

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

J.N., Appellant)	
)	
and)	Docket No. 20-1287
)	Issued: October 26, 2021
U.S. POSTAL SERVICE, CUSTOMER CARE CENTER, Edison, NJ, Employer)	
)	
)	

Appearances:
James D. Muirhead, Esq., for the appellant¹
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 June 8, 2020 appellant, through counsel, filed a timely appeal from a March 5, 2020 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.

ISSUE

The issue is whether appellant has met her burden of proof to establish a left hand/wrist condition causally related to the accepted factors of her federal employment.

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 an 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.*

FACTUAL HISTORY

On July 31, 2015 appellant, then a 55-year-old customer care agent, filed an occupational disease claim (Form CA-2) alleging that she developed a left-hand condition due to factors of her federal employment. She alleged that, after leaving work on Thursday, July 23, 2015, she noticed that her left hand was swollen. Appellant noted that she woke up the next day with a severely swollen hand and needed to go to the emergency room. She contended that she immediately notified the employing establishment. Appellant noted that she first became aware of her condition and realized its relation to her federal employment on July 23, 2015. She stopped work on July 24, 2015.

In an attached statement, appellant noted that she worked at the call center. She detailed her work duties, including answering customers' questions, providing information, and typing complaints and service issues on the computer. Appellant again noted that she noticed that her left hand was swollen after she left work on July 23, 2015.

In a July 24, 2015 letter, Dr. Julie Sundaram, an emergency medicine specialist, noted that appellant was seen by her on that day and found that she was totally incapacitated for the period July 27 through 28, 2015.

In a July 28, 2015 medical report, Dr. Louis C. Rose, a Board-certified orthopedic surgeon, indicated that appellant was typing at work when she first noticed swelling and pain in her forearm, wrist, and hand, which progressed over the next couple of days. He conducted a physical examination and reviewed appellant's x-ray of the left hand, which revealed no fracture. Dr. Rose diagnosed left joint pain, left wrist pain, and a probable left triangular fibrocartilage complex (TFCC) tear. In a disability certificate of even date, he found that appellant was totally incapacitated for the period July 28 through August 11, 2015.

In an August 11, 2015 medical report, Dr. Rose reiterated the same history of injury and diagnoses, noting that appellant's symptoms were worsened with carrying, lifting, gripping or grasping objects, as well as other repetitive uses such as pulling, pushing, and twisting motions. In a medical note of even date, he indicated that appellant was under his care for an orthopedic problem. In a disability certificate of even date, Dr. Rose found that she was totally incapacitated for the period August 11 through September 15, 2015.

Appellant received physical therapy treatment on August 19, 2015.

On September 14, 2015 the employing establishment controverted appellant's claim.

In a development letter dated September 28, 2015, 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. In a separate development letter of even date, OWCP requested that the employing establishment provide additional information, including comments from a knowledgeable supervisor and an explanation of appellant's work activities. It afforded both parties 30 days to submit the necessary evidence.

In an October 13, 2015 disability certificate, Dr. Rose found appellant totally incapacitated for the period October 13 through November 10, 2015.

In an October 22, 2015 response to OWCP's development questionnaire, appellant asserted that her duties mostly required typing up the service issues and customers' complaints on the computer. She contended that her employment duties, such as constant typing and answering telephones, contributed to her condition, which she first noticed on July 23, 2015. Appellant indicated that she was under pressure to answer as many customers' complaints as possible and that she worked five days a week. She asserted that she did not engage in any sports or other activities outside of her work due to her previously accepted shoulder injuries. Appellant further clarified that she was claiming an occupational disease.

In an October 27, 2015 statement, the employing establishment controverted appellant's claim, alleging that she failed to report any physical difficulty in performing her duties, which only required sedentary work such as entering information using a keyboard and a mouse intermittently. It also attached a position description for a customer care agent.

By decision dated January 13, 2016, OWCP denied appellant's occupational disease claim, finding that the medical evidence of record was insufficient to establish a medical diagnosis causally related to the accepted factors of her federal employment. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On January 26, 2016 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review. During the hearing, held on September 13, 2016, appellant reiterated that her work required a lot of typing, primarily with her left hand while using the mouse with her right hand. She testified that she had been working at her current position for two months before her injury. Appellant also noted that she had previously injured her left shoulder in 2012. She alleged that she had lipedema, which attributed to her swollen arm. Appellant contended that she could not use her left arm well to hold packages. She asserted that her new physician opined that her condition was most likely caused by the constant typing. The hearing representative held the case record open for 30 days for additional evidence. No further evidence was submitted.

