United States Department of Labor
Employees' Compensation Appeals Board

T.M., Appellant	)	
and	)	**Docket No. 18-1454**
	)	**Issued: February 14, 2019**
DEPARTMENT OF HOMELAND SECURITY, IMMIGRATION & CUSTOMS ENFORCEMENT, Phoenix, AZ, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On July 25, 2018 appellant, through counsel, filed a timely appeal from a May 21, 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 OWCP abused its discretion by denying appellant authorization for right wrist endoscopy/surgery, decompression of forearm 1 space, nerve repair with allograft, and nerve block other peripheral.

FACTUAL HISTORY

On May 11, 2015 appellant, then a 43-year-old immigration enforcement agent, filed a traumatic injury claim (Form CA-1) alleging that she sustained a "right hand 4th finger fracture" on May 8, 2015 during a defensive tactics scenario when she punched a practice dummy and hit the grill part of the mask. On May 18, 2015 the employing establishment completed an authorization for examination and/or treatment (Form CA-16), signed by the supervisor of detention and deportation offices, which authorized appellant to receive treatment for his right hand fourth finger fracture with Dr. Kent H. Chou, a Board-certified orthopedic surgeon, and Ortho AZ/Canyon Orthopedics.

By decision dated June 22, 2015, OWCP accepted appellant's claim for the conditions of closed fracture of neck of metacarpal bone, right middle finger; sprain of hand, metacarpo-phalangeal, right; and right hand sprain. It further authorized a surgical procedure to repair appellant's right middle finger radial sagittal band rupture, which occurred on June 29, 2015. Appellant returned to full-time, light-duty work on July 3, 2015.

Appellant subsequently submitted reports from Dr. Chou dated May 5 and 19, June 9, and July 28, 2016 and March 9, 2017, who diagnosed right carpal tunnel syndrome. Dr. Chou administered a steroid injection and advised that appellant had reached maximum medical improvement (MMI) on July 28, 2016. He noted the possibility that her symptoms would return over time and later requested surgery on behalf of appellant.

By letter dated March 9, 2017, OWCP notified Dr. Chou that it could not approve treatment for conditions that had not been accepted as work related. It requested that he provide a report with a rationalized opinion, based on objective medical evidence, explaining how appellant's right carpal tunnel syndrome was causally related to the accepted May 8, 2015 work injury and explain the medical necessity for surgery.

Appellant underwent right hand surgery, including an endoscopic carpal tunnel release, decompression volar fasciotomy, nerve wrap median nerve, fat tissue transfer, release of index trigger finger with tenolysis flexor tendons, and fat tissue transfer and nerve wrap to digital nerves to the index finger, performed by Dr. Michael Fitzmaurice, a Board-certified orthopedic hand surgeon, on March 10, 2017.

In a March 14, 2017 postoperative report, Dr. Fitzmaurice indicated that appellant had a significant amount of pain coming from her right elbow. He diagnosed trigger finger, right index finger, and carpal tunnel syndrome, right upper limb. Dr. Fitzmaurice noted that appellant was increasing with range of motion and strength and advised that she was able to resume work activity beginning the next week.

In a treatment note dated August 22, 2017, Dr. Chou opined that appellant developed right carpal tunnel syndrome as a result of her employment injury, subsequent surgery, and therapy required to rehabilitate her hand. He related that his opinion was based on the timing of her symptoms and the fact that she had never before experienced carpal tunnel-like symptoms prior to her injury and subsequent surgery and rehabilitation.

On September 26, 2017 Dr. Nathan Hammel, a Board-certified orthopedic surgeon and OWCP district medical adviser (DMA), reviewed a statement of accepted facts (SOAF) and the medical evidence of record. He opined that the requested carpal tunnel release with nerve wrap surgery was unrelated to the accepted employment injury. Dr. Hammel explained that there was no clear causal relationship weighing the mechanism of injury in the SOAF to the conditions for which the carpal tunnel release was performed. He found that there were correlating historical, physical examination, and imaging findings and there had been appropriate non-surgical therapy of a reasonable duration. Dr. Hammel concluded that the requested surgery was medically necessary and likely to decrease pain and increase function, but there was no causal relationship to the May 8, 2015 employment injury.

In a September 14, 2017 report, Dr. Fitzmaurice opined that appellant had reached MMI for right carpal tunnel syndrome and right index trigger finger after surgical treatment on her last postoperative examination on May 8, 2017. He advised that she did not have permanent impairment.

