United States Department of Labor
Employees' Compensation Appeals Board

L.S., Appellant	)	
and	)	**Docket No. 16-1664**
	)	**Issued: January 27, 2017**
U.S. POSTAL SERVICE, POST OFFICE, Binghamton, NY, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 17, 2016 appellant, through counsel, filed a timely appeal from a June 24, 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 has met her burden of proof to establish left wrist and thumb injuries 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.*

On appeal counsel asserts that OWCP did not properly consider the evidence in its June 24, 2016 decision, alleging that the decision seeks a biomechanical explanation of causation which changes the burden of proof.

FACTUAL HISTORY

On August 6, 2014 appellant, then a 53-year-old city letter carrier, filed an occupational disease claim (Form CA-2) alleging that work duties caused increasing pain and weakness in her left wrist and thumb. In an attached statement she alleged that her wrist first started bothering her early that year when grasping bundles of mail caused pain from her wrist into her thumb, noting that when delivering mail, she carried it on her left arm.

By letter dated August 28, 2014, OWCP informed appellant of the evidence needed to support her claim. This was to include a comprehensive narrative medical report from a qualified physician explaining how work activities caused, contributed to, or aggravated the claimed condition. OWCP further explained that nurse practitioners and physician assistants were not considered physicians under FECA and that chiropractors were defined as physicians only if there was a diagnosed spinal subluxation demonstrated by x-ray.

In support of her claim, appellant submitted disability slips, appointment notifications, and hand therapy notes. In an August 26, 2014 treatment note, Daria Lisick, a physician assistant described appellant's complaints and physical examination findings. She diagnosed de Quervain's tendinitis of the left wrist and advised that appellant could not work.

On September 30, 2014 Dr. John Brosnan, Board-certified in orthopedic surgery, noted appellant's complaint of left radial wrist pain. He indicated that left wrist physical examination did not show obvious inflammation, but that she was tender to palpation and had a positive Finkelstein's test with diminished grip strength. Dr. Brosnan diagnosed de Quervain's tendinitis of the left wrist and advised that appellant could not perform regular letter carrier duties.

By decision dated November 10, 2014, OWCP found the medical evidence insufficient to establish that appellant's work duties caused the diagnosed de Quervain's tendinitis and denied the claim.

Appellant, through counsel, timely requested a hearing with OWCP's Branch of Hearings and Review. She submitted February 3, 2015 correspondence in which Ms. Lisick advised that appellant was disabled from regular carrier work duties due to left wrist de Quervain's tendinitis caused by repetitive motion of the wrist and fingers. Ms. Lisick opined that returning to work would exacerbate the condition. The record also includes treatment notes signed by her dated November 11 and December 23, 2014, and March 23, 2015, and a treatment note dated February 3, 2015 signed by Oanu Stingu, a physician assistant. Each report describes appellant's continued treatment for de Quervain's tendinitis.

At the hearing, held on June 19, 2015, appellant testified that she stopped work on August 26, 2014 and had not returned. She described her job duties and indicated that she usually saw Ms. Lisick for treatment and that therapy had helped. The hearing representative informed appellant and counsel of the medical evidence needed to support her claim. The record

was held open for 30 days. Appellant thereafter submitted a July 1, 2015 treatment note signed by Ms. Lisick who additionally diagnosed left trigger thumb.

Appellant retired on disability effective July 30, 2015. The employing establishment submitted a city carrier position description, copies of policies regarding letter carrier procedures, correspondence from the employing establishment to appellant, hand therapy notes, disability slips signed by Ms. Lisick, and April 24, 2014 medical evidence from Dr. Abram H. Nichols, a chiropractor, who diagnosed left elbow tendinitis and provided physical restrictions.

In an August 11, 2015 decision, an OWCP hearing representative noted that Dr. Brosnan did not provide an affirmative opinion on causal relationship and affirmed the November 10, 2014 decision.

Appellant, through counsel, requested reconsideration on January 26, 2016. Counsel submitted a duplicate of Ms. Lisick's July 1, 2015 treatment note. In a treatment note dated August 3, 2015, Dr. Thomas R. Van Gorder, a Board-certified orthopedic surgeon, noted appellant's complaint of left wrist pain. Examination of the left wrist and thumb demonstrated soreness and tenderness, and Finkelstein's test was positive. Dr. Van Gorder opined that "this should be considered under comp[ensation]," continuing that all treatment dates should be compensation related. He recommended that appellant return to physical therapy.[3]

In a merit decision dated June 24, 2016, OWCP denied the claim because the medical evidence submitted was insufficient to establish that appellant's job duties caused, contributed to, or aggravated the diagnosed left wrist de Quervain's tendinitis and left trigger thumb.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish 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, and that the claim was timely filed within the applicable time limitation period of FECA.[4] When an employee claims that he or she sustained an injury in the performance of duty,[5] the employee must submit sufficient evidence to establish that he or she experienced a specific event, incident, or exposure occurring at the time, place, and in the manner alleged.[6] The employee must also establish that such event, incident, or exposure caused an injury.[7] 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.[8]

[3] Ms. Lisick, Ms. Stingu, Dr. Brosnan, and Dr. Van Gorder are associates at Tier Orthopedic Associates in Johnson City, New York.