By decision dated November 28, 2016, OWCP's hearing representative affirmed the January 13, 2016 decision.

On November 24, 2017 appellant, through counsel, requested reconsideration and attached a November 11, 2017 narrative report from Dr. Silvester Lango, a Board-certified orthopedic surgeon. Dr. Lango indicated that appellant previously had several arthroscopic surgeries on her shoulders. He also noted that she underwent a mastectomy on the left side, but that her left arm was never swollen until July 24, 2015, about two and half months after starting her new position at the employing establishment. Dr. Lango diagnosed lymphedema of the left upper extremities and left hand tendinitis. He explained that her current condition was complex as she had repeated surgeries on her left shoulder, which required long disability periods and affected the muscle/circulation function of the left arm. Dr. Lango noted that appellant's work required her to excessively type. He opined that her present conditions were work related.

By decision dated February 15, 2018, OWCP modified appellant's claim to find that she had submitted medical evidence containing a medical diagnosis in connection with her injury. The claim remained denied, however, as the medical evidence of record was insufficient to establish

causal relationship between her diagnosed conditions and the accepted factors of her federal employment.

On November 1, 2018 appellant, through counsel, requested reconsideration and attached an October 15, 2018 narrative report from Dr. Lango. In his report, Dr. Lango noted that appellant performed her work duties, which required typing primarily with her left hand, for eight hours a day, two days a week, and then part-time for the other three days a week. He again indicated that appellant previously underwent left mastectomy, which affected blood supply to her arm and made it susceptible to weakness and inflammation of soft tissues including muscles, tendons, and ligaments. Dr. Lango noted that her work was very repetitive. He opined that it was the combination of the left-side mastectomy and the extreme repetitive typing with her left arm that caused the swelling to the left hand, arm, and TFCC. Dr. Lango further concluded that the repetitive use of the weakened structures additionally and progressively damaged appellant's arm, causing damage to her TFCC.

By decision dated January 15, 2019, OWCP denied modification of the February 15, 2018 decision.

On December 23, 2019 appellant, through counsel, requested reconsideration and attached a December 20, 2019 narrative report from Dr. Lango, wherein he compared the results of appellant's magnetic resonance imaging (MRI) scans of the left hand from 2016 and 2019. He noted that in 2016, appellant had swelling of the left hand which worsened significantly to encompass the wrist and distal forearm; that tendinitis/tendinopathy was identified by an MRI scan; and that the most recent MRI scan showed a worsening of appellant's hand joints. Dr. Lango indicated that repetitive stress syndrome is based on excessive use of a part of the body, frequently the hands. He opined that "[r]ecent use of texting and long hours of typing caused friction of moving tendons and surrounding tendon [sheath], with increasing inflammation of both parts and increasing pain, limited use and increasing swelling of used parts. That in the end is also putting pressure on surrounding vessels, causing slowing of blood flow and increased swelling. This is how [appellant's] condition evolved and is causally related to her work."

OWCP also received an April 24, 2018 MRI scan of the left hand which revealed dorsal soft tissue swelling, but no fracture.

A March 15, 2019 MRI scan of the left wrist demonstrated diffuse edema and swelling of the wrist and the distal visualized hand and forearm, as well as extracapsular synovial cyst at the anterior radiocarpal articulation.

By decision dated March 5, 2020, OWCP denied modification of the January 15, 2019 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 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

³ *Id.*

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 establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit: (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 employment factors identified by the claimant.⁷

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical opinion evidence.⁸ The opinion of the physician must be based on a complete factual and medical background of the employee, 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 specific employment factors identified by the employee.⁹

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.¹⁰

ANALYSIS

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

In support of her claim, appellant provided narrative reports from Dr. Lango dated October 15, 2018 and December 20, 2019. Dr. Lango, in his October 15, 2018 narrative report, noted that appellant's work duties required typing primarily with her left hand, for eight hours a day, two days a week, and then part-time for the other three days a week. He indicated that her

⁴ *J.W.*, Docket No. 18-0678 (issued March 3, 2020); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *J.S.*, Docket No. 18-0657 (issued February 26, 2020); *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *L.J.*, Docket No. 19-1343 (issued February 26, 2020); *R.R.*, Docket No. 18-0914 (issued February 24, 2020); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁷ *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *R.H.*, 59 ECAB 382 (2008).

