United States Department of Labor
Employees' Compensation Appeals Board

M.V., Appellant	)	
and	)	**Docket No. 18-1141**
	)	**Issued: January 3, 2019**
U.S. POSTAL SERVICE, POST OFFICE, Minneapolis, MN, 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:
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On May 15, 2018 appellant, through counsel, filed a timely appeal from a March 29, 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 bilateral elbow and left thumb conditions causally related to the accepted July 9, 2016 employment incident.

FACTUAL HISTORY

On July 14, 2016 appellant, then a 57-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that, on July 9, 2016, he sustained bilateral elbow injuries due to repeated trauma to both elbows. He first sought medical treatment on July 11, 2016 and notified his supervisor of his injuries on July 18, 2016.

In support of his claim, appellant submitted medical reports dated July 11, 2016 through April 12, 2017 documenting treatment at Marshfield Clinic.[3]

In a July 14, 2016 report, Dr. Adam D. Atkins, Board-certified in family medicine and sports medicine, reported that he evaluated appellant for complaints of bilateral forearm pain and noted that appellant had pain in his forearms for a couple of months, but most recently experienced an intense increase on July 9, 2016 when he was sorting parcels and lifting boxes. Dr. Atkins noted a history of osteoarthritis and provided physical examination findings. He diagnosed bilateral forearm pain and medial epicondylitis of the left elbow. Dr. Atkins reviewed an August 4, 2016 left hand x-ray and provided the additional diagnosis of primary osteoarthritis of first carpometacarpal joint of left hand. In a September 22, 2016 report, he referred appellant for an electromyography (EMG) study of the bilateral upper extremities due to numbness and tingling in both hands. Dr. Atkins speculated that his symptoms were more consistent with bilateral carpal tunnel syndrome (CTS) due to his repetitive work at the employing establishment.

Appellant underwent a bilateral EMG study on September 27, 2016. On October 10, 2016 he was seen by Dr. Edward P. Hayes, a Board-certified orthopedic surgeon, due to complaints of bilateral wrist pain and numbness. Dr. Hayes reviewed the EMG study, which revealed moderate left and minimal right CTS. He further reported that appellant's August 4, 2016 left hand x-ray revealed moderate basilar thumb arthritis. Dr. Hayes diagnosed median neuropathy, unspecified laterality, and recommended left hand CTS surgery.

In an April 12, 2017 report, Dr. Atkins reported that appellant presented for a follow-up evaluation and complained of persistent symptoms at the left medial elbow and base of his left thumb. He diagnosed primary osteoarthritis of first carpometacarpal joint of left hand, medial epicondylitis of left elbow, and left CTS.

By development letter dated June 20, 2017, OWCP informed appellant that the evidence of record was insufficient to support his claim. It advised appellant of the type of medical and factual evidence needed and was asked to respond to a questionnaire, which sought clarification on whether he was claiming an occupational disease or traumatic injury based on the definitions

[3] The Board notes that the Marshfield Clinic reports included diagnostic studies, as well as nursing and physical therapy notes.

provided. OWCP afforded appellant 30 days to submit the requested evidence. Appellant did not respond and no other evidence was received.

By decision dated August 3, 2017, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish that the July 9, 2016 employment incident occurred as alleged.

On August 8, 2017 appellant, through counsel, requested an oral hearing before an OWCP hearing representative.

