United States Department of Labor
Employees' Compensation Appeals Board

Z.G., Appellant	)	
and	)	**Docket No. 22-0484**
	)	**Issued: March 15, 2023**
DEPARTMENT OF HEALTH & HUMAN SERVICES, INDIAN HEALTH SERVICES, Shiprock, NM, Employer	)	

Appearances:
Appellant, pro se
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 February 7, 2022 appellant filed a timely appeal from January 6, 2022 merit decisions of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. § § 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant has met her burden of proof to establish entitlement to continuation of pay (COP); and (2) whether appellant has met her burden of proof to establish expansion of the acceptance of the claim to include left cubital tunnel syndrome, left ulnar compression, and left neuritis as causally related to the accepted January 9, 2017 employment injury.

[1] 5 U.S.C. § 8101 *et seq*.

FACTUAL HISTORY

On November 22, 2021 appellant, then a 52-year-old social worker, filed a traumatic injury claim (Form CA-1) alleging that on January 9, 2017 she sustained nerve damage in her left arm when she pushed on a gate and the gate snapped back against her left arm, while in the performance of duty. She alleged that her condition worsened when she was required to lift heavy cases of water in the summer of 2020, and that she now required surgical treatment. Appellant's supervisor controverted the claim and indicated that appellant continued working full time, after the reported injury on January 9, 2017.

A January 11, 2017 x-ray of appellant's left elbow read by Dr. Brian D. Demby, Board-certified in diagnostic radiology, showed no acute fracture or dislocation and no acute osseous abnormality.

In a January 12, 2017 progress note, Dr. Richard T. Caldwell, Board-certified in family practice and sports medicine, noted that appellant had an injury that Monday while at work when she sustained a pulled left elbow and medial discomfort. He also related that her condition had improved as she could now flex and extend the elbow. Dr. Caldwell diagnosed a strain of the muscle and/or tendon of the left elbow. On January 18, 2017 he reviewed an x-ray of appellant's left elbow and found normal findings.

A July 20, 2020 progress report indicated that appellant had a visit that day with Dr. William H. Kim, a family medicine specialist. Dr. Kim noted that she had complaints of left arm/hand weakness, it was hard for her to open doors, she could not turn a key and could not button her pants. He assessed weakness of left hand, no sensory deficit, primarily motor deficit, and referred appellant for an electromyography (EMG) scan. In an August 6, 2020 treatment note, Dr. Kim found electrophysiologic evidence of subacute left ulnar nerve compromise, very mild focal demyelination of the right ulnar nerve, and mild left nerve medial compromise at the wrist involving myelin and affecting sensory and motor fibers.

In an August 14, 2020 treatment note, Dr. Paulette Galbraith, Board-certified in family practice, diagnosed ulnar neuropathy of the left arm and type 2 diabetes mellitus. In a separate note also dated August 14, 2020, she noted electrophysiologic evidence of subacute ulnar nerve compromise involving motor fibers, suggestive of a partial conduction block, not able to precisely localize, slowing most apparent across the elbow, but most significant amplitude drop below the elbow and wrist. Dr. Galbraith also noted evidence of possible very mild focal demyelination of the right ulnar nerve at the elbow, involving motor fibers, and evidence of mild left median nerve compromise at the wrist, affecting sensory, and motor fibers. In an addendum report also dated August 14, 2020, she noted that appellant related that she had been having weakness in the left arm for a few months and was going to physical therapy.

In a March 29, 2021 treatment note, Dr. Preyanka Makadia, an osteopathic physician Board-certified in family medicine, noted that appellant was diagnosed with uncontrolled diabetes mellitus and complained of severe left hand weakness worsening over the past year. She noted that appellant had pain and weakness and could not hold things in her hand. Dr. Makadia diagnosed left ulnar neuritis, severe, consistent with uncontrolled type 2 diabetes mellitus, and possible cubital tunnel syndrome.

OWCP received physical and occupational therapy reports dated August 25 and September 3, 22, and 30, 2020.

In a May 10, 2021 report, April Messinger, a certified physician assistant, noted assessments of severe left ulnar neuritis, consistent with uncontrolled diabetes mellitus, and likely cubital tunnel syndrome. In a June 21, 2021 progress note, she related that appellant was status three months post left cubital tunnel injection. Ms. Messinger indicated that the injection had relieved most of appellant's left-hand pain, but that her symptoms had returned. She indicated a diagnosis of left cubital tunnel syndrome, which had not significantly improved with conservative management.

