United States Department of Labor
Employees' Compensation Appeals Board

A.B., Appellant	)	
	)	
and	)	**Docket No. 17-0301**
	)	**Issued: May 19, 2017**
DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE, Nashville, TN, 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:
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On November 28, 2016 appellant, through counsel, filed a timely appeal from an October 31, 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 to consider the merits of this case.

[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.*

ISSUE

The issue is whether appellant has met her burden of proof to establish an occupational injury causally related to factors of her federal employment.

FACTUAL HISTORY

On February 3, 2015 appellant then a 52-year-old individual taxpayer advisory specialist, filed an occupational disease claim (Form CA-2) alleging that she developed bilateral carpal tunnel syndrome as a result of performing repetitive duties required in her job. She became aware of her condition on July 20, 2011 and realized it was causally related to factors of her federal employment on November 3, 2011. Appellant stopped work on February 3, 2015.

On February 11, 2015 OWCP advised appellant of the type of evidence needed to establish her claim, particularly requesting that appellant submit a physician's reasoned opinion addressing the relationship of her claimed condition and specific work factors.

In a March 16, 2015 decision, OWCP denied appellant's claim because the medical evidence of record was insufficient to establish a diagnosed medical condition causally related to the accepted work factors.

On February 12, 2016 appellant, through counsel, requested reconsideration. In a January 21, 2016 statement, appellant indicated that in her position as a customer service representative and an individual taxpayer advisory specialist, she was required to repetitively use a keyboard and mouse to enter information into a computer, respond to correspondence, scan and verify payments, and perform other data entry over a period of 26 years. She believed that her consistent use of a keyboard and mouse for over 26 years caused her current condition. Appellant submitted a job description for a customer service representative. She also submitted a reasonable accommodation request dated December 2, 2011 from Dr. F. Clark Holmes, a Board-certified orthopedist, who diagnosed bilateral carpal tunnel syndrome. Dr. Clark recommended an ergonomic keyboard with typing limited to two hours per day.

Appellant was treated by Dr. Christopher M. Stutz, a Board-certified orthopedist, on October 2, 2012 for bilateral carpal tunnel syndrome. She reported experiencing numbness and tingling in her hands and was treated conservatively with splints and corticosteroid injections which helped only temporarily. Dr. Stutz noted findings on physical examination of positive Tinel's sign over the median nerve in the bilateral wrists, positive Phalen's test bilaterally, and full strength bilaterally. He diagnosed bilateral carpal tunnel syndrome and recommended bracing and possible surgery.

In a December 6, 2012 operative report, Dr. Stutz performed a left carpal tunnel release and diagnosed left carpal tunnel syndrome. On December 18, 2012 he noted that appellant was two weeks status post left carpal tunnel release with mild improvement in her symptoms. Dr. Stutz returned appellant to work using her hand as tolerated with 15-minute breaks every hour. On January 15, 2013 he advised that appellant was six weeks status postsurgery and returned to activities without significant limitations. Findings on examination revealed a well-healed incision, intact strength and minimal tenderness about the scar in the base of her palm.

Dr. Stutz recommended scar massage and returned appellant to work without restrictions. In an April 23, 2013 report, he noted appellant's nocturnal pain had resolved; however, she had numbness and tingling. Dr. Stutz noted findings of a well-healed scar, intact strength and negative Tinel's sign. In an operative report dated February 4, 2015, he performed a right wrist endoscopic carpal tunnel release and diagnosed right wrist carpal tunnel syndrome.

A magnetic resonance imaging (MRI) scan of the right wrist dated December 15, 2014 revealed a small amount of fluid in the distal radial ulnar joint region which may be associated with an occult triangular fibrocartilage tear, no significant joint effusion, and no other gross abnormalities. A December 15, 2014 MRI scan of the left wrist revealed findings suspicious for a tear of the triangular fibrocartilage and small joint effusion. A December 30, 2014 electromyogram (EMG) revealed severe carpal tunnel syndrome on the right and mild carpal tunnel syndrome on the left.

Appellant was treated by Dr. Jason Haslam, a Board-certified orthopedist, on January 7, 2015, for a six-month history of bilateral hand numbness and tingling. Appellant's history was significant for a left carpal tunnel release with moderate improvement. He noted findings of positive Tinel's and Phalen's sign, no atrophy, and good sensation bilaterally. Dr. Haslam noted an EMG revealed severe carpal tunnel syndrome on the right and mild carpal tunnel syndrome on the left. He diagnosed bilateral carpal tunnel syndrome and recommended cortisone injections for temporary relief of symptoms and a right carpal tunnel release. On March 9, 2015 Dr. Haslam noted that appellant was postoperative right carpal tunnel release. Appellant reported that she felt her symptoms originated from her work activities which included performing data entry on a computer. Dr. Haslam noted healed right-hand surgical wound sites with no evidence of complications. He diagnosed bilateral hand carpal tunnel syndrome, status post right carpal tunnel release, and conservative treatment for the left wrist. Dr. Haslam indicated that he was treating appellant under commercial insurance, but she was interested in having this condition treated under workers' compensation insurance. He reviewed appellant's work activities and data entry activities on a computer. Dr. Haslam noted that there was no evidence that computer use caused carpal tunnel syndrome and he opined that he would not treat the carpal tunnel syndrome under workers' compensation insurance. In a March 23, 2015 attending physician's report (Form CA-20), he noted that appellant reported a history of injury of typing on a keyboard. Dr. Haslam diagnosed carpal tunnel syndrome and indicated that there was no evidence that keyboarding caused appellant's diagnosed carpal tunnel syndrome. He opined that appellant's condition was not work related.

