United States Department of Labor
Employees' Compensation Appeals Board

L.H., Appellant	)	
and	)	**Docket No. 17-0982**
	)	**Issued: July 9, 2018**
DEPARTMENT OF VETERANS AFFAIRS, REGIONAL BENEFIT OFFICE, Chicago, IL, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On April 4, 2017 appellant filed a timely appeal from a March 7, 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 this case.[2]

ISSUE

The issue is whether appellant has met his burden of proof to establish a traumatic injury causally related to the accepted March 31, 2016 employment incident.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The record provided to the Board includes evidence received after OWCP issued its March 7, 2017 decision. The Board is limited to the evidence that was in the case record at the time of OWCP's final decision. Therefore, the Board is precluded from reviewing this additional evidence for the first time on appeal. 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

On April 22, 2016 appellant, then a 69-year-old claims assistant, filed a traumatic injury claim (Form CA-1) alleging that on March 31, 2016 he sustained an injury to his right upper extremity with symptoms of pain, stiffness, and numbness as a result of typing. He stopped work on April 1, 2016 and returned to work on April 11, 2016. A supervisor checked a box indicating that appellant did not injure himself in the performance of duty, explaining that she was out of the office that day and did not know there was an injury.

By letter dated March 28, 2016, Dr. Gregory Winstead, Board-certified in family medicine, noted that appellant was under his care from April 1 through 8, 2016, and could return to his full duties as of April 11, 2016.[3]

On April 8, 2016 Dr. William Swedler, a Board-certified internist, noted that he had seen appellant on that date for arthritis of the wrists and a flare-up of symptoms of carpal tunnel syndrome. He recommended that appellant be assigned to duties not involving typing for 60 days.

In a disability certificate dated April 12, 2016, Dr. Aleksandr Goldvekht, Board-certified in physical medicine and rehabilitation, recommended that appellant be released to limited duty with restrictions of no lifting, carrying, pushing, or pulling with the right hand, no walking, standing, or sitting for more than 30 continuous minutes at a time, and no typing with the right hand. He recommended that these restrictions last from April 12 through May 10, 2016.

On June 3, 2016 Dr. Swedler noted that appellant was seen for arthritis of the wrists and a flare-up of right carpal tunnel syndrome for his unit arthritis. He recommended that appellant be assigned to duties that entails no typing for 90 days.

By letter dated July 22, 2016, Dr. Swedler noted that he had seen appellant on that day for evaluation of carpal tunnel syndrome in appellant's right wrist. He recommended that, due to his worsening condition, appellant would be unable to perform his duties for a minimum of 90 days, as it would exacerbate his symptoms.

On July 25, 2016 appellant filed a notice of recurrence (Form CA-2a) alleging that his injury of March 31, 2016 had recurred on July 11, 2016. He did not stop work. Appellant explained that while he had been limited to non-typing duties, he performed filing and mail room duties, including lifting and moving files, as well as packages. He stated that the condition had never ceased and that he had continued to work light duty continuously. A supervisor noted that the recurrence was not reported, and that appellant had continued to type and use his computer despite his medical provider's restrictions. The supervisor further noted that appellant's access to computers had been suspended to prevent further injury.

By letter dated September 7, 2016, OWCP informed appellant that he had not submitted sufficient evidence to support his claim. It noted that appellant had not submitted sufficient evidence to establish how the claimed injury resulted in his diagnosed carpal tunnel syndrome.

[3] Dr. Winstead referred to April 1, 2016 as "today" in this letter.

OWCP requested that appellant submit a narrative medical report from his attending physician, including the physician's opinion, supported by a medical explanation, as to how the claimed work incident caused or aggravated his diagnosed conditions.

By letter dated September 2, 2016, Dr. Swedler noted that he had seen appellant on that day for evaluation of his right wrist carpal tunnel syndrome and osteoarthritis in the left wrist. He noted that appellant's conditions had caused him permanent disability and were severely worsened by his job as a claims assistant. Dr. Swedler observed, "The disability is a consequence of his job which he can no longer perform due to the carpal tunnel causing severe pain and numbness to three of his fingers and his inability to do repetitive movements with his right hand [and] wrist."

