

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

_____)	
K.T., Appellant)	
)	
and)	Docket No. 19-1718
)	Issued: April 7, 2020
U.S. POSTAL SERVICE, POST OFFICE, Weikert, PA, 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, Deputy Chief Judge
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On August 12, 2019 appellant, through counsel, filed a timely appeal from a May 31, 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.

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 the additional conditions of a right acromioclavicular

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.*

separation, a sprained right thumb, and right shoulder sprain/strain as causally related to the accepted June 6, 2016 employment injury.

FACTUAL HISTORY

On June 9, 2016 appellant, then a 49-year-old postmaster relief, filed a traumatic injury claim (Form CA-1) alleging that on June 6, 2016 she injured her right thumb while in the performance of duty.³ She explained that as she was walking she tripped over a desk chair, landed on her right hand, and sprained her right thumb. On the reverse side of the claim form, the employing establishment indicated that appellant was injured in the performance of duty on June 6, 2016. It indicated that she stopped work on June 6, 2016 and returned to work on June 9, 2016.

In June 6, 2016 emergency room notes, Dr. Fredrick Lapp, Board-certified in emergency medicine, indicated that appellant complained of a right arm injury sustained at work from tripping and landing on her right arm. He noted that appellant could not move her right thumb and that she experienced significant pain in her right forearm and shoulder. The right thumb was noted to be swelling and tingling, and her symptoms were aggravated by movement. Appellant's physical examination revealed limited range of motion, the inability to flex her thumb, distal radial tenderness in her right wrist, anterior right shoulder tenderness, and distal clavicle tenderness. Her right shoulder's range of motion was limited by pain, and she could only extend to 90 degrees and was unable to touch her lower back or the back of her head.

In June 6, 2016 emergency room discharge instructions it was indicated that appellant was seen by Dr. Lapp and that he had diagnosed an acromioclavicular separation and a thumb sprain.

A June 7, 2016 x-ray of appellant's right thumb interpreted by Dr. Kiran Kapadia, Board certified in diagnostic radiology, revealed normal results. A June 7, 2016 x-ray of appellant's right shoulder and clavicle interpreted by Dr. Kapadia displayed a vertical lucency involving the distal end of the clavicle and extending beyond the clavicle margin. Dr. Kapadia noted that this was unlikely to be a fracture and that there were no acute post-traumatic findings. A June 7, 2016 x-ray of appellant's right forearm interpreted by Dr. Kapadia revealed normal findings.

A June 8, 2016 report from Dr. Paul Lin, Board-certified in orthopedic surgery, indicated that appellant presented with right upper extremity pain including wrist pain, mid-arm pain, and shoulder pain from a June 6, 2016 workplace fall where she tripped over a chair. Appellant's symptoms included swelling and stiffness. Dr. Lin reviewed the x-rays of appellant's fingers, forearm, and shoulders, and he noted that no fractures were identified. Appellant's right upper extremity physical examination revealed diffuse tenderness from her wrist up to her shoulder and otherwise normal results. Dr. Lin noted that he suspected appellant only sustained a shoulder sprain. He indicated that appellant sustained a work-related injury and diagnosed right shoulder contusion, pain in her right wrist, and pain in her right upper extremity. Dr. Lin concluded that

³ Appellant alleged a date of injury of June 7, 2016 on the claim form. However, the claim has been accepted for an injury determined to have occurred on June 6, 2016.

appellant could continue to work with restrictions including not using her upper extremity or right hand.⁴

In a June 16, 2016 medical report Dr. Matthew Eager, a Board-certified orthopedic surgeon, noted that appellant was following up for a right arm contusion she sustained a week prior when she fell at work and injured her right arm. Appellant complained of right arm pain from her wrist to her elbow, right arm swelling, and paresthesias in her thumb, index, and middle fingers. She noted that she had not experienced new trauma and that she had attended physical therapy which was helping with pain relief. Appellant's physical examination revealed mild edema in her right wrist and otherwise normal results. Dr. Eager recommended no right upper extremity use.

In a July 14, 2016 narrative statement, appellant indicated that since her claimed June 6, 2016 workplace injury she has experienced constant pain in her fingers, hand, and shoulder and numbness in her fingers.

In a July 20, 2016 development letter, OWCP indicated that when appellant's claim was received it appeared to be a minor injury that resulted in minimal or no lost time from work and, based on these criteria and because the employing establishment did not controvert continuation of pay or challenge the case, payment of a limited amount of medical expenses was administratively approved. It explained that it reopened the claim for consideration because the medical bills exceeded \$1,500.00. OWCP advised appellant of the deficiencies of her claim. It requested additional factual and medical evidence and attached a questionnaire for her completion. OWCP afforded appellant 30 days for a response.

A June 21, 2016 attending physician's report (Form CA-20) by Dr. Lin noted that appellant was injured at work on June 6, 2016 when she tripped over a chair and fell on her right side. His findings and diagnosis included right upper extremity pain, and he checked the box marked "yes" indicating that the condition he diagnosed was caused or aggravated by appellant's employment injury. Dr. Lin noted that appellant should perform modified work duties including no right upper extremity use beginning on June 8, 2016.

In a July 12, 2016 report, Dr. Thomas Martin, a Board-certified orthopedic surgeon, indicated that appellant was following up from an appointment a month prior at which she was diagnosed with a right arm contusion. He noted that despite some improvement from physical therapy, appellant continued to experience numbness in all of her fingers and shoulder pain. Appellant denied new trauma and a physical examination revealed: tenderness in her right trapezius muscle; swelling, numbness, and tingling in her right hand; pain and tenderness in her right wrist; good range of motion in her right hand and wrist; diminished sensation in all of her fingers on her right hand; and good radial and ulnar nerve motor function. Dr. Thomas opined that appellant had a few problems with her right hand, some of which seemed situated in the ulnar nerve, some seemed like carpal tunnel, and some seemed like de Quervain's. He provided work restrictions of refraining from repetitive motions and refraining from lifting over five pounds with her right arm.

