United States Department of Labor
Employees' Compensation Appeals Board

A.M., Appellant	)	
and	)	**Docket No. 23-0076**
	)	**Issued: December 12, 2023**
U.S. POSTAL SERVICE, POST OFFICE, St. Louis, MO, Employer	)	

Appearances:
Daniel M. Goodkin, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On October 21, 2022 appellant, through counsel, filed a timely appeal from an April 27, 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 an upper extremity condition causally related to the accepted August 25, 2020 employment incident.

FACTUAL HISTORY

On August 25, 2020 appellant, then a 35-year-old general expeditor, filed a traumatic injury claim (Form CA-1) alleging that on August 25, 2020 she developed a traumatic injury in the palms of her hands due to building a box while in the performance of duty. She did not stop work.

In an undated letter, appellant related that she was treated in the emergency room and was provided with ice packs, wrist splints, and anti-inflammatory medication. She received information on carpal tunnel syndrome (CTS) and was cleared to return to work on August 27, 2020.

In an August 25, 2020 statement, appellant related that at approximately 2:20 a.m. that day, she experienced pain in her hands and forearms while setting up boxes and thereafter asked her supervisor for documentation to see a physician. After providing her supervisor with an account of the injury, the supervisor asserted that appellant's injury was not job related.

In an August 25, 2020 statement, an employing establishment supervisor, T.J., noted that appellant approached her between 2:30 a.m. and 3:30 a.m. to report pain in her hand and request medical forms, but showed no signs of injury. She noted that appellant initially responded that her hands were just hurting when asked whether she hurt herself on the job. Appellant was advised that was not a work injury and asserted that she had pain in her hands as a result of assembling boxes at work.

In a statement also dated August 25, 2020, T.W., an employing establishment supervisor, controverted the claim, noting that appellant had informed her direct supervisor that she was experiencing pain in her hands due to building boxes. T.W. subsequently spoke with appellant, who related that she felt pain when bending her wrist or moving her fingers, but she could not demonstrate how she injured herself while building boxes.

Encounter notes dated August 25, 2020 from Ashley Altman, a nurse practitioner, noted that appellant presented with complaints of bilateral wrist pain that began at 2:00 a.m. while assembling boxes at work. Appellant described the pain as shooting and originating at the volar aspect of her wrists, traveling up to her elbows, and reported having similar symptoms approximately five years ago that were never treated. Ms. Altman performed a physical examination and diagnosed bilateral wrist pain, acute radial nerve palsy, unspecified laterality, and ulnar nerve palsy. In a work status note of even date, she held appellant off work until August 27, 2020.

In a February 3, 2021 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed to establish her claim and afforded her 30 days to submit the necessary evidence.

Thereafter, appellant submitted a February 24, 2021 visit note wherein Dr. Raymond Leung, an internist, found that she had possible CTS and recommended that she undergo electrodiagnostic testing, schedule a follow up with her primary physician, and continue to wear braces. Dr. Leung also prescribed medication.

By decision dated March 18, 2021, OWCP accepted that the August 25, 2020 employment incident occurred as alleged. However, it denied appellant's claim, finding that the medical evidence of record was insufficient to establish a diagnosed medical condition in connection with the accepted employment incident. Consequently, OWCP found that appellant had not met the requirements to establish an injury as defined by FECA.

Appellant continued to submit evidence, including additional February 24, 2021 visit notes from Dr. Leung, who related that she complained of pain in her hands and wrists from an August 25, 2020 work injury.

On February 24, 2022 appellant, through counsel, requested reconsideration of the March 18, 2021 decision and submitted additional evidence.

A July 12, 2019 report of electromyography and nerve conduction velocity (EMG/NCV) study revealed mild right-sided sensory demyelinating median neuropathy.

In an April 28, 2021 statement, appellant related that she began working for the U.S. Postal Service in June 2011 and worked six to seven days per week, in 9- to 10-hour overnight shifts, sometimes longer. Until 2015, half of her shift was spent sorting letters in trays by turning each letter right side up. Appellant's position involved fast-paced walking on concrete floors to retrieve mail containers, carrying them to elevators, sweeping mail from machines, overhead lifting, as well as placing, pushing, and pulling items and heavy equipment. After approximately one year, she began experiencing sharp pain through the center of her hands and wrists. By 2015, appellant transferred to a retail and distribution station where she worked 40- to 50-hour workweeks and was requested to work overtime. The position involved less strain on her hands and body and her pain became less frequent and intense, though it never ceased. After one year in her new position, appellant began to experience a different type of hand pain due to new repetitive motions, including sorting large and small packages into containers for each route. She asserted that her duties at the retail counter included accepting, lifting, and sorting packages over the counter, which wore on the condition of her hands and wrists/forearms. Appellant related that she would toss packages using a frisbee-style motion or a basketball-toss motion and would hand-carry heavier items to containers and trucks for transport. Each day she received pallets of packages for sorting and distribution, which doubled during the holiday season.

Appellant explained that in April 2020 she was required to return to the warehouse/factory facility as an expediter and was responsible for printing, scanning, labeling, and radio/walkie-talkie use. Subsequently, she was removed from those duties and returned to work as a mail handler, which involved heavy lifting and repetitive motions, including assembling industrial-sized boxes by folding the bottoms so that the boxes would not collapse and then placing the boxes onto large, heavy plastic pallets. The pallets were stacked on top of one another, requiring appellant to lift and place them onto the floor for loading. She performed this task repetitively for hours, filled the

boxes with mail, and helped move the boxes with a hand jack. Additionally, appellant sorted and placed heavy bundles of magazines and mail weighing 5 to 10 pounds into the boxes.

