United States Department of Labor
Employees' Compensation Appeals Board

W.L., Appellant	)	
and	)	**Docket No. 22-1192**
	)	**Issued: April 10, 2023**
DEPARTMENT OF THE AIR FORCE, U.S. AIR FORCES IN EUROPE, ROYAL AIR FORCE BASE MILDENHALL, England, Employer	)	

Appearances:
Alan J. Shapiro, 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
JANICE B. ASKIN, Judge

JURISDICTION

On August 12, 2022 appellant, through counsel, filed a timely appeal from an August 4, 2022 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 a left wrist condition causally related to the accepted May 11, 2016 employment incident.

FACTUAL HISTORY

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

On June 15, 2016 appellant, then a 42-year-old lead child development program technician, filed a traumatic injury claim (Form CA-1), alleging that on May 11, 2016 a child punched her on her left wrist through a wrist splint she was wearing due to a prior injury while in the performance of duty.[4] OWCP assigned OWCP File No. xxxxxx798. Appellant stopped work on May 11, 2016.

By decision dated August 3, 2016, OWCP denied appellant's May 11, 2016 traumatic injury claim, finding that the medical evidence of record was insufficient to establish a medical condition causally related to the accepted employment incident. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

Dr. Joshua Y. Young, a Board-certified orthopedic surgeon, treated appellant on August 18, 2016 for possible ulnar impaction syndrome of the left wrist. He noted a history of two left wrist injuries occurring at work on April 11, 2016 and another occurring at an unspecified date. Dr. Young diagnosed left wrist pain and recommended a wrist arthroscopy. In reports dated September 19 and October 13 and 28, 2016, he treated appellant in surgical aftercare, noting that she was status post left wrist arthroscopy and ulnar shortening osteotomy.

On November 22, 2016 Dr. Young performed a left forearm hardware removal, ulnar neurolysis and diagnosed left ulnar nerve palsy. He treated appellant postoperatively on January 23 and March 13, 2017 and noted a history of work injuries occurring on April 11 and May 11, 2016. An x-ray revealed interval healing with some callus formation.

In a June 15, 2017 memorandum, Dr. Young reported treating appellant since August 18, 2016 for two left wrist injuries. On July 1, 2017 he asserted that the injuries she sustained on April 11 and May 11, 2016 were related and both occurred at work. Dr. Young diagnosed soft tissue triangular fibrocartilage complex (TFCC) tear. He opined that it was the cumulative effect of both injuries.

On July 18, 2017 appellant requested reconsideration.

[3] Docket No. 20-1589 (issued August 26, 2021); Docket No. 19-0396 (issued May 18, 2020).

[4] OWCP had previously accepted that appellant had sustained a left wrist sprain on April 11, 2016 when emptying a water table into a sink while in the performance of duty. It assigned OWCP File No. xxxxxx799.

By decision dated October 16, 2017, OWCP denied modification of its August 3, 2016 decision.

On September 13, 2018 appellant requested reconsideration. She submitted an August 14, 2018 report from Dr. Young, who treated her for a symptomatic traumatic TFCC tear. Dr. Young opined that the two work injuries in 2016 were the direct cause of her wrist pain and surgery. He advised that, although ulnar positive variance may predispose appellant to a wrist injury, it was the two injuries themselves that caused pain and disability.

By decision dated October 24, 2018, OWCP denied modification of the October 16, 2017 decision.

Appellant submitted an electromyogram (EMG) and nerve conduction velocity (NCV) study dated September 26, 2018.

On December 13, 2018 appellant appealed to the Board.[5] By decision dated May 18, 2020, the Board set aside the October 24, 2018 decision and remanded the case for OWCP to administratively combine OWCP File Nos. xxxxxx798 and xxxxxx799, to be followed by a *de novo* decision.

Upon return of the case record, OWCP administratively combined OWCP File Nos. xxxxxx799 and xxxxxx798, with OWCP File No. xxxxxx798 designated as the master file.

While the appeal was pending before the Board, appellant submitted a report from Dr. Aaron M. McGuire, an osteopath and Board-certified physiatrist, who diagnosed left wrist sprain, ulnar impaction syndrome, TFCC tear at the ulnar attachment, and axonal ulnar mononeuropathy. Dr. McGuire described two employment incidents, one that occurred on April 11, 2016 when she was emptying water out of a sensory table and twisted her left wrist resulting in a diagnosis of acute sprain. He further noted that a second injury occurred on May 12, 2016 when appellant was dealing with an unruly child who punched her in the right wrist. Dr. McGuire opined to a reasonable degree of medical certainty, that her injuries arose out of and are a direct result of the work-related injury she sustained on April 11, 2016 with a secondary injury on May 12, 2016.

By decision dated July 17, 2020, OWCP denied modification.

On September 4, 2020 appellant, through counsel, appealed to the Board.[6] By decision dated August 26, 2021, the Board affirmed OWCP's July 17, 2020 decision.

