

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

S.M., Appellant)	
)	
and)	Docket No. 20-0241
)	Issued: August 25, 2020
DEPARTMENT OF THE INTERIOR,)	
U.S. GEOLOGICAL SURVEY, Reston, VA,)	
Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Deputy Chief Judge
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On November 11, 2019 appellant filed a timely appeal from an October 2, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ Pursuant to the Federal Employees' Compensation Act² and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

¹ Appellant timely requested oral argument before the Board. 20 C.F.R. § 501.5(b). By order dated August 20, 2020, the Board exercised its discretion and denied the request, finding that the arguments on appeal could adequately be addressed based on the case record. *Order Denying Request for Oral Argument*, Docket No. 20-0241 (issued August 20, 2020). The Board's *Rules of Procedure* provide that an appeal in which a request for oral argument is denied by the Board will proceed to a decision based on the case record and the pleadings submitted. 20 C.F.R. § 501.5(b).

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met her burden of proof to expand acceptance of the claim to include additional right upper extremity conditions as causally related to her November 7, 2016 employment injury.

FACTUAL HISTORY

On June 6, 2019 appellant, then a 59-year-old financial specialist, filed a traumatic injury claim (Form CA-1) alleging that on November 7, 2016, she cut her right knee and bruised her right hand when she tripped and fell while, landing on her right hand and knee due to a crevice on an asphalt path while in the performance of duty.

In a June 12, 2019 development letter, OWCP advised appellant that the evidence of record was insufficient to establish her claim. It advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence.

In a report dated November 7, 2016, a registered nurse diagnosed a knee abrasion.

On June 8, 2019 Dr. Fuad Alykhan, a specialist in internal medicine, examined appellant for complaints of pain and swelling in the right palm related to repetitive work. He noted that she told him she injured her right hand on November 7, 2016 when she tripped and fell on an asphalt path. On examination, Dr. Alykhan noted mild swelling, tenderness, and ecchymosis of the right hand. He diagnosed right hand pain, tingling, and swelling. Dr. Alykhan repeated these diagnoses in a discharge instruction sheet of even date.

In a prescription note dated June 8, 2019, Dr. Alykhan referred appellant to physical therapy for a diagnosis of right hand swelling, overuse, and strain. In a work status form of even date, he diagnosed right hand pain and swelling and restricted appellant from performing repetitive motion.

An x-ray of appellant's right hand taken on June 10, 2019 demonstrated mild osteoarthritis, but no fracture or subluxation. An x-ray of his left hand of even date demonstrated mild osteoarthritis.

On June 19, 2019 appellant replied to OWCP's inquiries. She noted that after her fall on the pathway on November 7, 2016 her right hand was sore and bruised. Appellant submitted photographs of hand and knee injuries taken on the date of injury. She explained that she had not filed her traumatic injury claim until June 2019 because she had been experiencing worsening pain and swelling in her right hand when performing repetitive tasks at home and at work. Appellant also submitted e-mails dated November 8, 2016, in which she informed her supervisor that on November 7, 2016 she had tripped and had gone to the health unit because her knee was bleeding.

In a letter dated June 20, 2019, Dr. Alykhan noted that he had seen appellant on June 8, 2019 for complaints of right hand pain and swelling. Appellant recalled a work-related injury on November 7, 2016 when she tripped and fell on an asphalt path. She was treated for right knee abrasion and noted that her hand had been bruised and sore with full range of movement, which

resolved after one day. Appellant had no gross symptoms until about a year and a half before the date of Dr. Alykhan's letter, when she began to develop symptoms of pain with use of her right hand at work and when cleaning at home. On physical examination of the right hand, Dr. Alykhan observed minimal to mild swelling/edema to the base of her right thumb with full range of motion and no point tenderness, ecchymosis, erythema, soft tissue/bony crepitus, or bony deformity. He provisionally diagnosed right hand pain and swelling with a history of right hand injury after a fall, likely due to right thumb tenosynovitis and possible concomitant right hand arthritis. Dr. Alykhan opined that it was possible that her fall "may have been" the precipitating event to her current right hand symptoms, which were noted to recur when she performed repetitive movements at work or at home.

