United States Department of Labor
Employees' Compensation Appeals Board

S.M., Appellant	)	
	)	**Docket No. 16-1312**
and	)	**Issued: December 7, 2016**
	)	
U.S. POSTAL SERVICE, POST OFFICE, Vorhees, NJ, Employer	)	

Appearances:
Thomas R. Uliase, 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
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On June 8, 2016 appellant, through counsel, filed a timely appeal from a February 29, 2016 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.

ISSUE

The issue is whether appellant met her burden of proof to establish a right thumb injury causally related to factors of her federal employment.

[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.*

FACTUAL HISTORY

On July 20, 2015 appellant, then a 58-year-old rural letter carrier, filed an occupational disease claim (Form CA-2) for right thumb osteoarthritis. She alleged that she first became aware of the condition and the relationship to her employment on April 10, 2014. Appellant asserted that repetitive work duties caused or aggravated her condition. She stopped work on March 13, 2015.

In a March 30, 2015 narrative statement, appellant described the development of her right thumb condition. In the winter of 2014 she began to feel medium to sharp pain around her right thumb on a daily basis. The pain progressed to where it was difficult for her to work. Appellant described the medical treatment she received which included surgery on March 20, 2015. She also described her work duties which involved constant use of her right hand for 10 years as a rural letter carrier. Appellant grasped thousands of pieces of mail, picked up piles of mail and put it into her case, pulled down piles of mail to take to the street, and picked up parcels with her right hand. She twisted her hand in many different positions to complete these tasks.

In a March 9, 2015 work/activity status report, Dr. Mark S. Rekant, an attending Board-certified orthopedic hand surgeon, advised that appellant was totally incapacitated and would remain off work until seen on March 11, 2015. In a March 11, 2015 work status report, he diagnosed right thumb arthritis and advised that appellant could return to full-duty work on that date. In a March 17, 2015 work/activity status report, Dr. Rekant advised that appellant was totally incapacitated and would remain off work through April 13, 2015, the date of her first appointment after her scheduled March 20, 2015 surgery. He noted that she had been off work since March 13, 2015.

In a March 25, 2015 report, Dr. Krista King, an attending Board-certified internist, noted that appellant was under her care for long-standing progressive right carpal tunnel syndrome and currently was under her care for acute de Quervain's tenosynovitis. She noted that when she saw appellant on March 2, 2015, she complained of severe right thumb pain and swelling that occurred abruptly while she was vacuuming on the prior day. This was different from the intermittent numbness and tingling in her hand that was more typical of her carpal tunnel. On examination, Dr. King found a right thumb that was swollen and tender to touch, especially at the base, and a pincher grasp that worsened her pain. She obtained x-rays which showed arthritic changes, including joint space narrowing and osteopathy formation. Dr. King opined that appellant's conditions, while not solely caused by the nature of her physical job, had definitely been aggravated by her work. She noted that her work duties, which included pushing, pulling, and carrying heavy packages, caused increased pain. Appellant also submitted a March 2, 2015 letter from a nurse excusing her from work through March 4, 2015.

In a report dated March 13, 2015 and letter dated April 10, 2015, the employing establishment challenged appellant's claim, contending that she did not sustain a work-related injury. It submitted narrative statements from its employees in support of its contention.

In an April 2, 2015 telephone injury interview conducted by the employing establishment, appellant responded to questions regarding her claimed injury. Statements dated

April 7, 2015 from appellant's coworkers were submitted in support of appellant's contention that she sustained a work-related hand injury.

In an April 15, 2015 addendum to her March 25, 2015 report, Dr. King noted that she examined appellant on April 8, 2014 and found a weak right thumb. She advised that this condition was progressive and chronic and recommended that appellant wear a splint.

On April 23, 2015 appellant responded to the employing establishment's statements and comments concerning the reporting of her injury and filing of her claim for compensation.

By letter dated May 21, 2015, OWCP informed appellant of the deficiencies in her claim and afforded her 30 days to submit additional factual and medical evidence.

