United States Department of Labor
Employees' Compensation Appeals Board

J.D., Appellant	)	
and	)	**Docket No. 22-0935**
	)	**Issued: December 16, 2022**
U.S. POSTAL SERVICE, MURPHY ROAD CARRIER ANNEX, Hartford, CT, 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
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On June 3, 2022 appellant filed a timely appeal from January 18 and May 18, 2022 merit decisions 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.

ISSUE

The issue is whether appellant has met her burden of proof to establish a right upper extremity condition causally related to the accepted December 4, 2021 employment incident.

FACTUAL HISTORY

On December 10, 2021 appellant, then a 56-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on December 4, 2021 she injured her right thumb, wrist,

[1] 5 U.S.C. § 8101 *et seq*.

scapholunate ligament, and forearm when a pallet skid she was putting away fell and struck these areas while in the performance of duty. She stopped work on December 4, 2021.

Appellant submitted duty status reports (Form CA-17) dated December 7 and 8, 2021 by Dr. S. Paul Winkel, Board-certified in internal and occupational medicine. Dr. Winkel diagnosed right scapholunate diastasis and right hand, wrist, and elbow pain status-post December 4, 2021 trauma. On both reports, he returned appellant to full-time modified-duty work, effective December 9, 2021.

In a development letter dated December 20, 2021, OWCP informed appellant that the evidence of record was insufficient to establish her claim. It advised her of the type of factual and medical evidence needed. OWCP afforded appellant 30 days to respond.

In response, appellant submitted a December 4, 2021 x-ray of the right hand that demonstrated mild degenerative changes of the first carpometacarpal joint, with no acute traumatic findings.

In a December 16, 2021 Form CA-17, Dr. Winkel noted increasing right elbow, forearm and wrist pain. He diagnosed right scapholunate diastasis and maintained appellant on modified-duty work.

On January 4, 2022 OWCP received December 4, 2022 emergency department notes signed by Stephanie Nesdale, a registered nurse, Jessica Joseph, a registered nurse, and Misti C. Talati, a certified physician assistant, and a December 16, 2022 report by Adam Kovalski, a certified physician assistant.

In reports dated January 6, 2022, Dr. Allen R. Berkowitz, a Board-certified orthopedic surgeon specializing in hand surgery, recounted appellant's December 4, 2021 employment incident where a plastic pallet slipped as she was lifting it and struck the radial aspect of the right hand, wrist, and distal forearm. On examination of the right upper extremity, he observed mild instability in the scapholunate joint, tenderness along the course of the ulnar nerve at the elbow, mild tenderness and shoulder deformity at the carpometacarpal joint of the thumb, positive Phalen's and median nerve compression tests at the wrist, a positive Tinel's sign over the ulnar nerve at the elbow, and a positive elbow flexion test. Dr. Berkowitz obtained x-rays of the right wrist and thumb, which demonstrated widening at the scapholunate interval, an increased scapholunate angle with a mild dorsal intercalated segment instability (DISI) deformity of the lunate, and mild osteophytic degenerative changes. X-rays of the right elbow were within normal limits. Dr. Berkowitz diagnosed right carpal tunnel syndrome, right ulnar neuropathy at the elbow, and carpometacarpal joint arthritis of the right thumb. He also suspected that the December 4, 2021 employment incident with the pallet "precipitated the symptoms of nerve compression," but that the x-ray findings regarding the scapholunate joint of the right wrist were "most likely preexisting" based on appellant's age and objective clinical findings. Dr. Berkowitz recommended continued use of a right wrist splint for carpal tunnel syndrome and prescribed an elbow sleeve for right ulnar neuropathy. He returned appellant to light-duty work, effective January 7, 2022, with minimal repetitive activities with the right upper extremity and no lifting.

By decision dated January 18, 2022, OWCP denied appellant's traumatic injury claim. It accepted that the December 4, 2021 employment incident occurred, as alleged, but denied the claim, finding that the medical evidence of record was insufficient to establish causal relationship between the accepted employment incident and her diagnosed right upper extremity conditions.

On February 17, 2022 appellant requested reconsideration. Accompanying her request, she submitted duplicate copies of the December 4, 2021 nurses' notes.

Appellant also submitted a copy of Dr. Berkowitz' January 6, 2022 report with an addendum opining that within a reasonable degree of medical certainty, the diagnosed right carpal tunnel syndrome, ulnar neuropathy of the right elbow, and carpometacarpal joint arthritis of the right thumb were "causally related to her injury lifting a pallet to place it on top of 13 stacked pallets at work on December 4, 2021."