⁴ In a June 8, 2016 injury status note, Dr. Lin indicated that appellant could return to modified duties with the restriction of no right upper extremity use. On June 10, 2016 appellant accepted a limited-duty assignment from the employing establishment.

An August 8, 2016 progress report from Dr. Lin noted that appellant complained of posterior scapular pain, shooting pain in her lower arm, intermittent numbness in her hand, and thumb pain. She indicated that physical therapy had worsened her pain. Appellant's physical examination of her shoulder, elbow, wrist, and hand revealed normal results. Dr. Lin recommended that appellant return to her regular work duties without restrictions.

On September 1, 2016 OWCP accepted appellant's claim for a right shoulder contusion, but denied the additional claimed conditions.

On February 2, 2017 appellant, through counsel, requested that the acceptance of her claim be expanded to include the additional conditions of a right acromioclavicular separation, a right thumb sprain, and a right shoulder sprain/strain. He resubmitted copies of medical records.

In a September 11, 2017 letter, OWCP noted that appellant submitted no new medical evidence.

By decision dated November 7, 2018, OWCP denied expansion of appellant's claim to include a right acromioclavicular separation, a right thumb sprain, or a shoulder sprain/strain as causally related to her accepted June 6, 2016 employment injury.

On November 21, 2018 appellant, through counsel, requested an oral hearing before an OWCP hearing representative. On November 22, 2019 he requested a review of the written record in lieu of an oral hearing.

By decision dated May 31, 2019, an OWCP hearing representative affirmed the November 7, 2018 decision.

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.⁵

Causal relationship is a medical question that requires medical evidence to resolve the issue.⁶ 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 accepted employment injury.⁷

⁵ See *T.E.*, Docket No. 18-1595 (issued March 13, 2019); *T.F.*, Docket No. 17-0645 (issued August 15, 2018); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

⁶ *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

⁷ See *M.M.*, Docket No. 19-0061 (issued November 21, 2019); *P.M.*, Docket No. 18-0287 (issued October 11, 2018).

ANALYSIS

The Board finds that appellant has not met her burden of proof to expand the acceptance of her claim to include a right acromioclavicular separation, a right thumb sprain, or a shoulder sprain/strain causally related to the accepted June 6, 2016 employment injury.

Dr. Lapp's June 6, 2016 emergency room notes indicated that appellant complained of a right arm injury sustained at work when she tripped and fell, landing on her right arm. He conducted an examination and diagnosed an acromioclavicular separation and a thumb sprain. These notes, however, do not provide an opinion as to whether the accepted June 6, 2016 employment injury either caused or contributed to appellant's additional diagnosed 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.⁸ Therefore, this report is insufficient to meet appellant's burden of proof.⁹

Dr. Lin's June 8, 2016 medical report indicated that appellant presented with right upper extremity pain including wrist pain, mid-arm pain, and shoulder pain from a June 6, 2016 fall at work where she tripped over a chair. Dr. Lin opined that she sustained a work-related injury and diagnosed a right shoulder contusion, pain in her right wrist, and pain in her right upper extremity. He also noted that he suspected appellant only sustained a [shoulder] sprain. Dr. Lin's indication that he suspected that appellant sustained a shoulder sprain is speculative and therefore of limited probative value.¹⁰ Therefore, this report is insufficient to establish appellant's claim.

Dr. Lin's June 21, 2016 attending physician's report noted that appellant was injured at work on June 6, 2016 when she tripped over a chair and fell, landing on her right side. He diagnosed right upper extremity pain, and checked the box marked "yes" indicating that he believed the condition was caused or aggravated by appellant's employment injury. The Board has held, however, that when a physician's opinion on causal relationship consists only of checking "yes" to a form question, without explanation or rationale, that opinion has little probative value and is insufficient to establish a claim.¹¹

Dr. Lin did not make any diagnoses in his August 8, 2016 medical report, but only noted appellant's pain complaints. Likewise, Dr. Eager's June 16, 2016 medical report noted that appellant was following up for a right arm contusion she sustained one week prior when she fell at work and injured her right arm. Also, in his July 12, 2016 report, Dr. Thomas indicated that appellant had a few problems with her right hand, but provided no opinion as to causal relationship. 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.¹² These reports, therefore, are insufficient to establish appellant's claim.

⁸ See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

⁹ *K.A.*, Docket No. 14-0213 (issued May 7, 2014).

¹⁰ See *C.B.*, Docket No. 17-1499 (issued July 25, 2018).

¹¹ See *M.O.*, Docket No. 18-1056 (issued November 6, 2018); *Deborah L. Beatty*, 54 ECAB 3234 (2003).

¹² See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

Appellant also submitted June 7, 2016 x-rays of her right thumb, forearm, shoulder, and clavicle. The Board has explained that diagnostic studies standing alone lack probative value as they do not address whether the employment incident caused any of the diagnosed conditions.¹³

The Board finds that appellant has not submitted the necessary rationalized medical evidence to support her claim that she sustained the additional conditions of a right acromioclavicular separation, a right thumb sprain, or a shoulder sprain/strain causally related to the accepted June 6, 2016 employment injury. Therefore, appellant has not met her burden of proof to establish her claim.

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 a right acromioclavicular separation, a right thumb sprain, or a right shoulder sprain/strain condition causally related to the accepted June 6, 2016 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the May 31, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 7, 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

¹³ *N.B.*, Docket No. 19-0221 (issued July 15, 2019).