United States Department of Labor
Employees' Compensation Appeals Board

E.D., Appellant	)	
and	)	**Docket No. 19-0833**
	)	**Issued: October 3, 2019**
U.S. POSTAL SERVICE, POST OFFICE, Minneapolis, MN, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On March 12, 2019 appellant, through counsel, filed a timely appeal from an October 5, 2018 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.

[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 left thumb and right shoulder conditions causally related to the accepted factors of her federal employment.

FACTUAL HISTORY

On December 10, 2015 appellant, then a 56-year-old mail handler, filed an occupational disease claim (Form CA-2) alleging that she developed left anterior interosseous nerve entrapment of the left thumb due to her federal employment duties, including a new assignment unloading and staging mail which required pushing and pulling heavily loaded mail transport equipment. She indicated that she first became aware of the disease or illness on December 24, 2012, and first realized its relation to her federal employment on January 8, 2013. On the reverse side of the claim form, the employing establishment controverted the claim contending that appellant's physician indicated that her thumb condition was caused by viral neuritis.

In a development letter dated December 29, 2015, OWCP advised appellant that additional factual and medical evidence was necessary to establish her claim. It provided a questionnaire for her completion and requested that she submit a response in order to substantiate the factual basis of her claim. OWCP also instructed appellant to provide a narrative medical report from her physician which contained a detailed description of findings and diagnoses, explaining how her work activities caused, contributed to, or aggravated her medical condition. It afforded her 30 days to submit the necessary evidence.

In a statement dated February 12, 2016, appellant described her activities at work. She explained that she had worked for the employing establishment in a variety of different capacities for over 16 years. Appellant indicated that much of her work was repetitive in nature, and despite spending the majority of her career on motorized, industrial equipment, she was also required to work in jobs which "required a lot of physical, 'hands-on' involvement with the mail."

In a January 17, 2013 treatment note, Dr. Elizabeth Anne Van Heest, a Board-certified orthopedic hand surgeon, noted that appellant was right-hand dominant and that she was unable to flex her left thumb. She explained that she saw appellant in follow-up for evaluation of her electromyography nerve conduction velocity (EMG/NCV) testing. Dr. Van Heest diagnosed left anterior interosseous nerve neuritis and explained that this was commonly a viral neuritis, "sometimes associated with a brachial neuritis and [appellant] has had problems with frozen shoulder on the left so this may be congruent with that diagnosis."

In a February 28, 2013 report, Dr. Van Heest noted that appellant had difficulty flexing her left thumb due to an anterior interosseous nerve neuritis which was documented by nerve testing. She related that appellant was "lifting very heavy things at work. Dr. Van Heest noted that appellant did a lot of pushing and pulling when she first had this disorder in her thumb and there was some concern as to whether it could be a rupture." She examined the thumb and diagnosed left thumb anterior interosseous neuritis. Dr. Van Heest continued to treat appellant and in a July 24, 2014 treatment note, indicated that appellant's left thumb anterior interosseous neuritis was secondary to Parsonage Turner syndrome, with permanent loss of terminal full interphalangeal (IP) joint flexion strength and range of motion.

In a March 11, 2016 report, Dr. Albert K. Tsai, a Board-certified orthopedic surgeon, noted that appellant presented for right arm pain. He indicated that appellant was "riding a motorized pallet jack while working at the [employing establishment] yesterday when she turned her right arm and felt a 'pop and rip' in her right dominant arm." Dr. Tsai noted a past rotator cuff injury, arthritis, and insomnia. He diagnosed a right biceps tendon rupture.

In a March 16, 2016 report, Dr. Nancy Luger, a Board-certified orthopedic surgeon, indicated that appellant had a history of right shoulder pain from March 10, 2016. She noted that appellant was working a motorized pallet jack when she felt an injury to her right shoulder. Dr. Luger indicated that appellant had a prior history of shoulder pain, some injections and physical therapy, but nothing recently. She advised that appellant had a history of "some work comp injury and being treated for her left thumb with an interosseous nerve impingement." Dr. Luger diagnosed proximal biceps rupture, noted that appellant was a laborer at the employing establishment, and concluded that she had an employment-related injury.

