United States Department of Labor
Employees' Compensation Appeals Board

J.I., Appellant	)	
and	)	**Docket No. 20-1374**
U.S. POSTAL SERVICE, POST OFFICE, Reno, NV, Employer	)	**Issued: March 3, 2021**

Appearances:
Alan J. Shapiro, *Esq.*, for the appellant[1]
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 July 9, 2020 appellant, through counsel, filed a timely appeal from an April 9, 2020 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.

[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 his burden of proof to establish bilateral de Quervain's tenosynovitis causally related to the accepted factors of his federal employment.

FACTUAL HISTORY

On June 3, 2019 appellant, then a 52-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that he developed bilateral de Quervain's tenosynovitis in his thumbs due to factors of his federal employment. He noted that he cased and delivered mail since November 1994. Appellant noted that he first became aware of his condition and first realized that it was caused or aggravated by his federal employment on June 3, 2019. He stopped work on June 3, 2019.

In a statement dated June 3, 2019, appellant reported experiencing pain in his hands and thumbs which began approximately 8 to 10 months earlier when grasping handfuls of mail at work. He indicated that his symptoms have gotten progressively worse and he is no longer able to pinch, grasp, or lift at work. Appellant provided a job description and a diagram of his work area. He noted that his work duties consisted of loading letters and flats onto a ledge from plastic tubs or trays, sorting letters and flats into a case for delivery, removing sorted mail from the case, combining bundles, transporting/loading prepared mail and hampers of parcels for loading, loading trucks, signing for accountable mail, and departing to deliver his mail route.

In support of his claim appellant submitted a June 3, 2019 note from Ashley E. Owens, a physician assistant, who diagnosed bilateral de Quervain's tenosynovitis. Ms. Owens noted that appellant attributed his pain to constant use of both hands at work while delivering and sorting mail. In an employee's claim for compensation report of initial treatment dated June 3, 2019, Ms. Owens noted that appellant worked as a letter carrier and repetitively cased and carried mail since 1994 which involved grasping and fine manipulation. She diagnosed bilateral de Quervain's tenosynovitis and recommended a medicine dosepak, icing, and use of wrist braces bilaterally. Ms. Owens stated "No" to the question as to whether the information from the employee together with the medical evidence directly connected this injury or occupational disease to appellant's job and indicated that she was unable to correlate it to a specific injury. In an occupational health network progress report and disability certification dated June 3, 2019, she noted that he presented with a one-year history of bilateral wrist and thumb pain which he attributed to constant use of both hands while delivering and sorting mail at work. Ms. Owens diagnosed bilateral de Quervain's tenosynovitis. She responded "No" to the question of whether the diagnoses was related to an industrial injury and noted "no specific injury, difficult to correlate." Ms. Owens released appellant to restricted duty from June 3 through 7, 2019. In an accompanying duty status report (Form CA-17) of even date, she diagnosed de Quervain's tenosynovitis and advised that appellant could return to limited-duty work.

A Form CA-17 dated June 4, 2019, prepared by a healthcare practitioner whose signature was illegible diagnosed de Quervain's tenosynovitis and returned appellant to restricted duty.

In a progress report dated June 4, 2019, Erin R. Hicks, an advanced practice registered nurse noted that appellant presented with a one-year history of bilateral wrist and thumb pain which

he attributed to constant use of both hands while at work delivering and sorting mail. Ms. Hicks diagnosed bilateral de Quervain's tenosynovitis and responded "No" to the question of whether the diagnoses was related to an industrial injury. She released appellant to restricted duty from June 4 through 11, 2019.

In a development letter dated June 19, 2019, OWCP advised appellant of the factual and medical deficiencies of his claim. It asked him to complete a questionnaire to provide further details regarding the circumstances of his claimed injury and requested a narrative medical report from his treating physician, which contained a detailed description of findings and diagnoses, explaining how his work activities caused, contributed to, or aggravated his medical conditions. OWCP afforded appellant 30 days to respond.

Dr. Alan Taylor, an osteopath, treated appellant on June 11, 2019 for bilateral hand pain. Appellant reported being a letter carrier with a one-year history of bilateral wrist and thumb pain with occasional numbness and tingling. Findings on examination revealed bilateral tenderness to palpation at the base of thumb and radial wrist, mildly decreased range of motion in all planes with pain, diminished grip strength, and positive Finkelstein's test. Dr. Taylor diagnosed bilateral de Quervain's tenosynovitis. He returned appellant to restricted duty and referred appellant to a hand surgeon. In a progress note dated July 5, 2019, Dr. Taylor noted findings of bilateral tenderness at the base of the thumb, mildly decreased range of motion, diminished grip strength, and positive Finkelstein's test. He diagnosed bilateral de Quervain's tenosynovitis and responded "No" to the question of whether the diagnosis was related to an industrial injury. Dr. Taylor released appellant to restricted duty from June 11 through July 5, 2019.

