

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

T.L., Appellant)

and)

DEPARTMENT OF VETERANS AFFAIRS,)
VETERANS BENEFITS ADMINISTRATION,)
Chicago, IL, Employer)

Docket No. 23-0073
Issued: January 9, 2023

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On October 21, 2022 appellant filed a timely appeal from an August 12, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

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

On February 28, 2022 appellant, then a 58-year-old rating veterans service representative (RVSR), filed an occupational disease claim (Form CA-2) alleging that she developed right-sided

¹ 5 U.S.C. § 8101 *et seq.*

de Quervain's tenosynovitis due to factors of her federal employment, including typing for eight hours per day while processing veteran benefit claims. She noted that she first became aware of her condition on December 27, 2021 and realized its relationship to her federal employment on February 7, 2022. Appellant did not stop work.

In an undated statement, appellant related that she first noticed pain in her right wrist during the third week of December 2021, which she attributed to her work duties, including typing for eight hours per day plus mandatory overtime. She indicated that she sought treatment with an outpatient clinic, a chiropractor, orthopedics, and Dr. Diana Chicos, a Board-certified internist, who had previously treated her for left wrist carpal tunnel syndrome.²

OWCP also received various illegible medical notes.

In a March 4, 2022 development letter, OWCP informed appellant that the evidence of record was insufficient to establish 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 submit the necessary evidence.

In a March 11, 2022 response to OWCP's questionnaire, appellant outlined her work history with the employing establishment, which included working as a clerk typist from 1985 until 1993, a claims examiner from 1993 through November 2010, and an RVSR from November 2010 until the present. She explained that the physical demands of each position included typing and repetitive use of her right hand and wrist for eight hours per day, five days per week, and mandatory overtime. Appellant indicated that, in December 2021, she noticed intense pain in her right wrist and thumb and had difficulty picking up objects. She first sought medical treatment on December 27, 2021 for her symptoms and was referred to a hand specialist, who performed a steroid injection into her right wrist. Appellant related that the injection did not alleviate her symptoms.

In a March 18, 2022 narrative report, Dr. Harriet Mae Chan, a chiropractor, noted that appellant related complaints of sharp, shooting pain in her right wrist and thumb. She indicated that her physical examination findings included positive Finkelstein's test and tenderness with palpation along the tendons of the thumb, wrist, and forearm extensor muscles. Dr. Chan diagnosed de Quervain's tenosynovitis and recommended chiropractic modalities and work restrictions. She opined that repetitive movements and continued computer work caused appellant's injury.

In a letter dated March 24, 2022, the employing establishment controverted appellant's occupational disease claim, citing a lack of rationalized medical evidence to establish causal relationship.

OWCP also received an additional medical report, which was illegible.

² Appellant has a previously accepted occupational disease claim for left shoulder, ulnar, and forearm strains, left ulnar compression, left flexor tendinitis, and left shoulder bursitis sustained on January 1, 1999 under OWCP File No. xxxxxx909. OWCP has not administratively combined these claims.

By decision dated April 7, 2022, OWCP denied appellant's claim, finding that there was no diagnosed medical condition in connection with the accepted employment factors. Consequently, it concluded that she had not met the requirements to establish an injury as defined by FECA.

OWCP continued to receive medical evidence including a December 27, 2021 visit summary by Dr. Marc R. Spiller, a Board-certified emergency medicine specialist, who diagnosed "de Quervain's tenosynovitis, right" and recommended using ice and a splint at night.

In a January 17, 2022 medical report, Dr. William Vitello, a Board-certified orthopedic and hand surgeon, noted that appellant related complaints of constant aching pain in the right hand that radiated to the right wrist for the past month. He performed a physical examination of the right wrist, which revealed focal pain with tenderness and marked edema over the first dorsal compartment and a positive Finkelstein's test. Dr. Vitello diagnosed de Quervain's tenosynovitis and performed a right extensor compartment injection and arthrocentesis.

In an April 1, 2022 visit summary, Dr. Chicos diagnosed de Quervain's tenosynovitis of the right hand, left-sided neck pain, and osteoarthritis of the cervical spine.

In an April 1, 2022 note, Dr. Chicos responded to various questions and noted that she evaluated appellant on January 8 and April 1, 2022 for symptoms of right wrist and thumb pain with decreased grip. She diagnosed right wrist tenosynovitis and opined that typing for eight hours per day was "the aggravating condition."

