

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

G.E., Appellant)	
)	
and)	Docket No. 19-1190
)	Issued: November 26, 2019
DEPARTMENT OF VETERANS AFFAIRS,)	
WASHINGTON, DC VETERANS)	
ADMINISTRATION MEDICAL CENTER,)	
Washington, DC, Employer)	
)	

Appearances:
Alan J. Shapiro, Esq., for the appellant¹
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
JANICE B. ASKIN, Judge

JURISDICTION

On May 7, 2019 appellant filed a timely appeal of an April 8, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (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 right wrist condition causally related to the accepted January 22, 2015 employment incident.

FACTUAL HISTORY

On July 23, 2015 appellant, then a 41-year-old registered nurse, filed a traumatic injury claim (Form CA-1) alleging that on January 22, 2015 she sustained a detachment of a right wrist ligament while in the performance of duty. She explained that, during her shift, she was assigned to multiple total care patients who were unable to turn themselves and that her unit did not have any working equipment to lift and position her patients. As a result, appellant was required to lift, pull, and reposition her patients manually when her injury occurred.

Appellant provided an April 20, 2015 medical report from Dr. Angela Jones, a Board-certified orthopedic surgeon. Dr. Jones noted that appellant injured her right wrist some months prior while lifting a patient at work and that she had subsequently had a magnetic resonance imaging (MRI) scan that revealed problems with the triangular fibrocartilage complex (TFCC). She diagnosed a TFCC tear in appellant's right wrist and discussed the possibility of surgery in order to treat her condition.

In an October 29, 2015 e-mail, appellant's nurse manager, I.B., modified her duties in the form of assisting with admissions and discharges, performing audits and environment of care rounds, providing coverage at nursing stations as a medical support assistant, and providing coverage at the infusion center.

In a development letter dated November 25, 2015, OWCP advised appellant that it required additional factual and medical evidence to determine whether she was eligible for FECA benefits. It requested that she respond to its questionnaire and submit the MRI scan referenced in Dr. Jones' April 20, 2015 medical report, as well as a narrative medical report from her physician which contained a detailed description of findings and diagnoses explaining how the reported incident caused or aggravated her medical condition. OWCP afforded appellant 30 days to respond.

In response, appellant provided the January 26, 2015 MRI scan conducted by Dr. Joanne Gerber, a Board-certified radiologist. Dr. Gerber noted a TFCC tear at the ulnar styloid attachment and small pinhole defect at the radial detachment, early degenerative changes involving the carpal and mild irregularity of the volar aspect of the scapholunate ligament.

In a February 5, 2015 medical report, Dr. David Dorin, a Board-certified orthopedic surgeon, indicated that on June 19, 2014 appellant had derangement of the ligament structures on the dorsal aspect of the right wrist. At that time, he instructed appellant to return if her condition worsened, but appellant did not return until February 2015. Based on a review of the January 26, 2015 MRI scan of her right wrist, Dr. Dorin diagnosed appellant with a tear of the ulnar attachment of the TFCC ligament.

Appellant submitted a December 10, 2015 medical report from her follow-up appointment with Dr. Jones. Dr. Jones noted pain in appellant's wrist with twisting and lifting activities and

explained that a heavy or awkwardly placed load, such as a patient, can result in forced twisting of the hand at the wrist causing injury to the TFCC on the ulnar side of the wrist. She provided that this force directly corresponded to appellant's reported cause of injury at work. In a surgical screening of even date, Dr. Jones noted that appellant would need to undergo a right wrist arthroscopy and TFCC repair in order to treat her condition. In a December 10, 2015 duty status report (Form CA-17) she noted a diagnosis of a TFCC tear in appellant's right wrist caused by lifting a patient at work. Dr. Jones provided that appellant could return to work with modified duties.

In response to OWCP's questionnaire, appellant explained that she originally provided her doctor's report to her manager, S.W., when her injury first occurred, but she had not opened a file or submitted the information to the Department of Labor. She noted that when her injury first occurred she experienced intense pain in her wrist and that she subsequently attempted to treat her injury by resting, minimizing her activities and by using ice, but the pain continued to worsen.