In a January 6, 2022 report, Dr. Richard Howard, a Board-certified orthopedic surgeon, noted that appellant presented with complaints of bilateral hand pain, CTS, and trigger finger. He related that she was employed with the employing establishment as a clerk for nine years and performed repetitive handling of mail and assembling boxes, which brought about her symptoms including the inability to bend her right thumb, which was locked in extension. Dr. Howard further noted that appellant reported that in 2015 she began having problems with pain, occasional numbness, and tingling in the fingers in both hands, which she attributed to assembling boxes and retrieving cases of mail for long periods of time. He performed a physical examination and diagnosed bilateral CTS and right trigger thumb. Dr. Howard indicated that repetitive, grip-intensive duties are known to be associated with development of CTS and trigger finger and opined that appellant's duties were contributing causative factors in the development of her diagnosed conditions. He concluded that her work was a significant factor in the development of her conditions and noted that she did not have any major risk factors for CTS, other than being female and middle-aged. Dr. Howard related that she currently had limited use of her right thumb and could resume full-time work without restrictions after she underwent trigger thumb release.

In a February 16, 2022 note, Dr. Howard acknowledged receiving a copy of appellant's July 12, 2019 NCV study, which was positive for mild right CTS. He related that the study did not have a significant impact on his prior opinion, but it did provide electrodiagnostic evidence of CTS in 2019, which had likely progressed when he examined appellant on January 6, 2022. Dr. Howard asserted that his opinion remained unchanged and that the 2019 study confirmed his previous impressions.

By decision dated April 27, 2022, OWCP modified its March 18, 2021 decision to find that the evidence of record was sufficient to establish diagnoses of bilateral CTS and right thumb trigger finger in connection with the accepted August 25, 2020 employment incident. The claim remained denied, however, as the medical evidence of record was insufficient to establish causal relationship between appellant's diagnosed conditions and the accepted August 25, 2020 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] 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,[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

[3] *Id*.

[4] *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).

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 first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. The first component is whether the employee actually experienced the employment incident at the time and place, and in the manner alleged. The second component is whether the employment incident caused an injury.[7]

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident 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 the specific employment incident identified by the claimant.[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 appellant has not met her burden of proof to establish a medical condition causally related to the accepted August 25, 2020 employment incident.

In his January 6, 2022 report, Dr. Howard noted that appellant reported that her job duties required repetitive handling of mail and assembling boxes, which brought about her symptoms including the inability to bend her right thumb, which was locked in extension. He diagnosed bilateral CTS and right trigger thumb, and noted that repetitive, grip-intensive duties are known to be associated with development of CTS and trigger finger. Dr. Howard opined that appellant's work duties were significant contributing causative factors in the development of her diagnosed conditions. In his February 16, 2022 note, he indicated that the July 12, 2019 EMG/NCV did not

[5] *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).

[6] *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).

[7] *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

[8] *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).

[9] *A.S.*, Docket No. 19-1955 (issued April 9, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

[10] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); *R.D.*, Docket No. 18-1551 (issued March 1, 2019).

have a significant impact upon his previously stated opinions. Dr. Howard did not, however, provide a rationalized explanation of how the accepted August 25, 2020 employment incident caused or contributed to the diagnosed conditions. The Board has held that medical evidence which does not provide a rationalized explanation regarding causal relationship between the diagnosed condition and the specific employment incident is of limited probative value.[11] As such, this evidence is insufficient to establish the claim.

In his February 24, 2021 notes, Dr. Leung diagnosed CTS due to a work injury. However, he similarly failed to explain a pathophysiological process of how the accepted August 25, 2020 employment incident caused or contributed to the diagnosed condition.[12] As such, this evidence is also insufficient to establish the claim.

Appellant also submitted August 25, 2020 encounter notes by Ms. Altman, a nurse practitioner. Certain healthcare providers such as physician assistants, nurse practitioners, and physical therapists are not considered qualified physicians as defined under FECA.[13] Their medical findings, reports and/or opinions, unless cosigned by a qualified physician, will not suffice for purposes of establishing entitlement to FECA benefits.[14] As these reports were not cosigned by a physician, they are of no probative value and, thus, insufficient to establish appellant's claim.[15]

The remaining evidence of record consisted of an EMG/NCV study dated July 12, 2019. The Board has held that diagnostic studies, standing alone, lack probative value on the issue of causal relationship as they do not address whether the accepted employment injury caused any of the additional diagnosed conditions.[16]

As appellant has not submitted rationalized medical evidence to establish a medical condition causally related to the accepted August 25, 2020 employment incident, the Board finds that she has not met her burden of proof.

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.

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[11] *Id*.

[12] *Id*.

[13] Section 8101(2) of FECA provides that physician "includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law." 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). *J.D.*, Docket No. 21-0164 (issued June 15, 2021) (nurse practitioners are not physicians as defined under FECA; *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA).

[14] *See K.A.*, Docket No. 18-0999 (issued October 4, 2019); *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, *id*.

[15] *Id*.

[16] *F.D.*, Docket No. 19-0932 (issued October 3, 2019); *J.S.*, Docket No. 17-1039 (issued October 6, 2017).

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a medical condition causally related to the accepted August 25, 2020 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the April 27, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 12, 2023
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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