United States Department of Labor
Employees' Compensation Appeals Board

J.R., Appellant	)	
and	)	**Docket No. 20-0292**
	)	**Issued: June 26, 2020**
U.S. POSTAL SERVICE, CENTRAL MASSACHUSETTS PROCESSING & DISTRIBUTION CENTER, Shrewsbury, MA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On November 20, 2019 appellant filed a timely appeal from an August 28, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.[2]

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that, following the issuance of the August 28, 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.*

ISSUE

The issue is whether appellant has met his burden of proof to expand the acceptance of his claim to include additional conditions causally related to the accepted February 9, 2019 employment injury.

FACTUAL HISTORY

On February 11, 2019 appellant, then a 54-year-old maintenance mechanic, filed a traumatic injury claim (Form CA-1) alleging that on February 9, 2019 he sprained his right hand when he tripped when stepping off a belt onto a catwalk while in the performance of duty. On the reverse side of the claim form, the employing establishment indicated that he stopped work on the date of injury.

Appellant was initially treated in a hospital emergency room on February 9, 2019 by several physicians, including Dr. Martin A. Reznek, Board-certified in emergency medicine. Dr. Reznek noted a history of injury that on that date appellant slipped while trying to step over an object and fell on his right side pinning his hand against his body. He reported examination findings and diagnosed sprain of the right wrist, initial encounter.

In a February 11, 2019 duty status report (Form CA-17), Dr. Joseph Kuruvilla, an internist, noted a history that on February 9, 2019 appellant fell and landed on his right wrist. He diagnosed a soft tissue injury of the right hand due to injury. Dr. Kuruvilla advised that appellant could not resume work and listed his restrictions. In a February 11, 2019 letter, he requested that appellant be excused from work until further evaluation on February 19, 2019.

In a March 1, 2019 attending physician's report (Form CA-20), Dr. Kuruvilla reiterated appellant's history of injury on February 9, 2019 and noted that the injury occurred at work. He diagnosed right hand swelling and checked a box marked "Yes" indicating that the diagnosed condition was caused or aggravated by the employment activity. Dr. Kuruvilla indicated that appellant was currently off work due to shoulder surgery performed on February 19, 2019.

A February 9, 2019 right hand x-ray performed by Dr. Hao H. Lo, a Board-certified diagnostic radiologist, was normal.

CA-17 and CA-20 form reports dated March 7, 2019 by Dr. Michael A. Brown, a Board-certified orthopedic surgeon, noted a history that on February 9, 2019 appellant fell on his right wrist. Dr. Brown diagnosed left shoulder rotator cuff tear and right chronic biceps tendon proximal rupture. In the Form CA-17 report, he indicated that the diagnosed conditions were due to appellant's injury. In the Form CA-20 report, Dr. Brown indicated that the diagnosed conditions were not caused or aggravated by an employment activity. He advised that appellant was totally disabled from February 19 through May 2019.

OWCP, in a March 12, 2019 development letter, notified appellant that when his claim was received it appeared to be a minor injury that resulted in minimal or no lost time from work, and since the employing establishment had not controverted continuation of pay or challenged the case, a limited amount of medical expenses were administratively approved and paid. It noted that it had reopened the claim for formal consideration because he had not returned to work in a full-time capacity. OWCP informed appellant that additional factual and medical evidence was required to

establish his claim. It advised him of the type of factual and medical evidence necessary to establish his claim and attached a questionnaire for his completion. OWCP afforded appellant 30 days to submit the requested evidence.

On March 19, 2019 appellant responded to OWCP's development letter and submitted evidence by Dr. Edward R. Calkins, a Board-certified hand and plastic surgeon. In a March 11, 2019 progress note, Dr. Calkins reported physical examination findings and reviewed diagnostic test results with regard to appellant's right hand. He noted that appellant presented status post a mechanical fall onto his right hand at work on February 9, 2019 with generalized right hand pain and small finger stiffness in the setting of mild-degenerative arthritis. Dr. Calkins related that, although appellant suffered from some stiffness, his primary diagnosis seemed most consistent with arthritis. Appellant was most limited by decreased range of motion at the proximal interphalangeal (PIP) and distal interphalangeal (DIP) joints and had pain along the ulnar border of the digit, but he had no formal work restrictions. Dr. Calkins prescribed physical therapy to treat appellant's right hand condition.

OWCP also received a March 15, 2019 physical therapy progress note.

In progress notes dated February 11 and 28, 2019, Dr. Kuruvilla restated appellant's history of injury on February 9, 2019. He reported findings on examination of the right hand and advised that appellant was unable to work due to pain, swelling, and stiffness in his hand.

