United States Department of Labor
Employees' Compensation Appeals Board

D.M., Appellant	)	
and	)	**Docket No. 19-1968**
	)	**Issued: August 28, 2020**
U.S. POSTAL SERVICE, POST OFFICE, Bridgeville, PA, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On August 20, 2019[1] appellant filed a timely appeal from a February 25, 2019[2] merit decision of the Office of Workers' Compensation Programs (OWCP).[3] Pursuant to the Federal

[1] Under the Board's *Rules of Procedure*, an appeal must be filed within 180 days from the date of the last OWCP decision. An appeal is considered filed upon receipt by the Clerk of the Appellate Boards. *See* 20 C.F.R. § 501.3(e)-(f). One hundred and eighty days from February 25, 2019, the date of OWCP's decision, was August 24, 2019. Since using October 7, 2019, the date the appeal was received by the Clerk of the Appellate Boards, would result in the loss of appeal rights, the date of the postmark is considered the date of filing. The date of the U.S. Postal Service postmark is August 20, 2019, which renders the appeal timely filed. *See* 20 C.F.R. § 501.3(f)(1).

[2] Appellant's AB-1 form indicates that she is requesting an appeal of an October 18, 2018 decision; however, the only final adverse OWCP decision within the Board's jurisdiction is the February 25, 2019 decision.

[3] The Board notes that following the February 25, 2019 decision, OWCP received additional evidence. 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.*

Employees' Compensation Act[4] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has met her burden of proof to establish a left wrist condition causally related to the accepted August 7, 2018 employment incident.

FACTUAL HISTORY

On August 7, 2018 appellant, then a 64-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that she fractured her left wrist on that date when she fell and struck her arm and wrist on steps and pavement while in the performance of duty. She stopped work that day.

On August 7, 2018 appellant was admitted to the hospital. On August 8, 2018 Dr. Allan H. Tissenbaum, a Board-certified orthopedic surgeon, diagnosed comminuted intra, extraarticular distal radial and ulnar fracture and performed a surgical internal fixation and external fixator application of the left wrist. Appellant was discharged on August 10, 2018 with a diagnosis of left radial fracture. On August 13, 2018 documentation from appellant's health insurance company indicated that she was admitted to St. Clair Hospital and underwent surgery. On August 22, 2018 Dr. Eric D. Nabors, a Board-certified orthopedic surgeon, diagnosed external fixation of the left wrist and noted the date of injury as August 7, 2018.

In an August 22, 2018 postoperative note, Dr. Tissenbaum reported that appellant underwent left wrist surgery two weeks earlier. He diagnosed left wrist fracture status post external fixation.

An August 28, 2018 nurses report referenced that appellant reported that when she delivered a package, she lost her footing and fell, fracturing her left wrist. She was then transported to St. Clair hospital and underwent surgery for reduction and stabilization of the fracture.

In an attending physician's report (Form CA-20) dated September 5, 2019, Dr. Tissenbaum diagnosed left wrist fracture. He noted that appellant underwent surgery on August 8, 2018. Dr. Tissenbaum did not answer the form question whether he believed that the condition was caused or aggravated by the employment activity. In a work capacity evaluation (Form OWCP-5c) of even date, Dr. Tissenbaum found that appellant was disabled from work.

In a September 6, 2018 development letter, OWCP advised appellant, that when her claim was received it appeared to be a minor injury that resulted in minimal or no lost time from work. The claim was administratively approved to allow payment of a limited amount of medical expenses, but the merits of the claim had not been formally adjudicated. OWCP advised that because appellant had not returned to full-time work, her claim would be formally adjudicated. It requested that she submit factual and medical information including a comprehensive report from her physician regarding how a specific work incident contributed to her claimed injury. OWCP

[4] 5 U.S.C. § 8101 *et seq.*

provided appellant with a questionnaire for completion and afforded her 30 days to submit the necessary evidence.

In a September 12, 2018 response to OWCP's September 6, 2018 development questionnaire, appellant noted that she fell when she lost her footing on a step while delivering a package and mail.