In a report dated November 23, 2015, Dr. Jason Jones, a Board-certified orthopedist, noted that appellant presented with persistent right de Quervain's tenosynovitis. He reported that the steroid injection lasted two months and that appellant continued to have significant discomfort in the first dorsal compartment. Findings on examination revealed mild swelling in the first dorsal compartment, no erythema, positive Finkelstein's test, severe tenderness to palpation over the first dorsal compartment, and positive Phalen's and Tinel's sign. Dr. Jones diagnosed right wrist pain and right de Quervain's tenosynovitis and recommended surgery. Appellant also submitted evidence from a physician assistant and a nurse practitioner.

In an October 31, 2016 decision, OWCP denied appellant's claim for compensation as modified. It found that appellant established fact of injury, in that she has bilateral carpal tunnel

syndrome and right de Quervain's tenosynovitis, but denied the claim as she failed to establish that her claimed medical condition was causally related to the established work-related factors.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim. When an employee claims that he or she sustained an injury in the performance of duty, the employer must submit sufficient evidence to establish that he experienced a specific event, incident or exposure occurring at the time, place, and in the manner alleged. Appellant must also establish that such event, incident or exposure caused an injury.[3]

Whether an employee actually sustained an injury in the performance of duty begins with an analysis of whether fact of injury has been established.[4] To establish fact of injury in an occupational disease claim, an employee must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.[5]

The medical evidence required to establish causal relationship is generally rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. 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 claimant.[6]

ANALYSIS

It is undisputed that appellant's duties as a customer service representative and an individual taxpayer advisory specialist included repetitive use of a keyboard and mouse to enter data on a computer. However, appellant has not submitted medical evidence sufficient to establish that her diagnosed medical conditions are causally related to specific employment factors or conditions.

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[3] *See Walter D. Morehead*, 31 ECAB 188, 194 (1979) (occupational disease or illness); *Max Haber*, 19 ECAB 243, 247 (1967) (traumatic injury). *See generally John J. Carlone*, 41 ECAB 354 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[4] *S.P.*, 59 ECAB 184, 188 (2007).

[5] *R.R.*, Docket No. 08-2010 (issued April 3, 2009); *Roy L. Humphrey*, 57 ECAB 238, 241 (2005).

[6] *Solomon Polen*, 51 ECAB 341 (2000).

Appellant submitted an October 2, 2012 report from Dr. Stutz who diagnosed bilateral carpal tunnel syndrome. Dr. Stutz reported that appellant experienced numbness and tingling in her hands and was treated conservatively which provided only temporary relief. On December 6, 2012 he performed a left carpal tunnel release and on February 4, 2015, a right wrist endoscopic carpal tunnel release and diagnosed bilateral carpal tunnel syndrome. Other reports from Dr. Stutz dated December 18, 2012 to April 23, 2013, noted that appellant progressed well postsurgery and returned to work without work without restrictions on January 15, 2013. However, these reports are insufficient to establish the claim as Dr. Stutz did not provide a history of injury,[7] or specifically address whether appellant's employment activities had caused or aggravated a diagnosed medical condition.[8]

Dr. Haslam provided a January 7, 2015 report and diagnosed bilateral carpal tunnel syndrome. He noted that appellant was status post left carpal tunnel release with moderate improvement. On March 9, 2015 Dr. Haslam indicated that appellant felt her symptoms originated from her work activities doing data entry on a computer and sought treatment under workers' compensation insurance. He reviewed appellant's work activities, including data entry activities using a computer, and opined that there was no evidence that computer use caused carpal tunnel syndrome. Dr. Haslam advised that he would not treat carpal tunnel syndrome under workers' compensation insurance. Similarly, in an attending physician's report dated March 23, 2015, he diagnosed carpal tunnel syndrome. Dr. Haslam indicated that there was no evidence that keyboarding caused the carpal tunnel syndrome and opined that appellant's condition was not work related. His reports do not support that appellant developed bilateral carpal tunnel syndrome causally related to her work duties, rather, Dr. Haslam clearly opines that appellant's bilateral carpal tunnel syndrome was not work related.

Likewise, other medical reports from Dr. Holmes dated December 2, 2011 and Dr. Jones dated November 23, 2015 are insufficient to establish the claim as they do not specifically address whether appellant's employment activities caused or aggravated her diagnosed medical condition.[9] Therefore these reports are insufficient to meet appellant's burden of proof.

Appellant also submitted evidence from a nurse practitioner and a physician assistant. However, these practitioners are not considered physicians under FECA.[10] Thus, these records are of no probative medical value in establishing appellant's claim.

[7] *Frank Luis Rembisz*, 52 ECAB 147 (2000) (medical opinions based on an incomplete history or which are speculative or equivocal in character have little probative value).

[8] *A.D.*, 58 ECAB 149 (2006) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

[9] *Id.*

[10] *See David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA); *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). 5 U.S.C. § 8101(2) (this subsection defines a "physician" as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law).

The remainder of the medical evidence, including reports of diagnostic tests, are of limited probative value as they fail to provide an opinion on the causal relationship between appellant's job and her diagnosed bilateral carpal tunnel syndrome. For this reason, this evidence is not sufficient to meet appellant's burden of proof.[11]

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 an occupational injury causally related to factors of her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the October 31, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 19, 2017
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

[11] *Supra* note 8.