By decision dated June 13, 2016, OWCP denied appellant's occupational disease claim. It found that appellant had established the factual portion of her claim. However, appellant had not provided a rationalized medical opinion explaining how her diagnosed left hand thumb anterior interosseous neuritis and right biceps tendon rupture were causally related to the accepted employment factors.

On May 26, 2017 appellant requested reconsideration. She submitted a statement dated May 11, 2017, from her union representative, and her own detailed May 22, 2017 supplemental statement describing her employment duties and alleging that overcompensation for her left thumb condition contributed to her right shoulder condition.

By decision dated August 23, 2017, OWCP denied modification of its prior decision. It explained that appellant had not submitted medical evidence from a qualified physician with an objective finding and rationalized medical opinion establishing that the claimed conditions were caused or aggravated by factors of her federal employment.

On June 27, 2018 appellant, through counsel, requested reconsideration of the August 23, 2017 OWCP decision and submitted new medical evidence.

In a September 14, 2016 report, Dr. Mark C. Agre, Board-certified in physical medicine and rehabilitation, noted that appellant presented with pain for 17 years and that "the onset of the condition was a work injury." He indicated that appellant continued to work and reported difficulty with the left hand. Dr. Agre noted thumb dysfunction with degenerative changes at her left first metacarpalphalangeal joint and limitation in full flexion/extension. He also found distal to the IP flexion weakness, which could be an anterior interosseous syndrome, advised that appellant had Parsonage-Turner syndrome, and explained that this was the only nerve that was affected. Dr. Agre noted that it seemed a little odd that other factors would not be a cause, but that appellant's left thumb has been a long-standing problem. He explained that appellant had been retroactively trying to make it related to her repetitive work for the employing establishment due to over 18 years of continual pounding manual repetitive hand work. Dr. Agre opined: "I certainly cannot state it did not have a negative influence…." He also indicated that appellant had other medical issues including osteoarthritis of her left carpometacarpal joint and persisting IP

flexion/flexor pollicis-type weakness which "could be an anterior interosseous syndrome albeit the medical records describe Parsonage-Turner, although this is pretty focal for that diagnosis." Dr. Agre related that appellant believed her repetitive work exacerbated "either the preexisting condition versus the etiology for it wholly." He opined "[u]ndoubtedly her repetitive manual use at the [employing establishment] could have caused a Gillette-type injury to this area as she describes no other primary injury to the area." Dr. Agre noted that he had not evaluated appellant's right biceps problems, which she believed were related to the repetitive nature of her job duties.

In a June 16, 2016 report, Dr. Sanjeev Arora, Board-certified in physical medicine and rehabilitation, noted that appellant had a history dating back many years for left hand symptoms. He indicated that her current symptoms included left hand weakness, right hand pain, and right shoulder pain, to include a right shoulder biceps tear that was a work-related injury. Dr. Arora diagnosed a lesion of the left anterior interosseous nerve (AIN). He explained that he noticed that her work was repetitive in nature and included the use of her forearm muscles in a repeated fashion, and opined "it is potentially possible that her work will be a significant contributor to her AIN palsy. Actually, I feel that it is more likely than not to be responsible for her left AIN palsy."

By decision dated October 5, 2018, OWCP denied modification of its August 23, 2017 decision.

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, that the claim was timely filed within the applicable time limitation period of FECA,[3] that an injury 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.[4] 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.[5] To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (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

[3] *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

[4] *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[5] *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.[6]

The medical evidence 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 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.[7] 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.[8]

In any case where a preexisting condition involving the same part of the body is present and the issue of causal relationship therefore involves aggravation, acceleration, or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.[9]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish left thumb and right shoulder conditions causally related to the accepted factors of her federal employment.

Appellant initially alleged a left thumb injury. In a supplemental statement dated May 22, 2017, she alleged that her left thumb condition caused overcompensation and contributed to a right shoulder condition. OWCP denied appellant's claim for both left thumb and right shoulder conditions.

