

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

V.P., Appellant)

and)

DEPARTMENT OF THE ARMY, ARMY)
BENEFITS CENTER, Fort Knox, KY, Employer)
_____)

**Docket No. 20-0528
Issued: October 12, 2021**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge

JANICE B. ASKIN, Judge

VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On January 9, 2020 appellant filed a timely appeal from a September 13, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

ISSUE

The issue is whether appellant has met her burden of proof to establish a right wrist condition causally related to the accepted September 14, 2018 employment incident.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the September 13, 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.*

FACTUAL HISTORY

On September 20, 2018 appellant, then a 49-year-old information technology (IT) specialist (system analysis), filed a traumatic injury claim (Form CA-1) alleging that on September 14, 2018 she bruised her right knee, left wrist/thumb, and right wrist as a result of falling on the sidewalk while in the performance of duty. She noted that she also hit both of her knees on the concrete and that her right knee was injured with bruising, swelling, and two quarter-sized abrasions. Appellant did not stop work.

Appellant submitted hospital records dated August 6, 2018 from Dr. Amitava Gupta, a Board-certified orthopedic surgeon, who diagnosed synovitis of the left hand and performed a synovectomy of the left wrist extensors that same day.

In a September 14, 2018 attending physician's report (Form CA-20), Dr. James Stephens, a Board-certified internist, noted that appellant injured her wrists, shoulders, and right knee on September 14, 2018 when she tripped and fell on the sidewalk. He observed her preexisting history of bilateral wrist pain with a ganglion cyst and left wrist surgery. Dr. Stephens diagnosed an abrasion and a contusion and checked a box marked "Yes" to indicate that appellant's fall at work aggravated her preexisting conditions.

Appellant submitted multiple September 14, 2018 diagnostic reports in which Drs. Gregory Tiu and Tina Mascarenhas, Board-certified diagnostic radiologists, performed x-ray scans of her left wrist, right wrist and bilateral shoulders, and right knee, observing no acute bony abnormalities in each scan.

In a September 19, 2018 e-mail, N.W., appellant's coworker, explained that she was at the work event on September 14, 2018 when she looked ahead and noticed that appellant was not moving after she quickly fell to the ground. She noted that her right wrist was swollen and her knee was bleeding. Appellant was assisted and treated by multiple soldiers before being transported to the doctor's office.

In a September 20, 2018 statement, appellant explained that R.D., her deputy chief, transported her to the occupational medical facility. She was seen by a physician who sent her to a hospital for x-rays of her wrists, shoulders, and right knee. The physician informed appellant of her x-ray results and advised that she be seen by her hand specialist for further evaluation.

In a September 20, 2018 Form CA-20, Dr. Gupta indicated that appellant injured her right wrist as a result of falls on July 9 and September 14, 2018.³ He diagnosed synovitis and right wrist pain status post fall and checked a box marked "Yes" to indicate his opinion that appellant's condition was caused or aggravated by her employment activity.

In an October 9, 2018 duty status report (Form CA-17), Dr. Stephens diagnosed bilateral wrist pain/strain and noted that appellant sustained her injury on September 14, 2018 when she fell in the parking lot at a work event. He advised that she was able to perform her regular work duties.

³ Dr. Gupta indicated that appellant fell on September 15, 2018. However, this appears to be a typographical error.

In a December 19, 2018 medical report, Dr. Gupta recounted his treatment of appellant dating back to a November 15, 2016 left wrist injury as well as two subsequent falls on July 9 and 15, 2018. Appellant was ultimately required to undergo a synovectomy of the left wrist extensor tendons on August 6, 2018 to treat her injury. Dr. Gupta reviewed her right wrist symptoms and noted that her right wrist pain continued despite being placed in a splint. He advised that appellant undergo a right wrist synovectomy as she encountered problems with her blood sugar after previously receiving an injection to treat her symptoms.

In a January 18, 2019 medical report, Dr. George Scott, a Board-certified neurologist, evaluated appellant, noting that she had experienced three falls in the past year with two being in the parking lot of the employing establishment and one occurring after being unaware of a decline. Appellant insisted that she had no issues with her equilibrium. Dr. Scott diagnosed falls and explained that, given her normal neurological evaluation, he did not see any evidence for peripheral neuropathy or a cerebellar disorder.

In a February 8, 2019 narrative statement, appellant indicated that she spoke with an OWCP representative who informed her that her current claim would be administratively combined with her claim under OWCP File No. xxxxxx754. She also notified OWCP of her upcoming medical appointments in regard to further evaluations for her injuries. Appellant attached photographs of her right hand injuries.

Appellant also submitted a position description of her duties as an IT specialist.

In a March 5, 2019 development letter, OWCP advised appellant of the deficiencies in her claim and requested that she submit factual and medical information, including a comprehensive report from her physician regarding how a specific work incident contributed to her claimed injury. It provided appellant with a questionnaire for completion and afforded her 30 days to submit the necessary evidence.

In medical reports dated February 14 and March 21, 2019, Dr. Gupta administered an injection to treat appellant's symptoms associated with her right wrist synovitis. He advised that she would need to undergo a right wrist synovectomy to treat her condition.

