United States Department of Labor
Employees' Compensation Appeals Board

A.M., Appellant	)	
	)	
and	)	**Docket No. 18-1538**
	)	**Issued: April 25, 2019**
DEPARTMENT OF JUSTICE, U.S. MARSHALS SERVICE, Brooklyn, NY, Employer	)	

Appearances:
Thomas R. Uliase, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 9, 2018 appellant, through counsel, filed a timely appeal from a July 3, 2018 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 this 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 that his right wrist, hand, and thumb conditions were causally related to the accepted January 30, 2017 employment incident.

FACTUAL HISTORY

On January 30, 2017 appellant, then a 44-year-old criminal investigator, filed a traumatic injury claim (Form CA-1) alleging that, on that date, his right wrist, thumb, and his hand "gave out" when he placed a basket full of restraints into a push cart while in the performance of duty. On the reverse side of the claim form, appellant's supervisor checked a box marked "yes" indicating that she was injured in the performance of duty. Appellant stopped work on January 30, 2017.

In a February 1, 2017 report, Dr. Julie Keller, a Board-certified orthopedic surgeon, noted that appellant injured his right wrist the prior day. She indicated that he had a wrist condition that began one year prior. Dr. Keller indicated that appellant was working when he shot a gun that kicked back against his wrist. She noted that he indicated that it was a fracture at that time, and it was treated nonsurgically. Dr. Keller also indicated that appellant advised that he continued to have pain in the wrist and loss of grip strength, along with grinding and popping when trying to rotate or grab or pick anything up with any sort of force. She related that he indicated that it made it "nearly impossible to do his job" as he had to be physically active, and he had "significant difficulty firing a firearm due to the pain and weakness in the wrist." Dr. Keller also indicated that appellant had no other injuries to the wrist. She performed a physical examination and determined that the imaging revealed a slight deformity at the waist of the scaphoid, which was most likely his old fracture, which appeared to be healed. Dr. Keller noted that it looked like appellant did have "widening of the scapholunate interval." She assessed wrist pain and weakness following an injury approximately one year ago. Dr. Keller indicated that appellant had a chronic disruption in his scapholunate ligament which was leading to instability at the carpal bones, and opined that it was "possible" that he had a nonunion in his scaphoid.

On the attending physician's portion of an authorization for examination and/or treatment (Form CA-16) dated February 1, 2017, Dr. Keller noted that appellant had a swollen right wrist, hand, and thumb. She diagnosed a right wrist fracture. Dr. Keller checked a box marked "no" in response to whether appellant had a preexisting injury and checked a box marked "yes" in response to whether she believed that the condition was caused or aggravated by an employment activity.

In a development letter dated February 13, 2017, OWCP advised appellant that the evidence of record was insufficient to support his claim. It advised him of the need for a physician's opinion supported by a medical explanation as to how the reported work incident caused or aggravated the claimed injury. OWCP also asked appellant to respond to a factual

development questionnaire, describe his prior incident, and include his medical records.[3] It afforded him 30 days to submit the requested information.

In a February 27, 2017 response to the development letter, appellant indicated that he was treated for right wrist pain in December 2015. He noted that he was given an injection and there was no further treatment or pain thereafter.

A December 5, 2015 magnetic resonance imaging (MRI) scan of the right wrist revealed dorsal interrelated segmental instability, a small amount of fluid in the joint space between the trapezium and base of the first metacarpal, a 2.6 millimeter radial subluxation of the base of the metacarpal and no fracture or ligamentous abnormality was observed.

A March 6, 2017 MRI scan of the right wrist revealed scapholunate ligament tear with widening of the scapholunate interval and imaging features suggesting early scapholunate advanced collapse (SLAC) wrist.

In a March 16, 2017 report, Dr. Janet Yueh, a Board-certified plastic surgeon, noted that appellant presented with severe right wrist pain. She indicated that he was shooting a hand gun one year prior when it forcefully kicked back against his wrist. Dr. Yueh advised that appellant related that he had a hairline fracture. She related that, over the ensuing year, he continued to have right wrist pain despite receiving three steroid injections.

