United States Department of Labor
Employees' Compensation Appeals Board

D.N., Appellant	)	
and	)	**Docket No. 19-1312**
	)	**Issued: February 14, 2020**
U.S. POSTAL SERVICE, POST OFFICE, Pinckneyville, IL, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On May 28, 2019 appellant, through counsel, filed a timely appeal from an April 19, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (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 left carpal tunnel and left cubital tunnel syndrome causally related to the accepted factors of her federal employment.

FACTUAL HISTORY

On June 5, 2018 appellant, then a 58-year-old rural carrier, filed an occupational disease claim (Form CA-2) alleging that she sustained injuries to her hands, wrists, and elbows while in the performance of duty. She attributed her bilateral upper extremity condition(s) to repetitive work factors, which included gripping, grasping, pushing, pulling, reaching, and lifting. Appellant identified February 28, 2018 as the date she first became aware of her condition. She did not stop work.

Under OWCP File No. xxxxxx571, appellant has an accepted occupational disease claim for left forearm/elbow sprain, left ulnar nerve lesion, and left lateral epicondylitis, which arose on or about June 2, 2008.[3]

In an April 23, 2018 work status note, Jeremy D. Palmer, a certified physician assistant, diagnosed left elbow lateral epicondylitis and requested authorization for left upper extremity electrodiagnostic testing for evaluation of cubital tunnel syndrome. He also provided work restrictions, which included no lifting in excess of three to five pounds and no repetitive pushing/pulling activities.

In a July 13, 2018 development letter, OWCP informed appellant that the evidence of record was insufficient to establish her claim. It advised her of the type of factual information and medical evidence necessary to support her claim and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the requested information.

On August 10, 2018 appellant responded to OWCP's development letter. In a narrative statement, she described in detail her employment duties, which included casing and sorting mail, pulling mail down and bundling and delivering it. Appellant indicated that her employment duties required repetitive gripping, reaching approximately 400 times a day, grasping and tying mail, driving, and pushing and pulling open mail boxes. She reported that she performed these motions six days a week for approximately six to eight hours per day.

In an April 23, 2018 report, Dr. John T. Davis, a Board-certified orthopedic surgeon, indicated that appellant worked as a rural mail carrier and that she sought treatment for complaints of left lateral elbow pain. He recounted that the pain began at work with repetitive activities over time and had progressively worsened in the past several months. Dr. Davis reported that appellant's pain was aggravated with daily activities, including repetitive reaching and lifting at work. Examination of appellant's bilateral upper extremities revealed tenderness focally over the lateral epicondyle, with pain reported on resisted wrist extension, long finger extension, resisted supination, and grip form elevation. Dr. Davis indicated that a left elbow x-ray revealed an ulnar

[3] Appellant's previously accepted left upper extremity employment injury under OWCP File No. xxxxxx571 is not currently before the Board.

nerve lesion. He assessed left elbow pain, left elbow lateral epicondylitis, and left cubital tunnel syndrome. Dr. Davis opined that appellant's current complaints were causally related to her repetitive work activity.

In an April 26, 2018 report, Dr. Steven D. Young, a Board-certified orthopedic surgeon, related appellant's complaints of left hand catching and pain, swelling, and numbness on the left side. He reported that appellant's symptoms began four months prior and were nontraumatic. Dr. Young reviewed appellant's history and noted that she was diabetic. Upon examination of appellant's left hand, he observed a Dupuyten's node on the long finger volar proximal interphalangeal (PIP) joint and triggering over the ring finger. Dr. Young diagnosed left hand pain and left ring finger triggering.

In a May 30, 2018 report, Dr. Davis related that appellant was treated for complaints of numbness and tingling in the ulnar digits of her left hand. He reviewed appellant's history and conducted an examination. Dr. Davis noted positive Tinel's sign and pain with hyperflexion of the elbow into the ulnar digits. He assessed left elbow ulnar neuritis and improving left elbow lateral epicondylitis.

A June 7, 2018 electromyography and nerve conduction velocity (EMG/NCV) study revealed moderate left median neuropathy at the wrist and mild left ulnar neuropathy at the elbow.

In a June 7, 2018 report, Dr. Young reported appellant's complaints of left hand numbness and tingling and left ring finger triggering. Upon examination of appellant's left hand, he observed positive Phalen's and median nerve compression tests. Dr. Young diagnosed left ring trigger finger, left carpal tunnel syndrome, left cubital tunnel syndrome, and Dupuytren's fibromatosis.

In a July 5, 2018 report, Dr. Young indicated that appellant had persistent symptoms of triggering of the left ring finger and left whole hand numbness and tingling that did not improve with conservative care. He reviewed appellant's history and noted that she was diabetic. Upon examination of appellant's left hand, Dr. Young observed triggering and tenderness in the area of the A1 pulley, numbness and tingling of the whole left hand, and tenderness at the medial elbow. Dr. Young discussed the results of the EMG/NCV study and assessed left carpal tunnel syndrome, left cubital tunnel syndrome, and left ring trigger finger.

