

ISSUE

The issue is whether appellant has met her burden of proof to expand the acceptance of her claim to include degenerative arthritis of the right thumb as a consequence of her accepted December 7, 1999 employment injury.

FACTUAL HISTORY

This case has previously been before the Board on different issues.⁴ The facts and circumstances as set forth in the Board's prior decisions are incorporated herein by reference. The relevant facts are as follows.

On February 13, 2001 appellant, then a 39-year-old social insurance specialist/claims representative, filed an occupational disease claim (Form CA-2) alleging that repetitive keypunching, typing, and writing while in the performance of duty on or before December 7, 1999 caused bilateral upper extremity conditions. OWCP accepted the claim for bilateral carpal tunnel syndrome, bilateral lateral epicondylitis, bilateral median nerve neuritis, right wrist tenosynovitis, and a right shoulder condition.⁵

Dr. Michael Zafuta, a Board-certified orthopedic surgeon, performed an OWCP-authorized open right median nerve release on March 1, 2005 and an OWCP-authorized open left median nerve release on April 1, 2005.

On July 17, 2008 Dr. John B. Moore, IV, an attending Board-certified plastic surgeon specializing in hand surgery, performed an OWCP-authorized repeat right median nerve release with open radical tenosynovectomy of the flexor tendons, neurolysis of the median nerve including the palmar cutaneous branch, excision of the accessory flexor tendon, and reduction of lumbrical muscle volume. In an August 11, 2009 report, he opined that appellant had reached maximum medical improvement (MMI).

On April 5, 2010 Dr. Anthony Eidelman, Board-certified in anesthesiology and pain management, injected the tendon sheath and ligament of the right palm. He diagnosed chronic pain, unspecified enthesopathy, and tendinitis of the right hand and palm.⁶

In an April 25, 2011 report, Dr. John W. Ellis, a Board-certified family practitioner, noted a history of injury and treatment. On examination he noted a surgical scar between the thenar and hypothenar eminence of the right hand, tenderness over the carpometacarpophalangeal (CMC) joint of both thumbs, and hypertrophy over the CMC joint of both thumbs "consistent with

⁴ Docket No. 17-1854 (issued March 20, 2018); Docket No. 11-0527 (issued April 9, 2012).

⁵ OWCP assigned the present claim File No. xxxxxx960. Appellant has other claims alleging injuries to her neck and bilateral upper extremities under OWCP File Nos. xxxxxx087, xxxxxx567, xxxxxx473, xxxxxx188, and xxxxxx960. OWCP has administratively combined appellant's claims, with OWCP File No. xxxxxx960 designated as the master file.

⁶ Following intermittent work absences, appellant retired from federal employment, effective November 30, 2010. She was then employed in the private sector.

repetitive traumatic tendinitis and arthritis.” Dr. Ellis diagnosed traumatic arthritis of the CMC joint of both thumbs.

By decision dated August 24, 2012, OWCP granted appellant a schedule award for 12 percent permanent impairment of the right upper extremity and 9 percent permanent impairment of the left upper extremity due to bilateral carpal tunnel syndrome, bilateral lateral epicondylitis, and right wrist tenosynovitis. The award ran for 65.92 weeks from July 26, 2012 through October 27, 2013.

In December 2, 2016 reports, Dr. Moore noted pain and swelling in all joints of both hands. X-rays of both hands demonstrated widespread osteoarthritis of both CMC joints, with grade III arthritis in the sesamoid bone of the right thumb metacarpophalangeal joint, widespread synovitis of all flexor and extensor tendons, and fusiform swelling of all fingers. He opined that these findings were caused by systemic disease. Dr. Moore explained that, while appellant’s prior hand problems had been aggravated by her employment duties, the “current synovitis and arthritis were not caused by work activities.”

In a November 17, 2017 report, Dr. Moore noted appellant’s history of bilateral hand symptoms caused by “overuse syndrome from her previous job.” Appellant had developed stage III degenerative arthritis of the right thumb CMC joint with chronic pain. Dr. Moore opined that this was “a normal condition in 56-year-old females and is not caused by work, though it can be aggravated by work activities.”

On December 13, 2017 appellant, through counsel, requested that OWCP expand its acceptance of the claim to include stage III degenerative arthritis of the right thumb CMC joint.

On January 11, 2018 Dr. Moore performed a trapeziectomy with suture suspension, reconstruction of right thumb intermetacarpal ligament, and steroid injection to the right thumb intermetacarpal joint. He diagnosed osteoarthritis of the right thumb CMC joint with injury to the intermetacarpal ligament, and osteoarthritis of the right thumb intermetacarpal joint.