In a May 27, 2015 report, Dr. Rekant noted appellant's complaint of increasing pain and swelling at the base of her right thumb and increasing symptoms over the prior four exacerbated with pinch and grip activities and repetitive work activities as a postal worker. He also reported findings on physical and x-ray examination. Dr. Rekant provided an impression of right thumb carpometacarpal (CMC) joint arthritis and right de Quervain's tenosynovitis. He related that it was certainly reasonable and plausible that appellant's repetitive work activities, including repetitive pinch and grip activities, caused sheering and degeneration of cartilage in her right thumb CMC joint and thickening and swelling about the first extensor compartment. Dr. Rekant concluded that given the development of her thumb and wrist symptoms, it was certainly reasonable and medically necessary to proceed with both surgical and nonsurgical management as well as postoperative care which had been reasonably and medically necessary to date.

By letter dated June 9, 2015, appellant detailed her work duties. She explained that she prepared and cased letters, flats, and parcels two to 3.50 hours a day (usually two hours in the summer and up to 3.5 hours in other seasons and sometimes greater than 3.5 hours during holidays and on Tuesdays following a Monday holiday). Appellant picked up 4- to 12-inch bundles of loose mail and mail in plastic bundles from tubs and trays on the floor and placed them on her case with two hands. On an average spring day, she picked up bundles of flats from five to six tubs and bundles of letters from three to six trays. The tubs were 12 to 15 inches tall and the trays were two feet long. Appellant picked up four to six inches of letters and flats from her case (ripping plastic off of the plastic-wrapped bundles) and placed them in her left arm and twisted, stretched, and pushed her right hand to get the mail into slots. She also twisted her right hand to place mail in the slots of curbside boxes and cluster boxes at businesses. Appellant rolled her parcel cart to her case and lifted parcels from the cart one at time with her right hand. She marked a parcel address in her case with the same hand and lined the parcels up on her knocker. On any given day, appellant handled 15 to 45 parcels. She pulled down two to six inches of bundles of mail with her right hand and took them to her truck where she placed them into trays or tubs. Appellant placed full trays and tubs on her knocker. She used her right hand to write certified letters and signature confirmations on a form. It took appellant three and a half to four hours to deliver mail to curbside boxes, 39 cluster boxes which contained 427 separate mailboxes, and cluster box lockers. She used both hands to pick up parcels and took them to the door or inside businesses or put them in cluster boxes. When she returned to the employing establishment, appellant placed letter bundles and flats stacked one to four inches in the appropriate cases, trays, and tubs.

Appellant submitted additional reports from Dr. Rekant which addressed her right thumb conditions and disability. In March 4 and 11, 2015 reports, Dr. Rekant examined his and reiterated his impression of advanced right thumb CMC joint arthritis and right de Quervain's tenosynovitis. In a March 20, 2015 operative report, he noted appellant's surgery for these conditions and right thumb CMC joint loose bodies. In a March 30, 2015 narrative report, Dr. Rekant examined appellant, removed her skin sutures, and addressed her treatment plan. In a work/activity report of the same date, he noted appellant's office visit on that date. In an April 27, 2015 report and a second report dated May 27, 2015, Dr. Rekant provided findings on physical examination of appellant's right thumb and addressed her medical treatment. In the May 27, 2015 report, he advised that she would continue to be out of work. In a June 6, 2015 work status report, Dr. Rekant noted that appellant was unable to work from March 20, 2015 to the present.

In a June 26, 2015 decision, OWCP denied appellant's occupational disease claim finding that she failed to submit a rationalized medical opinion to establish that her right wrist and right thumb conditions were causally related to the accepted employment factors.

By letter dated July 6, 2015, appellant, through counsel, requested an oral hearing before an OWCP hearing representative.

In a duty status report (Form CA-17) and an attending physician's report (Form CA-20) dated June 17, 2015, Dr. Rekant again diagnosed right thumb CMC osteoarthritis and de Quervain's tenosynovitis. In the June 17, 2015 Form CA-20, he provided a history that appellant had increasing right thumb pain and swelling exacerbated by pinch and grip. Dr. Rekant advised that she was totally disabled for work from March 20, 2015 to the present.

