United States Department of Labor
Employees' Compensation Appeals Board

J.R., Appellant	)	
and	)	**Docket No. 22-1250**
	)	**Issued: May 11, 2023**
U.S. POSTAL SERVICE, LAKE OTIS STATION POST OFFICE, Anchorage, AK, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On August 27, 2022 appellant filed a timely appeal from an August 17, 2022 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.

ISSUE

The issue is whether appellant has established a medical condition causally related to the accepted October 22, 2020 employment incident.

FACTUAL HISTORY

This case has previously been before the Board.[2] The facts and circumstances as presented in the prior order are incorporated herein by reference. The relevant facts are as follows.

[1] 5 U.S.C. § 8101 *et seq*.

[2] *Order Remanding Case*, Docket No. 21-1421 (issued April 20, 2022).

On October 23, 2020 appellant, then a 41-year-old city delivery specialist, filed a traumatic injury claim (Form CA-1) alleging that on October 22, 2020 he sustained an injury to his right wrist and experienced pain when sorting mail while in the performance of duty. He reported that he was wearing a wrist splint on his right hand because of a previous injury. On the reverse side of the claim form, appellant's supervisor, acknowledged that appellant was injured in the performance of duty. However, the employing establishment challenged the factual basis of the claim on the grounds that this was not a new injury, but a reaggravation of a December 19, 2019 employment injury accepted under OWCP File No. xxxxxx880. Appellant stopped work on October 23, 2020.

Under OWCP File No. xxxxxx880, appellant previously filed a Form CA-1 on December 19, 2019 alleging that, on that date, he sprained his right wrist when he tried to catch a parcel falling off of a hand truck while in the performance of duty. OWCP accepted the claim for a right wrist sprain.

In October 23 and 24, 2020 reports submitted under OWCP File No. xxxxxx880, Dr. Mari Hately, a Board-certified family medicine physician, related appellant's history of worsening pain due to a right triangular fibrocartilage complex (TFCC) tear and a right wrist injury as a result of a December 19, 2019 employment injury. Appellant reported that the recent increase in mail and packages had put more strain on his wrist as he tried to balance packages in his left hand or carry them against his body with his right forearm. Examination of the right wrist revealed some possible slight muscle atrophy compared to the left wrist, tenderness over the TFCC region at the distal ulnar styloid along the lateral wrist, decreased range of motion with flexion and extension, and pain with ulnar and radial deviation of the wrist. Dr. Hately diagnosed a right TFCC injury and right wrist sprain, noting that the injury was work related, and advised that appellant could return to work with restrictions.

In corresponding October 23 and 24, 2020 reports, Dr. Hately, diagnosed right wrist sprain and right TFCC injury and indicated that appellant's condition was work related. In the October 23, 2020 report, Dr. Hately released him for modified work and in the October 24, 2020 report she held him off work for four to seven days.

In an October 27, 2020 report, Eric Suoja, a physician assistant, diagnosed TFCC injury, indicated that appellant's condition was work related, and held him off work for four to seven days.

In a development letter dated November 18, 2020, OWCP informed appellant of the deficiencies of his claim. It explained the type of factual and medical evidence needed and attached a questionnaire for his completion. OWCP afforded appellant 30 days to submit the requested evidence.

The employing establishment completed and signed an authorization for examination and/or treatment (Form CA-16) on October 29, 2020.

In a November 4, 2020 duty status report (Form CA-17), Mr. Suoja related appellant's history of injury, diagnosed right TFCC tear, and released appellant for work with restrictions.

Appellant responded to OWCP's development questionnaire on December 4, 2020, relating that he was sorting mail on October 22, 2020 and suddenly his right wrist began to hurt very badly.