In a July 5, 2019 medical note, Dr. Timothy Dooley, a Board-certified orthopedist, treated appellant for bilateral hand pain. Appellant attributed his condition to working as a mail carrier for 25 years. Dr. Dooley noted that x-rays of the left hand revealed severe carpometacarpal (CMC) joint arthritis with subluxation of the joint. Similarly, an x-ray of the left thumb revealed an old fracture of the ulnar styloid with callus formation. Dr. Dooley diagnosed bilateral osteoarthrosis of the CMC joint of the thumb. He responded "Yes" to the question of whether this was a work-related condition. Dr. Dooley performed a steroid injection into the right first CMC joint.

Appellant provided a work status form from Lupita Vidrio, a medical assistant, dated November 4, 2019, who diagnosed ulnar nerve entrapment at wrist and carpal tunnel syndrome and indicated that appellant was temporarily disabled.

OWCP received an unsigned work status note dated November 18, 2019 which indicated that appellant had an occupational injury and could return to light-duty status.

By decision dated August 2, 2019, OWCP denied appellant's occupational disease claim, finding that the medical evidence of record was insufficient to establish that his diagnosed bilateral de Quervain's tenosynovitis was causally related to the accepted factors of his federal employment.

In support of his claim appellant submitted an electromyography and nerve conduction velocity (EMG/NCV) study dated August 23, 2019 which revealed right carpal tunnel syndrome severe electrophysiologically, associated acute and chronic motor unit changes in the median nerve, right ulnar neuropathy at the wrist, mild slowing across the elbow associated with severely

attenuated amplitude of the motor conduction study, acute and chronic motor unit changes in the ulnar nerve, mild left carpal tunnel syndrome electrophysiologically, and mild prolongation of the left ulnar sensory distal latency.

On September 20, 2019 Dr. Donald Huene, a Board-certified orthopedist, treated appellant for right hand numbness and tingling, bilateral thumb numbness, triggering of the small finger, and basilar thumb pain. Appellant reported working at the employing establishment and his duties included repetitive gripping and grasping. X-rays of the wrists revealed bilateral significant degenerative joint changes of the CMC joints. Dr. Huene diagnosed entrapment of the median and ulnar nerves at the wrist, bilateral CMC osteoarthritis, and early trigger finger opined that appellant's condition was due to repetitive motions that he described at work and "could be" work related. He noted that the bilateral CMC osteoarthritis was not work related and was more genetically oriented due to the amount of bone wear seen. Dr. Huene recommended a carpal tunnel release. On November 5, 2019 he performed a right carpal tunnel release. Dr. Huene diagnosed entrapment of the ulnar nerve at the wrist as well as carpal tunnel syndrome and opined that the condition was related to repetitive motion at work.[3] He evaluated appellant on January 2, 2020 for left upper extremity symptoms of pain, numbness, tingling, and popping consistent with left carpal tunnel syndrome. Dr. Huene noted affirmatively "Yes" that appellant's condition was the result of injury that occurred at work with an onset dated of June 3, 2019. Findings on physical examination revealed full range of motion of the wrist, negative CMC grind test, negative Tinel's sign over the Guyon's canal, positive Tinel's sign over the carpal tunnel, and positive carpal compression test. X-rays of the left wrist demonstrated degenerative changes over the CMC region for which he was asymptomatic. Dr. Huene described the pathophysiology of the condition and indicated that repetitive motions at work seemed to be the underlying cause. He opined that to a high degree of reasonability that appellant's condition was due to work-related activities and recommended a left carpal tunnel release.

On January 10, 2020 appellant requested reconsideration.

By decision dated April 9, 2020, OWCP denied modification of its August 2, 2019 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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,[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

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[3] Page one of the operative report is not in the case record as transmitted to the Board.

[4] *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

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 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.[7]

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.[8] A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.[9] Additionally, the physician's opinion 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 appellant's specific employment factor(s).[10]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish bilateral de Quervain's tenosynovitis causally related to the accepted factors of his federal employment.

Dr. Taylor treated appellant on June 11, 2019 for bilateral hand, wrist and thumb pain and diagnosed bilateral de Quervain's tenosynovitis. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.[11] For this reason, Dr. Taylor's report is insufficient to meet appellant's burden of proof. In a progress note dated July 5, 2019, he diagnosed bilateral de Quervain's tenosynovitis and responded "No" to the question of whether the diagnoses was related to an industrial injury. The Board finds that the opinion of Dr. Taylor negates causal

[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] *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

[7] *R.G.*, Docket No. 19-0233 (issued July 16, 2019). *See also Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

[8] *T.H.*, 59 ECAB 388, 393 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

[9] *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

[10] *Id.*; *Victor J. Woodhams*, *supra* note 7.

[11] *S.J.*, Docket No. 19-0696 (issued August 23, 2019); *M.C.*, Docket No. 18-0951 (issued January 7, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

relationship between appellant's diagnosed conditions and the accepted factors of his employment.[12] Therefore, this report is insufficient to meet his burden of proof.

