United States Department of Labor
Employees' Compensation Appeals Board

K.O., Appellant	)	
and	)	**Docket No. 20-1272**
	)	**Issued: September 21, 2021**
U.S. POSTAL SERVICE, MARGARET L. SELLERS PROCESSING & DISTRIBUTION CENTER, San Diego, CA, Employer	)	

Appearances:
Toby Rubenstein, 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 June 16, 2020 appellant, through her representative, filed a timely appeal from a February 11, 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 an injury in the performance of duty on June 19, 2017, as alleged.

FACTUAL HISTORY

On June 23, 2017 appellant, then a 34-year-old mail processing clerk, filed a traumatic injury claim (Form CA-1) alleging that on June 19, 2017 her right hand and fingers started to hurt and swell while she was feeding mail into the delivery barcode sorter (DBCS), in the performance of duty.[3] On the reverse side of the claim form, T.H., a supervisor, indicated that appellant was injured in the performance of duty.

On June 23, 2017 the employing establishment executed an authorization for examination and/or treatment (Form CA-16) authorizing appellant to seek medical care related to her right hand.

In an undated narrative statement, appellant indicated that on June 19, 2017 D.V., automation lead clerk, told her to relieve a coworker on the DBCS. Her wrist started to hurt while feeding the mail into the machine. D.V. looked at her hands and agreed that her right fingers looked swollen. Appellant advised that on June 20, 2017 she used home remedies, but her fingers hurt more. On June 21, 2017 she sought medical care, at which time a doctor told her that she had tendinitis and took her off work from June 21 through 23, 2017.

In a report dated June 21, 2017, Dr. David C. Parra, a Board-certified family practitioner, diagnosed tendinitis and epidermal inclusion cyst. He held appellant off work from June 21 through 23, 2017. No date for the onset of condition was provided.

A June 22, 2017 medical record indicated that June 19, 2017 was the last day appellant worked and was also her date of injury. An employing establishment accident report dated June 23, 2017 related the date of injury as June 19, 2017.

In a development letter dated July 5, 2017, OWCP noted that no firm diagnosis of a work-related condition had been provided by a physician and the medical evidence failed to contain a diagnosis. It asked appellant to complete a questionnaire and provide further details regarding the circumstances of the claimed June 19, 2017 employment injury. OWCP afforded her 30 days to submit the necessary evidence.

In a July 13, 2017 attending physician's report (Form CA-20), Dr. Parra noted the date of injury as June 19, 2017. He indicated that appellant was examined on June 21, 2017 and presented with right arm numbness over the last few days with some swelling in the arm. Appellant indicated that she initially had pain to her right shoulder when pulling up tray of mail, but was able to sort mail the rest of her shift and that the numbness started the next day. Right leg numbness was also reported. Dr. Parra assessed tendinitis and epidermal inclusion cyst. Under the plan section he noted "favor right forearm tend[i]nitis with right shoulder strain, right lower leg tend[i]nitis."

[3] OWCP assigned the claim File No. xxxxxx239.

Dr. Parra also noted that, if it was felt that appellant's injury was work related, he advised a workers' compensation evaluation.

In a July 19, 2017 letter, M.C., a health and resource management (HRM) manager, indicated that appellant was off work on June 19, 2017. She indicated that on June 21, 2017 appellant had called in sick under the Family and Medical Leave Act (FMLA) to take care of her mother from June 20 through 23, 2017. M.C. also noted that on June 21, 2017, Dr. Parra held appellant off work for "tendinitis." A report summarizing appellant's processed clock rings was attached.

In a June 22, 2017 work status report, Dr. Maria Vazquez-Campos, a family medicine specialist, noted an onset of tendinitis on or around June 12, 2017. She held appellant off work from June 24 through 30, 2017. In a June 28, 2017 work status report, Dr. Vazquez-Campos reported a June 19, 2017 date for onset of right wrist joint pain and right forearm pain.

Dr. Emdad Payam, Board-certified in physical medicine and rehabilitation, reported on June 26, 2017 that appellant had sustained an injury on June 19, 2017. He related a diagnosis of overuse disorder of the soft tissues of the right hand and right forearm. Dr. Payam also completed a June 26, 2017 duty status report (Form CA-17) noted the date of injury as June 19, 2017 and that appellant's right hand and fingers started to hurt and swell while feeding mail on a DBCS machine. He opined that appellant was totally disabled from work and was not using her right hand.

