United States Department of Labor
Employees' Compensation Appeals Board

J.R., Appellant	)	
and	)	**Docket No. 20-0903**
	)	**Issued: April 22, 2021**
U.S. POSTAL SERVICE, BURLINGTON PROCESSING & DISTRIBUTION CENTER, Essex Junction, VT, 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:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On March 19, 2020 appellant, through counsel, filed a timely appeal from a February 24, 2020 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.[3]

[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.*

[3] The Board notes that OWCP received additional evidence following the February 24, 2020 decision. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether appellant has met her burden of proof to establish a right arm condition causally related to the accepted factors of her federal employment.

FACTUAL HISTORY

On May 21, 2019 appellant, then a 51-year-old automation clerk, filed an occupational disease claim (Form CA-2) alleging that she developed a right ulnar nerve condition as a result of her federal employment duties. She noted that she first became aware of her condition and its relation to her federal employment on May 20, 2019. Appellant did not stop work.

In a development letter dated May 31, 2019, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence necessary and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond. In a separate development letter also dated May 31, 2019, it requested additional factual information from the employing establishment.

In a May 23, 2019 note, Dr. William J. Cove, an osteopath specializing in neuromuscular disease, diagnosed right cubital tunnel syndrome and opined that the condition "is most likely due to the repetitive motions she performs at work."

In a June 6, 2019 memorandum, R.S., a plant manager, indicated that appellant was "continually" on "some sort of light duty for the past two years with restrictions from non-work related issues." The plant manager confirmed that the employing establishment was diligent with respect to adhering to her restrictions. R.S. disagreed that appellant engaged in repetitive work and indicated that the employing establishment had "100 percent" complied with her physician's recommendations for work restrictions.

A position description for a mail processing clerk was received on June 14, 2019, along with a description of measures to reduce fatigue while working.

In a June 19, 2019 letter, appellant indicated that she did not have appropriate medical restrictions in place and that she had just received a platform that could have possibly prevented her ulnar nerve damage if she had received it earlier.

In a July 3, 2019 attending physician's report (Form CA-20), Dr. Cove noted that appellant developed symptoms in her "right forearm after lifting trays of mail off a high shelf." He diagnosed ulnar nerve impingement, based upon an electromyogram (EMG) study dated April 24, 2019. Dr. Cove checked the box "Yes" in response to whether he believed the condition was caused or aggravated by an employment activity. He also indicated that appellant had no preexisting conditions.

In a July 3, 2019 duty status report (Form CA-17), Dr. Cove noted that appellant developed numbness in the right forearm after lifting heavy mail trays. He advised that appellant had right ulnar nerve impingement and that appellant was "never told to miss work."

By decision dated July 25, 2019, OWCP denied the claim, finding that appellant had not established that the identified employment factors had occurred as alleged. It explained that

appellant had not responded to the factual questionnaire, nor did she describe her alleged employment factors on the Form CA-2. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On August 20, 2019 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review, which was held on December 11, 2019.

During the hearing, appellant indicated that she was diagnosed with right ulnar nerve damage and that she had a cervical condition which she continued to aggravate. She noted that she had filed a prior claim, but due to ongoing employment exposure, she filed the present claim. Appellant explained that her job duties as an automation clerk involved continuous mail sorting. She confirmed that she had worked in a modified position since 2016 and that she currently worked between six to eight hours a day, based on her pain level. Appellant confirmed that she had injured her right wrist in October 2019, when she fell while trying to move her motorcycle. She indicated that her initial injury occurred on March 24, 2016, but that claim had not been accepted. OWCP's hearing representative noted that the current claim was administratively combined with appellant's two previously denied claims in OWCP File Nos. xxxxxx534 and xxxxxx791, both with a March 24, 2016 date of injury. Appellant discussed her light-duty work and explained that she primarily sorted letters as she had a five-pound lifting restriction. She stated that she was usually able to work for approximately six hours and that she also printed placards and worked with accountable mail in her light-duty assignment.

In an August 12, 2019 report, Dr. Seth Frenzen, a Board-certified orthopedic surgeon, released appellant to light-duty work, effective immediately. He related that appellant should limit weight bearing with the right upper arm to five pounds.

In an October 9, 2019 report, a physician assistant indicated that appellant could return to full duty.