In a note dated July 8, 2019, Dr. Subir S. Jossan, a Board-certified hand surgeon, noted that appellant had suffered a ground level fall and contusion to her right thumb and hand two and a half years prior. Appellant stated that she had experienced hand pain at that time, which persisted, and which increased in the right thumb with strenuous activity including pinching and gripping activities. On physical examination of the right hand and wrist, Dr. Jossan observed tenderness over the carpometacarpal (CMC) joint with a positive grind test, mild tenderness over the scaphotrapeziotrapezoidal (STT) joint with full wrist motion, and slight pain with resisted wrist flexion over the flexor carpi radialis (FCR) tendon. He diagnosed post-traumatic arthritis of the right thumb and wrist.

On July 17, 2019 OWCP accepted the claim for right knee abrasion.

Appellant subsequently submitted a revised version of Dr. Jossan's July 8, 2019 note. Dr. Jossan diagnosed post-traumatic arthritis of the right thumb and wrist. He opined that it was a work-related condition resulting from appellant's injury of November 7, 2016. Dr. Jossan recommended a permanent restriction of no repetitive motion of the right hand/wrist, including no data entry work.

In a development letter dated August 21, 2019, OWCP advised appellant of the type of evidence required to support that the acceptance of her claim should be expanded, including submission of a rationalized medical report explaining how the diagnosed condition(s) was work related, bridging medical documentation from 2016 through 2019, and answers to its inquiries. It afforded her at least 30 days to submit the necessary evidence.

In a letter dated August 28, 2019, Dr. Jossan noted that he had seen and treated appellant for conditions of her right thumb and wrist. He opined that, based on her history, physical examination, and diagnostic studies that her post-traumatic osteoarthritis of the right thumb and wrist were a direct result of the work injury dated November 7, 2016. Dr. Jossan explained that this injury caused cartilage damage that had been gradually progressing since that time, and that post-traumatic arthritis was a chronic, slow-developing condition.

Appellant responded to OWCP's inquiries in a September 5, 2019 letter. She stated that she had noticed that the November 7, 2016 report signed by a nurse did not include reference to a hand injury. Appellant noted that she had photos of her knee and hand from her date of injury and that the hand injury should have been noted as well. She observed that she first experienced symptoms of right hand swelling and pain in May 2018 when she moved from one residence to

another and thoroughly cleaned the residences in a short time period. Appellant stated that her right hand swelled from the repetitive motion of wiping down cabinets, scrubbing bathrooms, mopping, and vacuuming within a short time frame. She further noted that her normal duties at work had not included repetitive motion, but that when she was occasionally asked to process invoices, which involved data entry, her right hand would swell and hurt from the repetitive motion.

By decision dated October 2, 2019, OWCP denied appellant's request to expand the acceptance of her claim to include right thumb and wrist osteoarthritis causally related to the November 7, 2016 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.³

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁴ A physician's opinion on whether there is causal relationship between the diagnosed condition and an accepted injury must be based on a complete factual and medical background.⁵ Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale which, explains the nature of the relationship between the diagnosed condition and the accepted employment injury.⁶

ANALYSIS

The Board finds that appellant has not met her burden of proof to expand the acceptance of her claim to include additional right upper extremity conditions as causally related to the accepted November 7, 2016 employment injury.

In a report dated June 8, 2019, Dr. Alykhan diagnosed right hand pain, tingling, and swelling. He repeated these diagnoses in a discharge instruction sheet of even date. On the same date, Dr. Alykhan referred appellant to physical therapy for a diagnosis of right hand swelling, overuse, and strain. In a work status form of even date, he diagnosed right hand pain and swelling. Dr. Alykhan did not, however, provide an opinion as to the cause of the additional conditions. The Board has held that medical evidence offering no opinion regarding the cause of an employee's

³ A.A., Docket No. 19-1165 (issued December 16, 2019); M.B., Docket No. 19-0485 (issued August 22, 2019); R.J., Docket No. 17-1365 (issued May 8, 2019); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

⁴ E.M., Docket No. 18-1599 (issued March 7, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

⁵ M.V., Docket No. 18-0884 (issued December 28, 2018); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁶ *Id.*

condition is of no probative value on the issue of causal relationship.⁷ As Dr. Alykhan did not offer an opinion regarding the cause of appellant's diagnosed conditions, these documents are of no probative value on the issue of causal relationship.⁸

In a letter dated June 20, 2019, Dr. Alykhan opined that it was possible that her fall "may have been" the precipitating event to her right hand symptoms. The Board has held that medical opinions that suggest that a condition was "likely" or "possibly" caused by work activities are speculative or equivocal in character and have limited probative value.⁹ Thus, Dr. Alykhan's letter of June 20, 2019 is insufficient to establish appellant's claim.