OWCP subsequently received additional evidence. An EMG/NCV study dated August 19, 2020 revealed left dorsal ulnar cutaneous neuropathy.

On December 17, 2020 Dr. Henry Leis, a Board-certified orthopedist, performed a left wrist open scapholunate ligament reconstruction and left wrist posterior and anterior interosseous

[5] *Supra* note 3.

[6] *Supra* note 3.

neurectomy and diagnosed left wrist scapholunate ligament rupture. The pathology report revealed benign nerve and fibroadipose tissue.

On May 17, 2022 appellant, through counsel, requested reconsideration.

In support thereof, appellant submitted a report dated December 31, 2021, wherein Dr. M. Stephen Wilson, a Board-certified orthopedist, noted his evaluation of her for a left wrist and ulnar nerve injury that occurred at work. She reported that on April 11, 2016 while emptying water from a sensory table she twisted her left wrist. Subsequently, on May 11, 2016 while at work appellant was dealing with an unruly child when she was punched in the left wrist.[7] Dr. Wilson noted that she underwent left wrist arthroscopy with ulnar shortening osteotomy on September 13, 2016 and left forearm hardware removal and ulnar neurolysis on November 22, 2016. He diagnosed left wrist sprain, ulnar impaction syndrome, TFCC tear at the ulnar attachment, and axonal ulnar mononeuropathy. Dr. Wilson opined that appellant sustained a significant injury to the left upper extremity (TFCC tear and ulnar nerve) due to the injuries she sustained throughout and in the course of her employment at the employing establishment. He further opined that based upon a reasonable degree of medical certainty the sole and major cause of the injury and the need for treatment to the left upper extremity was directly related to the employment incidents on April 11 and May 11, 2016.

By decision dated August 4, 2022, OWCP denied modification.

LEGAL PRECEDENT

An employee seeking benefits under FECA[8] 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,[9] 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.[10] 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.[11]

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.

[7] Dr. Wilson initially noted "right" wrist. However, this appears to be a typographical error as the remainder of his report consistently referenced only the left wrist.

[8] *Supra* note 2.

[9] *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).

[10] *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).

[11] *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).

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. Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.[12]

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.[13] 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 incident identified by the employee.[14]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a left wrist condition causally related to the accepted May 11, 2016 employment incident.

Initially, the Board notes that it is unnecessary to consider the evidence appellant submitted prior to the issuance of OWCP's July 17, 2020 decision, which was considered by the Board in its August 26, 2021 decision. Findings made in prior Board decisions are *res judicata* absent further merit review by OWCP under section 8128 of FECA.[15]

In a report dated December 31, 2021, Dr. Wilson diagnosed left wrist sprain, ulnar impaction syndrome, TFCC tear at the ulnar attachment, and axonal ulnar mononeuropathy. He noted a history of injury on April 11, 2016 while emptying water from a sensory table appellant twisted her left wrist. Dr. Wilson further noted that on May 11, 2016 while at work she was dealing with an unruly child she was punched in the left wrist. He opined that based upon a reasonable degree of medical certainty the sole and major cause of the injury and the need for treatment to the left upper extremity was directly related to the April 11 and May 11, 2016 employment incidents. However, 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 was causally related to the accepted employment incident.[16] This conclusory opinion is, therefore, insufficient to establish appellant's claim.

[12] *T.J.*, Docket No. 19-0461 (issued August 11, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

[13] *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

[14] *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[15] *C.M.*, Docket No. 19-1211 (issued August 5, 2020); *Clinton E. Anthony, Jr.*, 49 ECAB 476 (1998).

[16] *See Y.D.*, Docket No. 16-1896 (issued February 10, 2017) (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).

On December 17, 2020 Dr. Leis performed a left wrist open scapholunate ligament reconstruction and left wrist posterior and anterior interosseous neurectomy and diagnosed left wrist scapholunate ligament rupture. However, he did not provide an opinion on causal relationship between appellant's diagnosed conditions and the accepted May 11, 2016 employment incident. The Board has held that a medical report that does not offer an opinion on causal relationship is of no probative value.[17] Therefore, this report is also of no probative value and is insufficient to establish the claim.

Appellant also submitted an EMG/NCV study. The Board, however, has held that diagnostic test reports, standing alone, lack probative value on the issue of causal relationship as they do not provide an opinion as to whether the accepted employment incident caused a diagnosed condition.[18] This diagnostic report is, therefore, also insufficient to establish appellant's claim.

As the medical evidence of record is insufficient to establish a left wrist condition causally related to the accepted May 11, 2016 employment incident, the Board finds that appellant has not met her burden of proof to establish her 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.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a left wrist condition causally related to the accepted May 11, 2016 employment incident.

[17] *T.M.*, Docket No. 21-1310 (issued March 7, 2022); *K.F.*, Docket No. 19-1846 (issued November 3, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[18] *A.P.*, Docket No 18-1690 (issued December 12, 2019).

ORDER

IT IS HEREBY ORDERED THAT the August 4, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 10, 2023
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board