[4] 5 U.S.C. § 8101(1); *L.M.*, Docket No. 16-0143 (issued February 19, 2016); *B.B.*, 59 ECAB 234 (2007).

[5] *Id*. at § 8102(a).

[6] *J.C.*, Docket No. 16-0057 (issued February 10, 2016); *E.A.*, 58 ECAB 677 (2007).

[7] *Id.*

[8] *R.H.*, 59 ECAB 382 (2008).

OWCP regulations define the term "occupational disease or illness" as a condition produced by the work environment over a period longer than a single workday or shift."[9] 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 diagnosed condition is causally related to the employment factors identified by the claimant. The medical opinion 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 claimant.[10]

Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence.[11] The opinion of the physician must be based on a complete factual and medical background of the claimant, 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.[12] 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 causal relationship.[13]

ANALYSIS

The Board finds that appellant did not meet her burden of proof to establish a left wrist or left thumb condition causally related to factors of her federal employment as a city carrier.

In this case, the majority of medical reports are from Ms. Lisick, a physician assistant. Her associate Ms. Stingu also submitted a treatment note. Reports from physician assistants are not considered medical evidence as a physician assistant is not considered a physician under FECA.[14] Thus, their reports are not considered probative medical evidence and are insufficient to meet appellant's burden of proof.

Likewise, the reports from Dr. Nichols, a chiropractor, do not constitute probative medical evidence. Under section 8101(2) of FECA, the term "physician" includes chiropractors

[9] 20 C.F.R. § 10.5(ee).

[10] *Roy L. Humphrey*, 57 ECAB 238 (2005).

[11] *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[12] *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

[13] *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

[14] 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. Registered nurses, licensed practical nurses and physician assistants are not "physicians" as defined under FECA. 5 U.S.C. § 8101(2). Their opinions are of no probative value. *Supra* note 10.

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 regulations by the Secretary.[15] A chiropractor is not considered a physician under FECA without an x-ray diagnosing subluxation.[16] As there is no evidence that Dr. Nichols diagnosed a spinal subluxation and there is no x-ray report in the record, his opinion cannot be considered as probative medical evidence.

In his September 30, 2014 report, Dr. Brosnan merely discussed appellant's complaints and physical examination findings. While he diagnosed de Quervain's tendinitis, he did not discuss its cause. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[17]

On August 3, 2015 Dr. Van Gorder noted appellant's complaint of left wrist pain. He described left wrist and thumb physical examination findings of soreness and tenderness, and noted that Finkelstein's test was positive. While Dr. Van Gorder opined that "this should be considered under comp[ensation]," and that all treatment dates should be compensation related, 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.[18] To be of probative value, the physician must provide rationale for the opinion reached. Medical reports such as that of Dr. Van Gorder, which do not contain adequate rationale on causal relationship are of diminished probative value and are insufficient to meet an employee's burden of proof.[19]

It is appellant's burden of proof to establish that the claimed left wrist and left thumb conditions are causally related to factors of her federal employment.[20] The opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to a claimant's federal employment and such relationship must be supported with affirmative evidence, explained by medical rationale and be based upon a complete and accurate medical and factual background of the claimant.[21] Appellant submitted insufficient evidence to show that the claimed conditions were caused by her employment duties as a city carrier.

As to counsel's assertion on appeal regarding causal relationship, as noted, the Board has long held that to support causal relationship, the opinion of a physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship

[15] 5 U.S.C. § 8102(2); *see D.S.*, Docket No. 09-860 (issued November 2, 2009).

[16] *Id.*

[17] *Willie M. Miller*, 53 ECAB 697 (2002).

[18] *T.M.*, Docket No. 08-975 (issued February 6, 2009).

[19] *D.U.*, Docket No. 10-144 (issued July 27, 2010).

[20] *L.M.*, *supra* note 4.

[21] *A.D.*, 58 ECAB 149 (2006).

between the diagnosed condition and the specific employment factors identified by the employee.[22] For the reasons found above, there is no medical evidence of record which fits this criteria. Appellant has failed to meet 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.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish left wrist and thumb injuries causally related to factors of her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the June 24, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 27, 2017
Washington, DC

Christopher J. Godfrey, 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

[22] *Supra* note 12.