United States Department of Labor
Employees' Compensation Appeals Board

M.T., Appellant	)	
and	)	**Docket No. 20-0184**
	)	**Issued: June 24, 2022**
U.S. POSTAL SERVICE, MORGAN PROCESSING & DISTRIBUTION CENTER, New York, NY, Employer	)	

Appearances:
Paul Kalker, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On October 31, 2019 appellant, through counsel, filed a timely appeal from an October 10, 2019 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 to consider 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 right upper extremity condition causally related to the accepted factors of her federal employment.

FACTUAL HISTORY

This case has previously been before the Board.[3] The facts and circumstances of the case as set forth in the Board's prior order are incorporated herein by reference. The relevant facts are as follows.

On June 15, 2017 appellant, then a 71-year-old expeditor, filed an occupational disease claim (Form CA-2) alleging that she developed a right hand and wrist condition due to factors of her federal employment, including repetitive scanning, placement of placards, and unloading of pallets.[4] She noted that she first became aware of her condition and its relation to her federal employment on May 11, 2017. Appellant stopped work on that date.

On February 15 and March 28, 2017 Dr. Steven Lee, a Board-certified orthopedic surgeon, diagnosed TFCC sprain and degenerative joint disease of the right hand as a result of appellant's accepted March 16, 2016 traumatic injury under OWCP File No. xxxxxx059. He reported that she felt the need to take approximately two days a week off work to recover from her symptoms. Dr. Lee advised appellant to avoid overuse, gripping, lifting, and carrying.

In notes dated May 9, 2017, Dr. Lee expanded his diagnoses to include right carpal tunnel syndrome (CTS) and cervical radiculopathy. He recommended a repeat electromyogram (EMG) and nerve conduction velocity studies and recounted that appellant believed that the benefits from physical therapy were negated when she returned to work. Dr. Lee found that she was totally disabled from work through June 20, 2017. He directed appellant to keep her wrist in a neutral position during the day, while sleeping, and to avoid leaning on her wrist, and push-up type

[3] *Order Remanding Case*, Docket No. 18-1131 (issued June 12, 2019).

[4] Appellant previously sustained employment injuries on April 23, 1992, October 1, 1996, January 12, 1998, and April 22, 2015, which OWCP accepted for right trigger thumb, right de Quervain's tenosynovitis, right shoulder sprain, aggravation of cervical radiculitis or brachial neuritis, and lumbar sprain/strain. She returned to light duty four hours a day on September 22, 2005. By decision dated February 27, 2006, OWCP reduced appellant's wage-loss compensation based on her actual earnings in the light-duty position. Appellant returned to full-duty work on May 19, 2015. On March 16, 2016 she filed a traumatic injury claim (Form CA-1) alleging on that date an elevator door hit her right hand and wrist while she was in the performance of duty. On May 4, 2016 OWCP accepted the claim, assigned OWCP File No. xxxxxx059, for right wrist triangular fibrocartilage complex (TFCC) tear. Appellant returned to light-duty work for eight hours a day on May 7, 2016. On June 24, 2016 OWCP authorized right wrist arthroscopy. Appellant stopped work on August 1, 2016, but declined surgery on November 16, 2016. On September 20, 2016 she filed a notice of recurrence (Form CA-2a) alleging that, beginning on August 10, 2016, she lost time from work due to her March 16, 2016 employment injury. On August 15, 2017 OWCP authorized right wrist arthroscopy TFCC tear repair or debridement, ulna shortening, endoscopic carpal tunnel release, and de Quervain's surgical release.

positions.[5] On July 5, 2017 Dr. Lee noted that the EMG study was normal and that the appellant wished to continue with physical therapy rather than surgery.

In a July 27, 2017 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond.

On August 10, 2017 appellant responded to OWCP's development letter and reported that she had performed repetitive duties with her right hand during the 32 years she had worked at the employing establishment. She further noted that her March 16, 2016 right wrist injury was accepted by OWCP under OWCP File No. xxxxxx059 for right wrist TFCC tear when her wrist was struck by an elevator door, which resulted in her inability to work for more than 45 days.

On September 12, 2017 Dr. Lee noted that appellant's pain had worsened since her last visit. He again instructed her to avoid overuse, gripping, lifting, and carrying activities.

By decision dated September 26, 2017, OWCP denied appellant's occupational disease claim, finding that the medical evidence of record was insufficient to establish causal relationship between her diagnosed conditions and the accepted factors of her federal employment.

On December 13, 2017 appellant, through counsel, requested reconsideration of the September 26, 2017 decision.

Appellant submitted a report from Dr. Lee dated September 20, 2017 in which he described her history of traumatic injury on March 16, 2016 accepted for right wrist TFCC tear under OWCP File No. xxxxxx059 and her treatment history. Dr. Lee further noted that she had right wrist surgery in 2009 consisting of distal radius open reduction and internal fixation. He provided his findings on physical examination on September 12, 2017, including significant tenderness over the area of the TFCC, significant tenderness overlaying the right trigger thumb, and right middle finger with positive clicking and locking. Dr. Lee reported normal strength of the median radial and ulnar nerves with symmetric range of motion. He diagnosed large TFCC tear causing ulnar-sided wrist pain. Dr. Lee noted that, from January 4 through September 12, 2017, appellant had informed him that her right wrist pain had worsened and attributed this change in symptoms to her return to employment duties. Appellant asserted that she could not go back to work in her usual position using a scanner for over eight hours a day. Dr. Lee repeatedly informed appellant that surgery due to the March 16, 2016 traumatic injury under OWCP File No. xxxxxx059 was a possible option. He noted that her original diagnosis appeared to be related to her TFCC tear, and that she had developed ulnar impaction as well as basal joint arthritis and some right thumb triggering and potential nerve issues, as well as right middle finger triggering and de Quervain's tenosynovitis. Dr. Lee concluded that, due to appellant's persistent pain and tenderness, she was unable to perform her full duties without aggravating her condition further and opined that she was 70 percent disabled.

