

**United States Department of Labor
Employees' Compensation Appeals Board**

G.W., Appellant)
and) Docket No. 19-0003
U.S. POSTAL SERVICE, NATIONAL) Issued: June 18, 2019
DISTRIBUTION CENTER, Jersey City, NJ,)
Employer)

)

Appearances:

James D. Muirhead, Esq., for the appellant¹
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 October 1, 2018 appellant, through counsel, filed a timely appeal from a May 4, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP).² Pursuant to the

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 The Board notes that appellant submitted additional evidence on appeal. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

Federal Employees' Compensation Act³ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.

ISSUE

The issue is whether appellant has met his burden of proof to establish a left wrist injury causally related to the accepted November 1, 2014 employment incident.

FACTUAL HISTORY

On November 1, 2014 appellant, then a 56-year-old maintenance mechanic, filed a traumatic injury claim (Form CA-1) alleging that he slipped and fell backwards when turning to get a hammer and fractured his left wrist on that date while in the performance of duty. On the reverse side of the claim form, the employing establishment disagreed with his description of events and noted that a witness reported that appellant's face turned white and he fainted. On a November 1, 2014 incident report, it noted that appellant was in the process of standing up to go get tools, he started to turn, and then slipped and fell backwards landing on his back.

On November 1, 2014 the employing establishment provided appellant with an authorization for examination and/or treatment (Form CA-16) diagnosing fracture of the wrist. On that day appellant sought treatment at the emergency room where Dr. Amir E. Estaphan, a Board-certified emergency medicine physician, diagnosed syncope, hypotension, and left wrist fracture. Dr. Estaphan recommended left wrist surgery.

In a development letter dated November 18, 2014, OWCP advised appellant that initially his injury appeared to be minor, resulting in minimal or no lost time from work. It noted that payment of a limited amount of medical expenses was administratively approved and the merits of the claim had not been formally considered. OWCP determined that the factual portion of appellant's traumatic injury claim had not been established. It requested that he complete a questionnaire as well as provide additional factual and medical evidence in support of his claim. OWCP afforded him 30 days for response.

In a note dated November 1, 2014, Dr. Estaphan reported that appellant had sudden onset of weakness, stood up, and experienced a sudden onset syncopal episode. He diagnosed markedly comminuted, distracted, and angulated fracture through the distal radius on the left. Dr. Estaphan recommended hospitalization for observation due to a probably syncopal episode and hypotension, but appellant refused to stay.

On November 3, 2014 Dr. Renata Weber, a Board-certified hand and plastic surgeon, examined appellant and noted that he had fallen twice in the past week. She diagnosed comminuted distal radius fracture based on x-rays. Dr. Weber recommended wrist surgery. On November 3, 2014 she completed part B of the Form CA-16, attending physician's report, which listed October 27, 2014 as the date of injury and described the injury as distal radius fracture. Dr. Weber diagnosed Colles' fracture of the wrist and checked a box marked "no" that appellant's

³ 5 U.S.C. § 8101 *et seq.*

diagnosed wrist fracture was not due to his employment activity. She noted that he had a concurrent condition of “dizziness.”

On December 3, 4014 Dr. Peter H. Pham, an osteopath, admitted appellant to the hospital with diagnoses of anxiety, syncope, and left wrist fracture. Appellant noted that he had fallen the previous month at work when he tripped over machinery and had landed on his left wrist. On December 5, 2014 Dr. Weber examined him and noted that she had examined him four weeks earlier due to a distal radius fracture to the left hand. She noted that appellant reported that he had injured his wrist at work and that he had been falling more frequently lately. Dr. Weber diagnosed left distal radius fracture and new median nerve compression. She recommended surgery. On December 5, 2014 Dr. Weber performed an open reduction and internal fixation of four fragment distal radius fracture and left carpal tunnel release.

By decision dated January 5, 2015, OWCP denied appellant’s claim finding that he had not established the factual component of his traumatic injury claim. It explained that he failed to clarify the cause of his fall, *i.e.*, whether he had a history of fainting spells, whether a hazardous condition was present, or whether he struck any object as he fell. OWCP therefore concluded that the requirements had not been met to establish an injury as defined by FECA.

During his hospitalization on December 3, 2014, appellant reported that he tripped over machinery and fell onto his wrist. He denied dizziness, light headedness, or syncope at any time.

In a note dated April 2, 2015, Dr. Weber reported that appellant fell the previous week injuring his left hand and index finger. On May 4, June 25, and July 30, 2015 she again noted that he had reinjured his hand in March 2015 and diagnosed a tendon rupture due to either his original fracture or possibly the March 2015 injury. On August 3, 2015 appellant underwent a second left carpal tunnel release. In a note dated September 30, 2015, Dr. Weber diagnosed carpal tunnel syndrome, rupture of the extensor tendons of the hand, wrist sprain, and lumbosacral root lesions.

On November 20, 2015 appellant, through counsel requested reconsideration of the January 5, 2015 decision contending that appellant had fallen at work on November 1, 2014, had felt an immediate problem with his left wrist, and sought medical attention on that date.