In a January 8, 2021 attending physician's report, Part B of a Form CA-16, a health provider (whose signature is illegible), indicated treating appellant on January 8, 2021 for a right wrist TFCC tear. The provider checked a box marked "Yes" indicating that the diagnosed condition was work related. The provider referred appellant to a hand surgeon and released him to work with restrictions, including no use of right wrist. A Form CA-17 of even date, also bearing an illegible signature, provided the same information.

By decision dated January 12, 2021, OWCP denied appellant's traumatic injury claim, finding that the claimed October 22, 2020 employment incident had not been established. It noted that he had not completed and returned the factual questionnaire. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On February 1, 2021 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review, which was held on April 21, 2021.

In an undated letter under OWCP File No. xxxxxx880, Dr. Doug Vermillion, a Board-certified orthopedic surgeon, noted that he had last seen appellant on January 8, 2020 for right wrist pain and TFCC tear "after an injury that developed while at work on [October 22, 2020] while the patient was sorting mail wearing his Velcro wrist brace."

In a February 22, 2021 report, Dr. Vermillion related that appellant was seen for follow up of his right wrist pain and TFCC tear, as a result of sorting mail on October 22, 2020. Examination of the right wrist revealed TFCC tenderness, crepitus, and pain. Dr. Vermillion diagnosed right wrist pain and right wrist TFCC tear and indicated that appellant sustained an acute work-related injury.[3]

In a March 22, 2021 report, under OWCP File No. xxxxxx880, Dr. Elke Neuenschwander, a Board-certified family medicine physician, explained that appellant was first seen for his right wrist injury in December 2019 after he tried to catch a falling parcel with his right hand and it fell on the side of his wrist, twisting it outwards. She related that, starting in October 2020, his job became busier and his symptoms worsened. Dr. Neuenschwander reviewed an earlier magnetic resonance imaging (MRI) scan and diagnosed a right wrist full-thickness TFCC tear, as well as a tear of the ventral fibers of the scapholunate ligament. She provided the same information in a progress report of even date. In a separate form of even date, Dr. Neuenschwander restricted appellant to no use of the right upper extremity. In a Form CA-17 of even date, she diagnosed right wrist TFCC tear.

In an April 8, 2021 visit note, under OWCP File No. xxxxxx880, Dr. Mark Wade, a Board-certified orthopedic surgeon, related appellant's history of injuring his arm in the performance of duty on December 19, 2019. He reviewed a January 31, 2020 MRI scan of the right wrist, which demonstrated a full-thickness TFCC tear. Dr. Wade noted that appellant continued to have

[3] On March 15, 2021 OWCP administratively combined OWCP File Nos. xxxxxx915 and xxxxxx880, with the latter serving as the master file.

problems with his wrist and had not improved despite one year of conservative nonoperative treatment.

In a May 6, 2021 note, Dr. Neuenschwander related that appellant sustained an injury at work while handling packages in October 2020. She noted that imaging showed a full-thickness TFCC tear, likely a tear of the apex of this cartilage and a tear in ventral fibers of the scapholunate ligament, which would require surgery.

On May 26, 2021 Dr. Wade performed a diagnostic arthroscopy of appellant's right wrist with arthroscopic debridement and TFCC repair.

By decision dated June 22, 2021, OWCP's hearing representative affirmed the January 12, 2021 decision, as modified, finding that the evidence of record was insufficient to establish causal relationship between appellant's right wrist condition and the accepted October 22, 2020 employment incident.

On July 20, 2021 OWCP received a May 25, 2021 report from Dr. Wade who related that appellant's symptoms began in December 2019 with catching a falling object. Dr. Wade diagnosed right wrist pain and noted that appellant was scheduled for diagnostic arthroscopy with arthroscopic debridement of the right wrist and evaluation for possible repair of the TFCC on May 26, 2021. In a June 2, 2021 report under OWCP File No. xxxxxx880, he noted that appellant was progressing as expected seven days status post right wrist diagnostic arthroscopy with arthroscopic debridement and TFCC tear repair.