In an April 12, 2022 narrative, also in response to various questions, Dr. Vitello diagnosed right-sided de Quervain's tenosynovitis. Regarding whether his opinion "was supported by a medical explanation on work activities," he responded "none, the patient was only evaluated once on January 17, 2022."

Appellant also submitted an additional statement dated April 25, 2022 describing her medical treatment. She attached various illegible medical records.

On April 30, 2022 appellant requested review of the written record by a representative of OWCP's Branch of Hearings and Review.

OWCP thereafter received an unsigned January 17, 2022 note from the office of Dr. Vitello, which noted a diagnosis of de Quervain's tenosynovitis.

By decision dated August 12, 2022, OWCP's hearing representative modified the April 7, 2022 decision, finding that the medical evidence established a diagnosed medical condition. However, the claim remained denied as the medical evidence did not establish a causal relationship between the diagnosed medical condition and the accepted employment factors.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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 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 that the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time and place, and in the manner alleged. The second component is whether the employment incident caused a personal injury and can be established only by medical evidence.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 specific employment factors identified by the employee.⁹

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 employment factors.

³ *Supra* note 1.

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).

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 *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).

In support of her claim, appellant submitted an April 1, 2022 visit summary and narrative letter by Dr. Chicos, who noted that she evaluated appellant on January 8 and April 1, 2022 for symptoms of right wrist and thumb pain with decreased grip. Dr. Chicos diagnosed right wrist tenosynovitis and opined that typing for eight hours per day was “the aggravating condition.” However, she did not explain a pathophysiological process of how the accepted employment factors caused or contributed to the diagnosed condition. The Board has held that a medical opinion should offer a medically-sound and rationalized explanation by the physician of how the specific employment incident physiologically caused or aggravated the diagnosed conditions.¹⁰ Medical evidence, which does not explain the nature of the relationship between the diagnosed condition and the specific employment incident, is insufficient to meet the claimant’s burden of proof.¹¹ As such, Dr. Chicos’ April 1, 2022 reports are insufficient to meet appellant’s burden.

In his January 17, 2022 medical report and prescription blank and April 12, 2022 narrative letter, Dr. Vitello diagnosed right-sided de Quervain’s tenosynovitis, but did not provide an opinion as to the cause of the condition. 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 on the issue of causal relationship.¹² Therefore, the reports of Dr. Vitello are insufficient to meet appellant’s burden of proof.

Appellant also submitted a report by Dr. Chan, a chiropractor, which did not contain a diagnosis of subluxation. Section 8101(2) of FECA provides that the term physician, as used therein, includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation, as demonstrated by x-ray to exist and subject to regulation by the Secretary.¹³ Thus, Dr. Chan’s report is of no probative value on the relevant issue of causal relationship as she is not considered a physician as she did not diagnose a subluxation based on the results of an x-ray.¹⁴

The remaining medical evidence of record consisted of illegible medical notes and reports. Reports that are unsigned or illegible cannot be considered probative medical evidence because

¹⁰ See *V.D.*, Docket No. 20-0884 (issued February 12, 2021); *Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

¹¹ *Id.*

¹² *D.C.*, Docket No. 19-1093 (issued June 25, 2020); see *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹³ See 20 C.F.R. § 10.311; *L.C.*, Docket No. 18-1707 (issued April 3, 2019); *M.B.*, Docket No. 17-1378 (issued December 13, 2018).

¹⁴ See 5 U.S.C. § 8101(2) of FECA provides as follows: (2) physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. The term physician includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulation by the secretary. See *M.B.*, *id.*; *Merton J. Sills*, 39 ECAB 572, 575 (1988).

they lack proper identification¹⁵ as the author cannot be identified as a physician.¹⁶ Thus, these reports have no probative value and are insufficient to establish the claim.

As appellant has not submitted rationalized medical evidence establishing causal relationship between her diagnosed medical condition and the accepted employment factors, the Board finds that she 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 10.607.15.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the August 12, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 9, 2023
Washington, DC

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

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

¹⁵ *W.L.*, Docket No. 19-1581 (issued August 5, 2020).

¹⁶ *D.T.*, Docket No. 20-0685 (issued October 8, 2020); *Merton J. Sills*, *supra* note 14.