Appellant also submitted a July 8, 2019 note and a revised note of even date from Dr. Jossan. Dr. Jossan diagnosed post-traumatic arthritis of the right thumb and wrist and opined that it was a work-related condition resulting from her injury of November 7, 2016. The Board has held that a mere conclusion without the necessary rationale as to whether a condition is due to an accepted employment incident is insufficient to meet a claimant's burden of proof.¹⁰ Because Dr. Jossan did not provide rationale to support his opinion in his July 8, 2019 note, it is insufficient to meet appellant's burden of proof.

OWCP also received a report dated August 28, 2019 from Dr. Jossan in which he opined that based on her history, physical examination, and diagnostic studies, appellant's post-traumatic osteoarthritis of the right thumb and wrist were a direct result of the work injury on November 7, 2016. Dr. Jossan explained that this injury caused cartilage damage that had been gradually progressing, and that post-traumatic arthritis was a chronic, slow-developing condition. However, his report is insufficiently rationalized as he failed to address the pathophysiological mechanism by which the accepted employment incident caused, aggravated, or accelerated appellant's diagnosed osteoarthritis of the right thumb and wrist.¹¹ Dr. Jossan failed to provide a sufficiently rationalized explanation of why appellant's osteoarthritis of the right thumb and wrist was work related, given that appellant also had osteoarthritis of the left hand as demonstrated by x-ray on June 10, 2019. As such, his August 28, 2019 report is of limited probative value and is insufficient to meet appellant's burden of proof.¹²

Appellant submitted diagnostic reports dated June 10, 2019, demonstrating bilateral mild osteoarthritis of the hands. The Board has held that diagnostic tests, standing alone, lack probative

⁷ See *R.G.*, Docket No. 18-0792 (issued March 11, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

⁸ *R.Z.*, Docket No. 19-0408 (issued June 26 2019); *P.S.*, Docket No. 18-1222 (issued January 8, 2019).

⁹ *J.W.*, Docket No. 18-0678 (issued March 3, 2020).

¹⁰ *A.T.*, Docket No. 19-0410 (issued August 13, 2019); *E.L.*, Docket No. 17-1632 (issued January 3, 2018).

¹¹ See *A.P.*, Docket No. 19-0224 (issued July 11, 2019).

¹² *Id.*

value as they do not provide an opinion on causal relationship between the traumatic incident and the diagnosed conditions.¹³ These reports are therefore insufficient to establish the claim.

Appellant submitted a November 7, 2016 report signed by a registered nurse. Certain healthcare providers, such as nurses, are not considered “physician[s]” as defined under FECA.¹⁴ Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.¹⁵ Moreover, this report did not reference any right hand condition.

The Board finds that appellant has not submitted sufficient medical evidence to establish causal relationship between the accepted November 7, 2016 employment injury and the claimed osteoarthritis of the right thumb and wrist. As such, appellant has not met her burden of proof to expand the acceptance of her claim.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 expand the acceptance of her claim to include additional right upper extremity conditions as causally related to her November 7, 2016 employment injury.

¹³ See *J.M.*, Docket No. 17-1688 (issued December 13, 2018).

¹⁴ 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).

¹⁵ Section 8101(2) of FECA provides that physician “includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law.” 5 U.S.C. § 8101(2). See also Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *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); *R.L.*, Docket No. 19-0440 (issued July 8, 2019) (nurse practitioners and physical therapists are not considered physicians under FECA); *K.W.*, 59 ECAB 271, 279 (2007).

¹⁶ See *O.M.*, Docket No. 18-1055 (issued April 15, 2020).

ORDER

IT IS HEREBY ORDERED THAT the October 2, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 25, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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