

ISSUE

The issue is whether appellant has met her burden of proof to establish a consequential right upper extremity condition causally related to the accepted April 3, 2015 employment injury.

FACTUAL HISTORY

On April 15, 2015 appellant, then a 40-year-old temporary rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on April 3, 2015 she strained her left shoulder muscle and wrist as a result of lifting a tray of magazines while in the performance of duty. She stopped work on April 13, 2015 and resigned from the employing establishment effective August 7, 2015.⁴ OWCP accepted the claim for left wrist and shoulder strains, and subsequently expanded acceptance of the claim to include left shoulder impingement syndrome, cubital tunnel syndrome, occipital neuritis, and C4-5 and C5-6 cervical disc displacement. It authorized left shoulder arthroscopy with subacromial decompression, which occurred on June 17, 2016, and anterior cervical C4-5 and C5-6 decompression surgery, which occurred on June 8, 2017. OWCP paid appellant wage-loss compensation on the periodic rolls as of June 25, 2017.

In an October 13, 2018 report, Kerri D. Winston, Ph.D., a licensed acupuncturist, advised Dr. John I. Foster, III, a Board-certified orthopedic surgeon, that appellant appeared to have a chronic condition despite responding well to her acupuncture treatment. She opined that appellant had developed neck discomfort and pain in her right thumb and right arm medial aspect from her daily living activities and surgeries.

In an October 17, 2018 report, Dr. Foster related appellant's history of injury and related appellant's report of right forearm pain and swelling, which he noted that, to his "knowledge is not part of the claim." He referenced Dr. Winston's October 13, 2018 opinion that appellant had developed a right upper extremity condition. Dr. Foster indicated that he had discussed with appellant the possibility of filing a new claim for her right upper extremity condition.

In notes of a telephone call (Form CA-110) dated October 17, 2018, OWCP advised appellant of the procedure for filing a consequential claim for her right upper extremity condition.

On October 30, 2018 appellant filed a claim for a consequential right arm/hand injury.

In a report dated November 1, 2018, Dr. Foster reviewed diagnostic testing, provided examination findings, and diagnosed thoracic outlet syndrome, left elbow ulnar neuropathy without demyelinating, resolved left occipital neuritis, left paracentral C4-5 and C5-6 cervical herniated nucleus pulposus, status post left shoulder arthroscopy with arthroscopic subacromial decompression, left shoulder distal arthroscopic distal clavicle resection, and left ulnar cubital tunnel nerve decompression. He referenced an October 13, 2018 letter from appellant's acupuncturist, which noted an aggravation of her right thumb and upper extremity conditions.

⁴ On February 13, 2018 OWCP received a notice of personnel action (Standard Form SF-50), noting June 24, 2015 as the effective date of appellant's resignation while the earlier SF-50 forms note the date of August 7, 2015. An October 26, 2016 field nurse report noted that appellant had been terminated from the employing establishment, effective August 7, 2015, due to abandonment of her position. In CA-110 notes of a telephone call dated January 31, 2017, appellant informed OWCP that she had returned to her private sector job as a bar tender/banquet server on October 1, 2016.

In a development letter dated November 26, 2018, OWCP noted that it received appellant's request for a consequential right arm condition causally related to the accepted April 3, 2015 employment injury. It advised her of the type of evidence required to expand the acceptance of her claim and afforded her 30 days to provide the necessary evidence.

On December 19, 2018 OWCP received reports covering the period October 12 through November 30, 2018 from Dr. Winston noting appellant's complaints of severe bilateral pain with the right arm worse than the left and summarizing her acupuncture treatment.

OWCP received a December 21, 2018 electromyograph and nerve conduction velocity (EMG/NCV) study performed by Dr. Ralph D'Auria, a Board-certified physiatrist, which showed right elbow ulnar neuropathy and no electrophysiological evidence of cervical radiculopathy.

By decision dated February 21, 2019, OWCP denied expansion of the acceptance of appellant's claim, finding that the medical evidence of record was insufficient to demonstrate that the right arm condition was causally related to the accepted April 3, 2015 employment injury.⁵

On February 21, 2019 OWCP received a February 6, 2019 report from Dr. D'Auria who noted that appellant was referred to Dr. Foster for evaluation and treatment of her right cubital tunnel syndrome shown by a December 21, 2018 EMG/NCV.

Appellant, through counsel, requested a telephonic hearing before an OWCP hearing representative on February 27, 2019, which was held on June 17, 2019. The following evidence accompanied counsel's request.

In a report dated February 21, 2019, Dr. Foster provided examination findings, detailed diagnostic studies, and examination findings. Appellant related that her right upper extremity conditions were worse than her left. Dr. Foster diagnosed right elbow ulnar neuropathy after reviewing a December 21, 2018 EMG/NCV study. An examination of the right upper extremity revealed a positive elbow Tinel's sign with radiating symptoms to her first, second, fourth and fifth fingers. Diagnoses included right radial neuritis, right elbow ulnar neuropathy, thoracic outlet syndrome, left elbow ulnar neuropathy without demyelination, resolved left occipital neuritis, status post left shoulder arthroscopy with arthroscopic subacromial decompression, and left paracentral C4-5 and C5-6 cervical herniated nucleus pulposus. Dr. Foster noted that the diagnosis of right radial neuritis was based on appellant's subjective complaints and was not confirmed diagnostically while the diagnosis of right elbow ulnar neuropathy had been confirmed diagnostically. In an addendum, he suggested that she had an underlying degenerative abnormality in addition to the cubital tunnel condition.

