United States Department of Labor
Employees' Compensation Appeals Board

K.R., Appellant	)	
and	)	**Docket No. 18-1388**
	)	**Issued: January 9, 2019**
U.S. POSTAL SERVICE, NETWORK DISTRIBUTION CENTER, Jersey City, NJ, Employer	)	

Appearances:
Stephen Larkin, 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 July 7, 2018 appellant, through her representative, filed a timely appeal from a March 1, 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 her burden of proof to establish a traumatic injury causally related to the accepted September 8, 2016 employment incident.

FACTUAL HISTORY

On October 6, 2016 appellant, then a 45-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that, on September 8, 2016, she sustained bilateral carpal tunnel syndrome and cervical radiculopathy in the performance of duty. She stopped work on September 9, 2016. The employing establishment controverted the claim, noting that appellant did not provide notice of the alleged injury until October 6, 2016. It further requested that OWCP adjudicate the claim as one for an occupational disease.

In a September 28, 2016 prescription note, Dr. Mark A.P. Filippone, a Board-certified physiatrist, indicated that appellant was under his care for numbness, pain, and tingling of the arm and neck.[3]

Appellant, in an October 6, 2016 statement, related that she had injured her shoulder on September 8, 2016 due to throwing mail repeatedly into containers. She advised that she did not feel pain until she arrived home from work that day.

The employing establishment, on October 6, 2016, challenged appellant's claim, noting that she currently worked in a limited-duty capacity due to a prior injury, assigned OWCP File No. xxxxxx451. It indicated that she had not reported her injury even though she had requested leave under the Family and Medical Leave Act. The employing establishment advised that appellant had notified the union, but not management, of the incident even though she was aware of the proper procedure. The employing establishment asserted that she reported the injury only after it questioned her leave usage, noting that she had no sick or annual leave balances. It provided a copy of a modified assignment that appellant had accepted on April 26, 2016.

OWCP, in an October 21, 2016 development letter, requested that appellant provide additional factual and medical evidence, including a detailed statement explaining how the injury occurred and a comprehensive medical report addressing the causal relationship between a diagnosed condition and the employment incident.

Thereafter, OWCP received a September 28, 2016 report from Dr. Filippone. Dr. Filippone indicated that he had previously evaluated appellant on August 10, 2016 and advised that her history was unchanged with no "history of trauma or injury." He discussed her complaints of neck pain, right hand pain, left hand numbness, and left shoulder crepitation. On examination, Dr. Filippone found reduced neck and left shoulder motion, a bilateral positive Tinel's sign at the median and ulnar nerves, and a bilaterally positive Phalen's sign. He diagnosed bilateral carpal tunnel syndrome, internal derangement of the bilateral shoulders, worse on the left, and internal derangement of the neck. Dr. Filippone interpreted an August 10, 2016 electromyogram as showing cervical polyradiculopathy at C5 to C7 and bilateral carpal tunnel syndrome. He opined

[3] The record indicates that appellant received treatment at the emergency department on October 5, 2016.

that appellant was disabled from employment beginning September 9, 2016 and could work with restrictions on October 4, 2016.

In an October 27, 2016 attending physician's report (Form CA-20), Dr. Filippone diagnosed carpal tunnel syndrome and cervical radiculopathy, and checked a box marked "yes" indicating that the condition was caused or aggravated by employment. He referred to a November 30, 2009 report for the history of injury and findings.

On November 16, 2016 appellant described her modified work duties. She asserted that she had repetitively lifted packages over her shoulders into containers on September 8, 2016. When appellant returned home that evening, she began experiencing numbness, tingling, and pain extending from her neck into her left shoulder and into her fingers. She believed that the condition was not related to her prior injury, but noted that she had a history of surgery on her hand and carpal tunnel syndrome bilaterally. Appellant asserted that she had tried using the automated system to report her accident, but that it was difficult to use so she had waited until the union returned from a convention to report the incident.

By decision dated December 15, 2016, OWCP denied appellant's claim as the medical evidence of record was insufficient to establish a diagnosed condition causally related to the September 8, 2016 work incident. It found that she had not submitted medical evidence explaining how the September 8, 2016 employment incident caused either bilateral carpal tunnel syndrome or cervical radiculopathy.

Appellant, on January 12, 2017, requested a telephonic hearing before an OWCP hearing representative.