By decision dated December 30, 2015, OWCP denied appellant's claim finding that the evidence of record was insufficient to establish that her medical condition was causally related to the accepted January 22, 2015 employment incident.

OWCP continued to receive evidence. A February 5, 2015 medical note, which contained an illegible signature, provided that appellant would be partially incapacitated from February 5 to August 2, 2015. Appellant also submitted a medical form of even date from Dr. Dorin, providing that she would undergo physical therapy two times a week to treat her condition.

In a March 5, 2015 medical report, Dr. Dorin noted appellant's history of injury in her right wrist related to an injury at work, including pain on the radial side of her right wrist which he interpreted to be de Quervain's tenosynovitis. He provided appellant with a steroid injection of the distal end of the ulna and the distal radioulnar joint.

Appellant provided April 15 and May 1, 2015 notes from Marla Miranian, a physical therapist. The therapy notes referenced an injury to the radial side of appellant's wrist caused by a January 2015 work incident when a patient fell on her while she was attempting to lift the patient. Ms. Miranian noted that appellant experienced pain with lifting and twisting motions as well as a decreased grip.

In a December 22, 2015 medical note from Dr. Gerard Champaloux, Board-certified in family medicine, he noted that appellant would be unable to return to work until January 6, 2016.

On January 6, 2016 appellant requested a review of the written record before an OWCP hearing representative.

In February 5 and 25, 2016 medical notes, Dr. Champaloux ordered that appellant be assigned light-duty work. In duty status reports of even dates, he provided work restrictions in relation to appellant's January 22, 2015 TFCC tear.

In an April 7, 2016 letter, Dr. Dorin noted that appellant requested that the notes from her 2015 visits be updated in order to show that the treatment for her TFCC tear was related to her January 22, 2015 employment incident.

By decision dated August 24, 2017, OWCP's hearing representative affirmed the December 30, 2015 decision.

In an October 3, 2017 medical report, Dr. Christopher Jones, a Board-certified orthopedic surgeon, noted appellant's pain in her right wrist was related to her diagnosed TFCC tear caused by the January 22, 2015 employment incident. He provided that appellant's most recent MRI scan, taken two weeks prior, showed no evidence of the TFCC tear. Dr. Jones diagnosed bilateral wrist pain and provided that there was no reason that appellant could not perform her full duties as tolerated. He also sent her to physical therapy to strengthen her wrists as needed.

On January 15, 2018 appellant requested reconsideration of OWCP's August 24, 2017 decision. Along with her reconsideration request, she submitted a November 30, 2017 letter from Dr. Champaloux, explaining that the TFCC tear was unrelated to the February 1, 2014 right wrist injury appellant had suffered. Dr. Champaloux noted that it was related to the right wrist injury on January 22, 2015. Appellant also provided an illustrative diagram of extensor tendon compartments of the wrist to better-illustrate Dr. Champaloux's explanation.

By decision dated April 8, 2019, OWCP reviewed the merits of the claim, but denied modification of its previous decision finding that the evidence appellant submitted was insufficient to establish causal relationship between her diagnosed medical condition and the January 22, 2015 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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

³ *Supra* note 1.

⁴ *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *S.C.*, *id.*; *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 *S.C.*, *id.*; *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁷ *R.C.*, Docket No. 19-0376 (issued July 15, 2019).

employment incident at the time, place, and in the manner alleged.⁸ Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.⁹

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

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a right wrist condition causally related to the accepted January 22, 2015 employment incident.