In a March 26, 2019 response to OWCP's development questionnaire, appellant described her symptoms following the claimed September 14, 2018 employment incident. She indicated that she spoke with an OWCP representative who informed her that her present claim, as well as OWCP File No. xxxxxx754, would be combined into one case. Appellant noted that she had undergone surgery for her left wrist injury on August 6, 2018 and completed physical therapy after her procedure. She also responded to questions, asserting that she was in the performance of duty at the time of her injury.

By decision dated April 10, 2019, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish a diagnosed condition causally related to the accepted September 14, 2018 employment incident.

On May 9, 2019 appellant requested a review of the written record before a representative of OWCP's Branch of Hearings and Review. In an attached statement, she noted that her original right hand injury occurred as a part of OWCP File No. xxxxxx754, but the claim was only accepted

for her left wrist injury and not both. Appellant requested that the acceptance of her claim under OWCP File No. xxxxxx854 be expanded to include her right wrist injury too and that she be approved for surgery. She also discussed her treatment for her left wrist injury under OWCP File Nos. xxxxxx088 and xxxxxx754.

Following a preliminary review, by decision dated June 26, 2019, OWCP's hearing representative set aside the April 10, 2019 decision as premature and remanded the case for further development. The hearing representative found that OWCP had improperly found appellant in the performance of duty at the time of the alleged September 14, 2018 employment incident without first contacting the employing establishment regarding appellant's work status. The hearing representative remanded the case for that purpose.

In a July 1, 2019 development letter, OWCP requested that the employing establishment respond to questions concerning whether or not appellant was in the performance of duty during the alleged September 14, 2018 employment incident.

In a July 17, 2019 response to OWCP's development questionnaire, the employing establishment indicated that official time was allowed for employees who elected to attend the event. It further indicated that the direct benefits to the employer included increased employee morale, teambuilding, and unit cohesion.

By decision dated September 13, 2019, OWCP issued a *de novo* decision finding that appellant was in the performance of duty during the September 14, 2018 employment incident, as alleged. It further found, however, that the medical evidence of record was insufficient to establish that her diagnosed conditions were causally related to the accepted September 14, 2018 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ has the burden of proof to establish the essential elements of his or her claim, including 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,⁵ 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 predicated upon a traumatic injury or an occupational disease.⁷

⁴ *Supra* note 1.

⁵ *F.H.*, Docket No.18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁷ *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. The first component is that the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged. The second component is whether the employment incident caused a personal injury and this component can be established only by medical evidence.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 between the diagnosed condition and the accepted employment incident must be based on a complete factual and medical background. 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 the specific employment incident.¹⁰

In any case where a preexisting condition involving the same part of the body is present and the issue of causal relationship, therefore, involves aggravation, acceleration, or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.¹¹

ANALYSIS

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

OWCP previously accepted on March 30, 2017 and January 10, 2019 that appellant sustained a left wrist contusion and a left wrist sprain under OWCP File Nos. xxxxxx088 and xxxxxx754, respectively. Appellant also indicated that she sustained injuries to her right wrist in these claims. On September 20, 2018 she filed the current claim for injuries to her wrists caused by the September 14, 2018 employment incident.

In support of her claim, appellant submitted multiple medical reports from Drs. Stephens, Gupta, and Scott in which they all noted her previous injuries to her wrists caused by the present employment incident as well as the prior employment incidents involved in OWCP File Nos. xxx088 and xxxxxx754. Specifically, Dr. Gupta noted, in his September 20, 2018 Form CA-20, that appellant's injuries were the result to falls she encountered at work on July 9 and

⁸ *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

⁹ *L.S.*, Docket No. 19-1769 (issued July 10, 2020); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

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

¹¹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013). *See R.D.*, Docket No. 18-1551 (issued March 1, 2019).

November 14, 2018. Further, Dr. Stephens opined, in his September 14, 2018 Form CA-20, that appellant's fall at work aggravated her preexisting conditions.

OWCP's procedures provide that cases should be administratively combined when correct adjudication of the issues depends on frequent cross-referencing between files.¹² For example, if a new injury case is reported for an employee who previously filed an injury claim for a similar condition of the same part of the body, doubling is required.¹³ OWCP had previously accepted that appellant had sustained left wrist conditions under OWCP File Nos. xxxxxx088 and xxxxxx754; however, these cases have not been administratively combined with the present file. As such, the Board is unable to review all of the factual and medical evidence under the present case file, which relates to a similar condition and the same bodily member that is contested in the present claim.

For a full and fair adjudication, the case must be remanded to OWCP to administratively combine OWCP File Nos. xxxxxx088 and xxxxxx754 and the present case file.¹⁴ Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

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

¹² Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8(c) (February 2000); *D.M.*, Docket No. 19-0340 (issued October 22, 2019).

¹³ *Id.*; *D.T.*, Docket No. 19-1375 (issued March 24, 2020); *D.L.*, Docket No. 17-1588 (issued January 28, 2019).

¹⁴ *K.T.*, Docket No. 17-0432 (issued August 17, 2018).

ORDER

IT IS HEREBY ORDERED THAT the September 13, 2019 decision is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: October 12, 2021
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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