United States Department of Labor
Employees' Compensation Appeals Board

A.F., Appellant	)	
and	)	**Docket No. 17-0751**
	)	**Issued: July 12, 2017**
U.S. POSTAL SERVICE, POST OFFICE, Sag Harbor, NY, 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 February 17, 2017 appellant, through counsel, filed a timely appeal from a November 22, 2016 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 met her burden of proof to establish that she sustained a recurrence of disability on or after February 3, 2016 causally related to her accepted employment injury.

FACTUAL HISTORY

On March 6, 2014 appellant, then a 50-year-old rural carrier, filed an occupational disease claim (Form CA-2) alleging that she sustained an occupational disease of her left thumb in the form of basal joint instability caused by sorting and delivering mail over time. She indicated that she first became aware of her claimed condition on March 3, 2014 and first realized on March 6, 2014 that it was caused or aggravated by factors of her federal employment. Appellant did not stop work around the time she filed her occupational disease claim.

On March 24, 2014 OWCP accepted that appellant sustained localized primary osteoarthritis of her left hand.

Appellant stopped work on September 24, 2015 and, on that date, Dr. Steven Puopolo, an attending Board-certified orthopedic surgeon, performed OWCP-authorized left thumb surgery, including excision of trapezium, ligament reconstruction and tendon interposition utilizing autograft, and extensor pollicis brevis to abductor pollicis longus tendon transfer.

OWCP paid appellant disability compensation on the daily roll from September 24 to December 18, 2015.

In a December 11, 2015 duty status report (Form CA-17), Dr. Puopolo provided various work restrictions, including lifting no more than 15 pounds and engaging in pushing or pulling for no more than four hours per day.

On December 18, 2015 appellant returned to work full time as a modified rural carrier. The limited-duty assignment involved casing mail for one to three hours per day and delivering mail for one to four hours per day. The physical requirements of the position included lifting, carrying, pushing, and pulling 10 to 15 pounds for one to four hours per day; sitting, standing, walking, and twisting for one to eight hours per day; and bending, stooping, and driving a vehicle for one to eight hours per day.

In a January 27, 2016 initial consultation report, Dr. Teresa Habacker, an attending Board-certified hand surgeon, noted that appellant reported injuring her left thumb at work two years prior. Appellant described her job as involving driving and sorting/delivering mail, and she complained of intermittent shooting pain in her right thumb and the palmar side base of her right hand. Dr. Habacker noted that, upon physical examination, appellant exhibited tenderness/pain at the base of the left thumb, but indicated that both of her hands and thumbs had full range of motion, that sensation was intact, and that there was no erythema and minimal edema. She diagnosed primary osteoarthritis of the left hand and degenerative joint disease of the left basal joint, and she advised that she was considering "the possibility of three issues," namely carpal tunnel syndrome, trigger thumb, or neuroma, the last condition being the least

likely possibility. Dr. Habacker recommended that appellant undergo electromyogram (EMG) and nerve conduction study (NCS). She indicated that appellant should not use her left hand.

In a January 27, 2016 attending physician's report (Form CA-20), Dr. Habacker listed the date of injury as March 3, 2014, diagnosed primary osteoarthritis of the left hand and degenerative joint disease of the left basal joint, and checked a box marked "yes" indicating the diagnosed conditions were due to the employment activity.[3] She indicated that appellant was totally disabled from January 27, 2016 until her follow-up appointment. In a January 27, 2016 form entitled "Work Capacity Evaluation Musculoskeletal Conditions" (Form OWCP-5c), Dr. Habacker indicated that appellant could not perform her usual work and could only perform work that did not require use of her left hand.