In a July 27, 2015 report, Dr. King addressed how appellant's condition was causally related to repetitive motions she performed as a rural carrier for 10 years. She noted that four months earlier was December 2013, a very busy time at work due to the holiday season which saw an increased mail volume. Appellant related that her work increased during the holidays. She spent a majority of her day with repetitive pinching, gripping, grasping, seizing, holding, turning, and twisting her fingers, hands, and wrists, predominantly on the right. These motions were repetitive and caused a variety of conditions including osteoarthritis and carpal tunnel syndrome. Dr. King noted first diagnosing appellant with wrist swelling which developed acutely after vacuuming as carpal tunnel syndrome. This resolved with treatment, but the underlying CMC osteoarthritis continued to progress. Dr. King referenced her March 24, 2015 report and explained that she had related that appellant's symptoms were not solely caused by her job because osteoarthritis started and progressed with repetitive use of an affected joint, including with daily activities. However, she noted that, if this were due to normal wear and tear with daily activities, it would take decades to develop. Further, Dr. King noted that progression to surgery was relatively rare in small joints like the CMC joint when compared to knees or hips. She maintained that she was certain there was a causal relationship between appellant's right thumb condition and her work duties. Dr. King noted that the specific nature of her job duties, which required constant hand manipulation 5 days a week for 10 years, was set against the rapid progression of her CMC osteoarthritis to the point of surgery. She opined that these work-related movements directly caused appellant's CMC joint cartilage to wear down much faster than any other activities in her life, thereby necessitating surgery to remove the jagged bone, which was

no longer cushioned by cartilage and caused her pain. Dr. King advised that appellant stay off work until August 15, 2015 for full recovery.

In an August 11, 2015 report, Dr. Scott M. Fried, a Board-certified orthopedic hand surgeon, noted appellant's complaint of right hand weakness, right thumb pain, and a sleep problem which began in March 2014. Appellant worked as a letter carrier for 10 years and described her work duties, which included casing and sorting with her right hand, driving, getting in and out of a truck to deliver mail to residences and cluster boxes. She also performed prolonged pinching, gripping, grasping and frequent wrist, hand, and arm activity. Appellant regularly twisted, turned, and torqued and lifting up to 80 or 85 pounds. Aggressive gripping was required and most mail weighed between 5 and 20 pounds. Dr. Fried noted her treatment, reviewed medical records, and reported findings. He diagnosed right and left median neuropathy, right radial neuropathy, left ulnar neuropathy, and left overuse syndrome. Dr. Fried indicated that appellant was status post a March 20, 2015 surgery. He related that there was no doubt about a direct cause and effect between her injury and her current clinical complaints and physical manifestations. Dr. Fried noted that appellant's job included aggressive and repetitive wrist and arm motion with repeated stress and strain on the flexor tendons resulting in chronic inflammatory change and finally compression of the median nerve at the carpal canal. The neuropathophysiology development of the disease eventually led to scarred surrounding tissue of the nerve. Once the scar tissue became fixed, a permanent long-term nerve injury developed that caused ongoing numbness, tingling, nerve symptoms, and ultimately positive electromyogram nerve conduction velocity (EMG/NCV) studies. As this progressed, function deteriorated and cumulative traumas increased and progressed each day worked or when the hand was used. Once there was permanent scarring a nerve became an irreversible process resulting in a permanent nerve injury. Although the symptoms may be calmed down, there would be ongoing dysfunction that varied in degree with each patient. Even with surgery, 30 percent of patients continued to have symptoms or recurrent problems. These numbers were worse if a patient was sent back to the same activities that initially caused the problem. Dr. Fried noted the nature of appellant's job involved regular and repetitive gripping, grasping, pinching, and carrying. Casing, carrying, and placing mail in cluster boxes represented aggressive hand and wrist activity. Specifically, the right hand performed an extensive amount of pinching and gripping activity which resulted in progressive traumatic involvement with a traumatic CMC capsular injury at the thumb with de Quervain's tenosynovitis. Appellant had radial nerve involvement through the forearm and some low level carpal tunnel on the right and left. She overused the left hand to compensate for the right hand which required an injection at the left elbow and subsequently resulted in ongoing issues at a low level on the left although her major problem remained the right hand. Dr. Fried recommended diagnostic testing to determine appellant's physical limitations as well as appropriate therapy.

