United States Department of Labor
Employees' Compensation Appeals Board

J.S., Appellant	)	
and	)	**Docket No. 16-0184**
	)	**Issued: March 2, 2016**
U.S. POSTAL SERVICE, POST OFFICE, Salt Lake City, UT, Employer	)	

Appearances:
Appellant, pro se
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 November 10, 2015 appellant filed a timely appeal from a September 23, 2015 merit decision 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.

ISSUE

The issue is whether appellant met his burden of proof to establish right hand conditions causally related to a July 27, 2015 employment incident.

FACTUAL HISTORY

On July 29, 2015 appellant, a 55-year-old clerk, filed a traumatic injury claim (Form CA-1) alleging that he sustained an injury to his right little finger on July 27, 2015 as a result of transferring trays of mail from one cage to another in the performance of duty. In a July 29,

[1] 5 U.S.C. § 8101 *et seq.*

2015 narrative statement, he explained that, while lifting letter trays from one cage to another, he took off his right glove to wipe his brow and while putting the glove back on he noticed that his right little finger felt numb. Appellant stated that he was not worried about it until he woke up on July 29, 2015 and noticed that he was unable to use that finger, which appeared numb and crooked. He did not stop work.

An OWCP Form CA-16, authorization for examination, was issued by the employing establishment on July 29, 2015. Appellant was authorized to visit First Med in Murray, Utah. He submitted reports dated July 29, 2015 from Joshua Bailey, a physician assistant at First Med, who diagnosed finger paresthesia and released appellant to modified duty with the following restrictions: pushing or pulling up to five pounds, with a right arm limitation of two pounds.

In a July 30, 2015 letter, the employing establishment controverted appellant's claim on the basis that the evidence failed to establish causal relationship or fact of injury.

In an August 6, 2015 letter, OWCP notified appellant of the deficiencies in his claim and afforded him 30 days to submit additional evidence and respond to its inquiries.

Appellant submitted a narrative statement dated August 22, 2015 reiterating the factual history of his claim and reports dated July 29 and August 5, 2015 from Mr. Bailey.

On August 6, 2015 Dr. Terry Brown, a Board-certified occupational medicine specialist, ordered an electromyography (EMG) study.

In reports dated August 11 through September 2, 2015, Dr. Stephanie Plunkett, a Board-certified family practitioner, diagnosed neuritis of upper extremity, paresthesias in right hand, and weakness and numbness of right hand fifth finger. She asserted that appellant was working in the mail room on July 27, 2015, took off his work gloves, and then lifted and placed several trays of mail. When appellant was done he put his gloves back on and noticed that his right fifth finger was numb and that it would not move correctly. Dr. Plunkett opined that appellant's condition was causally related to the July 27, 2015 employment incident, noting that "the temporal relationship [was] too strong." She indicated that appellant was awaiting an EMG study and released him to modified duty with the following restrictions: lifting no more than 5 to 10 pounds with the right arm.

In reports dated August 28, 2015, Susanne F. Jones, a certified nurse practitioner, diagnosed hand paresthesia and weakness of hand due to reaching to grab overhead letters at work on July 29, 2015. Ms. Jones released appellant to modified duty with a 10-pound right arm lifting restriction.

By decision dated September 23, 2015, OWCP denied appellant's claim, finding that the medical evidence was not sufficient to establish a causal relationship between his right hand conditions and the July 27, 2015 employment incident.

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 timely filed within the applicable time limitation period of FECA, that an injury[2] 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.[3]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. A fact of injury determination is based on two elements. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place, and in the manner alleged. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury. An employee may establish that the employment incident occurred as alleged but fail to show that his or her condition relates to the employment incident.[4]

Causal relationship is a medical issue and the medical evidence generally required to establish 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 medical 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]

ANALYSIS

OWCP accepted that the employment incident of July 27, 2015 occurred at the time, place, and in the manner alleged. The issue is whether appellant's right hand conditions resulted from the employment incident. The Board finds that appellant has not met his burden of proof to establish right hand conditions causally related to the July 27, 2015 employment incident.

