

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

T.P., Appellant

and

**U.S. POSTAL SERVICE, WESTWOOD POST
OFFICE, Kalamazoo, MI, Employer**

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**Docket No. 20-0970
Issued: June 16, 2022**

Appearances:

Alan J. Shapiro, Esq., for the appellant¹

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 April 1, 2020 appellant, through counsel, filed a timely appeal from a February 4, 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.

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 that the acceptance of her claim should be expanded to include the additional condition of complex regional pain syndrome (CRPS) as causally related to her accepted November 21, 2014 employment injury.

FACTUAL HISTORY

On November 21, 2014 appellant, then a 55-year-old sales and services distribution associate, filed a traumatic injury claim (Form CA-1) alleging that on that date she sustained fractures to her right fingers and thumb when a door struck her hand while in the performance of duty. She stopped work on November 21, 2014. On January 22, 2015 OWCP accepted the claim for open right distal phalanx fracture traumatic and extensor tendon laceration with resulting surgery. Appellant returned to full-time limited-duty work in January 2015, but was subsequently terminated by the employing establishment.

On February 27, 2015 Dr. Jeffrey C. King, a Board-certified hand surgeon, examined appellant's right thumb and found that her incisions were well healed and slightly hypersensitive. He observed that she lacked active or passive motion at the interphalangeal (IP) joint. On March 27, 2015 Dr. King found that appellant's skin was swollen and hypersensitive. He again examined her on November 2, 2015 and noted tenderness over the dorsal aspect of her thumb at the site of injury and shooting pains in the dorsal aspect of the thumb. Appellant also reported stiffness of her fingers and wrist as well as difficulty gripping. Dr. King found some hypersensitivity over the dorsal thumb, no active or passive motion of the IP joint, and that she was neurovascularly intact. He diagnosed arthrofibrosed IP joint of the right thumb.

On November 25, 2015 appellant filed a claim for compensation (Form CA-7) for a schedule award. In a May 19, 2016 note, Dr. King found that her incision was well healed with no swelling and that her fingernail had completely recovered. He related that appellant had no motion at the IP joint and limited range of motion of the metacarpophalangeal (MP) joint. Dr. King determined that she was neurovascularly intact.

Dr. Catherine Watkins Campbell, a Board-certified occupational medicine specialist, completed a report on June 9, 2016. She noted appellant's history of injury and medical treatment. Dr. Watkins Campbell opined that appellant met the criteria for CRPS as she had continued disproportionate pain, reported edema, vasomotor changes, and trophic changes in the right thumbnail. She opined that appellant had 25 percent permanent impairment of the left upper extremity due to CRPS.

By decision dated January 26, 2017, OWCP granted appellant a schedule award for six percent permanent impairment of her right digit "based on the accepted condition of fracture of [the] right thumb." Appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. Following a preliminary review, by decision dated June 27, 2017, OWCP's hearing representative vacated the January 26, 2017 decision and remanded the case for further consideration of her permanent impairment.

Upon return of the case record, by decision dated November 29, 2017, OWCP denied appellant's claim for an additional schedule award finding that she had no greater than six percent permanent impairment of her right thumb. Thereafter, through counsel, she requested an oral hearing, which was held on May 10, 2018. By decision dated June 13, 2018, an OWCP hearing representative set aside the November 29, 2017 OWCP decision and remanded the case for further development, including a second opinion evaluation regarding whether she had developed CRPS.

On August 1, 2018 OWCP referred appellant, a statement of accepted facts (SOAF) and a list of questions for a second opinion evaluation with Dr. Emmanuel Obianwu, a Board-certified orthopedic surgeon. In a September 10, 2018 report, Dr. Obianwu noted her history of injury and medical treatment. He further noted that there was concern about CRPS, but found that it was not present on examination. Dr. Obianwu reported that appellant had no motion in the IP joint, no hyperemia, hyperesthesia, hypersensitivity, excessive sweating, or swelling in the right thumb. He opined that she had 17 percent impairment of the thumb.