In June 29 and July 13, 2017 work status reports, Dr. Waldo Ferrer, a Board-certified family practitioner, noted a July 19, 2017 date of injury for overuse disorder of soft tissues, right hand, left distal radioulnar joint subluxation. He placed appellant on modified activity from June 29 through July 13, 2017 and from July 13 through August 10, 2017. Corresponding industrial work status reports and after visit summaries were received.

Work status reports from physician assistants dated July 7 and 9, 2017 were provided which included diagnoses of complex regional pain syndrome (CRPS); overuse disorder of soft tissues, right hand; and right distal radioulnar joint subluxation. Appellant was also taken off work from July 9 through 23, 2017.

In a July 24, 2017 statement, J.M., a coworker, related that about three to four weeks ago, appellant's hand and forearm looked swollen. She indicated that she witnessed an injury, only the aftermath -- probably the next day. J.M. told appellant to see her doctor.

In a July 25, 2017 narrative statement, appellant indicated that her injury happened on June 18, 2017 at work. She indicated that she was flipping trays of mail on the DBCS machine when her wrist starting hurting and her right fingers became swollen. Appellant indicated that both D.V. and J.M. saw her hand that day and told her to see a doctor. She indicated that she called her medical provider that evening. Appellant advised that she did not go into work the next day due to pain, and that she made an appointment on June 21, 2017 to see Dr. Parra. She indicated that because of her hand pain, she could not write, and that supervisor T.H. had completed the workers' compensation paperwork. Appellant described her medical treatment, noting that on July 9, 2017, she had an x-ray of her hand taken at an urgent care facility where she was diagnosed with CRPS.

In a July 26, 2017 work status report, Dr. David McClaskey, a Board-certified family practitioner, diagnosed right distal radioulnar joint subluxation and held appellant off work. The date of onset of the condition was not provided.

By decision dated August 7, 2017, OWCP denied the claim, finding that the evidence of record was insufficient to establish when the injury and/or event occurred, as the date of injury was unclear. It noted that when appellant filed the claim, she reported a June 19, 2017 date of injury, which the majority of the medical evidence also noted. However, a June 22, 2017 medical report indicated the date of injury as June 12, 2017 and, in her July 25, 2017 statement, appellant reported the date of injury as June 18, 2017.

The record reflects that on August 14, 2017 appellant filed an occupational disease claim (Form CA-2) for injuries sustained to her right hand and fingers due to flipping mail while in the performance of duty. She noted that she first became aware of her condition and realized its relation to her federal employment on June 18, 2017. Appellant reported her condition to her supervisor on June 21, 2017 and stopped work that day. OWCP assigned that claim File No. xxxxxx023 and undertook development of the occupational disease claim by requesting information from both appellant and the employing establishment.

In a July 27, 2017 statement, D.V., an automation lead clerk, indicated that about a month or a month and a half ago, he was walking through the machines and noticed that appellant was at the feeder and her DBCS machine was running out of mail. As he approached her to tell her that her machine was running out of mail, she complained to him about pain in her hand. D.V. advised that he agreed that her hand looked a little swollen, but thought it was nothing that would require her to be taken off the machine. He told her to have it checked out if it continued to hurt her and that she should continue working the DBCS machine.

In an August 15, 2017 letter, Y.L., supervisor distribution operation, reported that appellant worked on June 17 and June 18, 2017. She indicated that appellant had filed sick leave under FMLA to care for her mother for various dates before June 16, 2017, which were denied and subjected to disciplinary action. Y.L. also reported that appellant also requested sick leave under FMLA to care for her mother from June 21 to 25, 2017.

On August 17, 2017 appellant completed OWCP's development questionnaire. In an undated statement, she advised that she performed repetitive work of lifting mail trays weighing 10 to 15 pounds and flipping trays of mail which she fed into a machine. Appellant reported that around June 17 and 18, 2017 she first discovered that her right hand and fingers were swollen and her wrist starting hurting.

Additional evidence received included a mail processing clerk job description and diagnostic testing, which included July 7, 2017 right forearm x-ray; July 9, 2017 right ulna, right elbow, and chest x-rays; a July 9, 2017 right wrist magnetic resonance imaging scan, which noted evidence of distal radial ulnar joint instability with dorsal subluxation of the ulna aspect and a partial tear of the volar radioulnar ligament; July 19, 2017 right wrist x-ray; and August 16, 2017 right wrist x-ray.