By decision dated February 16, 2016, OWCP denied modification of the January 5, 2015 decision. It found that, according to a witness, appellant’s face turned white and he fainted. OWCP also noted two different descriptions of the alleged employment incident in the medical evidence, falling over machinery and slipping when he turned to get a hammer.

On March 2, 2016 appellant, through counsel, requested reconsideration and provided additional medical evidence arguing that appellant slipped and fell at work whether turning to get a hammer or falling over machinery. Appellant alleged that his job contributed to his fall.

In a report dated January 29, 2016, Dr. Weber noted that appellant had fallen twice in November 2014 and that he was evaluated for syncopal episodes. She opined, “One of these falls caused the wrist fracture and possibly a few other falls while the wrist was not properly protected with a splint or cast contributed to the severe comminution.” Dr. Weber performed appellant’s first wrist surgery on December 4, 2014 which included carpal tunnel release. Appellant fell again in April 2015 reinjuring the left thumb and wrist. In June 2015, Dr. Weber diagnosed attrition

rupture of the extensor tendon to the left thumb, a known complication of distal radius fractures. She performed a second left wrist surgery in August 2015 rereleasing the carpal tunnel with internal neurolysis of the median nerve, removal of synovial tissue, and tendon transfer to restore thumb extension. Following the surgery, magnetic resonance imaging (MRI) scans demonstrated scapholunate ligament tear, and triangular fibrocartilage complex (TFCC) tear. Appellant also developed symptoms of severe pain consistent with a neuroma as well as laxity of the metacarpophalangeal (MCP) joint which disrupted the tendon transfer. In November 2015, Dr. Weber performed a third left wrist surgery to repair the TFCC and remove a bone spur as well as transposing the ulnar sensory nerve. Four weeks later, she performed a fourth surgery to remove the volar plate and minimize synovitis and ulnar styloid bursitis. As a result of appellant's medical course, Dr. Weber found that he was partially disabled.

By decision dated June 1, 2016, OWCP denied modification of its prior decisions. It found that appellant had not submitted factual statements clarifying the events of November 1, 2014.

On November 10, 2016 appellant, through counsel, requested reconsideration and submitted a factual statement. Appellant asserted that on November 1, 2014 he was at work replacing a machine shaft. As he was leaving the area to retrieve more tools, his left foot caught in a gap between a beam and the floor. Appellant fell and landed on his left wrist. He did not realize the exact cause of his fall until a few days later when he noticed the bruising on his toes. Appellant further noted that, although he had experienced syncopal episodes in the past, the fall on November 1, 2014 was not due to syncope, but due to tripping when his left foot was caught in a gap between the floor and a beam. He denied losing consciousness and asserted that he could not see his coworker's face when he fell, disputing his coworker's claim that appellant's face turned pale before he fell.

By decision dated February 27, 2017, OWCP modified and affirmed its prior decisions finding that appellant had established that the incident occurred as alleged, but failed to provide medical evidence to establish causal relationship between his diagnosed condition and the accepted employment incident.

On February 5, 2018 appellant, through counsel, requested reconsideration and submitted a report from Dr. Weber dated January 29, 2018. In her January 29, 2018 report, Dr. Weber noted that she first examined appellant in November 2014 after an emergency room visit with low blood pressure and a left wrist fracture. Appellant reported that he fell at work one week prior to the emergency room visit, but did not immediately seek treatment as he believed that his wrist was sprained. Dr. Weber diagnosed severely comminuted fracture of the left distal radius and ulnar styloid known as a fall on outstretched hand. Appellant underwent surgery approximately one month after his injury. Dr. Weber opined that the severe comminution as well as the delay in care contributed to the complications he sustained and the need for multiple additional surgeries. She opined that a fall on an outstretched wrist could cause the fracture pattern appellant sustained. Dr. Weber noted that most syncopal falls did not result in wrist fractures, but instead falling with the hand outstretched to prevent or break the fall that results in wrist fractures. She noted that most syncopal falls were the result of appellant's losing consciousness and resulted in facial injuries and head lacerations. Dr. Weber found that he was partially disabled.

By decision dated May 4, 2018, OWCP denied modification of the February 27, 2017 decision finding that appellant had not established that his injuries were causally related to his accepted November 1, 2014 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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 timely filed within the applicable time limitation period of FECA,⁴ that an injury was sustained in the performance of duty as alleged, and that any disability or medical 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 upon 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 must first be determined whether fact of injury has been established.⁷ First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged.⁸ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁹

Causal relationship is a medical issue and the evidence generally required to establish causal relationship is rationalized medical opinion evidence.¹⁰ Rationalized medical opinion evidence is evidence which includes a physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors.¹¹ 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

⁴ *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Elyett*, 41 ECAB 992 (1990).

⁷ *B.F.*, Docket No. 09-0060 (issued March 17, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

⁸ *D.B.*, 58 ECAB 464 (2007); *David Apgar*, 57 ECAB 137 (2005).

⁹ *C.B.*, Docket No. 08-1583 (issued December 9, 2008); *D.G.*, 59 ECAB 734 (2008); *Bonnie A. Contreras*, *supra* note 7.

