United States Department of Labor
Employees' Compensation Appeals Board

R.C., Appellant	)	
and	)	**Docket No. 17-0716**
	)	**Issued: September 22, 2017**
U.S. POSTAL SERVICE, POST OFFICE, Kennebunk, ME, 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
COLLEEN DUFFY KIKO, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On February 10, 2017 appellant filed a timely appeal from a January 3, 2017 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 the claim.[2]

ISSUE

The issue is whether appellant met his burden of proof to establish a recurrence of a medical condition causally related to his accepted right carpal tunnel syndrome.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The record provided the Board includes evidence received after OWCP issued its January 3, 2017 decision. The Board's review is limited to the evidence that was before OWCP at the time of its final decision. Therefore, the Board lacks jurisdiction to review this additional evidence for the first time on appeal. 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

On March 15, 2003 appellant, then a 49-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging a right hand condition as a result of casing, fingering, and delivering mail since 1986. He first became aware of his condition and that it was caused or aggravated by his employment on March 15, 2003. OWCP assigned the claim File No. xxxxxx148 and accepted it for right carpal tunnel syndrome. Appellant underwent OWCP-approved carpal tunnel release on April 2, 2003. He was off work for the period April 2 through 26, 2003, but returned to full duty thereafter.

On September 14, 2004 appellant filed an occupational disease claim (Form CA-2) for wrist and thumb pain, which he also became aware of on March 15, 2003. He experienced right wrist and bilateral thumb pain as a result of repetitive sorting, carrying, and delivering mail, which was required of his letter carrier duties. OWCP accepted the claim (File No. xxxxxx096) for aggravation of degenerative arthritis at the trapeziometacarpal (TMC) joint of the right and left thumbs.[3] Appellant did not lose any time due to his accepted condition and had been on full-time, limited-duty status since September 21, 2004. OWCP File Nos. xxxxxx148 and xxxxxx096 have been administratively combined with File No. xxxxxx096 serving as the master file.

On February 28, 2006 appellant underwent right ligament reconstruction and trapezial arthroplasty, which OWCP approved. On February 7, 2007 he underwent similar OWCP-approved surgery for his left thumb/hand. Appellant returned to full-time restricted duty on April 3, 2007, and continued in that capacity until he retired from the employing establishment on September 3, 2009.[4]

In June and September 2014 OWCP determined that appellant had permanent impairment of 26 percent for the left thumb and 11 percent for the right upper extremity for which he received schedule awards.

On September 7, 2016 appellant filed a notice of recurrence for medical treatment only (Form CA-2a) with respect to his accepted condition of right carpal tunnel syndrome under the current file (OWCP File No. xxxxxx148). He stated that an August 29, 2016 electromyography/nerve conduction velocity (EMG/NCV) study revealed carpal tunnel syndrome, which appellant believed was related to his original employment injury.

In an August 29, 2016 EMG/NCV study report, Dr. Douglas M. Paviak, a Board-certified electrodiagnostic medicine fellow, noted that appellant had a history of bilateral hand numbness and weakness. He found no evidence of cervical radiculopathy. An impression of moderate bilateral carpal tunnel syndrome, right greater than left and mild bilateral ulnar nerve compression at Guyon's canal involving sensory fibers only was provided.

[3] Under an earlier File No. xxxxxx156, date of injury May 8, 1999, appellant has an accepted claim for left wrist and left thumb sprain. He was fitted for a splint and worked restricted duty for two months. Effective July 20, 1999, appellant was cleared for full-time full duty. This file was combined with OWCP File No. xxxxxx096.

[4] Under OWCP File No. xxxxxx096, OWCP accepted a recurrence beginning November 24, 2009.

In September 13 and 15, 2016 medical reports, Dr. Thomas S. Savadove, a Board-certified physiatrist, noted that appellant had bilateral hand weakness and that an EMG had been performed. He diagnosed bilateral carpal tunnel syndrome and osteoarthritis of cervical spine with radiculopathy. Appellant was referred to occupational therapy and advised to wear his carpal tunnel splits at night again and obtain a new EMG study.