On September 20, 2016 Dr. Swedler noted that he had treated appellant for carpal tunnel syndrome of the right wrist between April 29 and September 2, 2016. He observed that appellant had pain, numbness, and a tingling sensation in his right elbow, wrist, and hand, involving his right thumb, index finger, middle finger, and lateral hand. Evaluation on April 15, 2016 found diminished monofilament sensation to light touch on the right hand in the median nerve distribution, along with reduced active range of motion on flexion and extension, and reduced hand strength. An x-ray study from February 3, 2012 demonstrated severe loss of radial carpal joint space with large cysts in the scaphoid bones and reduced intercarpal joint spaces. Dr. Swedler further noted degenerative arthritic changes, perhaps from prior trauma. He concluded that, "[Appellant's] carpal tunnel pain is made worse by his duties as a claims assistant with the repetitive motion typing entails."

In occupational therapy notes dated April 8, 2016, Dr. Swedler examined appellant for complaints of paresthesias of the right arm and first three digits of his right hand over the past six months. He noted that appellant worked in a job involving typing at the employing establishment, which appellant stated aggravated his parasthesias. On examination Dr. Swedler noted moderate swelling over the medial side of the right wrist accompanied by pain. He diagnosed appellant with carpal tunnel syndrome and gout. Dr. Swedler administrated an injection to the right wrist. On April 15, 2016 he examined appellant for complaints of dorsal wrist pain and weakness/parasthesias throughout median nerve distribution of the right hand. Dr. Swedler noted that appellant's work involved data entry and typing for most of his workday. On physical examination he noted diminished light touch sensation of fingers of the right hand and diminished active range of motion on flexion and extension, along with diminished hand strength. Dr. Swedler recommended occupational therapy. The progress notes documented appellant's follow-up appointments regarding the progress of his physical therapy on April 22 and 29, 2016.

In a follow-up visit on May 13, 2016, Dr. Swedler noted that appellant's range of motion, hand pain, and hand strength had improved after four occupational therapy sessions. He noted that appellant admitted to lifting heavy dumbbells despite a therapist's recommendation to replace them with other exercises, and stated that occupational therapy was no longer warranted. On May 27, 2016 Dr. Swedler noted that appellant experienced pain with hyperextension of the right wrist, due to a ganglion cyst, though symptoms of his right wrist's carpal tunnel syndrome had improved.

On July 22, 2016 appellant visited Dr. Srinaivasu Yerneni with complaints of discomfort in his right wrist, noting that he had been moved to the mail room of the employing establishment due to his disability from typing, which had caused greater discomfort in his wrist.[4] On examination Dr. Yerneni noted limited flexion and extension of the right wrist with full strength and sensation.

By decision dated March 7, 2017, OWCP denied appellant's claim. It found that he had not submitted sufficient medical evidence to establish a causal relationship between his diagnosed conditions and the employment incident of March 31, 2016. OWCP noted that Dr. Swedler's report of September 20, 2017 was considered equivocal without a more in-depth explanation in light of appellant's known arthritic changes and possible prior trauma to his right wrist.

LEGAL PRECEDENT

An employee seeking benefits under FECA[5] 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, that the claim was timely filed within the applicable time limitation period of FECA, that an injury[6] 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.[7]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether "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 or she 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.[8]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.[9] Rationalized medical

[4] Dr. Yerneni's Board certification in a medical specialty could not be confirmed.

[5] *Supra* note 1.

[6] OWCP's regulations define a traumatic injury as a condition of the body caused by a specific event or incident, or series of events of 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).

[7] *T.H.*, 59 ECAB 388, 393 (2008); *see Steven S. Saleh*, 55 ECAB 169, 171-72 (2003); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[8] *See Shirley A. Temple*, 48 ECAB 404, 407 (1997); *John J. Carlone* 41 ECAB 354, 356-57 (1989).

[9] *Y.J.*, Docket No. 08-1167 (issued October 7, 2008); *A.D.*, 58 ECAB 149, 155-56 (2006); *D'Wayne Avila*, 57 ECAB 642, 649 (2006).

opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and compensable employment factors.[10] 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.[11]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a causal relationship between the March 31, 2016 incident and his claimed right wrist conditions.

On March 28, 2016 Dr. Winstead noted that appellant was under his care from April 1 through 8, 2016. On April 8, 2016 Dr. Swedler noted that he had seen appellant on that date for arthritis of the wrists and a flare-up of symptoms of carpal tunnel syndrome. In a disability certificate dated April 12, 2016, Dr. Goldvekht recommended that appellant be released to limited duty with restrictions.