By decision dated August 16, 2018, OWCP accepted appellant's employment duties as a rural carrier and diagnoses for left elbow lateral epicondylitis, left carpal tunnel syndrome, left cubital tunnel syndrome, and left ring trigger finger. However, it denied her claim finding insufficient medical evidence to establish causal relationship.

On August 29, 2018 appellant, through counsel, requested a telephonic hearing before an OWCP hearing representative. The hearing was held on January 15, 2019. Appellant clarified that she was not requesting acceptance of her claim for her left ring trigger finger or left hand nodules as her doctor had informed her that those conditions were due to her diabetes. She also related that, although she received medical treatment for her previously accepted left arm conditions in 2008, the pain and symptoms never went away.

By decision dated February 25, 2019, an OWCP hearing representative affirmed the August 16, 2018 decision.

On March 22, 2019 appellant, through counsel, requested reconsideration.

Appellant submitted a February 24, 2019 letter by Dr. Young. Dr. Young indicated that he had been treating appellant for diagnosed left ring trigger finger, left carpal tunnel syndrome, and left cubital tunnel syndrome. He also reported that appellant worked as a mail carrier for the past 21 years and that her employment duties required driving, working in a rural setting, and lifting up to 70 pounds. Dr. Young opined that driving, lifting heavy loads, and the repetitive nature of these activities over a prolonged period of time, such as 21 years, was "most certainly a contributing factor" to her symptoms. He explained that these activities contributed to the "thickening of the transverse carpal ligament, which diminishes room for the median nerve at the carpal tunnel." Dr. Young indicated that these activities also contributed to the development of cubital tunnel syndrome. He further noted that appellant's diabetic condition did not negate the impact that her work situation had on the development of her left carpal tunnel, left cubital, and left ring trigger finger conditions.

By decision dated April 19, 2019, OWCP denied modification of the February 25, 2019 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[4] has the burden of proof to establish the essential elements of his or her claim, including 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 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 establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.[8]

[4] *Supra* note 2.

[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).

[8] *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *R.H.*, 59 ECAB 382 (2008).

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical opinion evidence.[9] 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 specific employment factors identified by the employee.[10]

ANALYSIS

The Board finds that this case is not in posture for decision.

Appellant submitted reports and letters by Dr. Young dated April 26, 2018 to February 24, 2019. In his initial report, Dr. Young related appellant's complaints of left hand catching, pain, swelling, and numbness. In reports dated June 7 and July 5, 2018, he noted examination findings of positive Phalen's and median nerve compression tests and tenderness in appellant's left ring finger. Dr. Young diagnosed left ring trigger finger, left carpal tunnel syndrome, and left cubital tunnel syndrome. In a February 24, 2019 letter, he noted that appellant worked as a mail carrier and that her employment duties required driving and lifting up to 70 pounds. Dr. Young opined that the repetitive nature of these activities over a prolonged period of time contributed to the development of appellant's symptoms. He explained that these activities contributed to the "thickening of the transverse carpal ligament, which diminishes room for the median nerve at the carpal tunnel." Dr. Young reported that these activities also contributed to the development of cubital tunnel syndrome.

The Board finds that Dr. Young provided an affirmative opinion on causal relationship, which describes appellant's repetitive employment duties, findings upon examination, and explained the mechanism of injury of how the accepted factors of employment contributed to the development of her left cubital and carpal tunnel syndromes.[11] Dr. Young also noted that although appellant had a preexisting diabetic condition, her work activities still contributed to the worsening of her left upper extremity conditions. His opinion is also supported by Dr. Davis, who opined in an April 23, 2019 report that appellant's conditions were causally related to her repetitive reaching and lifting at work. The Board finds that, although Dr. Young's and Dr. Davis' opinions were not sufficiently rationalized to meet appellant's burden of proof to establish her claim, they are sufficient to require further development of the case by OWCP.[12]

[9] *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *T.H.*, 59 ECAB 388, 393 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

[10] *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[11] *See C.M.*, Docket No. 18-1516 (issued May 8, 2019).

[12] *C.M.*, Docket No. 17-1977 (issued January 29, 2019); *see also John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

It is well established that proceedings under FECA are not adversarial in nature, and while appellant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.[13] OWCP has an obligation to see that justice is done.[14]

Therefore, the Board finds that the case shall be remanded to OWCP. On remand, OWCP shall prepare a statement of accepted facts concerning appellant's working conditions and refer the matter to an appropriate medical specialist, consistent with OWCP's procedures, to determine whether appellant's employment duties caused or aggravated her left upper extremity conditions. Following this, and any other further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that this case is not in posture for decision.

[13] *See e.g., M.G.*, Docket No. 18-1310 (issued April 16, 2019); *Walter A. Fundinger, Jr.*, 37 ECAB 200, 204 (1985); *Michael Gallo*, 29 ECAB 159, 161 (1978); *William N. Saathoff*, 8 ECAB 769, 770-71; *Dorothy L. Sidwell*, 36 ECAB 699, 707 (1985).

[14] *See A.J.*, Docket No. 18-0905 (issued December 10, 2018); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983); *Gertrude E. Evans*, 26 ECAB 195 (1974).

ORDER

IT IS HEREBY ORDERED THAT the April 19, 2019 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded for further action consistent with this decision of the Board.

Issued: February 14, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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