In a December 1, 2021 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of medical evidence necessary to establish her claim and attached a questionnaire for her completion. OWCP noted that there was no indication of any ongoing medical care from January 23, 2017 to July 19, 2020, for any left arm residuals of the claimed injury. It afforded appellant 30 days to submit the necessary evidence. In a separate letter of even date, OWCP requested that the employing establishment confirm when written notice of the claimed injury was received.

Thereafter OWCP received notes from Justin Ritter, a registered nurse, dated January 11, 2017, which related that appellant was seen in the emergency room for left elbow pain of two days duration.

In December 6, 2021 statement, appellant explained that she was injured on January 9, 2017 and she was advised by her Director, R.W., to file a web incident report. She related that she contacted him again on January 11, 2017 and he told her to go to the emergency room, where an x-ray was taken of her left elbow, which revealed no broken bones. Appellant noted that the emergency room x-ray was documentation that she hurt her left arm on the job on January 9, 2017. She also noted that in 2017 she saw her physician, Dr. Kim and also told him about the pain in her left arm. Appellant related that, during the COVID-19 pandemic, the employing establishment relocated and she had to deliver cases of water to employees stationed outside. At that time, she again experienced problems with her left arm. Appellant explained that there was a note indicating that she had problems beginning in April 2020, that she believed that she followed the correct procedure to contact her supervisor, and that she thought that she had properly filed the web incident report. A copy of the web incident report was enclosed. In a December 14, 2021 statement, appellant reiterated that she injured her arm on January 9, 2017 and that, by April 2020, her arm was aching and losing strength.

In December 7, 2021 correspondence, R.W., a retired employee of the employing establishment, indicated that he remembered that appellant injured her arm a couple years before he retired. He related that he informed her to fill out a web incident report and also a traumatic injury report. R.W. indicated that appellant continued to have problems with her arm.

OWCP received a December 1, 2021 note from Ms. Messinger. Ms. Messinger indicated that appellant had left cubital tunnel syndrome. She also related that appellant would like to pursue cubital tunnel release/ulnar nerve transposition, after another injection.

By decision dated January 6, 2022, OWCP accepted appellant's claim for strain of left elbow. It accepted appellant's supervisor's statement that she had timely notified him of the injury.

OWCP also found that appellant was not entitled to COP because she did not file her written claim within 30 days of the date of injury.

By separate decision also dated January 6, 2021, OWCP denied expansion of the acceptance of appellant's claim to include left cubital tunnel syndrome, left ulnar compression, and left neuritis. It found that the medical evidence of record was insufficient to establish that the additional conditions were causally related to the accepted employment injury.

LEGAL PRECEDENT -- ISSUE 1

Section 8118(a) of FECA authorizes COP, not to exceed 45 days, to an employee who has filed a claim for a period of wage loss due to a traumatic injury with his or her immediate superior on a form approved by the Secretary of Labor within the time specified in section 8122(a)(2) of FECA.[2] This latter section provides that written notice of injury shall be given within 30 days.[3] The context of section 8122 makes clear that this means within 30 days of the injury.[4]

OWCP's regulations provide that, to be entitled to COP, an employee must: (1) have a traumatic injury which is job related and the cause of the disability and/or the cause of lost time due to the need for medical examination and treatment; (2) file Form CA-1 within 30 days of the date of the injury; and (3) begin losing time from work due to the traumatic injury within 45 days of the injury.[5]

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish entitlement to COP.

The Board notes that on November 22, 2021 appellant filed written notice (Form CA-1) of a traumatic injury on January 9, 2017. Because more than 30 days elapsed between the date of injury on January 9, 2017 and the filing of written notice (Form CA-1) on November 22, 2021 the Board finds that she did not file written notice within 30 days of the injury, as specified in sections 8118(a) and 8122(a)(2) of FECA. As such, the Board finds that appellant has not met her burden of proof to establish entitlement to COP.

[2] *Id*. at § 8118(a).

[3] *Id*. at § 8122(a)(2).

[4] *See B.G.*, Docket No. 21-0865 (issued May 6, 2022); *E.M.*, Docket No. 20-0837 (issued January 27, 2021); *J.S.*, Docket No. 18-1086 (issued January 17, 2019); *Robert M. Kimzey*, 40 ECAB 762-64 (1989); *Myra Lenburg*, 36 ECAB 487, 489 (1985).

[5] 20 C.F.R. § 10.205(a)(1-3); *see also T.S.*, Docket No. 19-1228 (issued December 9, 2019); *J.M.*, Docket No. 09-1563 (issued February 26, 2010). *Dodge Osborne*, 44 ECAB 849 (1993); *William E. Ostertag*, 33 ECAB 1925 (1982).