In a November 4, 2015 decision, an OWCP hearing representative affirmed the June 26, 2015 decision. She found that the medical evidence did not contain a rationalized medical opinion based on an accurate factual background. The hearing representative noted that Dr. King's March 25, 2015 report provided a history that appellant developed right thumb symptoms while vacuuming at home the day before her March 2, 2015 examination and the other physicians of record did not explain their opinions on causal relationship in light of this history.

By letter dated December 14, 2015, counsel requested reconsideration and submitted medical evidence. In a December 1, 2015 report, Dr. King referenced her July 27, 2015 report. She maintained that appellant's claim was improperly denied on an erroneous understanding of her statement that one day of vacuuming solely caused her injury. Dr. King maintained that her July 27, 2015 letter specifically detailed the very specialized nature of appellant's work duties and the direct effect these daily duties had in causing deterioration of the cartilage and bone in her right thumb which necessitated surgery.

In a December 14, 2015 letter, Dr. Fried noted treating appellant from December 29, 2015 to January 18, 2016. Appellant remained under his care for documented work-related injuries. Dr. Fried advised that appellant may attempt to return to full-time work with self-modification, self-pacing, and breaks as needed while wearing splints.

By decision dated February 29, 2016, OWCP denied modification of the November 4, 2015 decision. It found that the medical evidence submitted failed to establish a causal relationship between the claimed medical conditions and the established employment factors.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA; that the claim was filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.[3] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[4]

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish a causal relationship is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.[5]

[3] *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[4] *S.P.*, 59 ECAB 184 (2007); *Victor J. Woodhams*, 41 ECAB 345 (1989); *Joe D. Cameron*, 41 ECAB 153 (1989).

[5] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, *id.*

ANALYSIS

OWCP accepted as factual that appellant performed repetitive duties as a rural letter carrier. The Board finds, however, that the medical evidence of record is insufficient to establish that she sustained a right thumb condition caused or aggravated by work factors.

Appellant submitted various reports from Dr. Rekant dated March 9 to July 14, 2015 addressing her right thumb condition, medical treatment, and work capacity. In the May 27, 2015 report, Dr. Rekant opined that appellant's right thumb CMC joint arthritis and right de Quervain's tenosynovitis and resultant surgery were causally related to her repetitive work duties. He related that it was plausible that her work duties, which included repetitive pinch and grip activities, caused her diagnosed right thumb condition. Although Dr. Rekant provided an opinion on causal relationship, the Board finds that he did not provide any medical rational to support his opinion. The Board has found that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale.[6] Dr. Rekant generally referred to appellant's work duties as the cause of her diagnosed right thumb conditions. Moreover, he did not adequately explain how the established repetitive work duties caused or aggravated her right thumb conditions for which she underwent surgery. The Board finds that the lack of medical rationale diminishes the probative value of Dr. Rekant's opinion.[7] Other reports from Dr. Rekant did not offer any medical opinion addressing whether the diagnosed conditions, resultant surgery, and disability for work were caused or aggravated by the established employment factors. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value.[8]

Dr. King's March 25, 2015 report noted treating appellant for acute de Quervain's tenosynovitis. She reported findings and opined that while appellant's work duties did not solely cause her right thumb condition but did aggravate her condition. Dr. King did not explain how the accepted repetitive work duties aggravated appellant's right thumb condition. Similarly, her July 27, 2015 report is of diminished probative value on the issue of causal relationship. Dr. King opined that the established repetitive work duties as described by appellant caused right thumb CMC osteoarthritis for which appellant underwent surgery and was disabled through August 15, 2015, but she did not explain the how the accepted work duties caused the diagnosed right thumb condition which necessitated surgery. The Board finds that the lack of medical rationale diminishes the probative value of her opinion.[9] Further, while Dr. King clarified her March 25, 2015 opinion on causal relationship, noting that appellant's symptoms were not solely caused by her physical job because osteoarthritis started and progressed with repetitive use of an

[6] *T.M.*, Docket No. 08-075 (issued February 6, 2009); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

[7] *Deborah L. Beatty*, 54 ECAB 340 (2003) (where the Board found that in the absence of a medical report providing a diagnosed condition and a reasoned opinion on causal relationship with the employment incident, appellant did not meet her burden of proof).