On March 8, 2019 OWCP referred appellant, a SOAF, and a series of questions to Dr. Jiab H. Suleiman, an osteopath, for a second opinion evaluation to determine whether appellant had CRPS causally related to the accepted employment injury and whether there was any disability or impairment resulting therefrom. In a report dated April 4, 2019, Dr. Suleiman noted her history of injury and reviewed the SOAF. He performed a physical examination and found that appellant had a well-healed incision on the dorsum of her right thumb, with no sign of changes in her capillary refill, no loss of skin sensation, no redness, and no coolness or cool sensation in any of her fingers. Dr. Suleiman found some hypersensitivity at the dorsum of her right thumb. He also noted a loss of range of motion. Dr. Suleiman opined that appellant had no signs of CRPS as her thumb sensation was intact.

In a June 5, 2019 letter, OWCP referred appellant, a SOAF, and a series of questions to Dr. Michael Grof, an osteopath and Board-certified neurologist, for an impartial medical examination to resolve the conflict of medical opinion evidence between Dr. Watkins Campbell for the appellant and Drs. Obianwu and Suleiman for the government regarding whether appellant developed CRPS.

Dr. Grof completed a report on July 17, 2019 and reviewed appellant's history of injury and medical history including Dr. Watkins Campbell's June 9, 2016 report. He noted that she described light burning dysesthesias in the radial distribution of her right forearm. Dr. Grof reported that touching appellant's right forearm produced a mild, disagreeable pain, but not CRPS. He found no discoloration and no temperature change, although she reported that her right hand was occasionally much colder than the left. Dr. Grof utilized a digital thermometer and established no difference in temperature. He found no sweat differences, dystrophic changes of hair, sudomotor changes in the skin or generalized hyperpathic sensory changes. Dr. Grof performed a neurological examination and found no hand atrophy, and bilaterally similar skin drag. He noted that appellant's perceived changes in sensation did not follow any one dermatomal abnormality and attributed this to her preexisting spinal cord injury and surgeries. Dr. Grof found no mononeuropathy by sensory examination in her right hand. He specifically addressed Dr. Watkins Campbell's findings of disproportionate pain, reported edema, vasomotor changes, and trophic changes in the right thumbnail in support of her diagnosis of CRPS.

Dr. Grof noted that the type of pain appellant described was more likely due to frozen shoulder, that her edema was not a legitimate finding to use for diagnosis of CRPS as there were no tropic changes and she had other reasons to explain this symptom, that the nail changes were not confirmed by other examiners, and that other diagnoses better explained her pain including previous cervical myelopathy and stiffness in her right upper extremity due to immobility, casting, slinging, and inflammatory tendinopathies. He noted his belief that she embellished her pain symptomatology. Dr. Grof concluded that appellant did not exhibit any evidence of CRPS.

By decision dated August 27, 2019, OWCP denied expansion of the acceptance of appellant's claim to include CRPS as causally related to her accepted November 21, 2014 employment injury.

By separate decision, also dated August 27, 2019, OWCP granted appellant a schedule award for an additional 11 percent right thumb permanent impairment. The award ran for 8.25 weeks during the period April 4 to May 31, 2019.

On September 3, 2019 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review regarding both August 27, 2019 OWCP decisions. A hearing was held on December 6, 2019.³

In a separate February 4, 2020 decision, OWCP's hearing representative denied appellant's request for expansion of the acceptance of her claim to include CRPS. It found that Dr. Grof's report was entitled to the special weight of the medical evidence as the impartial medical examiner (IME).

LEGAL PRECEDENT

When an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.⁴

To establish causal relationship between a condition and the employment event or factors, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background, supporting such a causal relationship.⁵ The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the

³ By decision dated February 4, 2020, OWCP's hearing representative set aside and remanded the August 27, 2019 schedule award decision for further development of the medical evidence.

