United States Department of Labor
Employees' Compensation Appeals Board

K.F., Appellant	)	
and	)	**Docket No. 20-0308**
	)	**Issued: October 14, 2020**
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Lehigh Valley, PA, Employer	)	

Appearances:
Brian Odums, 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 November 25, 2019 appellant, through her representative, filed a timely appeal from a June 27, 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.[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 as 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 appellant submitted additional evidence on appeal. 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 left wrist condition causally related to the accepted November 2, 2018 employment incident.

FACTUAL HISTORY

On November 2, 2018 appellant, then a 31-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on that day she sprained her left wrist when lifting a tray of mail while in the performance of duty. On the reverse side of the claim form the employing establishment acknowledged that she was injured in the performance of duty, but controverted her claim alleging that she had a preexisting condition. Appellant stopped work on November 3, 2018.

An after-visit summary dated November 2, 2018, by Dr. David Burmeister, an osteopath Board-certified in emergency medicine, diagnosed a ganglion cyst on the dorsum of the left wrist. In an accompanying work excuse note, a physician assistant noted that appellant could return to work on November 5, 2018.

In an undated attending physician's report, Part B of a Form CA-16, a physician assistant diagnosed a ganglion cyst of the dorsum of the left wrist. Along with a notation of "overuse of wrist," a box marked "Yes" was checked to indicate that the condition was caused or aggravated by the described employment activity.[4] The physician assistant noted that appellant could resume light-duty work with restrictions on November 2, 2018.

In a November 14, 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 and medical evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence.

An after-visit summary, dated November 15, 2018, indicated that appellant saw Dr. Daniel Torres, a Board-certified orthopedic surgeon, for a left wrist sprain. In a November 15, 2018 form, Dr. Torres ordered a magnetic resonance imaging (MRI) scan of appellant's left wrist and diagnosed left wrist pain.

In a November 15, 2018 attending physician's report (Form CA-20), Dr. Torres diagnosed left wrist sprain and possible ligament injuries. He checked a box marked "Yes" to indicate that the condition was caused or aggravated by an employment activity and noted that appellant was able to resume work with restrictions on November 15, 2018.

In a November 15, 2018 duty status report (Form CA-17), Dr. Torres diagnosed left wrist sprain and possible tears. He noted that appellant could return to work with restrictions on November 15, 2018.

On November 18, 2018 appellant accepted an offer of modified assignment to work a limited-duty position as a mail handler.

[4] The Board notes that Part A, the first page of the Form CA-16, is not contained in the case record.

In a December 14, 2018 letter, the employing establishment controverted appellant's claim noting that the medical evidence of record was insufficient to establish causal relationship.

By decision dated December 17, 2018, OWCP denied appellant's traumatic injury claim finding that the factual evidence of record was insufficient to establish that the employment incident occurred as described. Specifically, it noted that, as she had failed to respond to its development questionnaire, there was insufficient evidence to establish the injury or event occurred.

In a November 2, 2018 patient care report, appellant's supervisor noted that she was sent to the hospital after lifting a heavy tray and feeling pain in her left wrist. In an accompanying witness statement, N.M., appellant's coworker, indicated that appellant showed her wrist and stated that she felt left wrist pain after picking up a tray.

X-rays of appellant's left wrist, dated November 15, 2018, revealed no acute fractures or dislocations, no signs of carpal instability, and no other degenerative changes.

In a November 15, 2018 progress report, Dr. Torres noted that appellant felt a pop in her left wrist after lifting a 40- to 50-pound tray. He reviewed x-rays of appellant's left wrist and diagnosed left wrist pain and left wrist sprain.

In a December 5, 2018 progress report, Dr. Torres noted that appellant was experiencing continued left wrist pain. He reviewed appellant's left-wrist MRI scan and diagnosed left wrist tendinitis. Dr. Torres administered a steroid injection to appellant's left extensor carpi ulnaris (ECU).

A December 13, 2018 MRI scan report of appellant's left wrist revealed no significant abnormalities.

On January 4, 2019 appellant requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

In a January 16, 2019 progress report, Dr. Torres noted that appellant was experiencing some left wrist pain relief following a steroid injection to the left ECU. He diagnosed left wrist tendinitis and administered another left ECU steroid injection.

In a March 6, 2019 progress report, Dr. Torres indicated that appellant's left wrist pain was not improving despite conservative management including steroid injections, splinting, physical therapy, and nonsteroidal anti-inflammatory drugs. He examined her and diagnosed left wrist tendinitis and ganglion cyst of the volar aspect of the left wrist. Dr. Torres noted that appellant wanted to pursue surgical intervention and advised that she should undergo left wrist ECU tenosynovectomy and volar ganglion cyst excision.

In a March 14, 2019 letter, Dr. Torres indicated that appellant would be having surgery on her left wrist on March 19, 2019 to control her left wrist pain that began while she was lifting a tray. He opined that she had a torn ligament and that surgery was medically necessary.

A hearing was held on May 8, 2019. Appellant testified that she injured her left wrist while lifting a heavy tray on a high-speed trace order. The hearing representative advised appellant to submit medical evidence containing a physician's opinion explaining how her diagnosed

conditions were causally related to the employment incident. He held the case record open for 30 days for the submission of additional evidence. OWCP did not receive additional evidence.