In support of her claim appellant submitted several reports from Dr. Van Heest. In her January 17, 2013 treatment note, Dr. Van Heest indicated that her left anterior interosseous nerve neuritis was commonly a viral neuritis. She indicated that this was "sometimes associated with a brachial neuritis and she has had problems with frozen shoulder on the left so this may be congruent with that diagnosis." This initial report did not provide a medical opinion addressing whether appellant's diagnosed condition was caused by the accepted employment factors. Medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no

[6] *R.R.*, Docket No. 19-0714 (issued August 8, 2019); *Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

[7] *See J.R.*, Docket No. 17-1781 (issued January 16, 2018); *I.J.*, 59 ECAB 408 (2008).

[8] *T.H.*, Docket No. 18-1585 (issued March 22, 2019); *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

[9] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); *see K.P.*, Docket No. 18-0041 (issued May 24, 2019).

probative value on the issue of causal relationship.[10] In her February 28, 2013 report, Dr. Van Heest noted that appellant lifted, pushed and pulled very heavy items at work and that she did a lot of pushing and pulling when she first had this disorder in her thumb, but she did not provide a rationalized opinion regarding causal relationship. The Board has held that the mere recitation of patient history does not suffice for purposes of establishing causal relationship between a diagnosed condition and the employment incident.[11] Without explaining physiologically how the accepted employment incident caused or contributed to the diagnosed conditions, the physician's reports are of limited probative value.[12] Further, a temporal relationship alone will not suffice.[13] Dr. Van Heest also provided a July 24, 2014 treatment note in which she opined that appellant's left thumb anterior interosseous neuritis was secondary to Parsonage-Turner syndrome, a preexisting condition. This report did not offer support for an occupational disease claim due to the accepted employment factors.[14] For the reasons set forth above, the Board finds that Dr. Van Heest's reports are insufficient to meet appellant's burden of proof.

In a September 14, 2016 report, Dr. Agre found appellant had left thumb dysfunction with degenerative changes to her metacarpalphalangeal joint, and flexion weakness, could be an interior interosseous syndrome. He concluded: "[u]ndoubtedly her repetitive manual use at the [employing establishment] could have caused a Gillette-type injury to this area as she describes no other primary injury to the area." Dr. Agre's opinion regarding causation is speculative and couched in equivocal terms.[15] To be of probative value, a physician's opinion on causal relationship must be one of reasonable medical certainty. Dr. Agre's opinion is therefore insufficient to establish appellant's claim.[16]

Likewise, Dr. Arora, in his June 16, 2016 report, addressed appellant's left thumb condition and opined that "it is potentially possible that her work will be a significant contributor to her AIN palsy." The Board finds that this opinion is speculative in nature,[17] and lacks the specificity, and detail needed to establish appellant's claim.

OWCP also received reports from Dr. Tsai and Dr. Luger diagnosing a right biceps tendon rupture. While appellant alleged that her right shoulder condition was due to overcompensation

[10] *See S.G.*, Docket No. 19-0041 (issued May 2, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018) (medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship).

[11] *See J.G.*, Docket No. 17-1382 (issued October 18, 2017).

[12] *See A.B.*, Docket No. 16-1163 (issued September 8, 2017).

[13] *M.H.*, Docket No. 18-1737 (issued March 13, 2019); *Daniel O. Vasquez*, 57 ECAB 559 (2006).

[14] *Supra* note 10.

[15] *See J.P.*, Docket No. 19-0303 (issued August 13, 2019).

[16] *D.P.*, Docket No. 18-1647 (issued March 21, 2019); *P.O.*, Docket No. 14-1675 (issued December 3, 2015); *S.R.*, Docket No. 12-1098 (issued September 19, 2012).

[17] *Id*.

from her left thumb condition, neither of these physicians provided an opinion supporting causal relationship between appellant's diagnosed conditions and the accepted factors of her employment.[18]

As appellant has not submitted sufficiently rationalized medical evidence to establish causal relationship between her left thumb or right shoulder conditions and the accepted employment factors, she has not met her burden of proof to establish her occupational disease claim.

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 left thumb and right shoulder conditions causally related to the accepted factors of her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the October 5, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 3, 2019
Washington, DC

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

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

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

[18] *Supra* note 10.