Appellant stopped work on February 3, 2016, and she filed a claim for a recurrence of disability (Form CA-2a) on February 5, 2016 claiming a recurrence of total disability beginning February 3, 2016 due to her accepted employment injury.[4]

In a February 22, 2016 report, Dr. Habacker reported examination findings of no erythema/edema, less than full left thumb abduction, and tenderness at the thenar eminence of the left thumb base and along the September 24, 2015 surgery incision site. She indicated that recent EMG and NCS showed very mild carpal tunnel syndrome and she diagnosed carpal tunnel syndrome of the left upper limb, primary osteoarthritis of the left hand, and degenerative joint disease of the left basal joint. Dr. Habacker posited that the left carpal tunnel syndrome was caused and exacerbated by the swelling associated with the degenerative joint disease of the left thumb. She indicated that appellant could not use her left hand.

The record contains physical therapy records from March 2016 in which appellant complained to her therapist of sharp, shooting pains which randomly occurred in both of her thumbs, even when she was resting.

By letter dated March 15, 2016, OWCP requested that appellant submit additional factual and medical evidence in support of her claim for recurrence of disability.

In response, OWCP received appellant's April 1, 2016 narrative statement in which she asserted that she stopped work on February 3, 2016 because there was no modified work available within the limitations provided by Dr. Habacker. Appellant noted her belief that her claimed disability was work related because her pain never went away.

OWCP also received a March 14, 2016 medical report from Dr. Habacker, who noted examination findings of no erythema/edema, bilateral deformity of the small fingers, scaphoid tubercle tenderness, and normal thumb range of motion. There was a positive Finkelstein's test in the left wrist, but sensation was reported as intact. Dr. Habacker diagnosed left wrist pain, carpal tunnel syndrome of the left upper limb, primary osteoarthritis of the left hand, and

[3] Dr. Habacker did not describe any employment activity on the form.

[4] Appellant actually listed the date of recurrence of total disability as January 3, 2016, but the employing establishment indicated that appellant did not stop work until February 3, 2016.

degenerative joint disease of the left basal joint. She recommended a magnetic resonance imaging (MRI) scan to rule out ganglion cyst at the left wrist and indicated that appellant could not use her left hand. In a March 23, 2016 Form CA-17, Dr. Habacker listed the date of injury as September 24, 2015 and indicated that appellant could not use her left hand. In an undated attending physician's report (Form CA-20), she listed the date of injury as March 3, 2014 and diagnosed primary osteoarthritis of the left hand and left carpal tunnel syndrome "causally related to the injury."

The findings of the April 20, 2016 testing of appellant's left wrist revealed postsurgical changes and small joint effusions.

By decision dated May 19, 2016, OWCP denied appellant's claim for a work-related recurrence of disability on or after February 3, 2016. It found that appellant had not established a work stoppage on or after February 3, 2016 due to a spontaneous change, without an intervening cause, in the accepted condition of localized primary osteoarthritis of the left hand.[5] OWCP indicated that the record did not contain a rationalized medical opinion explaining how the accepted work-related condition worsened to the point that appellant was further disabled. Additionally, it noted that Dr. Habacker had not explained how appellant's diagnosed left carpal tunnel syndrome was related to the accepted condition of localized primary osteoarthritis of the left hand.

Appellant disagreed with the May 19, 2016 decision and requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

Appellant submitted a February 17, 2016 report of EMG and NCS which contained an impression of very mild left median neuropathy at the wrist.

In a report dated June 8, 2016, Dr. Habacker indicated that, upon physical examination, the Tinel's sign was negative for appellant's left wrist. She included a diagnosis of left carpal tunnel syndrome.

In a report dated June 9, 2016, Dr. Habacker opined that appellant's disability beginning February 3, 2016 was work related because she had persistent symptoms even while performing limited-duty work and there were no other incidents to explain her symptoms. She indicated that appellant had left carpal tunnel syndrome that "may be precipitated by and/or aggravated by swelling." Dr. Habacker found that appellant was 40 percent disabled, that she should limit left hand usage as tolerated, and that she should refrain from lifting, carrying, pushing, or pulling 25 pounds. She noted that the diagnosis was "left hand/wrist pain [status post] surgery for aggravated arthritis."

On June 27, 2016 Dr. Habacker diagnosed primary osteoarthritis of the left hand, left wrist pain, and Dupuytren's contracture disease (also known as palmar fascial fibromatosis).