On October 6, 2017 OWCP informed appellant that it had deleted claim File No. xxxxxx023 as she was alleging the same mechanism of injury as claimed in the current claim, File No. xxxxxx239. It indicated that all documents submitted were moved into the current claim.

A telephone record review revealed that on June 16, 2017 appellant called her medical provider and reported problems with her right hand. It was noted that appellant reported right-sided weakness and numbness for two days, worsening since that morning.

Medical reports from Dr. Parra dated August 11, 2017, May 30, 2018, and June 21, 2018 were received. In an August 11, 2017 report, Dr. Parra indicated that appellant had complaints of right arm numbness with distal arm swelling after pulling up a tray of mail while working. He also related that she performed repetitive tasks at work with her upper extremities. Dr. Parra indicated that appellant was diagnosed with right distal radioulnar joint subluxation and partial tear of the volar radioulnar ligament of the right wrist, which he opined could have been caused by her work-related duties.

Additional reports from her medical provider dated August 30, 2017 through July 6, 2018 were received along with x-ray imaging and pictures of appellant's right hand. These reports noted diagnoses of history of right distal radioulnar joint subluxation and complex regional pain syndrome, chronic daily pain, depression, and insomnia.

On August 6, 2018 appellant, through her then-counsel, requested reconsideration. Then-counsel asserted that appellant noticed swelling and pain of her right hand on June 14 and 15, 2017 while performing her normal job at a DBCS machine, which included flipping trays of mail. On June 16, 2017 appellant's hand had swollen to the point she knew she needed medical attention. Then-counsel indicated that she was off work that day to accompany her mother home from the hospital. He further indicated that appellant returned to work on June 17 and June 18, 2017 with a swollen and painful hand and was assigned lighter duties which consisted of casing letters, and putting empty trays into position on the equipment. By the end of her shift on June 18, 2017, the swelling in appellant's right hand had worsened.

On October 18, 2018 the employing establishment responded to appellant's reconsideration request, indicating that they could not make any changes to the documents they received. It noted that it tried to offer appellant limited-duty work on July 24, 2018 based on her restrictions, but appellant returned with a medical report placing her on temporary total disability.

In an October 19, 2018 statement, M.C. challenged appellant's claim for fact of injury and performance of duty. She verified against Time and Control System (TACS) that June 19, 2017 and June 12, 2017 were non-scheduled work days for appellant. In addition, appellant told her that she completed the CA-1 form with her supervisor's help and signed the claim herself. M.C. indicated that appellant had an open FMLA case for her mother using sick leave on May 31 through June 2, 2017; June 16, 2017; and June 21 through 25, 2017.

In an undated statement, which OWCP received October 23, 2018, T.E., a coworker, indicated that on June 23, 2017 she completed appellant's CA-1 form with appellant, who signed the form. She noted that appellant indicated that she was not able to write.

On November 14, 2018 appellant's then-counsel submitted a rebuttal brief. Attached were documents pertaining to appellant's mother.

By decision dated November 29, 2018, OWCP denied modification of its August 7, 2017 decision. It found inconsistent evidence regarding the factual aspects of the alleged injury with respect to the date of injury.

In an October 23, 2019 report, Dr. Parra opined that appellant's employment-related injury was incurred over time during her employment as a distribution clerk. He noted appellant's job duties and that she has CRPS Type 1 involvement in her right hand which was continuing to expand into her arm. Dr. Parra also discussed the pathophysiology of CRPS and distal radioulnar joint dislocations. He opined that, given the repetitive physical requirements of appellant's position, it was more than reasonable to conclude that appellant's medical conditions of overuse disorder of soft tissues, right hand, right distal radioulnar joint subluxation and CRPS, Type I were occupationally related. Dr. Parra also opined that appellant remained totally disabled from all employment due to the severity of the CRPS.

In a November 6, 2019 statement, signed by both appellant and Dr. Parra on November 6, 2019, appellant set forth the job requirements of her automation clerk and mail processing clerk duties. She alleged that she was diagnosed with CRPS, overuse disorder of soft tissues of right hand, wrist subluxation (dislocated -- right hand), persistent depressive disorder with intermittent major depressive episodes, adjustment disorder with mixed anxiety and depressed mood, and anxiety as a result of her employment. Appellant indicated that she had filed the wrong form. She indicated that she last worked on June 18, 2017 and denied any hobbies or surgery to her right wrist.