On June 3, 2016 Dr. Swedler noted that appellant was seen for arthritis of the wrists and a flare-up of right carpal tunnel syndrome for his unit arthritis. By letter dated July 22, 2016, he noted that he had seen appellant on that day for evaluation of carpal tunnel syndrome in appellant's right wrist. In occupational therapy notes dated April 8, 2016, Dr. Swedler examined appellant for complains of paresthesias of the right arm and first three digits of his right hand over the past six months. On April 15, 2016 he examined appellant for complaints of dorsal wrist pain and weakness/parasthesias throughout median nerve distribution of the right hand. In a follow-up visit on May 13, 2016, Dr. Swedler noted that appellant's range of motion, hand pain, and hand strength had improved after four occupational therapy sessions. On May 27, 2016 he noted that appellant experienced pain with hyperextension of the right wrist, due to a ganglion cyst, though symptoms of his right wrist's carpal tunnel syndrome had improved.

On July 22, 2016 appellant visited Dr. Yerneni with complaints of discomfort in his right wrist, noting that he had been moved to the mail room of the employing establishment due to his disability from typing, which had caused greater discomfort in his wrist.

On September 2, 2016 Dr. Swedler noted that he had seen appellant on that day for evaluation of his right wrist carpal tunnel syndrome and osteoarthritis in the left wrist. He noted that his conditions had caused him permanent disability and were severely worsened by his job as a claims assistant. Dr. Swedler opined that appellant's conditions were a consequence of his job. On September 20, 2016 he noted that he had treated appellant for carpal tunnel syndrome of the right wrist between April 29 and September 2, 2016. Dr. Swedler observed that appellant had pain, numbness, and a tingling sensation in his right elbow, wrist, and hand, involving his right thumb, index finger, middle finger, and lateral hand. Evaluation on April 15, 2016 found diminished monofilament sensation to light touch on the right hand in the median nerve

[10] *J.J.*, Docket No. 09-0027 (issued February 10, 2009); *Michael S. Mina*, 57 ECAB 379, 384 (2006).

[11] *I.J.*, 59 ECAB 408, 415 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

distribution, along with reduced active range of motion on flexion and extension, and reduced hand strength. An x-ray study from February 3, 2012 demonstrated severe loss of radial carpal joint space with large cysts in the scaphoid bones and reduced intercarpal joint spaces. Dr. Swedler further noted degenerative arthritic changes, perhaps from prior trauma, and stated that appellant's duties at work had exacerbated his symptoms. His September 2 and 20, 2016 reports regarding appellant's right hand conditions do not contain medical rationale explaining how the specific incident of March 31, 2016 physiologically caused appellant's specific condition.[12]

None of the medical reports submitted for consideration in this claim contained an opinion on the cause of appellant's conditions. Medical evidence offering no opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[13] As such, these reports, lacking any opinion on the cause of appellant's conditions, are insufficient to establish appellant's claim.

Other medical evidence of record, including work restriction notes and diagnostic testing, are of limited probative value as they do not specifically address whether appellant's conditions are attributable to his accepted work incident.[14]

The issue of a causal relationship between appellant's claimed conditions and a work-related incident is a medical question that must be established by probative medical opinion from a physician.[15] The Board finds that none of the medical evidence appellant submitted constitutes rationalized medical evidence sufficient to establish causal relationship between the work incident and his diagnosed conditions.[16] Accordingly, the Board finds that appellant failed to 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(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 a traumatic injury causally related to the accepted March 31, 2016 employment incident.

[12] *See A.D.*, Docket No. 17-1136 (issued November 9, 2017).

[13] *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).

[14] *See K.W.*, 59 ECAB 271 (2007); *A.D.*, *id.*; *Linda I. Sprague*, 48 ECAB 386 (1997) (finding that 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). *See also D.J.*, Docket No. 17-0364 (issued April 13, 2018).

[15] *W.W.*, Docket No. 09-1619 (issued June 2010); *David Apgar*, 57 ECAB 137 (2005).

[16] *See T.C.*, Docket No. 16-0586 (issued August 9, 2016)*; Patricia J. Bolleter*, 40 ECAB 373 (1988).

ORDER

IT IS HEREBY ORDERED THAT the March 7, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 9, 2018
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

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

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