By letter dated October 2, 2017, OWCP advised Dr. Fitzmaurice that his request for surgery and authorization were denied as the procedures were not causally related to appellant's accepted May 8, 2015 employment injury. It noted that this determination was based on Dr. Hammel's opinion that, while the surgery was medically necessary, it was not causally related to the accepted employment conditions. OWCP afforded Dr. Fitzmaurice 30 days to provide a complete narrative report explaining why the proposed procedures were causally related to appellant's accepted conditions, along with any recent examinations, if he disagreed with Dr. Hammel's findings. It further noted that, if he did not respond, it would assume the request for surgery was withdrawn and no further action would be taken. Dr. Fitzmaurice did not respond.

On October 23, 2017 Dr. Chou saw appellant for a postoperative follow up. Appellant reported experiencing continued numbness of the right hand, despite splinting her wrist, and night symptoms suggestive of carpal tunnel syndrome. Dr. Chou diagnosed injury of extensor muscle, fascia, and tendon of right middle finger at the wrist and hand level and disturbances of skin sensation. He reiterated his opinion that appellant developed right carpal tunnel syndrome as a result of her injury and the subsequent surgery and therapy required to rehabilitate the hand.

In a supplemental report dated November 3, 2017, Dr. Hammel explained that the mechanism of appellant's injury and the treatment for her accepted conditions could cause trigger finger and need for trigger release. He noted, however, that there was nothing particularly injurious to the median nerve and there was no causal link to her carpal tunnel syndrome or need for treatment. Additionally, the operative report did not support that allograft was used. There was autograft of fat, but no nerve repair was performed. Based on this, Dr. Hammel concluded that the requested surgery was not causally related to the accepted work injury.

By decision dated November 16, 2017, OWCP denied appellant authorization for right wrist endoscopy/surgery, decompression of forearm 1 space, nerve repair with allograft, and nerve block other peripheral. It found that at the time of the surgery request, appellant was being treated for right carpal tunnel syndrome and right index trigger finger and these conditions had not been accepted as work related.

Appellant subsequently submitted a November 8, 2017 report from Dr. Chou who again opined that appellant's right carpal tunnel syndrome was causally related to the treatment of her accepted employment injury, subsequent surgery, and therapy required to rehabilitate her hand. Dr. Chou explained that his impression was based on the timing of her symptoms and the fact that she had never experienced carpal tunnel-like symptoms prior to her work-related injury and its subsequent treatment thereof.

On November 27, 2017 counsel requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

Prior to the hearing, appellant submitted a January 11, 2018 report from Dr. David A. Thull, a Board-certified orthopedic hand surgeon, who opined that her carpal tunnel syndrome was related to the injury that caused the sagittal band rupture. Dr. Thull explained that his opinion was based on the fact that she was young, had no other risk factors, and had no problems on the left.

A telephonic hearing was held before an OWCP hearing representative on April 12, 2018. Appellant provided testimony and the hearing representative held the case record open for 30 days for the submission of additional evidence. OWCP did not receive additional evidence.

By decision dated May 21, 2018, OWCP's hearing representative affirmed the prior decision denying authorization for surgery.

LEGAL PRECEDENT

Section 8103 of FECA provides that the United States shall furnish to an employee who is injured while in the performance of duty, the services, appliances, and supplies prescribed or recommended by a qualified physician, which OWCP considers likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of the monthly compensation.[3] In interpreting this section of FECA, the Board has recognized that OWCP has broad discretion in approving services provided under FECA.[4] OWCP has the general objective of ensuring that an employee recovers from his or her injury to the fullest extent possible in the shortest amount of time. It therefore has broad administrative discretion in choosing the means to achieve this goal. The only limitation on OWCP's authority is that of reasonableness.[5] Abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or

[3] 5 U.S.C. § 8103.

[4] *See J.B.*, Docket No. 11-1301 (issued March 22, 2012).

[5] *Id.*

actions taken which are contrary to both logic and probable deductions from established facts.[6] It is not enough to merely show that the evidence could be construed so as to produce a contrary factual conclusion.[7]

In order to be entitled to reimbursement of medical expenses, a claimant has the burden of establishing that the expenditures were incurred for treatment of the effects of an employment-related injury or condition. Proof of causal relationship in a case such as this must include supporting rationalized medical evidence.[8] In order for a surgical procedure to be authorized, a claimant must submit evidence to show that the surgery is for a condition causally related to an employment injury and that it is medically warranted. Both of these criteria must be met in order for OWCP to authorize payment.[9]

ANALYSIS

The Board finds that OWCP has not abused its discretion in denying appellant's request for authorization for right wrist endoscopy/surgery, decompression of forearm 1 space, nerve repair with allograft, and nerve block other peripheral.

Medical evidence was received from Dr. Hammel who reviewed a SOAF and the medical evidence of record. He opined that the requested carpal tunnel release with nerve wrap surgery was not related to the accepted work injury. Dr. Hammel found that the requested surgery was medically necessary and likely to decrease pain and increase function; however, there was no causal link to the May 8, 2015 work injury. In a supplemental report dated November 3, 2017, he explained that the mechanism of appellant's injury and the treatment for her accepted conditions could cause trigger finger and need for trigger release, but that the requested surgery was not causally related to the accepted work injury.