In a February 12, 2019 report, Dr. Reznek opined that appellant had an abrasion over the ulnar styloid on the right hand.

By decision dated April 22, 2019, OWCP denied appellant's traumatic injury claim finding that the evidence of record failed to establish that a diagnosed condition was causally related to the February 9, 2019 accepted employment incident. It explained that he had not provided a rationalized medical opinion from his physician explaining how the accepted employment incident caused or aggravated his medical condition.

OWCP received additional physical therapy progress notes dated March 19 and 26, 2019.

In a progress note dated April 8, 2019, Dr. Calkins reported examination findings with regard to the right hand injury appellant sustained on February 9, 2019. He provided an impression that appellant had not progressed in a therapy program and recommended an exercise program.

Additional physical therapy progress notes dated April 3, 10, and 22, 2019 were received.

On May 30, 2019 appellant requested reconsideration of the April 22, 2019 decision and submitted additional medical evidence. A May 12, 2019 right hand magnetic resonance imaging (MRI) scan report by Dr. Ryan Tai, a diagnostic radiologist, revealed a complete tear of the fifth flexor digitorum profundus (FDP) tendon with the distal tendon retracted to the level of the metatarsal shaft proximal to the A1 pulley and distal to the carpal tunnel. The proximal retracted tendon was not visualized. Dr. Tai also found multifocal mild osteoarthritis, predominantly at the fifth DIP, PIP, and thumb carpometacarpal joints.

In a May 16, 2019 report, Dr. Jeffrey F. Dietz, an orthopedic hand surgeon, noted that appellant presented for a follow-up discussion of right hand MRI scan results to further evaluate a

right small finger injury. He reported that the MRI scan showed a full-thickness FDP tendon tear with retraction to the metacarpal head. Dr. Dietz provided an impression of finger pain. He opined that the injury seen on the MRI scan and appellant's current symptoms were caused by an injury he sustained at work.

Additional physical therapy progress notes dated March 19 and 26, 2019 were received.

OWCP, by decision dated August 28, 2019, modified its April 22, 2019 decision to reflect that the medical evidence submitted was sufficient to establish that appellant's diagnosis of right hand abrasion was causally related to the February 9, 2019 accepted employment incident. However, it found that the medical evidence of record was insufficient to establish a right finger/hand tendon tear or aggravation of his preexisting, underlying right hand osteoarthritis causally related to the accepted employment injury.

In a separate letter of even date, OWCP accepted appellant's claim for abrasion of the right wrist, sequela and provided instructions on how to file for reimbursement of medical expenses and lost wages.

LEGAL PRECEDENT

Where 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]

The medical evidence required to establish causal relationship between a specific condition, as well as any attendant disability claimed, and the employment injury, is rationalized medical opinion evidence.[4] A physician's opinion on whether there is a causal relationship between the diagnosed condition and the employment must be based on a complete factual and medical background.[5] Additionally, the opinion of the physician must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and the specific employment incident identified by the claimant.[6]

ANALYSIS

The Board finds that appellant has not met his burden of proof to expand the acceptance of his claim to include additional conditions causally related to the accepted February 9, 2019 employment injury.

[3] *W.L.*, Docket No. 17-1965 (issued September 12, 2018); *V.B.*, Docket No. 12-0599 (issued October 2, 2012); *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

[4] *T.C.*, Docket No. 19-1043 (issued November 8, 2019); *M.W.*, 57 ECAB 710 (2006); *John D. Jackson*, 55 ECAB 465 (2004).

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

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

In support of his request for claim expansion, appellant submitted a May 16, 2019 report from Dr. Dietz who diagnosed pain and full-thickness FDP tendon tear with retraction to the metacarpal head of the right finger. Dr. Dietz opined that appellant's conditions were causally related to his work injury. While he provided an affirmative opinion which supported causal relationship, he did not provide rationale necessary to establish the critical element of causal relationship. A medical opinion should reflect a correct history and offer a medically sound explanation by the physician of how the specific employment incident physiologically caused or aggravated the diagnosed conditions.[7] For these reasons, the Board finds that Dr. Dietz' report is insufficient to establish an additional condition is employment related.