LEGAL PRECEDENT -- ISSUE 2

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.[6]

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.[7] A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.[8] Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and appellant's employment injury.[9]

ANALYSIS -- ISSUE 2

The Board finds that appellant has not met her burden of proof to establish expansion of the acceptance of the claim to include left cubital tunnel syndrome, left ulnar compression, and left neuritis as causally related to the accepted January 9, 2017 employment injury.

In a January 12, 2017 progress note, Dr. Caldwell related that appellant had an injury that Monday while at work. He noted that she sustained a pulling of her left elbow and experienced medial discomfort. On January 18, 2017 Dr. Caldwell reviewed an x-ray of appellant's left elbow, which he related was normal. However, he only diagnosed a strain of the left elbow. Dr. Caldwell did not provide an opinion on causal relationship between the additional diagnosed conditions, and the accepted employment injury. 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.[10] This evidence is, therefore, insufficient to establish expansion of the claim.

In a July 20, 2020 report, Dr. Kim noted that appellant had left arm/hand weakness and referred her for an EMG scan. In an August 6, 2020 treatment note, he found electrophysiologic evidence of subacute left ulnar nerve compromise, very mild focal demyelination of the right ulnar nerve, and mild left nerve medial compromise at the wrist, involving myelin, affecting sensory, and motor fibers. However, Dr. Kim did not provide an opinion on causal relationship between any additional conditions and the accepted employment injury. As noted above, the Board has

[6] *See J.H.*, Docket No. 21-1255 (issued April 28, 2022); *J.R.*, Docket No. 20-0292 (issued June 26, 2020); *W.L.*, Docket No. 17-1965 (issued September 12, 2018); *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

[7] *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

[8] *F.A.*, Docket No. 20-1652 (issued May 21, 2021); *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[9] *Id.*

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

held that medical reports that do not provide an opinion on causal relationship are of no probative value.[11] This evidence is, therefore, insufficient to establish expansion of appellant's claim.

In an August 14, 2020 note, Dr. Galbraith diagnosed ulnar neuropathy of the left arm and type 2 diabetes mellitus. In a separate note also dated August 14, 2020, she noted that appellant had electrophysiologic evidence of subacute ulnar nerve compromise involving motor fibers, suggestive of a partial conduction block, not able to precisely localize, slowing most apparent across the elbow, but most significant amplitude drop below the elbow and wrist, and evidence of possible very mild focal demyelination of the right ulnar nerve at the elbow, involving motor fibers, and evidence of mild left median nerve compromise at the wrist, involving myeline, affecting sensory and motor fibers. In an addendum also dated August 14, 2020, Dr. Galbraith noted that appellant related that she had been having weakness in the left arm for a few months and was going to physical therapy. However, she did not provide an opinion on causal relationship between the additional diagnosed conditions and the accepted January 9, 2017 employment injury. Consequently, these reports are insufficient to meet appellant's burden of proof.

In a March 29, 2021 report, Dr. Makadia diagnosed left ulnar neuritis, severe, consistent with uncontrolled type 2 diabetes mellitus, and possible cubital tunnel syndrome. However, she did not provide an opinion on causal relationship between the additional diagnosed conditions and the accepted employment injury.[12] Consequently, this report is insufficient to meet appellant's burden of proof.

OWCP also received reports from physical and occupational therapists, a physician assistant, and a nurse. Certain healthcare providers such as nurses, physician assistants, and physical and occupational therapists are not considered "physician[s]" as defined under FECA.[13] Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.[14]

The record also contains a January 11, 2017 x-ray of appellant's left elbow. However, the Board has held that diagnostic studies, standing alone, lack probative value as they do not address whether the employment incident caused any of the diagnosed conditions.[15]

As the medical evidence of record is insufficient to establish causal relationship, the Board finds that appellant has not met her burden of proof to establish that her claim should be expanded

[11] *Id*.

[12] *Id*.

[13] Section 8101(2) provides that under FECA the term physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by the applicable state law. 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, physical and occupational therapists are not competent to render a medical opinion under FECA); *see also R.L.*, Docket No. 19-0440 (issued July 8, 2019) (nurse practitioners and physical therapists are not considered physicians under FECA); *E.T.*, Docket No. 17-0265 (issued May 25, 2018) (physician assistants are not considered physicians under FECA).

[14] *Id*.

[15] *M.B.*, Docket No. 19-1638 (issued July 17, 2020); *T.S.*, Docket No. 18-0150 (issued April 12, 2019).

to accept left cubital tunnel syndrome, left ulnar compression, and left neuritis as causally related to the accepted January 9, 2017 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 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 eligibility for COP. The Board further finds that she has not met her burden of proof to establish left cubital tunnel syndrome, left ulnar compression, and left neuritis as causally related to the accepted January 9, 2017 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the January 6, 2022 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: March 15, 2023
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