⁴ *T.D.*, Docket No. 19-1506 (issued November 4, 2020); *S.L.*, Docket No. 19-0603 (issued January 28, 2020); *T.E.*, Docket No. 18-1595 (issued March 13, 2019); *T.F.*, Docket No. 17-0645 (issued August 15, 2018); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

⁵ *T.D.*, *id.*; *S.L.*, *id.*; *S.A.*, Docket No. 18-0399 (issued October 16, 2018).

relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁶

Section 8123(a) of FECA provides, in pertinent part: “If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.”⁷ This is called a referee examination and OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.⁸

Where a case is referred to an IME for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.⁹

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish that the acceptance of her claim should be expanded to include the additional condition of CRPS as causally related to her accepted November 21, 2014 employment injury.

OWCP properly found that a conflict in the medical opinion evidence existed regarding whether appellant’s CRPS was causally related to the accepted November 21, 2014 employment injury and referred appellant to Dr. Grof to serve as an IME, to resolve the conflict in medical opinion, pursuant to 5 U.S.C. § 8123(a).

The record reflects that Dr. Grof was provided with a SOAF, which listed the accepted conditions and noted appellant’s November 21, 2014 employment injuries of open right distal phalanx fracture traumatic and extensor tendon laceration with resulting surgery. He was also provided a series of questions which specifically requested that he provide medical rationale to support his opinion on the causal relation between her accepted employment injury and her additional diagnosis of CRPS.

In his July 17, 2019 report, Dr. Grof explained that, based on the medical record and examination, it was clear that appellant failed to meet the criteria for a diagnosis of CRPS. He described her symptoms and reported that touching her right forearm produced a mild, disagreeable pain, but not CRPS. Dr. Grof found no discoloration and no temperature discrepancy through utilization of a digital thermometer. He found no sweat differences, dystrophic changes of hair, sudomotor changes in the skin, or generalized hyperpathic sensory changes. Dr. Grof specifically addressed Dr. Watkins Campbell’s findings of disproportionate pain, reported edema,

⁶ *M.M.*, Docket No. 19-0061 (issued November 21, 2019); *P.M.*, Docket No. 18-0287 (issued October 11, 2018).

⁷ 5 U.S.C. § 8123(a).

⁸ *K.C.*, Docket No. 19-1251 (issued January 24, 2020); *R.M.*, Docket No. 18-1621 (issued August 23, 2019); *R.C.*, 58 ECAB 238 (2006).

⁹ See *S.N.*, Docket No. 21-0070 (issued March 9, 2022); *D.S.*, Docket No. 19-1698 (issued June 18, 2020); *K.C.*, *id.*; *V.K.*, Docket No. 18-1005 (issued February 1, 2019).

vasomotor changes, and trophic changes in the right thumbnail in support of her diagnosis of CPRS and provided detailed reasoning for his disagreement with each of these findings as well as her concluding diagnosis.

In situations where the case is referred to an IME for the purpose of resolving a medical conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.¹⁰ The Board finds that Dr. Grof provided a well-rationalized opinion based on a complete background, his review of the SOAF, the medical record, and his examination findings. Thus, Dr. Grof's opinion that addition condition of CRPS is not causally related to appellant's accepted November 21, 2014 employment injury is entitled to the special weight of the medical evidence.¹¹

The Board therefore finds that appellant has not submitted sufficient rationalized medical evidence to establish that the acceptance of her claim should be expanded to include CRPS as causally related to her accepted November 21, 2014 employment injury.

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.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that the acceptance of her claim should be expanded to include the additional condition of CRPS as causally related to her accepted November 21, 2014 employment injury.

¹⁰ *Id.*

¹¹ *See D.S.*, Docket No. 18-0353 (issued February 18, 2020); *L.D.*, Docket No. 15-0220 (issued August 5, 2015).

ORDER

IT IS HEREBY ORDERED THAT the February 4, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 16, 2022
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