

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

_____)	
B.C., Appellant)	
)	
and)	Docket No. 20-0637
)	Issued: November 10, 2020
U.S. POSTAL SERVICE, POST OFFICE,)	
Penn Yan, NY, Employer)	
_____)	

Appearances:
*Kimberly Slimbaugh, Esq., for the appellant*¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
CHRISTOPHER J. GODFREY, Deputy Chief Judge
JANICE B. ASKIN, Judge

JURISDICTION

On January 29, 2020 appellant, through counsel, filed a timely appeal from an August 26, 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.³

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.*

³ The Board notes that, following the August 26, 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 her burden of proof to establish a right upper extremity condition causally related to the accepted factors of her federal employment.

FACTUAL HISTORY

On September 27, 2016 appellant, then a 50-year-old rural mail carrier, filed an occupational disease claim (Form CA-2) alleging that she developed tingling, swelling in her right hand, and pain shooting into her right arm due to factors of her federal employment including repetitive grasping, casing, and sorting mail. She first became aware of her condition on September 20, 2016 and realized that it was causally related to her federal employment on September 26, 2016. Appellant stopped work on September 26, 2016.

On September 27, 2016 appellant was treated in the emergency room by Dr. Douglas M. Sinclair, Board-certified in emergency medicine, for a one-week history of right wrist, hand, and forearm pain. She reported performing daily repetitive motion as a mail carrier. Dr. Sinclair diagnosed nerve compression syndrome and recommended rest, ice, elevation, and use of a splint. In a work excuse note dated September 27, 2016, he returned appellant to work on October 10, 2016.

In a development letter dated October 7, 2016, OWCP informed appellant that the evidence submitted 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. In a separate letter of even date, OWCP also requested additional information from the employing establishment. It afforded both appellant and the employing establishment 30 days to respond.

In response to OWCP's questionnaire, appellant provided a description of her work duties, which included repetitive pulling, fingering, grasping, casing, pinching, and sorting mail. She reported pulling bundles of mail down from a case, grasping bundles of mail from cubbies, and lifting trays of mail for approximately eight to nine hours a day. On September 20, 2016 appellant experienced worsening tingling in her hands and sought treatment in the emergency room on September 27, 2016. She indicated that she had no prior hand problems and no outside hobbies that would have caused a diagnosis of nerve compression syndrome.

Appellant was evaluated by Dr. Andrew Ritting, a Board-certified orthopedist, on October 7 and November 21, 2016 for right thumb and forearm pain and numbness and tingling of the digits of the right hand. She reported sorting mail at work when she experienced increased pain in the right hand and thumb. X-rays of the right hand revealed mild-to-moderate degenerative changes at the joint and proximal interphalangeal joint of the second and third digits. Dr. Ritting diagnosed unilateral primary osteoarthritis of the first carpometacarpal (CMC) joint of the right hand and CTS of the right upper limb. He prescribed a brace for the right thumb and night splints. In a duty status report dated October 7, 2016, Dr. Ritting diagnosed right thumb CMC joint arthritis and right CTS. He returned appellant to work with restrictions. In an attending physician's report (Form CA-20) dated October 14, 2016, Dr. Ritting recounted a history of repetitive motion injury from sorting, carrying, and lifting mail. He diagnosed CTS and unilateral primary osteoarthritis. Dr. Ritting checked a box marked "Yes," indicating that the diagnosed conditions were caused or aggravated by the described employment incident.

On October 7, 2016 appellant was also treated by Pamela Switzer, a nurse practitioner, who returned appellant to work with restrictions.

By decision dated December 2, 2016, OWCP denied appellant's claim finding that the medical evidence of record was insufficient to establish causal relationship between her diagnosed right CTS, primary osteoarthritis of the first CMC joint of the right hand, and nerve compression syndrome and the accepted factors of her federal employment.

On January 20, 2017 appellant requested reconsideration. In support of her request she submitted a January 3, 2017 report, from Dr. Ritting who treated her in follow-up and noted no improvement in her symptoms. Dr. Ritting diagnosed radial styloid tenosynovitis, unilateral primary osteoarthritis of the first CMC joint of the right hand, and CTS of the right upper limb. He indicated that appellant worked as a mail carrier and reported repetitive pulling, lifting up to 70 pounds of mail, grasping large bundles of mail, twisting of her hand, and prolonged periods of driving with her hand and wrist in an extended position. Dr. Ritting opined that all of these factors can lead to the development of CTS, de Quervain's tenosynovitis, and exacerbation of osteoarthritis of the CMC joint. He further noted that appellant had to twist her hand when opening mailboxes more than 500 times per day.