⁸ *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *T.H.*, 59 ECAB 388, 393 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

⁹ *R.G.*, Docket No. 18-0792 (issued March 11, 2020); *D.J.*, Docket No. 19-1301 (issued January 29, 2020); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

¹⁰ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); see *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *R.D.*, Docket No. 18-1551 (issued March 1, 2019).

work was very repetitive. Dr. Lango opined that it was the combination of the left-side mastectomy and the extreme repetitive typing with appellant's left arm that caused her diagnosed conditions. In his December 20, 2019 narrative report, Dr. Lango compared the results of appellant's MRI scans of the left hand from 2016 and 2019. He noted that in 2016, appellant had swelling of the left hand which worsened significantly to encompass the wrist and distal forearm; that tendinitis/tendinopathy was identified by the MRI scan; and that the most recent MRI scan showed a worsening of appellant's hand joints. Dr. Lango explained that repetitive stress syndrome is based on excessive use of a part of the body, frequently the hands. He opined that "[r]ecent use of texting and long hours of typing caused friction of moving tendons and surrounding tendon [sheath], with increasing inflammation of both parts and increasing pain, limited use and increasing swelling of used parts. That in the end is also putting pressure on surrounding vessels, causing slowing of blood flow and increased swelling. This is how [appellant's] condition evolved and is causally related to her work."

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.¹¹ OWCP has an obligation to see that justice is done.¹²

The Board finds that Dr. Lango's opinion demonstrates his knowledge of appellant's preexisting left hand/wrist condition and, although his opinion is not sufficiently rationalized to meet appellant's burden of proof to establish her claim, it is sufficient to require further development of the case by OWCP.¹³ Dr. Lango described appellant's employment duties, which included extreme repetitive typing with her left hand, and provided an explanation as to how the long hours of typing at work could cause friction of moving tendons and surrounding tendon in appellant's left hand, resulting in and aggravating her diagnosed left hand/wrist conditions. The Board has 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.¹⁴ Rather, the evidence required is only that necessary to convince the adjudicator that the conclusion drawn is rational, sound, and logical.¹⁵ Although Dr. Lango's opinion is insufficiently rationalized to establish causal relationship, it is sufficient to require further development of the case by OWCP.¹⁶

Therefore, the Board finds that the case shall be remanded to OWCP. On remand, OWCP shall prepare a statement of accepted facts, the medical evidence of record, and appellant to a

¹¹ *E.G.*, Docket No. 19-1296 (issued December 19, 2019); *A.P.*, Docket No. 17-813 (issued January 3, 2018); *Jimmy A. Hammons*, 51 ECAB 219 (1999).

¹² *See B.C.*, Docket No. 15-1853 (issued January 19, 2016); *E.J.*, Docket No. 09-1481 (issued February 19, 2010).

¹³ *See E.G.*, Docket No. 20-1184 (issued March 1, 2021); *D.S.*, Docket No. 17-1359 (issued May 3, 2019); *C.W.*, Docket No. 17-1293 (issued February 12, 2018); *see also John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

¹⁴ *J.C.*, Docket No. 20-0882 (issued June 23, 2021).

¹⁵ *J.C.*, *id.*; *W.M.*, Docket No. 17-1244 (issued November 7, 2017).

¹⁶ *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *D.S.*, Docket No. 17-1359 (issued May 3, 2019); *William J. Cantrell*, 34 ECAB 1223 (1983).

specialist in the appropriate field of medicine for a second opinion evaluation. Upon referral, the physician shall conduct a physical examination and provide a rationalized medical opinion as to whether appellant's diagnosed left hand/wrist conditions were caused or aggravated by factors of her employment. If the second opinion physician opines that the diagnosed conditions are not causally related, he or she must explain with rationale how or why the opinion differs from that of Dr. Lango's opinion. Following this, and any other further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the March 5, 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: October 26, 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