Dr. Foster, in a March 28, 2019 report, reiterated findings, review of diagnostic tests, and diagnoses contained in his February 21, 2019 report. Appellant noted that her right upper extremity symptoms were worse than her left with occasional pain. Right upper extremity examination findings included positive elbow Tinel's sign radiating into her fingers. In a

⁵ On January 23, 2019 OWCP reduced appellant's wage-loss compensation to zero based on a loss of wage-earning capacity (LWEC) determination due to her actual earnings as a banquet server working part time. It noted that the employment was effective July 19, 2018, that the position fairly and accurately represented her wage-earning capacity, and the wages she received met or exceeded the wages she had earned in her date-of-injury position. By decision dated May 2, 2019, an OWCP hearing representative vacated the January 23, 2019 LWEC determination and remanded the case for a proper calculation of appellant's pay rate in order to determine whether she had an LWEC.

March 29, 2019 report, Dr. Foster summarized examination findings and diagnosed right cubital tunnel syndrome based on diagnostic testing. He noted that appellant had undergone several unsuccessful surgeries, including cervical discectomy and fusion, as well as left shoulder arthroscopy and left ulnar nerve decompression; therefore, he did not recommend further surgical intervention.

By decision dated August 9, 2019, OWCP's hearing representative affirmed the February 21, 2019 decision, finding that the medical evidence of record was insufficient to expand the acceptance of the claim to include a consequential right upper extremity condition.

LEGAL PRECEDENT

When an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.⁶

To establish causal relationship, the employee must submit rationalized medical opinion evidence.⁷ 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 accepted employment injury.⁸ The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.⁹

When an injury arises in the course of employment, every natural consequence that flows from that injury likewise arises out of the employment, unless it is the result of an independent intervening cause attributable to a claimant's own intentional misconduct.¹⁰ Thus, a subsequent injury, be it an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural consequence of a compensable primary injury.¹¹

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a consequential right upper extremity condition causally related to the accepted April 3, 2015 employment injury.

⁶ See *W.C.*, Docket No. 19-1740 (issued June 4, 2020); *T.F.*, Docket No. 17-0645 (issued August 15, 2018); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

⁷ *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

⁸ *D.S.*, Docket No. 20-0146 (issued June 11, 2020); *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁹ *Id.*

¹⁰ See *S.M.*, Docket No. 19-0397 (issued August 7, 2019); *Mary Poller*, 55 ECAB 483, 487 (2004); Arthur Larson & Lex K. Larson, *The Law of Workers' Compensation* 10-1 (2006).

¹¹ *A.T.*, Docket No. 18-1717 (issued May 10, 2019); *Susanne W. Underwood (Randall L. Underwood)*, 53 ECAB 139 (2001).

In support of her claim, appellant submitted a series of reports from Dr. Foster. In an October 17, 2018 report, Dr. Foster noted her right upper extremity complaints. In reports dated October 17 and November 1, 2018, he referenced an October 13, 2018 report by appellant's acupuncturist who opined that appellant had sustained an aggravation of her right upper extremity. Dr. Foster, in reports dated February 21 and March 28, 2018, diagnosed right elbow ulnar neuropathy and right radial neuritis. He noted that appellant's right elbow ulnar neuropathy had been confirmed by diagnostic testing while the diagnosis of right radial neuritis was based on only appellant's subjective complaints. In reports dated March 28 and 29, 2018, Dr. Foster diagnosed right cubital tunnel syndrome. He, however, did not provide an opinion as to the cause of the right upper extremity conditions. Dr. Foster did not explain how appellant developed a consequential right upper extremity condition from the accepted employment injury. The Board has held that 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.¹² Accordingly, Dr. Foster's reports are insufficient to establish that appellant's claim should be expanded to include consequential right elbow ulnar neuropathy or right radial neuritis.

The record also contains a December 21, 2018 EMG/NCV study by Dr. D'Auria diagnosing right elbow ulnar neuropathy. The Board has held, however, that diagnostic studies standing alone lack probative value on the issue of causal relationship as they do not provide an opinion on causal relationship between an employment incident and a diagnosed condition.¹³ In a February 6, 2019 report, Dr. D'Auria noted that he had referred appellant for treatment of her right upper extremity conditions, but he again offered no opinion regarding causal relationship.¹⁴ This report is therefore insufficient to establish appellant's claim.

The remaining evidence is of no probative value on the issue of causal relationship. The October 13, 2018 report and subsequent treatment notes from Dr. Winston, an acupuncturist, have no probative medical value as acupuncturists are not considered physicians as defined under FECA.¹⁵

On appeal counsel contends that OWCP applied an improper standard of causation to appellant's case and did not give due deference to the opinions of appellant's treating physicians. As noted above, OWCP properly found that the medical evidence of record did not include a rationalized medical opinion to support expansion of her claim to include a consequential right upper extremity condition.

¹² *C.F.*, Docket No. 19-1748 (issued March 27, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹³ *M.M.*, Docket No. 20-0019 (issued May 6, 2020).

¹⁴ *Supra* note 13.

¹⁵ 5 U.S.C. § 8102(2) of FECA provides as follows: (2) physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. *See also 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). 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). *M.M.*, Docket No. 16-1180 (issued October 26, 2016) (acupuncturists and physical therapists are not considered physicians as defined under FECA); *C.K.*, Docket No. 14-1235 (issued September 11, 2014); *Nemat M. Amer*, Docket No. 03-0338 (issued April 7, 2005).

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 establish a consequential right upper extremity condition causally related to the accepted April 3, 2015 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the August 9, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 14, 2020
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

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