By decision dated June 27, 2019, OWCP's hearing representative modified the December 17, 2018 decision, finding that appellant had established that the employment incident occurred as alleged, but affirmed the denial of the claim, finding that the medical evidence of record was insufficient to establish a causal relationship between appellant's diagnosed conditions and the accepted November 2, 2018 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA[5] 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 period of FECA,[6] 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.[7] 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.[8]

To determine if an employee has sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Fact of injury 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.[9] The second component is whether the employment incident caused a personal injury.[10]

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.[11] 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 identified by the claimant.[12]

[5] *Supra* note 2.

[6] *G.L.*, Docket No. 18-1057 (issued April 14, 2020); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

[7] *M.G.*, Docket No. 18-1616 (issued April 9, 2020); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[8] 20 C.F.R. § 10.115; *A.S.*, Docket No. 19-1955 (issued April 9, 2020); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

[9] *R.K.*, Docket No. 19-0904 (issued April 10, 2020); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[10] *Y.D.*, Docket No. 19-1200 (issued April 6, 2020); *John J. Carlone*, 41 ECAB 354 (1989).

[11] *L.F.*, Docket No. 19-1905 (issued April 10, 2020); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[12] *A.S.*, Docket No. 19-1955 (issued April 9, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a left wrist condition causally related to the accepted November 2, 2018 employment incident.

OWCP received an after-visit summary from Dr. Burmeister, dated November 2, 2018. While this summary listed a diagnosis of ganglion cyst of the dorsum of the left wrist, it did not provide a history of appellant's employment incident or a rationalized medical explanation as to how this incident would have caused the diagnosed conditions. The Board has held that a medical opinion should reflect a correct history and offer a medically-sound explanation by the physician regarding how the specific employment incident caused or aggravated the diagnosed conditions.[13] As such, this summary is insufficient to establish her claim.

Appellant submitted a series of progress reports from Dr. Torres dated November 15, 2018 through March 6, 2019. Dr. Torres diagnosed left wrist pain, left wrist sprain, left wrist tendinitis, and a ganglion cyst of the volar aspect of the left wrist. While he noted appellant's history of injury in his November 15, 2018 report, he failed to provide his own opinion regarding causal relationship in his reports. The Board has held that medical evidence that does not include an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.[14] As such, these reports from Dr. Torres are also insufficient to establish appellant's claim.

Appellant also submitted November 15, 2018 Form CA-20 and Form CA-17 reports from Dr. Torres. In these reports, Dr. Torres diagnosed left wrist sprain, possible ligament injuries, and possible wrist tears. He checked a box marked "Yes" to indicate that the conditions were caused or aggravated by appellant lifting a heavy tray. However, the Board has held that when a physician's opinion on causal relationship consists only of checking "Yes" to a form question, without explanation or medical rationale, that opinion is of diminished probative value.[15] Accordingly, these reports are insufficient to establish appellant's claim.

In a March 14, 2019 letter, Dr. Torres indicated that appellant would be undergoing surgical intervention for a torn ligament. While he opined that the surgery was necessary, he did not offer a rationalized medical opinion on how appellant's diagnosed conditions were causally related to the accepted employment incident. As noted above, Dr. Torres' opinion is of no probative value on the issue of causal relationship and is insufficient to establish appellant's claim.[16]

[13] *B.M.*, Docket No. 19-1341 (issued August 12, 2020); *T.M.*, Docket No. 19-1283 (issued December 2, 2019); *T.G.*, Docket No. 17-1840 (issued December 20, 2018); *see J.M.*, Docket No. 17-1002 (issued August 22, 2017).

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

[15] *W.M.*, Docket No. 19-1853 (issued May 13, 2020).

[16] *Supra* note 12.

Appellant submitted Part B of an undated Form CA-16 report from a physician assistant. The Board has held that medical reports signed solely by physician assistants are of no probative value as such healthcare providers are not considered physicians as defined under FECA.[17]

The record also contains x-rays and MRI scans of appellant's left wrist. The Board has held, however, that diagnostic tests standing alone lack probative value on the issue of causal relationship as they do not provide an opinion on whether there is a relationship between an employment incident and a diagnosed condition.[18]

On appeal appellant references newly submitted evidence from Dr. Torres that was not in the case record that was before OWCP at the time of its final decision. Accordingly, the Board is precluded from reviewing this additional evidence for the first time on appeal.[19]

As appellant has not submitted rationalized medical evidence explaining the causal relationship between her diagnosed left wrist conditions and the accepted November 2, 2018 employment incident, the Board finds that she has not met her 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.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a left wrist condition causally related to the accepted November 2, 2018 employment incident.[20]

[17] 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). *See also 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.J.*, Docket No. 19-0179 (issued May 26, 2020) (physician assistants are not considered physicians under FECA).

[18] *L.F.*, *supra* note 10.

[19] *Supra* note 3.

[20] The Board further notes that, with respect to the undated Form CA-16 signed by a physician assistant, a properly completed Form CA-16 authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP. 20 C.F.R. § 10.300(c); *P.R.*, Docket No. 18-0737 (issued November 2, 2018); *N.M.*, Docket No. 17-1655 (issued January 24, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).

ORDER

IT IS HEREBY ORDERED THAT the June 27, 2019 of the Office of Workers' Compensation Programs is affirmed.

Issued: October 14, 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