[8] *See C.B.*, Docket No. 09-2027 (issued May 12, 2010); *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006).

[9] *See* cases cited, *supra* note 6.

affected joint, including daily activities, she still did not sufficiently explain how the repetitive work duties caused or aggravated her right thumb condition.[10]

Dr. King's December 1, 2015 report is likewise deficient. She maintained that her July 27, 2015 letter specifically detailed the very specialized nature of appellant's daily postal carrier duties and the direct effect these duties had on causing the deterioration of cartilage and bone in her right thumb which necessitated surgery. Dr. King's opinion on causal relationship is conclusory in nature as she did not provide medical rationale opinion relating how the established repetitive work duties caused or aggravated appellant's right thumb condition.[11] Other reports from Dr. King are of limited probative value as they do not offer a specific opinion as to whether the established repetitive work duties caused or aggravated appellant's condition.[12]

Likewise, Dr. Fried's December 14, 2015 report is of diminished probative value. He noted that appellant was under his care for work-related injuries and found that she could return to full-time work with restrictions. However, Dr. Fried did not provide a firm diagnosis of a particular medical condition or explain how appellant's injuries were caused or aggravated by the established repetitive work duties.[13] His August 11, 2015 report noted a review of appellant's medical records and her March 20, 2015 right thumb surgery. Dr. Fried described her work duties, reported findings, and diagnosed right and left median neuropathy, right radial neuropathy, left ulnar neuropathy, and left overuse syndrome. He opined that the established repetitive work duties resulted in a traumatic CMC capsular right thumb injury with de Quervain's tenosynovitis. Dr. Fried generally discussed the neuropathophysiology development of this condition and medical treatment and advised that appellant's right hand use to perform an extensive pinching and gripping activity resulted in her right thumb condition. Although he provided an opinion on causal relationship, he did not sufficiently explain how the diagnosed conditions were caused or aggravated by the established work factors. Dr. Fried did not adequately describe the medical process through which appellant's diagnosed right thumb condition and resultant surgery were caused or aggravated by the accepted repetitive work duties. Medical reports without adequate rationale on causal relationship are of diminished probative value and are insufficient to meet an employee's burden of proof.[14]

Appellant also provided evidence from a nurse. However, such evidence has no probative medical value on the issue of causal relationship as a nurse is not a physician as defined under FECA.[15]

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[10] *Id.*

[11] *See J.J.*, Docket No. 15-1329 (issued December 18, 2015).

[12] *See* cases cited, *supra* note 8.

[13] *Id.*

[14] *Ceferino L. Gonzales*, 32 ECAB 1591 (1981).

[15] 5 U.S.C. § 8101(2). 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. *See also Roy L. Humphrey*, 57 ECAB 238 (2005); *Jennifer L. Sharp*, 48 ECAB 209 (1996).

Appellant's belief that factors of employment caused or aggravated her condition is insufficient, by itself, to establish causal relationship.[16] The issue of causal relationship is a medical one and must be resolved by probative medical opinion from a physician. The Board finds that there is insufficient medical evidence of record to establish that appellant's right thumb condition was caused or aggravated by the established employment factors. Appellant did not meet her burden of proof.

On appeal, counsel contends that the medical evidence of record is sufficient to establish that appellant sustained a work-related right thumb injury for which she underwent surgery. The Board finds that the weight of the medical evidence does not establish that appellant's right thumb condition for which she underwent surgery on March 20, 2015, was caused or contributed to by the accepted employment factors.

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 right thumb injury causally related to factors of her federal employment.

[16] 20 C.F.R. § 10.115(e); *Phillip L. Barnes*, 55 ECAB 426, 440 (2004).

ORDER

IT IS HEREBY ORDERED THAT the February 29, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 7, 2016
Washington, DC

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

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

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