On September 12 and 24, 2018 Dr. Tissenbaum examined appellant. He removed the external fixation of her left wrist on September 24, 2018. Beginning on September 26, 2018 appellant underwent treatment by Deanna Gregory, a physical therapist.

By decision dated October 18, 2018, OWCP denied appellant's traumatic injury claim, finding that she had not established causal relationship between her diagnosed left wrist fracture and the accepted August 7, 2018 employment incident.

On November 6, 2018 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

By decision dated February 25, 2019, OWCP's hearing representative found that the medical evidence of record was insufficient to establish causal relationship between appellant's accepted employment of August 7, 2018 and her diagnosed left wrist fracture.

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,[5] 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.[6] 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.[7]

To determine if an employee has sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Fact of injury consists of two components that must be considered in conjunction with one another. The first

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

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

[7] *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).

component is whether the employee actually experienced the employment incident that allegedly occurred.[8] The second component is whether the employment incident caused a personal injury.[9]

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.[10] The opinion of the physician must be based on a complete factual and medical background of the employee, 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 factor(s) identified by the employee.[11] The weight of the 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.[12]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a left wrist condition causally related to the accepted August 7, 2018 employment incident.

On August 7, 2018 appellant was admitted to the hospital for a left radial fracture. The following day she underwent surgery performed by Dr. Tissenbaum. Dr. Tissenbaum diagnosed comminuted intra, extraarticular distal radial and ulnar fracture. Appellant was subsequently discharged from the hospital on August 10, 2018 with a diagnosis of left radial fracture. These records do not address whether appellant's diagnosed condition was caused or aggravated by the accepted August 7, 2018 employment incident. Likewise, in his September 5, 2018 Form CA-20 and Form OWCP-5c reports, Dr. Tissenbaum diagnosed a left wrist fracture, but did not provide an opinion on the cause of appellant's condition. In reports dated September 12 and 24, 2018, he noted examining appellant and removing external fixation of her left wrist on September 24, 2018. However, Dr. Tissenbaum never addressed the cause of appellant's condition. The Board has held that medical evidence that does not include an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.[13] As such, Dr. Tissenbaum's reports are insufficient to establish appellant's claim.

On August 22, 2018 Dr. Nabors diagnosed external fixation of the left wrist and noted that appellant's date of injury was August 7, 2018. However, he too did not provide an explanation of how the August 7, 2018 employment incident physiologically caused or aggravated appellant's

[8] *T.M.*, Docket No. 19-0380 (issued June 26, 2019); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[9] *M.H.*, Docket No. 18-1737 (issued March 13, 2019); *T.H.*, 59 ECAB 388 (2008); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

[10] *S.A.*, Docket No. 18-0399 (issued October 16, 2018); *Robert G. Morris*, 48 ECAB 238 (1996).

[11] *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

[12] *D.R.*, Docket No. 19-0954 (issued October 25, 2019); *James Mack*, 43 ECAB 321 (1991).

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

diagnosed condition.[14] Therefore, Dr. Nabors' August 22, 2018 report is also insufficient to establish appellant's claim.

Appellant also provided treatment notes from a physical therapist and an August 28, 2018 nurse's report which referenced appellant's August 7, 2018 fall. The Board has held that medical reports signed solely by a physical therapist or a nurse are of no probative value as a they are not considered physicians as defined under FECA and therefore is not competent to provide a medical opinion.[15]

As the medical evidence does not include a rationalized opinion explaining that appellant's accepted August 7, 2018 employment-related fall caused her diagnosed condition, the Board finds that she has not met her burden of proof.[16]

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 that her left wrist fracture was causally related to the accepted August 7, 2018 employment incident.

[14] *G.L.*, Docket No. 18-1057 (issued April 14, 2020).

[15] *See David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA); 5 U.S.C. § 8101(2) (this subsection defines a physician as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law).

[16] *See T.J.*, Docket No. 19-1339 (issued March 4, 2020); *F.D.*, Docket No. 19-0932 (issued October 3, 2019) *D.N.*, Docket No. 19-0070 (issued May 10, 2019); *R.B.*, Docket No. 18-1327 (issued December 31, 2018).

ORDER

IT IS HEREBY ORDERED THAT the February 25, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 28, 2020
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board