In support of his request, appellant submitted an April 10, 2017 narrative medical report from Dr. Atkins discussing his ongoing treatment. Dr. Atkins reported that he treated appellant following his July 9, 2016 injury when he was sorting parcels for the employing establishment and complained of intense forearm pain, left worse than right. Appellant was seen in urgent care following his initial injury and was referred to him for follow up beginning July 14, 2016. Dr. Atkins discussed appellant's treatment visits, physical examination findings, and review of diagnostic testing. He reported that an August 4, 2016 left hand x-ray revealed severe degenerative changes. Appellant was diagnosed with left medial epicondylitis and left thumb carpometacarpal arthritis. On September 22, 2016 he returned for treatment and also complained of numbness and tingling in both hands, left worse than right. Physical examination findings were positive for bilateral CTS and appellant was referred for EMG testing of the bilateral extremities on September 27, 2016. The EMG study revealed moderate left CTS and mild right CTS, and left hand surgery was recommended. Dr. Atkins opined that, when appellant was sorting parcels, he definitely experienced forearm pain, which likely was a strain of some muscles causing inflammation in the forearms. This led to a cascade of events causing some overuse of his left hand in particular, aggravating his underlying basilar thumb arthritis. Dr. Atkins concluded that the inflammation in his forearms also likely precipitated his bilateral CTS.

A hearing was held on February 14, 2018, which was attended by appellant and counsel. Appellant testified in support of his claim and reported that on July 9, 2016 he experienced increased pain in his forearm and elbow while using his left hand to deliver mail on his route. He noted no prior upper extremity injuries other than swelling of his forearms when he would sort mail. Counsel reported that appellant was claiming bilateral epicondylitis and aggravation of left thumb carpometacarpal arthritis as a result of the July 9, 2016 employment incident when he was sorting mail and lifting boxes. He further reported that they were not claiming a bilateral CTS injury at this time. Appellant was advised of the medical evidence needed in support of his claim. The record was held open for 30 days. Nothing further was received.

By decision dated March 29, 2018, OWCP's hearing representative affirmed the August 3, 2017 decision, as modified, finding that the evidence of record was insufficient to establish that the diagnosed medical conditions were causally related to the accepted July 9, 2016 employment incident.

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]

In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components, which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident, which is alleged to have occurred.[7] The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.[8]

To establish causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence supporting such causal relationship.[9] 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. This medical opinion must include an accurate history of the employee's employment injury and must explain how the condition is related to the injury. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.[10]

ANALYSIS

The Board finds that appellant has not established bilateral elbow and left thumb conditions causally related to the accepted July 9, 2016 employment incident.[11]

---

[4] *Supra* note 2.

[5] *See R.E.*, Docket No. 17-0549 (issued November 13, 2018); *see also Gary J. Watling*, 52 ECAB 278 (2001).

[6] *Michael E. Smith*, 50 ECAB 313 (1999).

[7] *Elaine Pendleton*, 40 ECAB 1143 (1989).

[8] *Id.*

[9] *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

[10] *James Mack*, 43 ECAB 321 (1991).

[11] *See Robert Broome*, 55 ECAB 339 (2004).

In support of his claim, appellant submitted medical reports dated July 14, 2016 through April 12, 2017 from Dr. Atkins, his treating physician. The Board finds that the reports of Dr. Atkins are not well rationalized and insufficient to establish appellant's claim. The Board notes that Dr. Atkins diagnosed bilateral CTS, left medial epicondylitis, and aggravation of left thumb carpometacarpal arthritis. During the February 14, 2018 hearing, counsel asserted that appellant was not claiming a bilateral CTS injury related to the July 9, 2016 traumatic incident. As such, the Board will not discuss this condition on appeal. With respect to the claimed conditions, the Board notes that the medical evidence of record fails to establish a diagnosed medical condition of right epicondylitis. Dr. Atkins failed to provide a firm medical diagnosis pertaining to the right upper extremity as he only diagnosed right forearm pain. The Board has consistently held that pain is a symptom, not a compensable medical diagnosis.[12]