A June 2, 2021 Form CA-17 bearing an illegible signature related that appellant injured his right wrist while handling parcels on December 19, 2019. The provider diagnosed right wrist TFCC tear and held appellant off work.

In a June 8, 2021 Form CA-17, Dr. Wade diagnosed torn cartilage in right wrist and advised that appellant could return to light-duty work with lifting restrictions on June 14, 2021.

In a June 16, 2021 progress report, under OWCP File No. xxxxxx880, Dr. Neuenschwander diagnosed tear of TFCC and scapholunate ventral fiber. She indicated that appellant's condition was work related. Dr. Neuenschwander released appellant to modified-duty work with a two-pound lifting limit. In a July 27, 2021 work restriction note, she advised that appellant should continue with his work restrictions, including a 20-pound lifting limit, "due to an injury sustained at work and subsequent procedures."

On September 27, 2021 appellant appealed to the Board.

By order dated April 20, 2022, the Board set aside OWCP's June 22, 2021 decision, finding that the case was not in posture for decision. The Board found that OWCP had not considered all evidence properly submitted by appellant and received by OWCP before the June 22, 2021 decision. The Board remanded the case to OWCP for consideration of all the evidence submitted at the time of its June 22, 2021 decision.[4]

[4] *Id.*

In an April 21, 2022 letter, OWCP requested additional information regarding causal relationship from Dr. Neuenschwander.

By *de novo* decision dated August 17, 2022, OWCP again denied appellant's claim, finding that the evidence of record was insufficient to establish that his medical condition was causally related to the accepted October 22, 2020 employment injury.

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,[6] 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.[7] 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.[8]

To determine whether an employee has sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. 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 at the time and place and in the manner alleged.[9] The second component is whether the employment incident caused a personal injury.[10]

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.[11] 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 specific employment factors identified by the employee.[12]

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[5] *Supra* note 1.

[6] *S.S.*, Docket No. 19-1815 (issued June 26, 2020); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989).

[7] *M.H.*, Docket No. 19-0930 (issued June 17, 2020); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[8] *S.A.*, Docket No. 19-1221 (issued June 9, 2020); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

[9] *R.K.*, Docket No. 19-0904 (issued April 10, 2020); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[10] *Y.D.*, Docket No. 19-1200 (issued April 6, 2020); *John J. Carlone*, 41 ECAB 354 (1989).

[11] *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

[12] *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a medical condition causally related to the accepted October 22, 2020 employment incident.

In October 23 and 24, 2020 reports, Dr. Hately related appellant's history of a recent increase in mail and packages, which put more strain on his wrist as he tried to balance packages in his left hand or carry them against his body with his right forearm. She diagnosed a right TFCC injury and right wrist sprain, noting that the injury was work related. In corresponding October 23 and 24, 2020 status reports, Dr. Hately, diagnosed right wrist sprain and right TFCC injury, and indicated that his condition was work related. In a February 22, 2021 report, Dr. Vermillion related that appellant was seen for follow up of his right wrist pain and TFCC tear as a result of sorting mail on October 22, 2020. He diagnosed right wrist pain and right wrist TFCC tear, and indicated that appellant sustained an acute work-related injury. In a June 16, 2021 progress report, Dr. Neuenschwander diagnosed tear of TFCC and scapholunate ventral fiber. She indicated that appellant's injury was work related and occurred during work with a package. While each of these reports provided an affirmative opinion suggestive of causal relationship, the providers did not offer medical rationale sufficient to explain why they believed appellant's employment duties could have resulted in, or contributed to, his diagnosed conditions. Without identifying specific employment duties or explaining how they caused or aggravated appellant's conditions, these medical reports are of limited probative value, and are insufficient to meet appellant's burden of proof.[13]