In her reports, Dr. Plunkett diagnosed neuritis of upper extremity, right hand paresthesias, and weakness and numbness of right hand fifth finger. She opined that appellant's condition was causally related to the July 27, 2015 employment incident, noting that "the temporal relationship [was] too strong." Dr. Plunkett noted that appellant was awaiting an EMG study and released him to modified duty with a 5- to 10-pound right arm lifting restriction. The Board finds that Dr. Plunkett failed to provide a rationalized opinion explaining how transferring trays of mail on July 27, 2015 caused or aggravated appellant's right hand conditions. Dr. Plunkett noted that appellant's conditions occurred while he was at work, but such generalized statements do not

[2] OWCP regulations define a traumatic injury as a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected. 20 C.F.R. § 10.5(ee).

[3] *See T.H.*, 59 ECAB 388 (2008). *See also Steven S. Saleh*, 55 ECAB 169 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[4] *Id. See Shirley A. Temple*, 48 ECAB 404 (1997); *John J. Carlone*, 41 ECAB 354 (1989).

[5] *Id. See Gary J. Watling*, 52 ECAB 278 (2001).

establish causal relationship because they merely repeat appellant's allegations and are unsupported by adequate medical rationale explaining how his physical activity at work actually caused or aggravated the diagnosed conditions.[6] She did not provide sufficient medical rationale explaining the mechanism of how appellant's right hand conditions were caused or aggravated by lifting and placing trays of mail on July 27, 2015. Dr. Plunkett noted that her opinion was based, in part, on temporal correlation. However, the Board has held that neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.[7] Dr. Plunkett did not otherwise sufficiently explain the reasons why diagnostic testing and examination findings led her to conclude that the July 27, 2015 incident at work caused or contributed to the diagnosed conditions. Thus, the Board finds that the reports from Dr. Plunkett are insufficient to establish that appellant sustained an employment-related injury.

Dr. Brown ordered an EMG study on August 6, 2015 but did not specifically address whether the July 27, 2015 work incident caused or contributed to a diagnosed condition. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship.[8] Thus, the Board finds that appellant did not meet his burden of proof with this submission.

Appellant also submitted evidence from a physician assistant and a nurse practitioner. These documents do not constitute competent medical evidence because neither nurse practitioners nor physician assistants are considered "physicians" as defined under FECA.[9] As such, this evidence is also insufficient to meet appellant's burden of proof.

The Board also notes that the employing establishment issued appellant a Form CA-16 on July 29, 2015 authorizing medical treatment. The Board has held that where an employing establishment properly executes a Form CA-16, which authorizes medical treatment as a result of an employee's claim for an employment-related injury, it creates a contractual obligation, which does not involve the employee directly, to pay the cost of the examination or treatment regardless of the action taken on the claim.[10] Although OWCP denied appellant's claim for an injury, it did not address whether he is entitled to reimbursement of medical expenses pursuant to the Form CA-16.

[6] *See K.W.*, Docket No. 10-98 (issued September 10, 2010).

[7] *E.J.*, Docket No. 09-1481 (issued February 19, 2010).

[8] *Jaja K. Asaramo*, 55 ECAB 200 (2004).

[9] 5 U.S.C. § 8101(2); *Sean O'Connell*, 56 ECAB 195 (2004) (reports by nurse practitioners and physician assistants are not considered medical evidence as these persons are not considered physicians under FECA). *See also Gloria J. McPherson*, 51 ECAB 441 (2000); *Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (a medical issue such as causal relationship can only be resolved through the submission of probative medical evidence from a physician).

[10] *See D.M.*, Docket No. 13-535 (issued June 6, 2013). *See also* 20 C.F.R. §§ 10.300, 10.304.

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 his burden of proof to establish right hand conditions causally related to a July 27, 2015 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the September 23, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 2, 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