By decision dated February 24, 2020, OWCP's hearing representative affirmed the July 25, 2019 decision, as modified, to find that appellant had provided a description of her "light-duty employment factors from 2016-2019)." However, the hearing representative found that the medical evidence of record was insufficient to establish causal relationship.

LEGAL PRECEDENT

An employee seeking benefits under FECA[4] 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,[5] 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

[4] *Supra* note 2.

[5] *See S.M.*, Docket No. 19-1634 (issued August 25, 2020); *E.W.*, Docket No. 19-1393 (issued January 29, 2020); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

to the employment injury.[6] 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.[7]

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 for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the identified employment factors.[8]

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.[9] 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.[10] 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, is sufficient to establish causal relationship.[11]

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.[12]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a right arm condition causally related to the accepted factors of her federal employment.

In a May 23, 2019 treatment note, Dr. Cove diagnosed right cubital tunnel syndrome and opined that appellant's condition "is most likely due to the repetitive motions she performs at work.…" The Board has held that medical opinions that suggest that a condition was likely or

[6] *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[7] 20 C.F.R. § 10.115; *E.S.*, Docket No. 18-1580 (issued January 23, 2020); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

[8] *See T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[9] *J.F.*, Docket No. 18-0492 (issued January 16, 2020); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[10] *A.M.*, Docket No. 18-0562 (issued January 23, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

[11] *E.W.*, *supra* note 5; *Gary L. Fowler*, 45 ECAB 365 (1994).

[12] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013). *See R.D.*, Docket No. 18-1551 (issued March 1, 2019).

possibly caused by work activities are speculative or equivocal and have limited probative value.[13] Thus, this report is of limited probative value.

In a July 3, 2019 Form CA-17, Dr. Cove diagnosed right ulnar nerve impingement. In a separate Form CA-20 report also dated July 3, 2019, he noted that appellant developed symptoms in her "right forearm after lifting trays of mail off a high shelf." Dr. Cove diagnosed ulnar nerve impingement and checked the box "Yes" in response to whether he believed the condition was caused or aggravated by an employment activity. The Board has explained that a report that addresses causal relationship with a check mark, without further medical rationale explaining how the employment incident caused or aggravated the alleged injury, is of diminished probative value and insufficient to establish causal relationship.[14] Dr. Cove also indicated that there were no preexisting conditions. However, this was not accurate as the record reflects two prior claims with a March 24, 2016 date of injury, as well as a motor vehicle accident and a fall and injury to her right wrist involving her motorcycle. Medical opinions based on an incomplete or inaccurate history are of diminished probative value.[15] These reports are, therefore, also insufficient to establish appellant's claim.

Dr. Frenzen provided an August 12, 2019 report releasing appellant to light-duty work, effective immediately. However, he did not provide a diagnosis or an opinion regarding the cause of appellant's condition.[16] As such, this report is insufficient to establish the claim.[17]

OWCP received reports from a physician assistant. However, certain healthcare providers such as physician assistants are not considered physicians as defined under FECA.[18] Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.[19] Thus, this evidence is of no probative value and is insufficient to establish appellant's claim.

As the medical evidence of record is insufficient to establish causal relationship between appellant's right arm condition and the accepted factors of her federal employment, the Board finds that she has not met her burden of proof.

[13] *J.W.*, Docket No. 18-0678 (issued March 3, 2020).

[14] *J.K.*, Docket No. 20-0590 (issued July 17, 2020); *J.A.*, Docket No. 17-1936 (issued August 13, 2018).

[15] *See D.B.*, Docket No. 19-0663 (issued August 27, 2020); *D.W.*, Docket No. 18-0123 (issued October 4, 2018); *L.G.*, Docket No. 09-1692 (issued August 11, 2010).

[16] *Supra* note 11.

[17] *R.G.*, Docket No. 19-0233 (issued July 16, 2019); *S.W.*, Docket No. 18-1489 (issued June 25, 2019).

[18] Section 8101(2) of FECA provides that physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). *See also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 201 3); *R.K.*, Docket No. 20-0049 (issued April 10, 2020) (a physician assistant is not considered a physician as defined under FECA); *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)..

[19] *Id*.

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 a right arm condition causally related to the accepted factors of her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the February 24, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 22, 2021
Washington, DC

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

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

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