In a September 22, 2016 letter, OWCP discussed appellant's need for additional medical treatment after a release from treatment for the work-related injury or when there had been a significant gap in treatment for the work-related injury. It requested that he submit supporting factual and medical evidence, including a report from his attending physician addressing the relationship between any current condition and his accepted work injury.

Physical therapy referral forms dated September 22 and 26, 2016 from Dr. Savadove were received along with a September 22, 2016 initial report from an occupational therapist, who noted that appellant did maintenance work part time 30 hours a week. His tasks included emptying trash, dusting, cleaning store, sweeping, and aisle clean-ups as needed.

By decision dated November 29, 2016, OWCP found that appellant had not established a recurrence of a medical condition due to a material change/worsening of his accepted right carpal tunnel condition. It determined that there was no well-reasoned narrative medical opinion which established that appellant's current conditions were related to the original accepted injury without intervening cause.

On December 27, 2016 appellant requested reconsideration. Occupational therapy notes dated September 22 through October 11, 2016 were received along with a December 13, 2016 EMG/NCV study, which noted electrodiagnostic evidence for bilateral median neuropathy at the wrist.

In an October 10, 2016 report, Dr. Jeffrey Fecko, a neurologist, reported that appellant had a history of carpal tunnel syndrome with surgical release on the right side in 2003 with good results. He also had a history of bilateral thumb arthritis, for which he had undergone surgery. Dr. Fecko indicated that appellant was seen for a decrease in grip strength, which had evolved over the last few years with the right side more affected than the left side. He noted that appellant had not complained of tingling or numbness, there was no hand or wrist pain and only minimal posterior neck pain with no radiation to the upper limbs. Dr. Fecko reviewed the EMG/NCV study of August 29, 2016, which showed mild bilateral median neuropathy at the wrist. He diagnosed hand weakness and median nerve compression, but indicated it was not clear what caused appellant's hand weakness. Although carpal tunnel was a consideration and the recent EMG/NVC study showed median neuropathy at both wrists, Dr. Fecko stated that the lack of any accompanying sensory complaints was unusual. Based on the diagnostic studies, he indicated ulnar nerve involvement underlying his weakness was unlikely and there was no evidence of root involvement or a cervical myelopathy as the source of his symptoms.

In an October 21, 2016 report, Dr. Fecko noted that he had evaluated appellant for bilateral hand weakness. He noted that electrodiagnostic testing revealed bilateral median neuropathy at the wrist, which raised the possibility of recurrent carpal tunnel syndrome on the right side. However, Dr. Fecko stated that appellant's specific diagnosis was not yet clear.

By decision dated January 3, 2017, OWCP denied modification of its November 29, 2016 decision.

LEGAL PRECEDENT

The United States shall furnish to an employee who is injured while in the performance of duty the services, appliances, and supplies prescribed or recommended by a qualified physician that the Secretary of Labor considers likely to cure, give relief, reduce the degree or the period of any disability, or aid in lessening the amount of any monthly compensation.[5]

Recurrence of medical condition means a documented need for further medical treatment after release from treatment for the accepted condition or injury when there is no accompanying work stoppage. Continuous treatment for the original condition or injury is not considered a need for further medical treatment after release from treatment, nor is an examination without treatment.[6]

If a claim for recurrence of medical condition is made more than 90 days after release from medical care, a claimant is responsible for submitting a medical report supporting a causal relationship between the employee's current condition and the original injury in order to meet his burden.[7]

An employee has the burden of proof to establish that he or she sustained a recurrence of a medical condition that is causally related to his or her accepted employment injury. To meet this burden, the employee must submit medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, supports that the condition is causally related and supports his conclusion with sound medical rationale.[8] Where no such rationale is present, medical evidence is of diminished probative value.[9]

ANALYSIS

Appellant has an accepted occupational disease claim for right carpal tunnel syndrome, which arose on or about March 15, 2013, assigned OWCP File No. xxxxxx148. He also has an accepted claim for aggravation of bilateral TMC joint degenerative arthritis, assigned OWCP File No. xxxxxx096, with the same March 15, 2013 date of injury. With respect to his right thumb/hand/wrist, appellant has undergone two OWCP-approved surgical procedures, the most recent of which was performed in February 2006. On September 19, 2016 appellant filed a notice of recurrence (Form CA-2a) for medical treatment only with respect to his accepted

[5] 5 U.S.C. § 8103(a).