[5] OWCP also indicated that appellant had not established a recurrence of disability due to a withdrawal of her light-duty assignment for reasons other than misconduct, nonperformance of job duties, downsizing, or the existence of a loss of wage-earning capacity determination.

She indicated that the Dupuytren's contracture disease was caused by the same work that caused the accepted left thumb arthritis.

In a June 29, 2016 Form CA-20, Dr. Habacker diagnosed Dupuytren's contracture disease and primary osteoarthritis and indicated that these conditions were "exacerbated by work activity." She found total disability from January 26, 2016 to the present.

In an August 30, 2016 report, Dr. Elizabeth White-Fricker, an attending Board-certified family practitioner, diagnosed left wrist pain, bone spur, Dupuytren's contracture disease, and repetitive strain injury.

In several reports dated between July 18 and October 27, 2016, Dr. Juan Gargiulo, an attending Board-certified anesthesiologist, diagnosed left hand pain, chronic pain syndrome, primary osteoarthritis of the left hand, and left carpal tunnel syndrome.

By decision dated November 22, 2016, OWCP's hearing representative affirmed the May 19, 2016 decision. She found that appellant had not met her burden of proof to establish a recurrence of disability on or after February 3, 2016 due to the accepted condition of localized primary osteoarthritis of the left hand. In reaching this determination, the hearing representative noted that attending physicians discussed medical conditions which were not accepted as related to appellant's localized primary osteoarthritis of the left hand.

LEGAL PRECEDENT

A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.[6] Recurrence of disability also means an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his or her work-related injury or illness is withdrawn or when the physical requirements of such an assignment are altered so that they exceed his established physical limitations.[7] Generally, a withdrawal of a light-duty assignment would constitute a recurrence of disability where the evidence established continuing injury-related disability for regular duty.[8] A recurrence of disability does not apply when a light-duty assignment is withdrawn for reasons of misconduct, nonperformance of job duties, or other downsizing, or where a loss of wage-earning capacity determination is in place.[9]

Absent a change or withdrawal of a light-duty assignment, a recurrence of disability following a return to light duty may be established by showing a change in the nature and extent

[6] 20 C.F.R. § 10.5(x).

[7] *Id.*

[8] *Id.*; Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.6a(4) (June 2013).

[9] 20 C.F.R. §§ 10.5(x), 10.104(c) and 10.509; *see* Federal (FECA) Procedure Manual, *id.* at Chapter 2.1500.2b (June 2013).

of the injury-related condition such that the employee could no longer perform the light-duty assignment.[10]

Where an employee claims a recurrence of disability due to an accepted employment-related injury, he or she has the burden of proof to establish that the recurrence is causally related to the original injury.[11] This burden includes the necessity of furnishing evidence from a qualified physician who concludes that the condition is causally related to the employment injury.[12] The physician's opinion must be based on a complete and accurate factual and medical history and supported by sound medical reasoning.[13]

ANALYSIS

OWCP accepted that appellant's occupational disease claim for localized primary osteoarthritis of the left hand. Appellant stopped work on September 24, 2015 and, on the same date, she underwent OWCP-authorized left thumb surgery, including excision of trapezium, ligament reconstruction and tendon interposition utilizing autograft, and extensor pollicis brevis to abductor pollicis longus tendon transfer. She returned to work on December 18, 2015 as a full-time modified rural carrier with restrictions including lifting, carrying, pushing, and pulling no more than 15 pounds. Appellant stopped work on February 3, 2016 and claimed a recurrence of disability beginning that date due to her accepted work condition.

The Board finds that appellant failed to submit sufficient medical evidence to establish a recurrence of disability on or after February 3, 2016 due to the accepted employment condition of localized primary osteoarthritis of the left hand.