On November 13, 2019 appellant, through her current representative, again requested reconsideration. Appellant's representative argued that appellant had always intended to file an occupational disease claim (Form CA-2). OWCP however did not properly develop the CA-2 claim appellant did file, but dismissed it as a duplicate claim. Based on its procedures, the representative argued that the claims examiner should not deny the case on the basis of the form filed, even if the case was technically in posture for denial. The representative argued that appellant was performing her usual job flipping trays of mail at a DBCS machine on June 14 and 15, 2017 when her wrist began to hurt and her fingers began to swell. On June 17 and June 18, 2017, she was assigned to sort mail, but could hardly grasp it as her fingers were numb. The representative argued that appellant's claim was, by definition, an occupational disease claim as her condition developed over time from repeated exposure to her work duties. However, OWCP never separately adjudicated the occupational disease claim or denied it with appeal rights. Furthermore, OWCP never converted the original claim to an occupational disease claim. She alleged that it was improper of OWCP to deny a case on the basis that appellant failed to submit the correct form. The representative further noted that appellant repeatedly provided details of the repetitive nature of the physical requirements of her position to Dr. Parra, her attending physician.

By decision dated February 11, 2020, OWCP denied modification of its November 29, 2018 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 whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether fact of injury has been established. First, 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.[7] Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.[8]

An injury does not have to be confirmed by eyewitnesses in order to establish the fact that an employee sustained an injury in the performance of duty, but the employee's statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action.[9] The employee has not met his or her burden of proof in establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim. Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury, and failure to obtain medical treatment may, if otherwise unexplained, cast serious doubt on an employee's statements in determining whether a case has been established. An employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.[10]

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[4] *P.A.*, Docket No. 19-1036 (issued November 19, 2019); *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.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[6] *See J.C.*, Docket No. 18-1803 (issued April 19, 2019); *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] *M.M.*, Docket No. 17-1522 (issued April 25, 2018); *John J. Carlone*, 41 ECAB 354 (1989).

[8] *M.H.*, Docket No. 18-1737 (issued March 13, 2019); *J.N.*, Docket No. 18-0675 (issued December 10, 2018); *E.H.*, Docket No. 16-1786 (issued January 30, 2017).

[9] *K.R.*, Docket No. 19-0477 (issued August 14, 2019); *B.P.*, Docket No. 19-0306 (issued August 9, 2019); *Charles B. Ward*, 38 ECAB 667, 67-71 (1987).

[10] *See M.C.*, Docket No. 18-1278 (issued March 7, 2019); *D.B.*, 58 ECAB 464, 466-67 (2007).

ANALYSIS

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

OWCP adjudicated appellant's claim as one for a traumatic injury. A traumatic injury is defined as a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift.[11] An occupational disease, however, is defined as a condition produced by the work environment over a period longer than a single workday or shift.[12] Appellant has maintained that her claim was one for an occupational disease arising from the repetitive duties of her position and that she had inadvertently filed the wrong claim form. Her narrative statements and the medical evidence of record support that she is in fact claiming that she sustained right hand injuries due to the repetitive nature of her job over a prolonged period of time. The Board thus finds that appellant's claim is one for an occupational disease and not for a traumatic injury.[13]

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.[14] OWCP has an obligation to see that justice is done.[15]

This case shall therefore be remanded for OWCP to convert appellant's traumatic injury claim to a claim for an occupational disease. Following this and other such further development as OWCP deems necessary, it shall issue a *de novo* decision regarding appellant's occupational disease claim.

[11] 20 C.F.R. § 10.5(ee).

[12] *Id*. at § 10.5(q).

[13] *See B.C.*, Docket No. 20-0465 (issued November 19, 2020).

[14] *See e.g., M.G.*, Docket No. 18-1310 (issued April 16, 2019); *Walter A. Fundinger, Jr.*, 37 ECAB 200, 204 (1985); *Michael Gallo*, 29 ECAB 159, 161 (1978); *William N. Saathoff*, 8 ECAB 769-71; *Dorothy L. Sidwell*, 36 ECAB 699, 707 (1985).

[15] *See A.J.*, Docket No. 18-0905 (issued December 10, 2018); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983); *Gertrude E. Evans*, 26 ECAB 195 (1974).

CONCLUSION

The Board finds that this case is not in posture for decision.[16]

ORDER

IT IS HEREBY ORDERED THAT the February 11, 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: September 21, 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

[16] The Board notes that the employing establishment issued a Form CA-16, dated June 23, 2017. A 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. *See* 20 C.F.R. § 10.300(c); *V.S.*, Docket No. 20-1034 (issued November 25, 2020); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).