Dr. Yueh determined that appellant was unable to extend or flex his right wrist without severe pain. She assessed a scapholunate ligament tear with a six millimeter widening, dorsal intercalated segment instability deformity, and early signs of arthritis. She recommended a partial wrist fusion, scaphoidectomy with four corner fusion, posterior interosseous neuroectomy, and possible radial styloidectomy.

By decision dated March 31, 2017, OWCP denied appellant's claim finding that the medical evidence of record was insufficient to establish causal relationship between the diagnosed condition and the accepted January 30, 2017 employment incident. On May 19, 2017 appellant requested reconsideration.

In an April 28, 2017 report, Dr. Yueh noted that on October 2, 2015 appellant was shooting a handgun when it forcefully kicked back against his right wrist. She explained that at that time he had been diagnosed with a hairline fracture, which was nondisplaced and healed with conservative management. Dr. Yueh also noted that on January 30, 2017 appellant was moving 80-pound restraints when his glove got caught and he sustained a twisting type of injury to his right thumb and wrist. She diagnosed right wrist pain secondary to scapholunate ligament tear and radioschaphoid arthritis. Dr. Yueh opined that the mechanism of injury noted by appellant was consistent with her examination findings.

By decision dated August 17, 2017, OWCP denied modification of the March 31, 2017 decision finding that causal relationship had not been established. It explained that it was unclear

[3] The record reflects that, under OWCP File No. xxxxxx814, appellant had a traumatic injury claim alleging an October 23, 2015 employment injury. That claim is not presently before the Board.

whether Dr. Yueh had a complete and accurate history when rendering her opinion on causal relationship. OWCP explained that appellant had not described a twisting type of injury as was discussed by her. It also noted that Dr. Yueh had not mentioned the January 30, 2017 employment incident in her March 16, 2017 report.

On December 4, 2017 appellant, through counsel, requested reconsideration and submitted additional medical evidence from Dr. Yueh.

In a November 22, 2017 report, Dr. Yueh referred to the October 2, 2015 injury involving the hand gun and explained that the fracture of the scaphoid bone was nondisplaced and healed with conservative management. She further explained that appellant continued to have some wrist pain between 2015 and 2017, but it was manageable with cortisone shots.

Dr. Yueh noted that, on January 30, 2017 while at work, appellant was moving 80-pound restraints into a basket when his right wrist and thumb gave out. She diagnosed right wrist pain secondary to scapholunateligament tear, a stage V tear with irreducible malaignment, and radioscaphoid arthritis. Dr. Yueh explained that the mechanism of injury on January 30, 2017 was consistent with appellant's examination findings and MRI scan." She opined that there is a reasonable level of medical certainty that appellant's repetitive twisting motions with the heavy restraints on January 30, 2017 aggravated his prior right wrist injury.

Dr. Yueh further explained that the scaphoid fracture that appellant sustained in 2015 likely caused a partial tear of his scapholunate ligament. While the MRI scan from 2015 had not shown a scapholunate tear, she explained that MRI scans were unreliable in diagnosing small ligamentous wrist tears. Dr. Yueh noted that in 2015 appellant did not have any carpal bone instability secondary to his injury, but that "over the ensuing two years, the tear not only persisted, but also resulted in incompetence of the adjacent ligamentous structures in the wrist. Over time the abnormal biomechanics of the carpal bones resulted in wrist arthritis." She explained that he was minimally symptomatic during this two-year period due to receiving steroid injections for pain. However, Dr. Yueh opined that "the repetitive wrist motion from moving heavy restraints in January 2017, has clearly aggravated and inflamed his SLAC arthritis." She opined that appellant had severe, constant, and debilitating right wrist pain that prevented him from working.

