

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

R.J., Appellant)	
)	
and)	Docket No. 20-0223
)	Issued: October 22, 2020
U.S. POSTAL SERVICE, POST OFFICE,)	
Charlotte, NC, 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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On November 6, 2019 appellant, through counsel, filed a timely appeal from a September 9, 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.

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 hand and wrist conditions causally related to the accepted April 9, 2018 employment incident.

FACTUAL HISTORY

On May 7, 2018 appellant, then a 54-year-old mail carrier, filed a traumatic injury claim (Form CA-1) alleging that on April 9, 2018 she felt a pop and noticed swelling in her left hand and wrist area when she was trying to lift a bag of fertilizer while in the performance of duty. She stopped work on April 23, 2018. On the reverse side of the claim form, the employing establishment controverted the claim noting that appellant was wearing a brace on her hand prior to the date of the alleged injury.

In an April 24, 2018 report, Dr. Tami Kannan, a Board-certified internist, noted that appellant was seen on that date and recommended desk work for four weeks to reduce repetitive work with her left wrist. In a May 4, 2018 report, she noted that appellant should be excused from work from April 2 to May 7, 2018, to reduce repetitive work with appellant's left wrist, at which time she could return to part-time work.

In reports dated May 7 and 9, 2018, Dr. Charlton McNair, a Board-certified internist, diagnosed de Quervain's radial styloid tenosynovitis and recommended that appellant return to work on May 7, 2018 with restrictions.

In a May 18, 2018 development letter, OWCP informed appellant that additional factual and medical evidence was necessary to establish her claim. It advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond.

An x-ray of appellant's left wrist, dated May 7, 2018, was interpreted by Dr. William H. McCuskey, a Board-certified diagnostic radiologist, as demonstrating normal findings.

Dr. McNair provided additional reports dated May 16, 21, 25, and 30, 2018. Within those reports he diagnosed de Quervain's radial styloid tenosynovitis and recommended work restrictions.

In a June 5, 2018 statement, appellant reiterated that on April 9, 2018 she injured her left hand when she picked up a large bag of fertilizer with both hands. She also indicated that she had not sustained any other injuries on or off the job since the date of her injury on April 9, 2018. Appellant also denied any prior similar disability or symptoms.

By decision dated June 19, 2018, OWCP denied appellant's claim finding that she had not submitted sufficient evidence to establish causal relationship between her diagnosed conditions and the accepted April 9, 2018 employment incident. It noted that there was no medical report opining that her diagnosed condition was a direct result of her accepted employment incident. OWCP further noted that appellant needed to provide a medical report from her physician explaining how the employment incident caused or affected her condition.

On July 12, 2018 appellant requested reconsideration.

In support of her reconsideration request appellant submitted additional medical evidence including reports from Dr. McNair dated June 13, 20, and 27 and July 5, 2018. In his July 5, 2018 report, Dr. McNair diagnosed de Quervain's tendinitis of the left hand. He indicated that appellant was injured when she tried to lift a bag of fertilizer that weighed 50 pounds and that she had denied any previous injury or diagnosis to her left hand or arm. Dr. McNair noted that her x-rays were negative for any bone involvement. He opined that appellant's condition was work related and explained that the diagnosis of tendinitis is a cumulative result of repetitive trauma with lifting. Dr. McNair explained how use of the extensors of the thumb and wrist when lifting was the cause of her tendinitis. He concluded by noting that the type of lifting that caused the injury, and continues to aggravate the tendinitis, is associated with lifting and grasping at the same time.

OWCP also received physical therapy notes dated from May 30 through June 8, 2018.

On September 4, 2018 appellant noted that she had requested reconsideration and she described her history of medical treatment. She also noted that she had requested that the employing establishment provide her with reasonable accommodations.

In a September 5, 2018 report, Dr. John Gaul, a Board-certified orthopedic surgeon, recommended that appellant undergo surgery to repair her diagnosed left hand and wrist conditions. In a September 7, 2018 report, he indicated that she was scheduled for surgery on September 27, 2018. Dr. Gaul noted that, if light duty was not available, appellant would not be able to return to work for four weeks.

By decision dated October 9, 2018, OWCP denied modification of its prior decision.

On April 9, 2019 appellant, through counsel, requested reconsideration and submitted additional medical evidence.

In a June 28, 2018 report, Dr. Michael L. Dockery, a Board-certified orthopedic surgeon, noted that the appellant sustained injury while lifting a heavy bag of fertilizer. He diagnosed left wrist pain and de Quervain's tenosynovitis. Dr. Dockery also found preexisting left thumb carpometacarpal joint and degenerative joint disease. In a report dated June 29, 2018, he provided appellant with work restrictions.

In a July 19, 2018 report, Dr. Gaul noted the history of injury included that on April 9, 2018 appellant was lifting a heavy bag of fertilizer (about 50 pounds) and that she was grasping with both hands, palm side down, when she felt a pop in her left hand and had immediate pain and swelling that she reported to her supervisor. He noted subluxation of her extensor tendons and indicated that he believed that she had a partial retinaculum rupture. Dr. Gaul diagnosed subluxing, extensor tendon and de Quervain's tenosynovitis. He opined that these diagnosed left hand and wrist conditions were work related. Dr. Gaul also noted that appellant had some osteoarthritis of

her thumb joint, which he opined was not work related. In a separate report of the same date, he noted her continuing work restrictions.

A July 26, 2018 magnetic resonance imaging scan read by Dr. Daniel Uri, a diagnostic radiology specialist, revealed a dorsal periscapular ganglion.

