related to appellant's injury, and noted that there were no other injuries occurring to the wrist with regard to fractures or dislocations.

By decision dated August 16, 2017, OWCP denied modification of its denial of her recurrence claim. It noted in its decision that appellant had submitted a May 10, 2017 medical report from Dr. Janz, amongst other items, in support of her claimed recurrence. OWCP cited to the specific findings of Dr. Janz as to the progression of her medical condition, noting his opinion that "biomechanically the irregularities of the joint then wear down the cartilage within the radial carpal joint, causing the arthritis and the advancement of the discomfort and pain that the patient is currently having" and that "the irregularities and advancement of the arthritis are directly related to the patient's injury which occurred on October 15, 2005." The Board finds that the decision dated August 16, 2017 failed to explain why the medical opinion of Dr. Janz, as set forth in detail in the decision, was deficient in it reasoning. OWCP's regulations direct that decisions shall contain findings of fact and a statement of reasons.[12] The Board has held that the reasoning behind OWCP's evaluation should be clear enough for the reader to understand the precise defect of the claim and the kind of evidence which would overcome it.[13] Herein, OWCP did not explain why the opinion of Dr. Janz was insufficiently rationalized or what further medical evidence was required of appellant to establish her claim for recurrence of disability.

On remand OWCP shall make findings of fact and provide a detailed evaluation of the sufficiency of the May 20, 2017 report of Dr. Janz. If it finds that the report of Dr. Janz is insufficiently well rationalized to establish the claimed recurrence of disability, it shall set forth such reasons in a manner that is clear enough for appellant to understand the precise defect of the claim and the kind of evidence which would overcome it.

[11] *Supra* note 5.

[12] 20 C.F.R. § 10.126. *See O.R.*, 59 ECAB 432 (2008); *Teresa A. Ripley*, 56 ECAB 528 (2005); *Tonja R. Hiebert*, 55 ECAB 706 (2004) (it is a well-established principle that OWCP must make proper findings of fact and a statement of reasons in its final decisions).

[13] *C.W.*, Docket No. 14-0693 (issued January 12, 2016).

After this and such further development as may be deemed necessary, OWCP shall issue a *de novo* decision on appellant's claim.

CONCLUSION

The Board finds that this case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 16, 2017 is set aside and this case is remanded for further proceedings consistent with this opinion.

Issued: September 6, 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