During the telephonic hearing, held on July 17, 2017, appellant related that she had a previously accepted workers' compensation claim for bilateral carpal tunnel syndrome under OWCP File No. xxxxxx451. She worked with restrictions under that claim beginning in 2005. Dr. Filippone had treated appellant for her carpal tunnel syndrome since 2009. Appellant related that on September 8, 2016 she did not perform her usual modified assignment, but instead threw packages coming off a machine into containers. She performed the work for only one day. Appellant asserted that Dr. Filippone found that she now had cervical radiculopathy, internal derangement of the left shoulder, and an aggravation of her carpal tunnel syndrome.

In an August 1, 2017 report, Dr. Filippone related that he began treating appellant for her "current injury of September 8, 2016" after previously treating her for bilateral carpal tunnel syndrome under OWCP File No. xxxxxx451. He diagnosed right cervical radiculopathy at C5 to C7, left cervical radiculopathy at C5-6, bilateral internal derangement of the shoulders worse on the right, bilateral mechanical derangement of the bilateral wrists, bilateral de Quervain's syndrome, and an exacerbation of right carpal tunnel syndrome. Dr. Filippone noted that on September 8, 2016 appellant repetitively threw packages weighing up to 50 pounds into containers. He opined that performing this work for eight hours would inflame the cervical discs resulting "in bulges to the disc and subsequent herniations to the disc." Dr. Filippone further found that repetitively throwing mail would cause irritation of the nerves into the arms and hands resulting in cervical radiculopathy and would also cause the shoulder to "move out of proper alignment thus resulting in the shoulder derangement." He asserted that repetitively throwing packages would

cause mechanical derangement of the wrists and swelling of the tendons at the base of the thumb resulting in inflammation and de Quervain's syndrome. Dr. Filippone additionally opined that repetitive use of the wrist on September 8, 2016 aggravated appellant's right carpal tunnel syndrome. He generally described the medical process through which the diagnosed conditions occurred and advised that the conditions were consistent with his "examination of September 28, 2016."

By decision dated September 25, 2017, OWCP's hearing representative affirmed the December 15, 2016 decision. She found that appellant had not established fact of injury as the factual and medical evidence contained inconsistencies sufficient to cast doubt on the occurrence of the alleged September 8, 2016 employment incident. The hearing representative noted that appellant had not advised the employing establishment of her injury until October 6, 2016 even though she had required leave. She further found that the medical evidence of record was insufficient to show that appellant had experienced an injury on September 8, 2016.

Dr. Filippone, in a November 5, 2017 report, repeated his findings from his August 1, 2017 report. He asserted that he had provided medical rationale supporting the September 8, 2017 employment incident had caused or aggravated the diagnosed conditions.

On December 1, 2017 appellant, through her representative, requested reconsideration.

Appellant submitted physical therapy reports dated January and February 2018.

By decision dated March 1, 2018, OWCP denied modification of the September 25, 2017 decision. It accepted that the September 8, 2016 incident occurred as alleged, but found that Dr. Filippone's opinion was speculative, conclusive, and generalized, and thus insufficient to show that appellant had sustained a diagnosed condition resulting from the accepted September 8, 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]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. First, the employee must submit

[4] *Supra* note 2.

[5] *See E.B.*, Docket No. 17-0164 (issued June 14, 2018); *Alvin V. Gadd*, 57 ECAB 172 (2005).

[6] *See P.S.*, Docket No. 17-0939 (issued June 15, 2018); *Ellen L. Noble*, 55 ECAB 530 (2004).

sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged.[7] Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.[8]

Rationalized medical opinion evidence is generally required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, 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] 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 met her burden of proof to establish a traumatic injury causally related to the accepted September 8, 2016 employment incident.

Dr. Filippone, on September 28, 2016, advised that he had previously evaluated appellant on August 10, 2016 and that since that time her history had not changed. He described her complaints of pain in her neck and right hand, numbness in her left hand, and crepitation of the left shoulder. Dr. Filippone diagnosed bilateral carpal tunnel syndrome, internal derangement of the shoulders bilaterally, and internal derangement of the neck. He found that appellant was disabled from employment. Dr. Filippone, however, did not provide a description of the September 8, 2016 work incident or attribute the diagnosed conditions to the accepted employment incident. Medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.[11]

In an October 27, 2016 Form CA-20, Dr. Filippone diagnosed carpal tunnel syndrome and cervical radiculopathy. He checked a box marked "yes" indicating that the condition was caused or aggravated by employment, and referenced a November 30, 2009 report for the history of injury. The Board has held that an opinion with a checkmark notation supporting causation, without supporting medical rationale, is of limited probative value and insufficient to establish causal relationship.[12] Additionally, Dr. Filippone indicated that the history of injury was provided in a

[7] *See V.J.*, Docket No. 18-0452 (issued July 3, 2018); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

[8] *Id*.