By decision dated February 14, 2017, OWCP denied modification of the December 2, 2016 decision.

Appellant was treated in follow-up by Dr. Ritting on February 14, March 28, and May 2, 2017 for persistent numbness and tingling in the median nerve distribution, consistent with CTS. Dr. Ritting noted that examination findings and diagnoses remained unchanged. He noted that appellant worked as a rural mail carrier and frequently lifted up to 70 pounds, she repetitively pulled and grasped mail, twisted her right hand opening mailboxes, and drove for prolonged periods with her right hand and wrist in an extended position. Dr. Ritting opined that these work activities were the competent producing cause of her positive examination findings including positive Finkelstein's test, grind test, positive Phalen and Tinel's sign and were consistent with the diagnosed de Quervain's tenosynovitis, CMC joint arthritis, and right CTS. He indicated that appellant was asymptomatic prior to September 20, 2016, and her work activities caused the diagnoses.

On April 10, 2017 appellant, through counsel, requested reconsideration.

By decision dated July 3, 2017, OWCP denied modification of the February 14, 2017 merit decision.

On December 6, 2017 appellant requested reconsideration. She submitted reports from Dr. Ritting dated June 13, September 11, and December 7, 2017, who treated her in follow-up and noted no improvement in her right hand symptoms. Dr. Ritting indicated that appellant continued to wait for approval for treatment. He diagnosed radial styloid tenosynovitis, unilateral primary osteoarthritis of the first CMC joint of the right hand, and CTS of the right upper limb. Dr. Ritting's September 11, 2017 report, addressed the causality of her workers' compensation claim to the etiology of her symptoms. He noted that appellant's conditions involved significant inflammation, which was caused by performing repetitive work duties. Dr. Ritting indicated that de Quervain's tenosynovitis was caused by inflammation within the first dorsal compartment,

which was exacerbated by the repetitive movements required in her job description. He explained that swelling secondary to repetitive motion within the carpal tunnel caused compression of the median nerve consistent with CTS. Dr. Ritting advised that, although CMC joint arthritis was not caused by appellant's work, repetitive motion performed as part of her work duties stressed the arthritic joint causing symptomatic osteoarthritis.

By decision dated March 6, 2018, OWCP denied modification of the July 3, 2017 decision.

On May 23, 2018 appellant, through counsel, requested reconsideration. In support of her request appellant submitted an affidavit from Dr. Ritting dated May 8, 2018 who noted treating her since October 7, 2016 for radial styloid tenosynovitis, primary osteoarthritis of the first CMC joint of the right hand, and CTS of the right upper limb. Dr. Ritting noted that she worked as a rural carrier, which required repetitively lifting up to 70 pounds in packages and mail daily, repetitive pulling and grasping mail, and twisting her hand while opening mail boxes. He opined that appellant's conditions and diagnoses were caused by significant inflammation within the first dorsal compartment of her wrist and thumb. Dr. Ritting opined that the diagnosed CTS was caused by compression of the median nerve. He explained that the compression was caused by swelling of the tissue surrounding the median nerve within the carpal tunnel. Dr. Ritting explained that the swelling was the result of inflammation caused by appellant's repetitive job duties. He further noted that, although the CMC joint arthritis was not caused by her work, it was significantly aggravated by repetitive motion performed with her work activities.

By decision dated August 21, 2018, OWCP denied modification of the March 6, 2018 decision.

On May 28, 2019 appellant, through counsel, requested reconsideration. Appellant submitted a May 23, 2019 report from Dr. Ritting who reiterated that her conditions involved significant inflammation caused by performing repetitive work duties. Dr. Ritting opined that these activities were the competent producing cause of her positive examination findings which included positive Finkelstein's test, grind test, Phalen's sign, Durkin sign, and Tinel's sign. He indicated that de Quervain's tenosynovitis was defined as inflammation within the first dorsal compartment and was exacerbated by repetitive movements as those within appellant's job description. Dr. Ritting advised that swelling secondary to repetitive motion within the carpal tunnel can cause compression of the median nerve consistent with CTS. He noted that repetitive motion performed as part of appellant's work activities stressed the arthritic joint causing inflammation and symptomatic osteoarthritis.