Dr. Kuruvilla, in his February 11, 2019 Form CA-17 report, noted a history of the February 9, 2019 employment injury and diagnosed right hand soft tissue injury due to the injury. Additionally, he advised that appellant was unable to work and provided his work restrictions. Dr. Kuruvilla failed to provide a firm diagnosis of a particular medical condition.[8] Furthermore, he did not provide a rationalized opinion based on objective findings regarding the causal relationship between appellant's right hand condition, disability from work, and work restrictions, and the accepted employment injury. Medical reports without adequate rationale on causal relationship are of diminished probative value and are insufficient to meet an employee's burden of proof.[9] Likewise, in his March 1, 2019 Form CA-20 report, Dr. Kuruvilla failed to provide a firm diagnosis as he diagnosed right hand swelling. He checked a box marked "Yes" indicating that the diagnosed condition was caused or aggravated by the February 9, 2019 employment injury. The Board has held that a checkmark on a form report, without supporting rationale, is of limited probative value, and is insufficient to establish the claim.[10] This report is, therefore, of limited probative value. Dr. Kuruvilla's remaining medical evidence reiterated appellant's history of injury on February 9, 2019 and disability from work. However, he did not relate any additional conditions due to appellant's February 9, 2019 employment injury. Medical evidence that does not offer an opinion that additional conditions are work related is of no probative value on the issue of causal relationship.[11] For these reasons, the Board finds that Dr. Kuruvilla's medical evidence is insufficient to meet appellant's burden of proof.

Dr. Brown's March 7, 2019 Form CA-17 and Form CA-20 reports related a history of the February 9, 2019 employment injury and noted diagnoses of left shoulder rotator cuff tear and right chronic biceps tendon proximal rupture. He opined that the diagnosed conditions were due to the accepted work injury. Dr. Brown also opined that these conditions were not causally related to the accepted work injury. He advised that appellant was totally disabled from February 19,

[7] *See T.M.*, Docket No. 19-1283 (issued December 2, 2019); *J.M.*, Docket No. 17-1002 (issued August 22, 2017).

[8] *See T.D.*, Docket No. 18-1157 (issued March 26, 2019); *Deborah L. Beatty*, 54 ECAB 340 (2003) (where the Board found that in the absence of a medical report providing a diagnosed condition and a reasoned opinion on causal relationship with the employment incident, appellant did not meet her burden of proof).

[9] *T.D. id.*; *C.J.*, Docket No. 18-0148 (issued August 20, 2018); *Franklin D. Haislah*, 52 ECAB 457 (2001); *Jimmie H. Duckett*, 52 ECAB 332 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

[10] *V.B.*, Docket No. 17-1847 (issued April 4, 2018); *L.B.*, Docket No. 17-1678 (issued February 1, 2018).

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

2019 through May 2019. Although it is unclear as to which opinion on causal relationship was made first by Dr. Brown as they were both rendered on the same day, he did not provide medical rationale explaining why he changed his opinion. The Board finds that the equivocal nature of his opinion on the critical issue of causal relationship diminishes its probative value.[12] The Board has held that medical opinions that are speculative or equivocal are of diminished probative value.[13] Thus, Dr. Brown's reports are insufficient to meet appellant's burden of proof.

Dr. Reznek's February 9, 2019 report and Dr. Calkins' March 11 and April 8, 2019 progress notes related a history of the February 9, 2019 employment injury and addressed appellant's right wrist and hand conditions. However, neither physician specifically related the diagnosed conditions to the accepted work injury. As noted above, the Board has held that medical evidence that does not offer an opinion regarding the cause of a diagnosed condition is of no probative value on the issue of causal relationship.[14] The Board finds, therefore, that their medical evidence is insufficient to establish an additional employment-related condition.

The diagnostic test reports of Dr. Lo and Dr. Tai addressed appellant's right hand conditions. Diagnostic studies, standing alone, lack probative value as they do not address whether the employment injury caused any of the diagnosed conditions.[15] These reports, therefore, are also insufficient to establish appellant's burden of proof.

Appellant also submitted physical therapy progress notes. However, physical therapists are not considered physicians as defined under FECA and thus their reports do not constitute competent medical evidence.[16] Consequently, these progress notes are insufficient to establish expansion of his claim.

As the medical evidence of record is insufficient to establish causal relationship, the Board finds that appellant has not met his burden of proof.

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.

[12] *R.C.*, Docket No. 18-0546 (issued November 14, 2018).

[13] *V.W.*, Docket No. 19-1537 (issued May 13, 2020).

[14] *Supra* note 12.

[15] *See D.H.*, Docket No. 19-0931 (issued October 2, 2019); *R.J.*, Docket No. 17-1365 (issued May 8, 2019); *E.G.*, Docket No. 17-1955 (issued September 10, 2018).

[16] 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); 20 C.F.R. § 10.5(t). *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).

CONCLUSION

The Board finds that appellant has not met his burden of proof to expand the acceptance of his claim to include additional conditions causally related to the accepted February 9, 2019 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the August 28, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 26, 2020
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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