In a March 3, 2022 report, Dr. Berkowitz noted that appellant underwent an electrodiagnostic study on February 28, 2022, which demonstrated mild right carpal tunnel syndrome, but no evidence of ulnar neuropathy at the right elbow. He explained that most of appellant's symptoms were related to right carpal tunnel syndrome, with pain and numbness in the right hand and nocturnal symptoms. On examination of the right upper extremity, Dr. Berkowitz observed tenderness along the course of the ulnar nerve at the elbow without subluxation of the ulnar nerve, mild instability at the scapholunate joint, mild tenderness and shoulder deformity at the carpometacarpal joint of the thumb, and positive Tinel's and median nerve compression tests at the wrist. He diagnosed right carpal tunnel syndrome. Dr. Berkowitz noted work restrictions and administered an intra-articular injection into the right carpal tunnel.

Appellant submitted photographs of her right hand and wrist. She explained, in an accompanying note, that the photographs were taken on December 4, 2021, the date of the claimed injury.

In a March 31, 2022 report, Dr. Berkowitz noted that the March 3, 2022 intra-articular injection into the right carpal tunnel had relieved appellant's right hand and wrist pain. However, appellant continued to have pain migrating into the right forearm, upper arm, and shoulder, and nocturnal right wrist symptoms. On examination of the right upper extremity, Dr. Berkowitz observed positive Phalen's, Tinel's, and median nerve compression tests at the right wrist. He maintained work restrictions for light-duty work and scheduled appellant for endoscopic/possible open right carpal tunnel release.

On April 1, 2022 OWCP received appellant's March 31, 2022 statement contending that the December 4, 2021 photographs were medical evidence that the December 4, 2021 employment incident had caused right carpal tunnel syndrome, ulnar neuropathy at the right elbow, and carpometacarpal joint arthritis of the right thumb. Appellant noted that she had been scheduled for carpal tunnel release on April 11, 2022. She also provided preoperative scheduling and instruction documents.

In a May 9, 2022 work slip, Dr. Berkowitz noted light-duty work restrictions for the right upper extremity and that appellant should use a right wrist splint while at work.

By decision dated May 18, 2022, OWCP denied modification of the January 18, 2022 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[2] 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 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 determine if an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established.[6] Fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred at the time and place, and in the manner alleged.[7] The second component is whether the employment incident caused a personal injury.[8]

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.[9] A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment incident must be based on a complete factual and medical background.[10] Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical

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[2] 20 C.F.R. § 10.607(a).

[3] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4b (September 2020).

[4] *G.G.*, Docket No. 18-1072 (issued January 7, 2019); *E.R.*, Docket No. 09-0599 (issued June 3, 2009); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

[5] *See* 20 C.F.R. § 10.607(b); *M.H.*, Docket No. 18-0623 (issued October 4, 2018); *Charles J. Prudencio*, 41 ECAB 499, 501-02 (1990).

[6] *L.C.*, Docket No. 18-1407 (issued February 14, 2019); *M.L.*, Docket No. 09-0956 (issued April 15, 2010). *See also* 20 C.F.R. § 10.607(b); *supra* note 3 at Chapter 2.1602.5 (September 2020).

[7] *J.W.*, Docket No. 18-0703 (issued November 14, 2018); *Robert G. Burns*, 57 ECAB 657 (2006).

[8] *J.S.*, Docket No. 16-1240 (issued December 1, 2016); *supra* note 3 at Chapter 2.1602.5a (September 2020).

[9] 20 C.F.R. § 10.607(a); *see J.W., supra* note 7; *Alberta Dukes*, 56 ECAB 247 (2005).

[10] *Supra* note 3 at Chapter 2.1602.4 (February 2016); *Veletta C. Coleman*, 48 ECAB 367, 370 (1997).

rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s).[11]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a right upper extremity condition causally related to the accepted December 4, 2021 employment incident.

Dr. Winkel, in CA-17 forms dated from December 7 through 16, 2021, diagnosed right scapholunate diastasis. However, Dr. Winkel did not provide any opinion on causal relationship. 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] Thus, this evidence is insufficient to establish causal relationship.

