United States Department of Labor
Employees' Compensation Appeals Board

M.N., Appellant	)	
and	)	**Docket No. 20-1683**
	)	**Issued: May 3, 2021**
U.S. POSTAL SERVICE, POST OFFICE, Maspeth, NY, Employer	)	

Appearances:
Alan J. Shapiro, 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
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On September 30, 2020 appellant, through counsel, filed a timely appeal from a June 16, 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 her burden of proof to establish a left hand condition causally related to the accepted April 14, 2018 employment incident.

FACTUAL HISTORY

On April 21, 2018 appellant, then a 36-year-old sales and service distribution clerk, filed a traumatic injury claim (Form CA-1) alleging that on April 14, 2018 she injured her left hand under the bone of her middle finger while in the performance of duty. She explained that she was constantly picking up and throwing mail. The pain had been going on for a while, but appellant continued to work. She stopped work on April 21, 2018.

In a personal statement of even date, appellant explained that she had been feeling pain inside of her left hand middle finger bone since April 14, 2018. She started to feel the pain when she picked up a box with her left hand, noting that she did not use her right hand because of a previous injury.[3] The pain went away for a week, but on April 21, 2018 appellant provided that the pain returned when she went to pick up another box and tried to close a parcel.

In an April 22, 2018 medical note, Yara Hourteh, a physician assistant, recommended that appellant remain out of work for two days.

In an April 27, 2018 letter, the employing establishment explained that appellant had a previously accepted claim for a contusion of the right thumb and, based on her statement, she began to favor her left hand to perform her employment duties. It requested that her claim be treated as a consequential injury as opposed to a separate traumatic injury claim.

In a development letter dated May 2, 2018, OWCP advised appellant that it required additional factual and medical evidence to establish her claim. It attached a questionnaire, requesting that she provide a detailed description of the employment incident believed to have contributed to her alleged injury, including a description of the exact medical condition she was claiming. OWCP also requested that appellant submit a narrative medical report from her physician, which contained a detailed description of findings and diagnoses, explaining how the reported incident caused or aggravated her medical condition. It afforded her 30 days to respond.

In an April 22, 2018 medical report, Dr. Jamar Williams, Board-certified in family medicine, evaluated appellant for left hand pain under her middle finger which she experienced at work. He noted her employment duties involved constantly carrying boxes. In a diagnostic report of even date, Dr. Sai-Chang Park, a Board-certified radiologist, performed an x-ray scan of appellant's left hand, finding no fracture or dislocation. On review of the x-ray scan, Dr. Williams diagnosed finger pain.

[3] Appellant previously filed a Form CA-1 on February 6, 2018 for a right thumb injury under OWCP File No. xxxxxx265. On April 13, 2018 OWCP accepted her claim for a crushing injury of the right thumb and a contusion of the right thumb.

In a May 31, 2018 physical therapy evaluation, Shari Bensadoun, an occupational therapist, observed appellant's diagnoses of an unspecified sprain of the left middle finger, an unspecified sprain of the left index finger, an unspecified sprain of the left ring finger and pain in the left hand and developed a treatment plan for her conditions.

By decision dated June 8, 2018, OWCP denied appellant's traumatic injury claim, finding that she had not submitted medical evidence containing a medical diagnosis in connection with the April 14, 2018 employment incident.

OWCP continued to receive evidence.

In a May 25, 2018 medical report, Dr. Ignatius Roger, a Board-certified orthopedic surgeon, evaluated appellant for a left hand injury she sustained on April 14, 2018 while lifting boxes and scanning packages at work. He reviewed her subsequent medical treatment and diagnosed a sprain of the left hand with tendinitis. Dr. Roger prescribed a medication for appellant to treat her symptoms. In an attending physician's report (Form CA-20) of even date, he checked a box marked "Yes" to indicate his opinion that her condition was caused or aggravated by her federal employment.

On June 4, 2018 the employing establishment offered appellant a limited-duty modified work position in which she would perform no continuous grasping or no continuous lifting of over five pounds.

Appellant submitted therapy notes dated from June 4 to 11, 2018 in which Ms. Bensadoun provided an update for her treatment for appellant's condition.

In duty status reports (Form CA-17) dated March 18 and 29, 2019, Dr. Roger diagnosed tendinitis and provided that she would be able to work full duty on April 2, 2019.

On June 7, 2019 appellant, through counsel, requested reconsideration of OWCP's June 8, 2018 decision.