[5] On August 24, 2016 appellant underwent an EMG, which found no evidence of right CTS, Guyon's canal syndrome or cervical radiculopathy.

By decision dated March 13, 2018, OWCP denied modification of its prior decision.

On July 3, 2018 Dr. Lee released appellant to return to work with restrictions including no scanning more than three hours a day, no pulling tape, no lifting over five pounds, and no continuous repetitive movements of her bilateral wrist in addition to avoiding overuse, gripping, lifting, and carrying activities. In a September 10, 2018 note, he again advised her to avoid overuse, gripping, lifting, and carrying activities. Dr. Lee completed notes dated August 28 through November 27, 2018 and January 29 through October 8, 2019 repeating his recommendations regarding avoidance of gripping, lifting, and carrying.

Appellant, through counsel, appealed the March 13, 2018 decision to the Board. By order dated May 14, 2018, the Board directed OWCP to administratively combine her claim files and issue a *de novo* decision.[6] Thereafter, OWCP administratively combined OWCP File Nos. xxxxxx059, xxxxxx967, xxxxxx971, and OWCP File No. xxxxxx549, with OWCP File No. xxxxxx059 serving as the master file.

By decision dated October 10, 2019, OWCP again denied modification.

LEGAL PRECEDENT

An employee seeking benefits under FECA[7] has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence, including the fact that the individual is an "employee of the United States" within the meaning of FECA and that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.[8] These are the essential elements of every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[9]

OWCP's regulations define an occupational disease as "a condition produced by the work environment over a period longer than a single workday or shift."[10] 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 employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated

[6] *Supra* note 3.

[7] *Supra* note 2.

[8] *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[9] *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).

[10] 20 C.F.R. §10.5(q).

differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.[11]

The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon a complete factual and medical background, showing a causal relationship between the claimed condition and identified factors.[12] The opinion of the physician must be based on a complete factual and medical background of the claim, 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 activity or factors identified by the claimant.[13]

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.[14]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a right upper extremity condition causally related to the accepted factors of her federal employment.

In reports dated August 10 to September 20, 2016, Dr. Lee noted appellant's continued complaints of ongoing right wrist tenderness and pain and diagnosed CTS, and sprain of the right TFCC. While he provided medical diagnoses, he did not offer a specific opinion as to whether her employment duties caused or aggravated her additional right wrist conditions.[15] 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.[16] As such, these reports are insufficient to meet appellant's burden of proof. In notes dated February 15 to September 12, 2017, Dr. Lee related that appellant's preexisting right wrist condition was aggravated by her work activity, as she had difficulty performing her job duties using only her nondominant left upper extremity. He additionally diagnosed degenerative joint disease of the right hand and provided work restrictions. However, Dr. Lee did not provide an opinion on causal relationship between appellant's diagnosed conditions and the accepted employment factors.[17] As such, this evidence is of no probative value and is insufficient to establish the claim.

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

[12] *A.M.*, Docket No. 18-1748 (issued April 4, 2019); *T.H.*, 59 ECAB 388 (2008).

[13] *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *I.J.*, 59 ECAB 408 (2008); *A.D.*, 58 ECAB 149 (2006).

[14] *L.B.*, Docket No. 20-0462 (issued August 18, 2020).

[15] *L.G.*, Docket No. 20-0433 (issued August 6, 2020).

[16] *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[17] *Id*.

In his September 20, 2017 report, Dr. Lee discussed appellant's previous traumatic injury of TFCC tear and diagnose ulnar impaction, basal joint arthritis, some right thumb triggering and potential nerve issues, right middle finger triggering and de Quervain's tenosynovitis. He found that she was unable to perform her full duties without aggravating her underlying conditions. While Dr. Lee opined that appellant's diagnosed conditions were work-related, he did not provide rationale explaining his conclusion. 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/disability was related to employment factors.[18]

In notes dated October 2 through December 5, 2017 and January 8 and February 14, 2018, Dr. Lee repeated his findings, diagnoses, and continued recommendation for surgery. He did not provide a medical opinion that the diagnosed conditions were causally related to appellant's accepted employment factors.[19] Therefore, this evidence is insufficient to meet her burden of proof.

In notes dated July 3 through November 27, 2018 and January 29 through October 8, 2019, Dr. Lee provided medical diagnoses and restrictions on her work duties, but did not provide a medical opinion on causal relationship between appellant's diagnosed conditions and the accepted employment factors.[20] Accordingly, his reports are of no probative value and are insufficient to meet appellant's burden of proof to establish her occupational disease claim.

The remaining evidence of record consists of diagnostic testing reports. The Board has held, however, that diagnostic studies, standing alone, lack probative value on the issue of causal relationship as they do not address whether the accepted employment factors caused the diagnosed conditions.[21]

As appellant has not submitted sufficient rationalized medical evidence to establish causal relationship, the Board finds that she has not met her burden of proof to establish her occupational disease claim.

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.

[18] *See Y.D.*, Docket No. 16-1896 (issued February 10, 2017) (finding that a report is of limited probative value regarding causal relationship if it does not contain medical rationale describing the relation between work factors and a diagnosed condition/disability).

[19] *Id*.

[20] *Id*.

[21] *R.S.*, Docket No. 19-1774 (issued April 3, 2020); *J.P.*, Docket No. 19-0216 (issued December 13, 2019).

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a right upper extremity condition causally related to accepted factors of her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the October 10, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 24, 2022
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board