[9] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

[10] *S.H.*, Docket No. 17-1660 (issued March 27, 2018); *James Mack*, 43 ECAB 321 (1991).

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

[12] *See S.W.*, Docket No. 17-0811 (issued August 1, 2017).

report that predated the September 8, 2016 employment incident, and thus his opinion does not support appellant's traumatic injury claim.

Dr. Filippone, on August 1, 2017, advised that he was currently treating appellant for a September 8, 2016 injury and that he had previously treated her for bilateral carpal tunnel syndrome under OWCP File No. xxxxxx451. He diagnosed right cervical radiculopathy at C5 to C7, left cervical radiculopathy at C5-6, bilateral internal derangement of the shoulders, mechanical derangement of the bilateral wrists, bilateral de Quervain's syndrome, and an exacerbation of right carpal tunnel syndrome. Dr. Filippone described appellant's work duties on September 8, 2016 repetitively throwing packages weighing up to 50 pounds into containers. He found that performing such employment for eight hours would irritate the cervical discs causing bulging and disc herniations. Dr. Filippone further opined that repetitively throwing mail would irritate the nerves extending into the arms and hands resulting in cervical radiculopathy and also move the shoulder out of alignment causing shoulder derangement. He explained that repetitively throwing packages would cause wrist derangement and irritation and swelling of the tendons at the base of the thumb resulting in de Quervain's syndrome. Dr. Filippone found that appellant's repetitive use of her wrist on September 8, 2016 aggravated her right carpal tunnel syndrome. In a November 5, 2017 report, he reiterated the findings set forth in his August 1, 2017 report.

Dr. Filippone described the September 8, 2016 work incident and offered an opinion generally supporting causal relationship. The Board finds, however, that his reports are of diminished probative value as he failed to offer sound medical reasoning in support of his conclusions.[13] While Dr. Filippone opined that the accepted employment incident of appellant repetitively throwing mail for eight hours would result in the diagnosed conditions of right cervical radiculopathy at C5 to C7, left cervical radiculopathy at C5-6, bilateral internal derangement of the shoulders worse on the right, bilateral mechanical derangement of the bilateral wrists, bilateral de Quervain's syndrome, and an exacerbation of right carpal tunnel syndrome, he did not sufficiently explain why employment factors occurring over the course of only one day caused or contributed to the diagnosed conditions. The need for medical rationale is particularly important given that he was treating appellant for a preexisting condition.[14] In cases where a claimant has a preexisting condition, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.[15] Dr. Filippone did not sufficiently explain how the accepted work incident altered appellant's preexisting conditions, and thus his opinion is of diminished probative value.[16] Additionally, his finding that the described work activities would result in the diagnosed conditions appears general

[13] *See S.T.*, Docket No. 17-1246 (issued November 2, 2017) (finding that a physician must offer a medically sound explanation of how the specific employment incident caused or aggravated a diagnosed condition).

[14] *See C.D.*, Docket No. 17-2011 (issued November 6, 2018).

[15] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013).

[16] *See K.C.*, Docket No. 17-1693 (issued October 29, 2018).

in nature rather than particular to appellant.[17] The Board thus finds that the reports from Dr. Filippone are insufficient to establish that appellant sustained an employment-related injury.

As appellant has not submitted sufficiently rationalized medical evidence to support her allegation that she sustained an injury causally related to the accepted September 8, 2016 employment incident, she has not met her burden of proof to establish a claim.

Appellant's representative argues on appeal that Dr. Filippone's opinion is sufficient to establish causal relationship. For the reasons set forth above, however, the Board finds that appellant has not met her burden of proof to establish a diagnosed medical condition causally related to the accepted September 8, 2016 employment incident. Therefore, appellant has not established a traumatic injury causally related to the accepted employment incident.

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 her burden of proof to establish a traumatic injury causally related to the accepted September 8, 2016 employment incident.

[17] *R.A.*, Docket No. 17-0011 (issued March 20, 2018).

ORDER

IT IS HEREBY ORDERED THAT the March 1, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 9, 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