In reports dated beginning in late-January 2016, Dr. Habacker, an attending physician, found that appellant had disability from work due to localized primary osteoarthritis of the left hand. For example, in a January 27, 2016 attending physician's report, she listed the date of injury as March 3, 2014, diagnosed primary osteoarthritis of the left hand and degenerative joint disease of the left basal joint, and checked a box marked "yes" indicating the diagnosed conditions were due to the employment factors. Dr. Habacker indicated that appellant was totally disabled from January 27, 2016 until her follow-up appointment in February 2016. The Board has held that when a physician's opinion on causal relationship consists only of checking "yes" in response to a form question, without more by the way of medical rationale, that opinion has little probative value and is insufficient to establish causal relationship. Appellant's burden includes the necessity of furnishing an affirmative opinion from a physician who supports his or her conclusion with sound medical reasoning.[14] Dr. Habacker's report is of limited probative value regarding appellant's recurrence of disability claim because she did not provide any explanation of

[10] *Theresa L. Andrews*, 55 ECAB 719, 722 (2004).

[11] 20 C.F.R. § 10.104(b); *see* Federal (FECA) Procedure Manual, *supra* note 8 at Chapter 2.1500.5 and 2.1500.6.

[12] *See S.S.*, 59 ECAB 315, 318-19 (2008).

[13] *Id.* at 319.

[14] *Lillian M. Jones*, 34 ECAB 379, 381 (1982).

why appellant's work-related left hand osteoarthritis rendered her unable to perform her modified-duty work. She did not describe the work-related condition in any detail or explain the medical process through which it could cause disability during the claimed period.

In a report dated February 22, 2016, Dr. Habacker reported examination findings of no erythema/edema, less than full left thumb abduction, and tenderness at the thenar eminence of the left thumb base and along the September 24, 2015 surgery incision site. She indicated that recent EMG and NCS testing showed very mild carpal tunnel syndrome and she diagnosed carpal tunnel syndrome of the left upper limb, and primary osteoarthritis of the left hand. Dr. Habacker posited that the left carpal tunnel syndrome was caused and exacerbated by the swelling associated with the degenerative joint disease of the left hand/thumb and suggested that this condition prevented appellant from using her left hand. However, she did not provide any explanation of the medical process of how appellant could have developed left carpal tunnel syndrome from swelling associated with work-related degenerative joint disease of the left hand/thumb. In addition, the basis for the statement that appellant had left hand swelling is unclear as Dr. Habacker repeatedly indicated that she had no erythema/edema in the hand. In other reports of record, Dr. Habacker found a work-related cause for the left carpal tunnel syndrome, but these reports do not contain any notable explanation for this finding. For example, in an undated Form CA-20, received in April 2016, she listed the date of injury as March 3, 2014 and diagnosed primary osteoarthritis of the left hand and left carpal tunnel syndrome "causally related to the injury" without providing any other explanatory comments. These reports are of limited probative value due to their lack of a rationalized medical opinion on causal relationship. The Board has held that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale.[15]

In a report dated June 9, 2016, Dr. Habacker opined that appellant's disability beginning February 3, 2016 was work related because she had persistent symptoms even while performing limited-duty work and there were no other incidents to explain her symptoms. However, this opinion is of limited probative value regarding appellant's claimed recurrence of disability because the Board has held that the fact that a condition manifests itself or worsens during a period of employment,[16] or that work activities produce symptoms revelatory of an underlying condition,[17] does not raise an inference of causal relationship between a claimed condition/disability and employment factors. In the same report, Dr. Habacker indicated that appellant had left carpal tunnel syndrome that "may be precipitated by and/or aggravated by swelling." She further noted that appellant was 40 percent disabled, that she should limit left hand usage as tolerated, and that she should refrain from lifting, carrying, pushing, or pulling more than 25 pounds. Dr. Habacker again failed to explain the medical process through which swelling from appellant's accepted left hand condition could cause left carpal tunnel syndrome. Her opinion is of limited probative value for the further reason that it is speculative in nature. The Board has held that an opinion which is speculative is of limited probative value regarding the

[15] *C.M.*, Docket No. 14-88 (issued April 18, 2014).