In an August 30, 2018 report, Dr. Gaul diagnosed left wrist de Quervain's tenosynovitis and pain which he attributed to appellant's work. He explained that the history of injury in which she reported the feeling of a "pop" was "compatible with a partial sprain of the periscapular area" and he noted that this mechanism of injury can also cause a ganglion cyst.

In a September 27, 2018 operative report, Dr. Gaul diagnosed dorsal ganglion cyst of the left wrist and de Quervain's tenosynovitis of the left wrist.

In an October 11, 2018 report, Dr. Gaul opined "I have explained that [it is] somewhat difficult to tell in terms of whether a work-related injury caused this or not." He also provided November 8 and December 20, 2018 reports and noted that appellant accepted a seasonal position with a private employing establishment and had not returned to the employing establishment. On December 20, 2018 Dr. Gaul reported that she could return to work on January 20, 2019 without restrictions.

By decision dated September 9, 2019, OWCP denied modification of the October 9, 2018 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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 time limitation of FECA,⁴ 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.⁵ 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.⁶

To determine if an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established.⁷ Fact of injury

³ *Id.*

⁴ See *M.A.*, Docket No. 19-1551 (issued April 30, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *R.R.*, Docket No. 19-0048 (issued April 25, 2019); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁷ *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.⁸ The second component is whether the employment incident caused a personal injury.⁹

Rationalized medical opinion evidence is required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, 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.¹⁰

ANALYSIS

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

In support of her claim appellant submitted a series of narrative medical reports from her attending physicians. In his July 5, 2018 report, Dr. McNair diagnosed de Quervain's tendinitis of the left hand. He noted the history of lifting a bag of fertilizer at work and noted no history of a prior hand or wrist condition. Dr. McNair noted that appellant's x-rays were negative for any bone involvement and opined that her condition was work related. He explained that her diagnosis of tendinitis is one that results from cumulative and repetitive trauma with lifting. Dr. McNair further explained and identified that appellant's use of the extensors of the thumb and wrist when lifting was the cause of her tendinitis. He concluded by noting that the type of lifting that caused the injury, and continues to aggravate the tendinitis, is lifting and grasping at the same time.

Appellant also submitted supportive medical opinion evidence from Dr. Gaul, who in a series of reports generally noted that the diagnosed left upper extremity conditions were work related. In his July 19, 2018 report, Dr. Gaul noted the history of injury of lifting a heavy bag of fertilizer while grasping with both hands, palm side down, when she felt a pop in her left hand and had immediate pain and swelling that she immediately reported to her supervisor. He opined that these diagnosed conditions were work related. There is no opposing medical evidence contained in the record as presented to the Board.

The Board finds that the reports from Drs. McNair and Gaul, when read together, are sufficient to require further development of the medical evidence. Both of these physicians are qualified in their field of medicine to render rationalized opinions on the issue of causal relationship and they provided a comprehensive understanding of the medical record and case history. Dr. McNair's July 5, 2018 report provides a pathophysiological explanation as to how appellant's accepted employment incident on April 9, 2018 when lifting a heavy bag of fertilizer resulted in the diagnosed left hand and wrist conditions. He sufficiently explains that the act of lifting and grasping simultaneously with the extensors of the thumb resulted in sufficient force to cause a pop and the development of tendinitis. The reports of Dr. Gaul supplement this explanation provided by Dr. McNair, as he too notes lifting and grasping during the accepted employment

⁸ *L.T.*, Docket No. 18-1603 (issued February 21, 2019); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁹ *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *John J. Carlone*, 41 ECAB 354 (1989).

¹⁰ *Id.*, see also *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

incident. 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 possible doubt. Rather, the evidence required is only that which is necessary to convince the adjudicator that the conclusion drawn is rational, sound, and logical.¹¹ Accordingly, the Board finds that the medical opinion of Drs. McNair and Gaul are rationalized and logical and are therefore sufficient to require further development of appellant's claim.¹²

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.¹³ OWCP has an obligation to see that justice is done.¹⁴

On remand OWCP shall refer appellant, a statement of accepted facts, and the medical record to an appropriate specialist. The chosen physician shall provide a rationalized opinion as to whether the diagnosed left hand and wrist conditions are causally related to the accepted April 9, 2018 employment incident. If the physician opines that the diagnosed conditions are not causally related, he or she must explain, with rationale, how or why the causation opinion differs from that of Drs. McNair and Gaul. Following this and such other further development as deemed necessary, OWCP shall issue a *de novo* decision on appellant's claim.

CONCLUSION

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

¹¹ *W.M.*, Docket No. 17-1244 (issued November 7, 2017); *E.M.*, Docket No. 11-1106 (issued December 28, 2011); *Kenneth J. Deerman*, 34 ECAB 641, 645 (1983) and cases cited therein.

¹² *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *D.S.*, Docket No. 17-1359 (issued May 3, 2019); *X.V.*, Docket No. 18-1360 (issued April 12, 2019); *C.M.*, Docket No. 17-1977 (issued January 29, 2019); *William J. Cantrell*, 34 ECAB 1223 (1983).

¹³ *See id.* *See also S.M.*, Docket No. 19-1634 (issued August 25, 2020); *A.P.*, Docket No. 17-0813 (issued January 3, 2018); *Jimmy A. Hammons*, 51 ECAB 219, 223 (1999).

¹⁴ *See B.C.*, Docket No. 20-0498 (issued August 27, 2020); *B.C.*, Docket No. 15-1853 (issued January 19, 2016); *E.J.*, Docket No. 09-1481 (issued February 19, 2010); *John J. Carlone*, 41 ECAB 354 (1989).

ORDER

IT IS HEREBY ORDERED THAT the September 9, 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: October 22, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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