

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

_____)
G.M., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Plainfield, IL, Employer)
_____)

Docket No. 19-0933

Issued: October 1, 2019

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
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On March 27, 2019 appellant, through counsel, filed a timely appeal from a March 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 to review 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 that the acceptance of her claim should be expanded to include right hand osteoarthritis as a condition causally related to her accepted January 18, 2014 employment injuries.

FACTUAL HISTORY

On January 25, 2014 appellant, then a 54-year-old lead sales service associate, filed a traumatic injury claim (Form CA-1) alleging that on January 18, 2014 she sustained a contusion and bruise on the back of her right hand when the weight of a spring loaded hamper shifted as she lifted two trays out of the hamper and a tray hit her hand while in the performance of duty. She stopped work on January 19, 2014.³

OWCP subsequently accepted the claim for contusion and other tenosynovitis of the right wrist and hand; other specified forms of effusion except tuberculosis, hemorrhagic effusion, right; and hemarthrosis and villonodular synovitis of the right hand. It paid appellant wage-loss compensation benefits on the supplemental rolls as of March 13, 2014.

In letters dated June 25, 2018, appellant, through counsel, requested that the acceptance of her claim be expanded to include osteoarthritis involving the first and second metacarpal and first metacarpophalangeal joint. Counsel submitted a right hand magnetic resonance imaging (MRI) scan report dated April 7, 2014 from Dr. Brian M. Fagan, a Board-certified diagnostic radiologist. Dr. Fagan provided an impression of hemorrhagic fluid distending the tendon sheath of the third extensor tendon at the level of the metacarpophalangeal joint. There was no hemorrhagic fluid in the extensor tendon sheath of the fourth digit and in the flexor tendon sheath of the second digit. Dr. Fagan also provided an impression of no evidence of disruption of flexor or extensor tendons. The collateral ligaments at the metacarpophalangeal joints were intact and there was no evidence of fracture. Dr. Fagan further provided an impression of osteoarthritis involving the first and second metacarpal joints and first metacarpophalangeal joint.

Counsel also submitted progress notes dated February 24, March 10 and 20, 2014 from Dr. Ronald A. Hickombottom, an internist. Dr. Hickombottom noted that appellant was seen for a follow-up visit for a job-related injury with a diagnosis of right hand second and third metacarpal joint contusion and second and third digit tenosynovitis. He reported physical examination findings and provided impressions of right hand contusion, right hand second, third, and fourth metacarpal joint tenderness, and right hand second and third digit tenosynovitis. Dr. Hickombottom advised that appellant was unable to work until further evaluation.

Additionally, counsel submitted a request from Alan Chen Surgical Associates, P.C. for surgery to treat appellant's diagnoses of synovitis and tenosynovitis, unspecified, and osteoarthritis and hemarthrosis of the right hand.

³ On November 4, 2015 the employing establishment informed OWCP that appellant had returned to full-duty work on December 3, 2014.

On July 9, 2018 OWCP referred a statement of accepted facts (SOAF) and the medical record, to Dr. Nathan Hammel, a Board-certified orthopedic surgeon serving as an OWCP district medical adviser (DMA), to determine whether the acceptance of appellant's claim should be expanded to include right hand second and third digit tenosynovitis, and osteoarthritis involving the first and second carpal metacarpal and first metacarpophalangeal joints, right hand.

In an August 1, 2018 medical report, Dr. Hammel noted that he had reviewed the SOAF and medical record. He indicated that the requested upgrade of tenosynovitis was encompassed by the previously accepted right hand tenosynovitis. Dr. Hammel further related that regarding the claimed arthritis, the SOAF described mechanism of injury was incapable of producing this condition. He recommended against the expansion of the acceptance of the claim. Dr. Hammel concluded that there was no rationalized discussion presented for evaluation.

OWCP, in a letter dated August 2, 2018, requested that counsel review Dr. Hammel's August 1, 2018 report. In a response letter dated August 9, 2018, counsel requested that OWCP issue a decision and appropriate appeal rights if it declined to expand the acceptance of appellant's claim to include arthritis.

By decision dated August 16, 2018, OWCP denied the expansion of the acceptance of appellant's claim to include the additional condition of right hand osteoarthritis.

On August 28, 2018 appellant, through counsel, requested a telephonic hearing with a representative of OWCP's Branch of Hearings and Review.

Counsel thereafter submitted additional medical evidence including a June 30, 2014 physicians order from Alan Chen Surgical Associates, P.C. The order noted appellant's right hand physical restriction and indicated that approval for right middle finger and ring finger metacarpal joint exploration with hemarthrosis drainage, extensor tenosynovectomy of the right index, middle, ring, and small fingers, and right thumb A1 pulley release had been denied as not related to a work injury.