¹⁰ *A.L.*, Docket No. 18-1465 (issued February 14, 2019); *K.V.*, Docket No. 18-0306 (issued August 8, 2018); *Elizabeth H. Kramm*, 57 ECAB 117, 123 (2005).

¹¹ *A.L., id.; I.J.*, 59 ECAB 408 (2008).

identified by the claimant.¹² 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.¹³

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish that his left wrist condition was causally related to the accepted November 1, 2014 employment incident.

On November 1, 2014 Dr. Estaphan diagnosed syncope, hypotension, and left wrist fracture. While this report reflects immediate treatment following the employment incident, it fails to relate any opinion regarding the cause of appellant's condition and is therefore insufficient to establish his traumatic injury claim.¹⁴ On December 3, 2014 Dr. Pham diagnosed anxiety, syncope, alcohol use, and left wrist fracture. Neither Dr. Estaphan nor Dr. Pham provided an opinion as to the cause of the diagnosed left wrist fracture. The record also contains multiple reports from Dr. Weber addressing appellant's left wrist condition. Beginning on November 3, 2014 she noted that he had fallen twice in the past week and diagnosed comminuted distal radius fracture based on x-rays. On November 3, 2013 Dr. Weber did not provide an opinion as to the cause of appellant's wrist fracture. The Board has held that 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.¹⁵ Thus, these reports are insufficient to meet appellant's burden of proof regarding causal relationship.

Dr. Weber completed the attending physician's portion of a December 3, 2014 Form CA-16 which listed October 27, 2014 as the date of injury and described the injury as distal radius fracture. She checked a box marked "no" that appellant's diagnosed wrist fracture was not due to his employment activity. Dr. Weber noted that he had a concurrent condition of "dizziness." This report does not support causal relationship between appellant's diagnosed left wrist fracture and his accepted November 1, 2014 employment incident. It is based on a different history of injury than that offered by him and accepted by OWCP. Therefore, this report does not support appellant's claim.¹⁶

On December 5, 2014 Dr. Weber noted that appellant reported he had injured his wrist at work and that he had been falling more frequently lately. She diagnosed left distal radius fracture

¹² *Id.*

¹³ *A.L.*, *supra* note 10; *D.H.*, Docket No. 17-1913 (issued December 13, 2018); *K.V.*, Docket No. 18-0723 (issued November 9, 2018); *James Mack*, 43 ECAB 321 (1991).

¹⁴ *T.M.*, Docket No. 18-0972 (issued December 13, 2018).

¹⁵ See *M.C.*, Docket No. 18-0951 (issued January 7, 2019); *J.L.*, Docket No. 18-0698 (issued November 5, 2018); *R.A.*, Docket No. 17-1472 (issued December 6, 2017); *Sedi L. Graham*, 57 ECAB 494 (2006); *Deborah L. Beatty*, 54 ECAB 340 (2003).

¹⁶ *M.C.*, *id.*; *M.B.*, Docket No. 18-0906 (issued November 21, 2018).

and new median nerve compression. Dr. Weber did not offer her own medical opinion as to the cause of appellant's injury. An award of compensation may not be based on surmise, conjecture, speculation, or upon appellant's own belief that there was a causal relationship between his condition and his employment.¹⁷

In her January 29, 2016 report, Dr. Weber noted that appellant had fallen several times in November 2014 and that he was evaluated for syncopal episodes. She opined, "One of these falls caused the wrist fracture and possibly a few other falls while the wrist was not properly protected with a splint or cast contributed to the severe comminution." In her January 29, 2018 report, Dr. Weber reported that appellant informed her that he fell at work one week prior to the emergency room visit on November 1, 2014, but did not immediately seek treatment as he believed that his wrist was sprained. She opined that a fall on an outstretched wrist could cause the fracture pattern he sustained. These reports do not support appellant's claim for a left wrist fracture due to the accepted November 1, 2014 employment incident. Instead, Dr. Weber attributed his left wrist fracture to either a series of falls or a sole earlier fall that has not been accepted as work related by OWCP. Furthermore, she did not clearly identify the November 1, 2014 employment incident as one of the falls which caused or contributed to appellant's diagnosed condition and did not attribute his left wrist fracture to this accepted employment incident.¹⁸ Without an affirmative opinion that appellant's diagnosed condition was causally related to his accepted employment incident, these reports are insufficient to meet his burden of proof.¹⁹

As appellant has not submitted rationalized medical evidence establishing that his left wrist condition was causally related to the accepted November 1, 2014 employment incident, he has not met 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 that his left wrist condition was causally related to the accepted November 1, 2014 employment incident.²⁰

¹⁷ A.L., *supra* note 10; A.W., Docket No. 17-0285 (issued May 25, 2018).

¹⁸ M.B., *supra* note 16.

¹⁹ M.C., *supra* note 15.

²⁰ The Board notes that the employing establishment issued a Form CA-16. A properly completed CA-16 form authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The 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. See 20 C.F.R. § 10.300(c); M.C., *supra* note 15; Tracy P. Spillane, 54 ECAB 608 (2003).

ORDER

IT IS HEREBY ORDERED THAT the May 4, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 18, 2019
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