In an undated letter, Dr. Vermillion noted that he treated appellant for right wrist pain and TFCC tear "after an injury that developed while at work on [October 10, 2020] while the patient was sorting mail wearing his Velcro wrist brace." In a March 22, 2021 report, Dr. Neuenschwander explained that appellant first injured his right wrist at work in December 2019 and, starting in October 2020, his job became busier and his symptoms worsened. She provided the same information in a progress report of even date. In an April 8, 2021 visit note, Dr. Wade related appellant's history of injuring his arm in the performance of duty on December 19, 2019, and noted that appellant continued to have problems with his wrist. In a May 6, 2021 note, Dr. Neuenschwander related that appellant sustained an injury at work while handling packages in October 2020. In a May 25, 2021 report, Dr. Wade related that appellant's symptoms began in December 2019 with catching a falling object. In a July 27, 2021 work restriction note, Dr. Neuenschwander advised that appellant should continue with his work restrictions "due to an injury sustained at work and subsequent procedures." Although each report suggested a work-related cause for appellant's medical condition, none provided a rationalized medical opinion relating the specific diagnosed condition to the October 22, 2020 employment incident. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how an employment activity could have caused or aggravated a medical condition.[14] Therefore, these reports are insufficient to establish appellant's traumatic injury claim.

[13] *See A.P.*, Docket No. 19-0224 (issued July 11, 2019).

[14] *Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

In a March 22, 2021 Form CA-17 and report, Dr. Neuenschwander diagnosed right wrist TFCC tear and provided work restrictions. In a June 2, 2021 report, Dr. Wade noted that appellant was progressing as expected seven days status post right wrist diagnostic arthroscopy with arthroscopic debridement and TFCC tear repair. In a June 8, 2021 Form CA-17, he diagnosed tom cartilage in right wrist, and advised that appellant could return to light-duty work with lifting restrictions on June 14, 2021. However, neither Dr. Neuenschwander nor Dr. Wade offered an opinion on causal relationship in any of this evidence. 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.[15] For this reason, this medical evidence is insufficient to meet appellant's burden of proof.

Appellant also submitted medical records by Mr. Suoja, a physician assistant. The Board has held that medical reports signed solely by a physician assistant, registered nurse, or medical assistant are of no probative value as such healthcare providers are not considered physicians as defined under FECA and are, therefore, not competent to provide medical opinions.[16] Consequently, their medical findings and/or opinions will not suffice for the purpose of establishing entitlement to FECA benefits.

The remaining evidence of record consists of multiple reports bearing illegible signatures. The Board has held that a report that is unsigned or bears an illegible signature lacks proper identification, and cannot be considered probative medical evidence because the author cannot be identified as a physician.[17] These notes are, therefore, insufficient to establish appellant's claim.

As the medical evidence of record is insufficient to establish a medical condition causally related to the accepted October 22, 2020 employment incident, the Board finds that he has not met his burden of proof.

[15] *S.J.*, Docket No. 19-0696 (issued August 23, 2019); *M.C.*, Docket No. 18-0951 (issued January 7, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[16] Section § 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. 5 U.S.C. § 8102(2); 20 C.F.R. § 10.5(t). *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *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 S.S.*, Docket No. 21-1140 (issued June 29, 2022) (physician assistants are not considered physicians under FECA and are not competent to provide medical opinions); *George H. Clark*, 56 ECAB 162 (2004) (physician assistants are not considered physicians under FECA).

[17] *R.C.*, Docket No. 20-1525 (issued June 8, 2021); *I.M.*, Docket No. 19-1038 (issued January 23, 2020); *T.O.*, Docket No. 19-1291 (issued December 11, 2019); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

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.[18]

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a medical condition causally related to the accepted October 22, 2020 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the August 17, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 11, 2023
Washington, DC

Alec J. Koromilas, 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

[18] The Board notes that the employing establishment issued a Form CA-16, dated October 29, 2020. A completed Form CA-16 authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. *See* 20 C.F.R. § 10.300(c); *V.S.*, Docket No. 20-1034 (issued November 25, 2020); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).