[16] *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

[17] *Richard B. Cassel*, 32 ECAB 1910, 1917 (1981).

issue of causal relationship.[18] Dr. Habacker noted that appellant's diagnosis was "left hand/wrist pain [status post] surgery for aggravated arthritis," but she did not provide a rationalized medical opinion that the accepted left hand condition caused disability from work. For these reasons, this report does not provide support for a finding that appellant sustained a recurrence of disability on or after February 3, 2016 due to her accepted work condition. In other reports, Dr. Habacker suggested other conditions might be related to the accepted employment injury, such as left wrist ganglion, left trigger finger, or neuroma, but she did not provide a clear opinion in this regard.[19]

On June 27, 2016 Dr. Habacker diagnosed primary osteoarthritis of the left hand and Dupuytren's contracture disease (also known as palmar fascial fibromatosis). She indicated that the Dupuytren's contracture disease was caused by the same work that caused the accepted left thumb arthritis. In a June 29, 2016 Form CA-20, Dr. Habacker diagnosed Dupuytren's contracture disease and primary osteoarthritis and indicated that these conditions were "exacerbated by work activity." She found total disability from January 26, 2016 to the present. Although Dr. Habacker suggested that this disability was due to work-related Dupuytren's contracture disease, these reports are of limited probative value in establishing appellant's recurrence of disability claim because she did not provide an explanation of how the diagnosed condition of Dupuytren's contracture disease was related to the accepted work injury, localized primary osteoarthritis of the left hand. She did not describe the medical process through which the same work duties that contributed to the localized primary osteoarthritis of the left hand had caused Dupuytren's contracture disease.

In other brief reports of record, Dr. Habacker found disability after February 3, 2016 and suggested that the disability was related to the accepted condition of localized primary osteoarthritis of the left hand.[20] For example, in a June 29, 2016 Form CA-20, Dr. Habacker diagnosed primary osteoarthritis of the left hand and found total disability from January 26, 2016 to the present. However, she did not provide a clear opinion that the disability was due to the accepted condition of localized primary osteoarthritis of the left hand or otherwise provide a rationalized medical report relating the disability to the condition. In other reports, Dr. Habacker related the period of disability to a "March 3, 2014" or "September 24, 2015" injury, but she did not provide any further explanation for such opinions.[21]

In several reports dated between July 18 and October 27, 2016, Dr. Gargiulo, an attending physician, diagnosed left hand pain, chronic pain syndrome, and left carpal tunnel syndrome. In an August 30, 2016 report, Dr. Elizabeth White-Fricker, an attending physician, diagnosed left wrist pain, bone spur, Dupuytren's contracture disease, and repetitive strain injury.

[18] *See Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962); *James P. Reed*, 9 ECAB 193, 195 (1956).

[19] With respect to the possibility of a left wrist ganglion, Dr. Habacker obtained a left wrist MRI scan which did not show any such condition.

[20] In a number of these reports, Dr. Habacker indicated that appellant was disabled because she could not use her left hand at all. She did not describe objective findings on examination or diagnostic testing that would justify such a level of disability.

[21] March 3, 2014 is the date appellant indicated on her Form CA-2 that she first became aware of her claimed left hand condition and September 24, 2015 is the date of her left hand surgery.

However, these reports are of limited probative value on the relevant issue of this case because neither physician provided an opinion that the diagnosed conditions were related to the accepted work injury, localized primary osteoarthritis of her left hand, or that appellant was disabled on or after February 3, 2016. The Board has held that medical evidence which does not offer a clear opinion regarding the cause of an employee's condition/disability is of limited probative value on the issue of causal relationship.[22]

Appellant may submit additional 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 recurrence of disability on or after February 3, 2016 causally related to her accepted employment injury.

[22] *See Charles H. Tomaszewski*, 39 ECAB 461 (1988). Appellant submitted an April 1, 2016 letter in which she asserted that she stopped work on February 3, 2016 because there was no modified work available within the limitations provided by Dr. Habacker. However, she did not submit any evidence to support this assertion and she has not established a recurrence of disability on or after February 3, 2016 due to a withdrawal of a light-duty assignment. *See supra* note 10.

ORDER

IT IS HEREBY ORDERED THAT the November 22, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 12, 2017
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