Dr. Berkowitz, in reports dated January 6, 2022, recounted appellant's December 4, 2021 employment incident where a plastic pallet slipped and fell as she was lifting it onto a stack of pallets, striking the radial aspect of the right hand, wrist, and distal forearm. He diagnosed right wrist pain, right ulnar neuropathy at the elbow, and right carpal tunnel syndrome. In an addendum to his January 6, 2022 report, Dr. Berkowitz opined that within a reasonable degree of medical certainty, the diagnosed right carpal tunnel syndrome, ulnar neuropathy of the right elbow, and carpometacarpal joint arthritis of the right thumb were causally related to the December 4, 2021 employment incident. He also suspected that the December 4, 2021 employment incident with the pallet precipitated the symptoms of nerve compression but that the x-rays findings regarding the right scapholunate joint were "most likely" preexisting based on appellant's age and objective clinical findings. The Board finds that Dr. Berkowitz' reports are speculative in nature as he expressed his support for causal relationship in an equivocal manner.[13] The Board has long held that medical opinions that are speculative or equivocal in character have little probative value.[14]

In his additional reports through May 9, 2022, Dr. Berkowitz did not address causal relationship. As these reports do not provide a rationalized medical opinion explaining the physiologic mechanisms whereby the accepted December 4, 2021 employment incident would cause a medical condition, they are, therefore, insufficient to establish an injury causally related to the accepted employment incident.[15]

OWCP also received December 4, 2022 reports by Ms. Nesdale, a registered nurse, Ms. Joseph, a registered nurse, Ms. Talati, a certified physician assistant, and a December 16, 2002

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[11] 20 C.F.R. § 10.607(b); *R.C.*, Docket No. 22-0426 (issued July 22, 2022); *see Debra McDavid*, 57 ECAB 149 (2005).

[12] *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[13] *See L.L.*, Docket No. 21-0981 (issued July 1, 2022); *see also L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[14] *See L.L.*, *id.*; *see also C.A.*, Docket No. 21-0601 (issued November 15, 2021); *J.P.*, Docket No. 19-0216 (issued December 13, 2019); *T.M.*, Docket No. 08-0975 (issued February 6, 2009).

[15] *See supra* note 12.

report by Mr. Kovalski, a certified physician assistant. The Board has held that medical reports signed solely by a nurse[16] or physician assistant[17] are of no probative value as they are not considered physicians under FECA and are not competent to provide a medical opinion.[18] Therefore, these reports are insufficient to meet appellant's burden of proof.[19]

OWCP also received photographs of appellant's right hand and wrist, appellant's note indicating the photographs had been taken on December 4, 2021, and preoperative informational documents. As noted above, the issue of causal relationship is medical in nature,[20] and must be resolved by probative medical evidence.[21] The photographs, note, and preoperative forms do not constitute medical evidence as they were not signed or reviewed by a physician.[22] They are, therefore, insufficient to meet appellant's burden of proof.

The record also contains imaging studies. 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.[23]

As the medical evidence of record is insufficient to establish a right upper extremity condition causally related to the accepted December 4, 2021 employment incident, the Board finds that appellant has not met her 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.

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[16] Section 8101(2) of FECA defines a physician as 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 supra* note 3 at Chapter 2.805.3a(1); *P.S.*, Docket No. 17-0598 (issued June 23, 2017) (registered nurses are not considered physicians 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); *see also A.C.*, Docket No. 20-1510 (issued April 23, 2021) (physician assistants are not physicians as defined by FECA).

[17] *Id.*, *M.M.*, Docket No. 17-1641 (issued February 15, 2018).

[18] *See supra* note 16.

[19] *David P. Sawchuk*, *supra* note 16.

[20] *J.W.*, *supra* note 7.

[21] *R.C.*, *supra* note 11; *see Debra McDavid*, *supra* note 11.

[22] *Merton J. Sills*, 39 ECAB 572, 575 (1988). *See also N.V.*, Docket No. 20-0781 (issued November 18, 2020); *C.T.*, Docket No. 19-0058 (issued June 14, 2019); *Susan M. Biles,* 40 ECAB 420 (1989) (where the Board held that the statement of a layperson is not competent evidence on the issue of causal relationship).

[23] *N.B.*, Docket No. 20-0794 (issued July 29, 2022); *C.F.*, Docket No. 19-1748 (issued March 27, 2020); *L.B.*, *supra* note 13; *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a right upper extremity condition causally related to the accepted December 4, 2021 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the January 18 and May 18, 2022 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: December 16, 2022
Washington, DC

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

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

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board