

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

_____)	
W.L., Appellant)	
)	
and)	Docket No. 19-0396
)	Issued: May 18, 2020
DEPARTMENT OF THE AIR FORCE, U.S. AIR)	
FORCES IN EUROPE, ROYAL AIR FORCE)	
BASE MENDENHALL, England, Employer)	
_____)	

Appearances:
Alan J. Shapiro, Esq., for the appellant¹
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 December 13, 2018 appellant, through counsel, filed a timely appeal from an October 24, 2018 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.

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 a left wrist injury causally related to the accepted May 11, 2016 employment incident.

FACTUAL HISTORY

On June 15, 2016 appellant, then a 42-year-old lead child development program technician, filed a traumatic injury claim (Form CA-1) alleging that on May 11, 2016 a child punched her in the left wrist through a wrist splint she was wearing due to a prior injury.³ She stopped work on May 11, 2016. OWCP assigned File No. xxxxxx798 to the current file.

On May 17, 2016 Joseph J. Jones, Captain, USAF, a physician assistant, indicated that appellant had injured her left wrist and provided work restrictions.

In a development letter dated June 28, 2016, OWCP informed appellant of the deficiencies in her claim. It requested that she submit additional factual and medical evidence and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond.⁴

In a report dated July 21, 2016, Alan C. Puddy, Major, USAF, MC, a Board-certified orthopedic surgeon, noted that appellant had experienced a twisting injury to her left wrist on April 11, 2016 while moving a water table. He related that her pain had improved until a child struck her on her left wrist at work. Dr. Puddy found that a magnetic resonance imaging (MRI) arthrogram of the left wrist revealed a traumatic triangular fibrocartilage complex (TFCC) tear, distal radioulnar joint marrow edema, and irregularity consistent with ulnar impaction syndrome. He indicated that appellant had ongoing pain in her left wrist after multiple employment injuries, and opined that the TFCC tear was consistent with wrist trauma.

By decision dated August 3, 2016, OWCP denied appellant's traumatic injury claim, finding that the medical evidence of record was insufficient to establish that the medical condition was causally related to the accepted May 11, 2016 employment incident.

On July 18, 2017 appellant requested reconsideration.

Thereafter, OWCP received a June 15, 2017 statement from Joshua Y. Young, Lieutenant Colonel, USAF, MC, a Board-certified orthopedic surgeon and employing establishment physician, advising that both of appellant's injuries had occurred at work "and they are related."

³ OWCP had previously accepted that appellant had sustained a left wrist sprain on April 11, 2016 emptying a water table into a sink while in the performance of duty. It assigned OWCP File No. xxxxxx799.

⁴ Appellant submitted medical reports regarding her April 11, 2016 employment injury.

On July 1, 2017 Dr. Young asserted that appellant had sustained injuries at work on April 11 and May 11, 2016.⁵ He diagnosed soft tissue TFCC tear. Dr. Young related, “It was the cumulative effect of both injuries that finally sent her to our clinic where she received further treatment.”

By decision dated October 16, 2017, OWCP denied modification of the August 3, 2016 decision.

On September 13, 2018 appellant, through counsel, requested reconsideration.

In support of her request, appellant submitted a report from Dr. Young dated August 14, 2018. Dr. Young indicated that he had treated her beginning August 2016 for a symptomatic TFCC tear confirmed by an MRI scan. He noted that appellant had injured her left wrist on April 11, 2016 moving a table. Dr. Young advised that her symptoms had improved until May 11, 2016, when a child struck her on her left wrist while she was at work causing increased pain that failed to improve until surgery. He opined that the two injuries were the direct cause of appellant’s wrist pain and surgery.

By decision dated October 24, 2018, OWCP denied modification of the October 16, 2017 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁶ 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 filed within the applicable time limitation of FECA,⁷ that an injury was sustained in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁸ 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.⁹

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established.¹⁰ There are two components involved in establishing fact of injury. First, the employee must submit

⁵ In a “supervisor’s mishap report” S.S., appellant’s supervisor, noted that on May 11, 2016 a child had slapped her on the left side of her face and had punched her left arm in the area of her already injured wrist. She advised that the “bottom left side of her face was red, and her left arm near her wrist is sore.”

⁶ *Supra* note 2.

⁷ *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁸ *T.H.*, Docket No. 18-1736 (issued March 13, 2019); *R.C.*, 59 ECAB 427 (2008).

⁹ *T.E.*, Docket No. 18-1595 (issued March 13, 2019); *Gary J. Watling*, 52 ECAB 357 (2001).

¹⁰ *S.S.*, Docket No. 18-1488 (issued March 11, 2019); *T.H.*, 59 ECAB 388 (2008).

sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged.¹¹ Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.¹²

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. 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 specific employment incident.¹³

ANALYSIS

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

OWCP previously accepted that on April 11, 2016 appellant had sustained left wrist sprain due to an April 11, 2016 employment injury, assigned OWCP File No. xxxxxx799. On May 11, 2016 appellant filed the current claim for a new left wrist injury that had occurred when a child struck her in the left wrist through her sling, assigned OWCP File No. xxxxxx798.

In support of her claim, appellant submitted medical evidence from Dr. Puddy who opined that she had sustained multiple employment injuries to her left wrist. Dr. Puddy diagnosed a TFCC tear consistent with trauma to the wrist. In a report dated July 1, 2017, Dr. Young diagnosed a TFCC tear due to a cumulative effect of injuries to appellant's left wrist in April and May 2016.

OWCP's procedures provide that cases should be administratively combined when correct adjudication of the issues depends on frequent cross-referencing between files.¹⁴ For example, if a new injury case is reported for an employee who previously filed an injury claim for a similar condition or the same part of the body, doubling is required.¹⁵ OWCP had previously accepted that appellant had sustained a left wrist condition under OWCP File No. xxxxxx799; however, this case has not been administratively combined with the present file. As such, the Board is unable to review all of the factual and medical evidence under OWCP File No. xxxxxx799, which relates to a similar condition and the same bodily member that is contested in the present claim.

¹¹ *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

¹² *Id.*; see also *T.H.*, *supra* note 8.

¹³ See *S.S.*, *supra* note 10; *H.B.*, Docket No. 18-0781 (issued September 5, 2018).

¹⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8(c) (February 2000). *D.M.*, Docket No. 19-0340 (issued October 22, 2019).

¹⁵ *Id.*; *D.T.*, Docket No. 19-1375 (issued March 24, 2020); *D.L.*, Docket No. 17-1588 (issued January 28, 2019).

For a full and fair adjudication, the case must be remanded to OWCP to administratively combine OWCP File Nos. xxxxxx799 and xxxxxx798.¹⁶ Following this and other such further development as it may deem necessary, OWCP shall issue a *de novo* decision.¹⁷

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the October 24, 2018 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: May 18, 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

¹⁶ *K.T.*, Docket No. 17-0432 (issued August 17, 2018).

¹⁷ *See T.M.*, Docket No. 18-0887 (issued February 21, 2019).