By decision dated February 28, 2018, OWCP denied modification of the August 17, 2017 decision. It explained that Dr. Yueh had not provided an accurate factual history, as appellant had not described repetitive twisting motions relative to the employment incident.

On April 5, 2018 appellant, through counsel, requested reconsideration and submitted a March 12, 2018 report from Dr. Yueh. Dr. Yueh noted that, on January 30, 2017 while at work, appellant was moving an 80-pound basket of restraints into a push cart. She noted that during the process his right wrist and thumb gave out. Dr. Yueh indicated that appellant had his right wrist reassessed due to the severe pain and swelling. She explained that the MRI scan from March 6, 2017 revealed a complete scapholunate ligament tear with widening and SLAC arthritis confirmed on March 16, 2017 x-rays. Dr. Yueh again opined that appellant's mechanism of injury on January 30, 2017 was consistent with the cause of his examination findings and MRI scan.

Dr. Yueh further opined that there was a reasonable level of medical certainty that the heavy lifting that appellant performed on January 30, 2017 resulted in a severe aggravation of his prior right wrist injury" She explained that the previous scaphoid fracture from 2015 likely also caused a partial tear of his scapholunate ligament. Dr. Yueh explained that the steroid injections were simply masking the progression of the scapholunate tear and instability and that ultimately the activity of moving a heavy basket of restrains in January 2017 directly caused severe inflammation of his SLAC arthritis.

By decision dated July 3, 2018, OWCP denied modification of the February 28, 2018 decision. It found that Dr. Yueh had not provided a rationalized medical opinion which differentiated between the effects of the work-related injury and the preexisting conditions.

LEGAL PRECEDENT

An employee seeking benefits under FECA[4] 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 or specific condition for which compensation is claimed is causally related to the employment injury.[5] 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.[6]

To determine whether an employee sustained a traumatic injury in the performance of duty, OWCP must determine whether fact of injury has been established. First, an employee has the burden of proof to demonstrate the occurrence of an injury at the time, place, and in the manner alleged, by a preponderance of the reliable, probative, and substantial evidence.[7] Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical evidence.[8] 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 employee.[9]

[4] *Supra* note 2.

[5] *J.P.*, Docket No. 18-1165 (issued January 15, 2019); *Anthony P. Silva*, 55 ECAB 179 (2003).

[6] *C.P.*, Docket No. 18-1645 (issued March 8, 2019); *Ellen L. Noble*, 55 ECAB 530 (2004).

[7] *R.D.*, Docket No. 18-1551 (issued March 1, 2019); *David Apgar*, 57 ECAB 137 (2005).

[8] *G.N.*, Docket No. 18-0403 (issued September 13, 2018); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[9] *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *Leslie C. Moore*, 52 ECAB 132 (2000).

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish that his right wrist, hand, and thumb conditions were causally related to the accepted January 30, 2017 employment incident.

Following the January 30 2017 employment incident appellant was initially seen by Dr. Keller on February 1, 2017. Dr. Keller noted his prior employment injury while shooting a gun which kicked back against his wrist and that he continued to have pain in the wrist and loss of grip strength along with grinding and popping when trying to rotate, grab or pick anything up with any sort of force. She noted that appellant had a chronic disruption in his scapholunate ligament which was leading to instability at the carpal bones and possible nonunion of his scaphoid. Dr. Keller indicated that he had related a right wrist injury on January 30, 2017, but did not otherwise address the January 30, 2017 incident. The Board has explained that a medical report which does not provide an opinion as to whether the accepted employment incident caused appellant's conditions is of no probative value. This report is therefore insufficient to establish causal relationship.[10]

Dr. Keller also completed a February 1, 2017 Form CA-16 in which she diagnosed a right wrist fracture and checked a box marked "yes" that the condition was caused or aggravated by an employment activity. Although the checkmark indicates support for causal relationship, the Board has held that when a physician's opinion on causal relationship consists only of a checkmark on a form report, without more by way of medical rationale, the opinion is of diminished probative value.[11] Dr. Keller did not provide additional medical rationale explaining how the January 30, 2017 employment incident caused or aggravated appellant's diagnosed condition. As such, the Board finds that this report is of diminished probative value and insufficient to establish the claim.[12]