Dr. A. Jones, in reports dated April 20 and December 10, 2015, noted that appellant injured her right wrist on January 22, 2015 while lifting a patient at work. She explained that a heavy or awkwardly placed load, such as a patient, can result in forced twisting of the hand at the wrist causing injury to the TFCC on the ulnar side of the wrist and opined that this directly corresponds to appellant's reported cause of injury at work. While Dr. Jones opined that appellant's TFCC tear was caused by a twisting force in relation to her trying to lift a heavy or awkwardly placed patient, these reports are insufficient to establish appellant's claim because they are not based on a complete factual and medical background. The Board has held that medical opinions based on an incomplete or inaccurate history are of limited probative value.¹² Specifically, Dr. Jones' reports do not address Dr. Dorin's June 19, 2014 diagnosis of derangement of the ligament structures in appellant's right wrist; his March 5, 2015 medical report that referenced de Quervain's tenosynovitis in her right wrist, nor the February 1, 2014 right wrist injury mentioned in Dr. Champaloux's November 30, 2017 letter. The need for a rationalized medical opinion based on medical rationale is especially important in this case as the evidence suggests that appellant had preexisting medical conditions.¹³ For these reasons, Dr. Jones' reports are insufficient to meet appellant's burden of proof.

In his February 5 and March 5, 2015 medical reports, Dr. Dorin noted appellant's history of right wrist derangement and de Quervain's tenosynovitis. Based on the January 26, 2015 MRI scan of her right wrist, he also acknowledged appellant's diagnosis of a TFCC tear in her right

⁸ *Id.*

⁹ *Id.*

¹⁰ *M.B.*, Docket No. 17-1999 (issued November 13, 2018).

¹¹ *M.L.*, Docket No. 18-1605 (issued February 26, 2019).

¹² *T.O.*, Docket No. 17-0093 (issued March 22, 2018).

¹³ *See M.E.*, Docket No. 18-0940 (issued June 11, 2019); *E.V.*, Docket No. 17-0417 (issued September 13, 2017).

wrist. However, Dr. Dorin's medical reports are insufficient as he offered no opinion regarding the cause of appellant's medical conditions. 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.¹⁴

Dr. Champaloux's November 30, 2017 letter explained that appellant's January 22, 2015 TFCC tear was unrelated to her February 1, 2014 right wrist injury. He also provided multiple medical notes and duty status reports, which provided work restrictions related to appellant's TFCC tear and the January 22, 2015 employment incident. While he provided an affirmative opinion on causal relationship, Dr. Champaloux did not explain the pathophysiological process of how lifting a patient would have caused appellant to tear the TFCC ligament in her right wrist.¹⁵ Because he did not provide a reasoned opinion explaining how the January 22, 2015 employment incident caused or contributed to appellant's right wrist condition, the Board finds that Dr. Champaloux's medical evidence is also insufficient to establish appellant's claim.

Similarly, Dr. C. Jones' October 3, 2017 medical report noted pain in appellant's right wrist related to her diagnosed TFCC tear caused by the January 22, 2015 incident. His medical report, however, fails to explain the pathophysiological process of how lifting a patient would have caused appellant to tear the TFCC ligament in her right wrist.¹⁶ For this reason, Dr. Jones' medical report is insufficient to establish appellant's claim.

The remaining medical evidence is also of no probative value on the issue of causal relationship. Appellant submitted the results of a right wrist MRI scan dated January 26, 2015. 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.¹⁷

Appellant also submitted physical therapy notes dated from February 5 to May 1, 2015. Certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered "physician[s]" as defined under FECA.¹⁸ Consequently, these medical findings are also of no probative value.¹⁹

¹⁴ *R.Z.*, Docket No. 19-0408 (issued June 26 2019); *P.S.*, Docket No. 18-1222 (issued January 8, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018).

¹⁵ *See J.T.*, Docket No. 18-0664 (issued August 12, 2019).

¹⁶ *Id.*

¹⁷ *T.H.*, Docket No. 18-1736 (issued March 13, 2019); *A.B.*, Docket No. 17-0301 (issued May 19, 2017).

¹⁸ *J.L.*, Docket No. 17-1207 (issued December 8, 2017) (a physical therapist is not considered a physician under FECA); *see also K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).

¹⁹ *See M.F.*, Docket No. 17-1973 (issued December 31, 2018).

As appellant has not submitted rationalized medical evidence sufficient to establish causal relationship between her diagnosed conditions and the accepted employment incident of January 22, 2015, the Board finds that she has not met her 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 her burden of proof to establish a right wrist condition causally related to the accepted January 22, 2015 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the April 8, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 26, 2019
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board