In a May 29, 2018 Form CA-17, Dr. Roger diagnosed tendinitis and checked a box to indicate his opinion that appellant was able to return to work.

In medical reports dated August 6, 2018 to May 13, 2019, Dr. Roger diagnosed tenosynovitis of the left middle finger, a sprain of an unspecified part of the left wrist and hand as well as other synovitis and tenosynovitis of the left hand. He suggested treatment for her to follow and advised that she could continue working full duty. In an April 22, 2019 certificate of employee's serious health condition, Dr. Roger diagnosed tenosynovitis of the middle finger and noted that appellant's condition commenced on April 14, 2018. He reviewed his history of treatment for her condition and estimated that it would continue for three additional months. In Form CA-17s of even dates, Dr. Roger diagnosed tenosynovitis of the left middle finger and checked a box to indicate that appellant was able to return to work.

By decision dated August 30, 2019, OWCP modified the June 8, 2018 decision to find that the evidence submitted was sufficient to establish the medical component of fact of injury. The claim remained denied, however, because appellant had not submitted a rationalized opinion from

her treating physician explaining how her diagnosed conditions were causally related to the accepted April 14, 2018 employment incident.

In a February 2, 2020 letter, Dr. Roger detailed his history of treatment for sharp pains she developed in her left hand while lifting boxes and scanning packages at work on April 14, 2018. He explained that her employment duties required her to perform repetitive mechanical activity with the digits of her hands to manipulate and lift mail packages. The repetitive flexion and extension of the digits against the resistance of the mail items caused inflammation of the tendons in appellant's left hand, resulting in a sprain of her left hand and tendinitis of the left index, middle, and ring digits.

On March 24, 2020 appellant, through counsel, requested reconsideration of OWCP's August 30, 2019 decision.

By decision dated June 16, 2020, OWCP denied modification of its August 30, 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 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 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.[7] The second component is whether the employment incident caused a personal injury.[8]

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.[9] A physician's opinion on whether there is causal relationship

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

[5] *L.S.*, Docket No. 19-1769 (issued July 10, 2020); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[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] *B.P.*, Docket No. 16-1549 (issued January 18, 2017); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[8] *M.H.*, Docket No. 18-1737 (issued March 13, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

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

between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.[10] 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).[11]

ANALYSIS

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

In support of her claim, appellant submitted a February 2, 2020 letter in which Dr. Roger detailed his history of treatment of appellant in relation to her diagnoses of a sprain of the left hand and tendinitis of the left index, middle, and ring fingers. Dr. Roger noted that her employment duties on April 14, 2018 required her to perform repetitive mechanical activity with the digits of her hands to manipulate and lift mail packages. He further explained that the repetitive flexion and extension of the digits against the resistance of the mail items caused inflammation of the tendons in appellant's left hand resulted in the development of her conditions.

Accordingly, the Board finds that Dr. Roger's February 2, 2020 letter provided an affirmative and rationalized opinion on causal relationship. Dr. Roger identified employment factors, which appellant consistently claimed had precipitated her conditions, identified physical findings upon examination and treatment, and provided a rationalized opinion citing to the facts of the case. Thus, the Board finds Dr. Roger's opinion sufficient to require further development of the record.[12]

It is well established that, proceedings under FECA are not adversarial in nature, and that 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 evidence of record to a physician in the appropriate field of medicine. The chosen physician shall provide a rationalized opinion addressing whether the diagnosed conditions are causally related to the accepted April 14, 2018 employment incident. If the physician opines that the diagnosed conditions are not causally related, he or she must provide rationale explaining how or why the

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

[11] *B.C.*, Docket No. 20-0221 (issued July 10, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

[12] *D.H.*, Docket No. 19-0633 (issued January 8, 2020); *J.J.*, Docket No. 19-0789 (issued November 22, 2019); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *A.F.*, Docket No. 15-1687 (issued June 9, 2016). *See also John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

[13] *A.P.*, Docket No. 17-0813 (issued January 3, 2018); *Jimmy A. Hammons*, 51 ECAB 219, 223 (1999); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983).

[14] *R.B.*, Docket No. 18-0162 (issued July 24, 2019); *K.P.*, Docket No. 18-0041 (issued May 24, 2019).

opinion differs from that of Dr. Roger. Following this and any other further development as may be 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 decision.

ORDER

IT IS HEREBY ORDERED THAT the June 16, 2020 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 3, 2021
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board