Dr. Yueh provided several reports describing appellant's history of injury and treatment. Her initial reports dated March 16 and April 28, 2017 focused on his prior employment injury. These reports were, therefore, again of no probative value as they did not provide a specific opinion as to whether the accepted January 30, 2017 employment incident caused appellant's conditions.[13]

In her November 22, 2017 report, Dr. Yueh opined that "[t]here is a reasonable level of medical certainty that [appellant's] repetitive twisting motions with the heavy restraints on January 30, 2017 aggravated his prior right wrist injury." She explained that the scaphoid fracture from 2015 was affected in that appellant now had a partial tear of his scapholunate ligament. Dr. Yueh opined that the repetitive wrist motion from moving heavy restraints in January 2017, has clearly aggravated and inflamed his SLAC arthritis. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale

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

[11] *S.W.*, Docket No. 18-0721 (issued November 6, 2018); *Lucrecia M. Nielson*, 42 ECAB 583, 594 (1991).

[12] *M.D.*, Docket No. 18-1267 (issued February 12, 2019).

[13] *Supra* note 10.

explaining how a given medical condition/disability was related to employment factors.[14] This report is therefore insufficient to establish the claim.

In a March 12, 2018 report, Dr. Yueh explained that, on January 30, 2017 while at work, appellant was moving an 80-pound basket of restraints into a push cart when his right wrist and thumb gave out. She opined that "[appellant's] mechanism of injury on January 30, 2017 is consistent with the cause of his exam[ination] findings and MRI [scan]." Dr. Yueh further opined that there was a reasonable level of medical certainty that the heavy lifting that appellant performed on January 30, 2017, resulted in a severe aggravation of his prior right wrist injury. She concluded that "the activity of moving a heavy basket of restraints in January 2017 directly caused severe inflammation of [appellant's] SLAC arthritis." The Board finds that this opinion is conclusory and therefore of limited probative value.[15] Dr. Yueh provided insufficient medical rationale to support her opinion on causal relationship. Such rationale is especially important when the medical evidence indicates that appellant has a preexisting condition.[16] Without explaining how, physiologically, his employment incident caused or contributed to the diagnosed conditions, Dr. Yueh's opinion is of limited probative value.[17]

OWCP also received several diagnostic reports. The Board has held that reports of diagnostic tests lack probative value as they do not provide an opinion on causal relationship between appellant's employment incident and a diagnosed condition.[18]

As the record lacks rationalized medical evidence establishing causal relationship between the January 30, 2017 employment incident and the diagnosed conditions, the Board finds that appellant has not met his burden of proof.[19]

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 and 20 C.F.R. §§ 10.605 through 10.607.

[14] *See Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

[15] *B.B.*, Docket No. 18-1036 (issued December 31, 2018); *B.W.*, Docket No.16-1012 (issued October 21, 2016).

[16] *See J.J.*, Docket No. 18-1545 (issued February 22, 2019).

[17] *K.K.*, Docket No. 17-1061 (issued July 25, 2018).

[18] *T.H.*, Docket No. 18-1736 (issued March 13, 2019).

[19] The record contains a Form CA-16 signed by the employing establishment official on January 30, 2017. When the employing establishment properly executes a Form CA-16 which authorizes medical treatment as a result of an employee's claim for an employment-related injury, the CA-16 form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP. *See* 20 C.F.R. § 10.300(c); *Tracy P. Spillane*, 54 ECAB 608 (2003). The record is silent as to whether OWCP paid for the cost of appellant's examination or treatment for the period noted on the form.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that his right wrist, hand, and thumb conditions were causally related to his accepted January 30, 2017 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the July 3, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 25, 2019
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board