As noted above, the only restriction on OWCP's authority to authorize medical treatment is one of reasonableness.[10] The opinion of Dr. Hammel constituted sufficient medical rationale to support OWCP's hearing representative's May 21, 2018 decision. He unequivocally concluded, based on a thorough review of the medical evidence, that the requested surgical procedure was not appropriate or necessary for appellant's accepted right hand conditions. The reports from Dr. Hammel are sufficiently probative, rationalized, and based upon a proper factual background. The Board therefore finds that OWCP has not abused its discretion by relying on the opinion of Dr. Hammel to deny approval for the surgical treatment requested.

In his January 11, 2018 report, Dr. Thull opined that appellant's right carpal tunnel syndrome was related to the injury that caused the sagittal band rupture and explained that the

[6] *Id.*

[7] *See Dale E. Jones*, 48 ECAB 648 (1997); *Daniel J. Perea*, 42 ECAB 214 (1990).

[8] *M.B.,* 58 ECAB 588 (2007).

[9] *R.C.,* 58 ECAB 238 (2006).

[10] *See supra* note 5.

reasoning for this was the fact that she was young, had no other risk factors, and had no problems on the left. Dr. Thull failed to provide a rationalized opinion explaining how the employment incident on May 8, 2015 caused appellant's right carpal tunnel syndrome. The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference as to causal relationship.[11] Dr. Thull noted that appellant's condition was related to the work injury that caused her sagittal band rupture, but such generalized statements do not establish causal relationship because they merely repeat appellant's allegations and are unsupported by adequate medical rationale explaining how her physical activity at work actually caused the diagnosed condition.[12] Thus, the Board finds that the report from Dr. Thull is insufficient to establish that the March 3, 2017 authorization request for surgical procedures was for a condition causally related to the accepted employment-related injury.

In his reports, Dr. Chou opined that appellant developed right carpal tunnel syndrome as a result of her injury and the subsequent surgery and therapy required to rehabilitate the hand. He related that this was based on the timing of her symptoms and the fact that she had never before experienced carpal tunnel-like symptoms prior to her injury and subsequent surgery and rehabilitation. The Board finds that Dr. Chou's opinion regarding the cause of appellant's right carpal tunnel syndrome is speculative and equivocal in nature.[13] He did not sufficiently explain why diagnostic testing and examination findings led him to conclude that the accepted May 8, 2015 work incident caused or contributed to the diagnosed condition. The fact that a condition manifests itself during a period of employment is insufficient to establish causal relationship.[14] Temporal relationship alone will not suffice.[15] A physician's opinion must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition, and appellant's specific employment exposure.[16] Although he presented a diagnosis of right carpal tunnel syndrome, Dr. Chou failed to provide a rationalized medical opinion explaining how the accepted May 8, 2015 employment incident caused appellant's newly diagnosed condition. For these reasons, Dr. Chou's reports are insufficient to satisfy appellant's burden of proof to establish

[11] *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

[12] *K.W.*, Docket No. 10-0098 (issued September 10, 2010). *See also John J. Carlone*, 41 ECAB 354 (1989). Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue. *Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s). *Id.*

[13] Medical opinions that are speculative or equivocal in character are of little probative value. *See Kathy A. Kelley*, 55 ECAB 206 (2004).

[14] 20 C.F.R. § 10.115(e).

[15] *See D.I.*, 59 ECAB 158, 162 (2007).

[16] *Victor J. Woodhams*, *supra* note 12.

that the proposed medical treatment is a result of the effects of an employment related injury or condition.[17]

Moreover, the Board finds that the reports from Dr. Fitzmaurice do not constitute competent medical evidence because they fail to provide an opinion regarding appellant's need for surgery. In an October 2, 2017 development letter, OWCP afforded Dr. Fitzmaurice 30 days to provide a complete narrative report explaining why the proposed procedures were causally related to appellant's accepted conditions along with any recent examinations. Dr. Fitzmaurice did not respond.

Consequently, the Board finds that OWCP has not abused its discretion by denying appellant's March 3, 2017 request for authorization for surgery.[18]

Appellant may submit new evidence or argument with a written request of 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 OWCP has not abused its discretion by denying authorization for right wrist endoscopy/surgery, decompression of forearm 1 space, nerve repair with allograft, and nerve block other peripheral.

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[17] *See supra* note 12.

[18] The Board notes that a Form CA-16 (authorization for examination and/or treatment) was issued by the employing establishment on May 18, 2015. 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 Form CA-16 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, 610 (2003).

ORDER

IT IS HEREBY ORDERED THAT the May 21, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 14, 2019
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