With respect to the left upper extremity conditions, Dr. Atkins provided a firm medical diagnosis of left medial epicondylitis and left thumb carpometacarpal arthritis.[13] However, he failed to provide a fully rationalized opinion that appellant's left upper extremity conditions were causally related to the July 9, 2016 employment incident. Dr. Atkins acknowledged that appellant had preexisting forearm pain, which was exacerbated on July 9, 2016 when he was sorting parcels and lifting boxes. He reported that, when sorting parcels, appellant experienced forearm pain, which was likely a strain of some muscles causing inflammation in the forearms. The Board notes that Dr. Atkins' opinion on causation is highly speculative and couched in equivocal terms. To be of probative value, a physician's opinion on causal relationship should be one of reasonable medical certainty.[14] Dr. Atkins' explanation failed to provide specific details pertaining to the mechanism of injury, only generally noting that appellant likely strained his forearm, which led to a cascade of events causing an aggravation of his underlying basilar thumb arthritis. While Dr. Atkins had some understanding of the July 9, 2016 employment incident, his statement on causation failed to provide a sufficient explanation as to the mechanism of injury pertaining to this traumatic injury claim, namely, how the repetitive movements of sorting and delivering mail on July 9, 2016 would cause or aggravate appellant's bilateral upper extremity conditions.[15]

The Board further notes that Dr. Atkins reported that appellant had prior pain in his forearms for a couple of months, but most recently experienced an intense increase on July 9, 2016 when he was sorting parcels and lifting boxes. Dr. Atkins further noted that an August 4, 2016 x-ray of the left hand revealed severe degenerative changes. He failed to provide a thorough discussion of appellant's medical history when asserting a July 9, 2016 work injury as the record reflects forearm complaints, which predate the traumatic incident, as well as a preexisting degenerative left hand condition. Moreover, Dr. Atkins failed to discuss whether appellant's preexisting injury had progressed beyond what might be expected from the natural progression of

[12] *See K.V*, Docket No. 18-0723 (issued November 9, 2018 (regarding pain); *J.S.*, Docket No. 07-0881 (issued August 1, 2007) (regarding spasm).

[13] *C.F.*, Docket No. 08-1102 (issued October 10, 2008).

[14] *See Beverly R. Jones*, 55 ECAB 411 (2004).

[15] *S.W.*, Docket 08-2538 (issued May 21, 2009).

that condition.[16] A well-rationalized opinion is particularly warranted when there is a history of a preexisting condition.[17] It remains unclear if appellant's left upper extremity issues were caused or aggravated by the July 9, 2016 employment incident, a result of a preexisting condition, or due to degenerative changes. As such, Dr. Atkins' reports are insufficient to meet appellant's burden of proof.

The report from Dr. Hayes is also insufficient to establish appellant's claim as he provided medical diagnoses with no opinion on the cause of injury. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of no probative value.[18] Any medical opinion evidence appellant may submit to support his claim should reflect a correct history and offer a medically-sound explanation by the physician of how the specific employment incident, in particular physiologically, caused or aggravated his injury.[19]

The remaining medical evidence of record is also insufficient to establish causal relationship between appellant's left medial epicondylitis and left thumb carpometacarpal arthritis and the accepted July 9, 2016 employment incident. The nursing and physical therapy notes from Marshfield Clinic are of no probative value as registered nurses and physical therapists are not physicians as defined under FECA.[20]

As the evidence of record lacks rationalized medical evidence establishing causal relationship between the accepted July 9, 2016 employment incident and appellant's left epicondylitis and left thumb carpometacarpal arthritis, he has failed to meet his burden of proof.

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 not met his burden of proof to establish bilateral elbow and left thumb conditions causally related to the accepted July 9, 2016 employment incident.

[16] *A.H.*, Docket No. 18-0722 (issued November 6, 2018).

[17] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013). *T.M.*, Docket No. 08-0975 (issued February 6, 2009); *Michael S. Mina*, 57 ECAB 379 (2006).

[18] *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

[19] *Id.*

[20] 5 U.S.C. § 8102(2) of FECA provides that the term "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. *See also Roy L. Humphrey*, 57 ECAB 238 (2005).

ORDER

IT IS HEREBY ORDERED THAT the March 29, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 3, 2019
Washington, DC

Patricia H. Fitzgerald, Deputy 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