In a surgery booking form dated April 15, 2014, Dr. Alan Chen, a Board-certified plastic surgeon, noted that a right middle finger and ring finger metacarpal joint exploration with hemarthrosis drainage, extensor tenosynovectomy of the right index, middle, ring, and small fingers, and right thumb A1 pulley release was planned. In a progress note dated June 30, 2014, Dr. Chen indicated that appellant was seen for a follow-up visit status post her right hand surgery. He discussed findings on physical examination. Dr. Chen diagnosed musculoskeletal and connective tissue disorders, and synovitis, tenosynovitis, and trigger finger, acquired. He advised that given appellant's mechanism of injury, a 20-pound plate hitting her right dorsal hand/knuckles causing immediate swelling and a large hematoma (up to "5x7 centimeters") with evidence of extensor and tenosynovitis with hemarthrosis of multiple joints to right hand and tendon sheaths, she needed right hand extensor and flexor tenosynovectomy of the right index, middle and ring fingers with right thumb A1 pulley release, and hemarthrosis drainage of the right middle, and ring finger metacarpals. Dr. Chen indicated that this should have been done more than two months prior, but it had been denied by workers' compensation. In a note dated December 8, 2014, he reiterated his diagnoses of synovitis and tenosynovitis, unspecified, and diagnosed osteoarthritis, localized, primary hand.

During a telephonic hearing, held on January 9, 2019, appellant testified that Dr. Chen performed surgery on her right hand in September 2014 because blood was going into her joints and tendons.

An OWCP hearing representative, by decision dated March 8, 2019, affirmed the August 16, 2018 decision finding that the medical evidence of record did not contain a rationalized opinion sufficient to support a causal relationship between appellant's right hand osteoarthritis and the accepted January 18, 2014 employment injury.

LEGAL PRECEDENT

When an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.⁴ 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 based on a complete factual and medical background, supporting such a causal relationship.⁵ 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.⁶ 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.⁷

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish that the acceptance of her claim should be expanded to include right hand osteoarthritis as a condition causally related to her accepted January 18, 2014 employment injuries.

In support of her claim, appellant submitted a progress note dated June 30, 2014 from Dr. Chen. Dr. Chen diagnosed musculoskeletal and connective tissue disorders, and synovitis, tenosynovitis, and trigger finger, acquired. He opined that based on appellant's mechanism of injury, surgery on her right hand was warranted. While Dr. Chen's opinion is generally supportive of causal relationship, he did not explain how appellant's accepted conditions of contusion and other tenosynovitis of the right wrist and hand; other specified forms of effusion except tuberculosis, hemorrhagic effusion, right, and hemarthrosis and villonodular synovitis of the right

⁴ See *T.F.*, Docket No. 17-0645 (issued August 15, 2018); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

⁵ See *S.A.*, Docket No. 18-0399 (issued October 16, 2018).

⁶ See *P.M.*, Docket No. 18-0287 (issued October 11, 2018).

⁷ *F.H.*, Docket No. 18-1238 (issued January 18, 2019).

hand caused the additional diagnosed conditions.⁸ Medical conclusions unsupported by rationale are of diminished probative value and are insufficient to establish causal relation.⁹ Dr. Chen's remaining note and surgery booking form addressed appellant's right hand conditions and requested surgery, but did not offer a medical opinion finding that the diagnosed conditions were causally related to the accepted work injuries. Medical evidence which does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.¹⁰ For the foregoing reasons, the Board finds, that his reports are insufficient to establish appellant's burden of proof.

Similarly, Dr. Hickombottom's February 24 and March 10 and 20, 2014 progress notes are insufficient to establish appellant's burden of proof. He provided impressions of right hand contusion, right hand second, third, and fourth metacarpal joint tenderness, and right hand second and third digit tenosynovitis. Dr. Hickombottom advised that appellant was unable to work until further evaluation. He did not offer a medical opinion finding that the diagnosed conditions and resultant disability were causally related to the accepted work injuries.¹¹ The Board finds, therefore, that Dr. Hickombottom's progress notes are insufficient to establish appellant's burden of proof.

Appellant also submitted Dr. Fagan's April 7, 2014 diagnostic test report in support of her claim. Diagnostic studies lack probative value as they do not address whether the employment incident caused any of the diagnosed conditions.¹² This report, therefore, is also insufficient to establish appellant's claim.

OWCP referred appellant to the DMA, Dr. Hammel, for an opinion regarding whether the acceptance of appellant's claim should be expanded. Dr. Hammel found no additional employment-related conditions and advised that the acceptance of appellant's claim should not be expanded. He explained that there was no need to upgrade the claim for tenosynovitis because this condition was encompassed by the previously accepted right hand tenosynovitis. In addition, Dr. Hammel explained that the mechanism of injury described in the SOAF was incapable of producing the claimed arthritis. Moreover, he reasoned that there was no rationalized discussion presented for evaluation.

The Board finds that appellant has not submitted sufficient rationalized medical evidence to establish causal relationship between the accepted January 18, 2014 employment injuries and the claimed additional conditions of right hand osteoarthritis. As such, appellant has not met her burden of proof.

⁸ See *S.O.*, Docket No. 19-0307 (issued June 18, 2019); *S.J.*, Docket No. 16-0279 (issued April 20, 2016).

⁹ *L.M.*, Docket No. 18-1514 (issued July 18, 2019).

¹⁰ See *R.J.*, Docket No. 17-1365 (issued May 8, 2019).

¹¹ See *T.D.*, Docket No. 18-1157 (issued March 26, 2019).

¹² See *R.J.*, *supra* note 10; *E.G.*, Docket No. 17-1955 (issued September 10, 2018).

On appeal counsel contends that OWCP's March 8, 2019 decision is contrary to fact and law. For the reasons set forth above, the Board finds that appellant 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 the Board's 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 that the acceptance of her claim should be expanded to include right hand osteoarthritis as a condition causally related to her accepted January 18, 2014 employment injuries.

ORDER

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

Issued: October 1, 2019
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board