By decision dated August 26, 2019, OWCP denied modification of the August 21, 2018 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ 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 timely filed within the applicable

⁴ *Supra* note 2.

time limitation period of FECA⁵, 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 based 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 the following: (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 identified employment factors.⁸

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁹ 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 factors identified by the claimant.¹⁰ Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents, is sufficient to establish causal relationship.¹¹

ANALYSIS

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

In reports dated February 14 to May 2, 2017, Dr. Ritting noted that appellant worked as a rural mail carrier and frequently lifted up to 70 pounds, she repetitively pulled and grasped mail, twisted her right hand opening mailboxes, and drove for prolonged periods with her right hand and wrist in an extended position. He considered her employment duties and opined that these work activities were the competent producing cause of her positive examination findings and were consistent with the diagnosed de Quervain's tenosynovitis, CMC joint arthritis, and right CTS. In an affidavit dated May 8, 2018, Dr. Ritting opined that appellant's conditions and diagnoses were caused by significant inflammation within the first dorsal compartment of her wrist and thumb.

⁵ *E.W.*, Docket No. 19-1393 (issued January 29, 2020); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁷ 20 C.F.R. § 10.115; *E.S.*, Docket No. 18-1580 (issued January 23, 2020); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁸ *See T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁹ *J.F.*, Docket No. 18-0492 (issued January 16, 2020); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

¹⁰ *A.M.*, Docket No. 18-0562 (issued January 23, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

¹¹ *E.W.*, *supra* note 5; *Gary L. Fowler*, 45 ECAB 365 (1994).

He advised that the diagnosed CTS was caused by compression of the median nerve. Dr. Ritting explained that the compression was caused by swelling of the tissue surrounding the median nerve within the carpal tunnel. He further explained that the swelling was the result of inflammation caused by appellant performing repetitive job duties. Similarly, in a September 11, 2017 report, Dr. Ritting opined that de Quervain's tenosynovitis was caused by inflammation within the first dorsal compartment, which was exacerbated by the repetitive movements required in her job. He explained that swelling secondary to repetitive motion within the carpal tunnel caused compression of the median nerve consistent with CTS. Dr. Ritting advised that, although CMC joint arthritis was not caused by appellant's work, repetitive motion performed as part of her work duties stressed the arthritic joint causing symptomatic osteoarthritis. He provided a proper factual and medical history of injury and directly opined that her repetitive job duties were the competent producing cause of her diagnosed de Quervain's tenosynovitis, CMC joint arthritis, and right CTS.

The Board finds that the reports of Dr. Ritting, when read together, are sufficient to require further development of the medical evidence to see that justice is done.¹² Dr. Ritting is a Board-certified orthopedist, who is qualified in his field of medicine to render rationalized opinions on the issue of causal relationship. He relied upon a proper history of injury and provided a pathophysiological explanation as to how the accepted factors of appellant's federal employment were sufficient to have caused the diagnosed conditions. The Board has long held that it is unnecessary that the evidence of record in a case be so conclusive as to suggest causal connection beyond all reasonable doubt. Rather, the evidence required is only that necessary to convince the adjudicator that the conclusion drawn is rationale, sound, and logical.¹³ Dr. Ritting's opinion is not contested by other medical evidence of record.

It is well established that, proceedings under FECA are not adversarial in nature and, while appellant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.¹⁴

On remand OWCP should refer appellant to an appropriate specialist, along with the case record and a statement of accepted facts, for a well-rationalized opinion regarding whether she developed de Quervain's tenosynovitis, CMC joint arthritis, and right CTS causally related to the accepted factors of her federal employment. If the physician opines that the de Quervain's tenosynovitis, CMC joint arthritis, and right CTS is not causally related to the accepted employment factors, he or she must explain with rationale how or why their opinion differs from that of Dr. Ritting. After this and such other further development as OWCP deems necessary, it shall issue a *de novo* decision.

CONCLUSION

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

¹² *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *X.V.*, Docket No. 18-1360 (issued April 12, 2019).

¹³ *C.C.*, Docket No. 18-1453 (issued January 28, 2020).

¹⁴ *K.P.*, Docket 18-0056 (issued January 27, 2020); *see also A.P.*, Docket No. 17-0813 (issued January 3, 2018).

ORDER

IT IS HEREBY ORDERED THAT the August 26, 2019 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: November 10, 2020
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board