[6] 20 C.F.R. § 10.5(y).

[7] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.4(b) (June 2013); *see also J.M.*, Docket No. 09-2041 (issued May 6, 2010).

[8] *O.H.*, Docket No. 15-0778 (issued June 25, 2015).

[9] *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988); *see Ronald C. Hand*, 49 ECAB 113 (1957).

condition of right carpal tunnel syndrome. He identified August 29, 2016 as the date of recurrence.

The Board finds that the evidence of record does not establish that appellant's current need for medical treatment is causally related to the accepted work injury. In medical reports dated September 13 and 15, 2016, Dr. Savadove noted that appellant had bilateral hand weakness and that an EMG had been performed. While he diagnosed bilateral carpal tunnel syndrome, Dr. Savadove did not address the cause of appellant's bilateral hand weakness or the diagnosed bilateral carpal tunnel syndrome. 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.[10] Thus, these reports are insufficient to establish appellant's claim.

In his October 10, 2016 report, Dr. Fecko indicated that the electrodiagnostic testing, which revealed bilateral median neuropathy at the wrist, raised the possibility of recurrent carpal tunnel syndrome on the right side. However, he advised that the explanation for appellant's hand weakness was unclear. In his October 21, 2016 report, Dr. Fecko stated that the specific diagnosis was not yet clear. Thus, he failed to provide a firm medical diagnosis of a specific condition or provide rationale as to how the results seen on electrodiagnostic testing were related to appellant's accepted right carpal tunnel syndrome.[11] Moreover, Dr. Fecko provided a speculative point of view as he indicated that electrodiagnostic testing raised the possibility of recurrent carpal tunnel syndrome on the right side.[12] Thus, these reports are insufficient to meet appellant's burden of proof.

The reports from an occupational therapist are of no probative medical value regarding causal relationship as they are not considered physicians under FECA.[13]

The electrodiagnostic study reports of August 29 and December 13, 2016 are of diminished probative value as no physician opined that appellant had a medical condition causally related to the accepted right carpal tunnel syndrome.[14]

As discussed, appellant has the burden of proof to submit reasoned medical evidence supporting his claim that he requires further medical treatment as a result of his accepted

[10] *S.E.*, Docket No. 08-2214 (issued May 6, 2009); *Conard Hightower*, 54 ECAB 796 (2003).

[11] *George A. Davis*, Docket No. 95-1684 (issued April 3, 1997).

[12] *D.D.*, 57 ECAB 734 (2006); *M.W.*, 57 ECAB 710 (2006); *Ceclia M. Corley*, 56 ECAB 662 (2005).

[13] The term physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. *See* 5 U.S.C. § 8102(2); 5 U.S.C. § 8101(2); *see also J.J.*, Docket No. 15-0727 (issued July 16, 2015) (reports from appellant's occupational therapist have no probative medical value. Occupational therapists are not considered physicians as defined under FECA).

[14] *See K.W.*, 59 ECAB 271 (2007); *A.D.*, 58 ECAB 149 (2006); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Michael E. Smith*, 50 ECAB 313 (1999).

employment injury.[15] He failed to provide such evidence and thus did not meet his 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 and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not established a recurrence of a medical condition causally related to his accepted right carpal tunnel syndrome.

ORDER

IT IS HEREBY ORDERED THAT the January 3, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 22, 2017
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

[15] *See T.M.*, Docket No. 16-1456 (issued January 10, 2017); *see also V.P.*, Docket No. 16-0614 (issued May 18, 2016).