In a July 5, 2019 medical note, Dr. Dooley treated appellant for bilateral hand pain that appellant attributed to working as a mail carrier for 25 years. He diagnosed bilateral osteoarthrosis of the CMC joint of the thumb. In response to a question as to whether the diagnosed condition was work related, Dr. Dooley responded affirmatively noting "Yes," without further comment. The Board has held that when a physician's opinion on causal relationship consists only of noting "Yes" to a form question, without explanation or rationale, that opinion is of limited probative value regarding causal relationship.[13]

Dr. Huene, in his September 20, 2019 report, diagnosed entrapment of the median and ulnar nerves at the wrist, bilateral CMC osteoarthritis, and early trigger finger. He opined that appellant's condition was from repetitive motions that he described at work and "could be" work related. Dr. Huene's opinion is speculative in nature. The Board has held that medical opinions that are speculative or equivocal are of diminished probative value.[14]

On November 5, 2019 Dr. Huene performed a right carpal tunnel release. He diagnosed entrapment of the ulnar nerve at the wrist and carpal tunnel syndrome and opined that the condition was related to repetitive motion at work. Dr. Huene, however, offered no medical rationale explaining the basis of his conclusory opinion regarding the cause of appellant's bilateral carpal tunnel syndrome. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how a given medical condition was caused or aggravated by the accepted employment factors.[15]

In a January 2, 2020 report, Dr. Huene evaluated appellant for symptoms consistent with left carpal tunnel syndrome. He note affirmatively "Yes" that appellant's condition was the result of injury that occurred at work with an onset dated of June 3, 2019. However, the Board has held that an opinion on causal relationship with an affirmative statement, without more by way of medical rationale, is insufficient to establish the claim.[16] Dr. Huene went on to describe the pathophysiology of appellant's condition and indicated that repetitive motions at work seemed to be the underlying cause and opined to a high degree of reasonability that his condition was due to work-related activities. While he provided an affirmative opinion on causal relationship, he did not offer any medical rationale sufficient to explain why he believes that appellant's employment duties could have resulted in or contributed to appellant's diagnosed condition. Without

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[12] *See T.W.*, Docket No. 19-0677 (issued August 16, 2019).

[13] *M.G.*, Docket No. 18-1616 (issued April 9, 2020); *Sedi L. Graham*, 57 ECAB 494 (2006); *D.D.*, 57 ECAB 734 (2006).

[14] *H.A.*, Docket No. 18-1455 (issued August 23, 2019).

[15] *See Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

[16] *See C.S.*, Docket No. 18-1633 (issue December 30, 2019); *D.S.*, Docket No. 17-1566 (issued December 31, 2018).

explaining how the frequent and repetitive actions of appellant's employment caused or aggravated his bilateral tenosynovitis, Dr. Huene's medical notes are of limited probative value.[17]

Appellant submitted a medical note, report of initial treatment, progress report, and duty status report dated June 3, 2019 from Ms. Owens, a physician assistant.[18] He also provided a progress report dated June 4, 2019 from Ms. Hicks, a registered nurse.[19] Similarly, appellant provided a work status form from Ms. Vidrio, a medical assistant, dated November 4, 2019. The Board has held that medical reports signed solely by a physician assistant, registered nurse, or medical assistant are of no probative value as such health care providers are not considered physicians as defined under FECA and are therefore not competent to provide medical opinions.[20] Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.

Appellant submitted a Form CA-17 dated June 4, 2019, prepared by a healthcare practitioner whose signature was illegible. Similarly, OWCP received an unsigned work status note dated November 18, 2019. There is no evidence that these documents are from physicians. Medical documents not signed by a physician do not constitute probative medical evidence and, thus, do not establish appellant's claim.[21]

Appellant submitted EMG/NCV study results dated August 23, 2019 which revealed bilateral carpal tunnel. The Board has held, however, that diagnostic test reports standing alone lack probative value on the issue of causal relationship as they do not address the relationship between accepted employment factors and a diagnosed condition.[22] For this reason, these diagnostic reports are insufficient to meet appellant's burden of proof.

As appellant has not submitted rationalized medical evidence establishing that his bilateral de Quervain's tenosynovitis is causally related to the accepted factors of his federal employment, the Board finds that he has not met his burden of proof to establish his claim.

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[17] *See A.P.*, Docket No. 19-0224 (issued July 11, 2019).

[18] *See S.E.*, Docket No. 08-2214 (issued May 6, 2009) (reports of a physician assistant have no probative value as medical evidence).

[19] *B.B.*, Docket No. 09-1858 (issued April 16, 2010) (nurse's reports are of no probative medical value as nurses are not physicians under the FECA).

[20] 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); *M.F.*, Docket No. 17-1973 (issued December 31, 2018); *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006). A report from a physician assistant or certified nurse practitioner will be considered medical evidence if countersigned by a qualified physician.

[21] *See R.M.*, 59 ECAB 690 (2008); *Bradford L. Sullivan*, 33 ECAB 1568(1982) (where the Board held that a medical report may not be considered as probative medical evidence if there is no indication that the person completing the report qualifies as a "physician" as defined in FECA).

[22] *W.M.*, Docket No. 19-1853 (issued May 13, 2020); *L.F.*, Docket No. 19-1905 (issued April 10, 2020).

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 his burden of proof to establish bilateral de Quervain's tenosynovitis causally related to the accepted factors of his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the April 9, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 3, 2021
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