In a development letter dated June 19, 2018, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of medical evidence necessary to establish her consequential injury claim and provided a questionnaire for her completion. OWCP afforded her 30 days to respond.

In response, appellant submitted a July 3, 2018 report by Dr. Moore, who opined that her current upper extremity pain and disability were caused by myofascial pain syndrome, a condition that was not work related.

In a July 3, 2019 report, Dr. Aaron M. McGuire, an osteopathic physician Board-certified in physiatry, provided a history of injury and treatment and reviewed medical records. On examination he noted a moderate adduction deformity of the right thumb, weakness in the right thumb against resisted abduction and flexion, and a positive right CMC grind test. Dr. Moore provided numerous diagnosis including status post trapeziectomy with suture suspension, reconstruction of the right thumb inter-method carpal ligament with steroid injection to the right

thumb IP joint. He opined that appellant's employment-related activities, while at the employing establishment, was the major cause of her thumb injury.

By decision dated April 17, 2020, OWCP denied expansion of its acceptance of the claim, finding that the medical evidence of record was insufficient to establish that the claimed right CMC arthritis was caused or aggravated by factors of her federal employment, or developed as a consequence of the accepted upper extremity conditions.

On April 24, 2020 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review, which was held on August 12, 2020. During the hearing, she testified that, after she left federal employment, she worked in private sector retail management, with significant computer use during her first two years of work. As keyboarding aggravated her upper extremity symptoms, she left the management position and obtained a new job in customer service, which did not require computer use.

By decision dated October 20, 2020, the hearing representative affirmed the April 17, 2020 decision.

LEGAL PRECEDENT

Where 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.⁷

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 the claimant's own intentional misconduct.⁸ 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 result of a compensable primary injury.⁹

The claimant bears the burden of proof to establish a claim for a consequential injury.¹⁰ As part of this burden, the claimant must present rationalized medical opinion evidence, based on a complete factual and medical background, establishing causal relationship. The opinion must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship of the diagnosed condition and the specific employment injury.¹¹ The weight of medical evidence is determined by its reliability, its probative value, its convincing

⁷ *S.D.*, Docket No. 21-0085 (issued August 9, 2021); *T.B.*, Docket No. 20-0182 (issued April 23, 2021); *W.L.*, Docket No. 17-1965 (issued September 12, 2018); *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

⁸ *See I.S.*, Docket No. 19-1461 (issued April 30, 2020); *see Charles W. Downey*, 54 ECAB 421 (2003).

⁹ *Id.*; *see also Susanne W. Underwood (Randall L. Underwood)*, 53 ECAB 139, 141 n.7 (2001).

¹⁰ *See C.H.*, Docket No. 20-0228 (issued October 7, 2020); *P.P.*, Docket No. 19-1359 (issued April 30, 2020).

¹¹ *K.W.*, Docket No. 18-0991 (issued December 11, 2018); *P.M.*, Docket No. 18-0287 (issued October 11, 2018).

quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.¹²

ANALYSIS

The Board finds that appellant has not met her burden of proof to expand the acceptance of her claim to include degenerative arthritis of the right thumb as a consequence of her accepted December 7, 1999 employment injury.

As noted, an employee claiming a consequential injury has the burden to provide rationalized medical evidence showing how the subsequently-acquired medical condition is a natural consequence of the prior employment injury.¹³

The record reflects that appellant has newly diagnosed right CMC joint arthritis. However, there is no rationalized medical opinion evidence explaining how her right thumb condition was a natural consequence of appellant's accepted December 7, 1999 employment conditions.

In an April 26, 2011 report, Dr. Ellis noted a history of injury and treatment. He diagnosed traumatic arthritis of the CMC joint of both thumbs consistent with repetitive traumatic tendinitis and arthritis. He did not, however, opine that the repetitive trauma occurred in the course of appellant's federal employment. Dr. Ellis' opinion is, therefore, of no probative value in establishing causal relationship.¹⁴

Dr. Moore opined in his December 2, 2016 report that appellant's right thumb arthritis was caused by systemic disease unrelated to work activities. He reiterated in a November 17, 2017 report that degenerative CMC arthritis was normal for appellant's age and not caused by work, but noted that it "can be aggravated by work activities." Dr. Moore modified his opinion in a July 3, 2018 report, attributing appellant's upper extremity symptoms to nonoccupational myofascial pain syndrome. The equivocal nature of his opinion significantly diminishes its probative value.¹⁵

In his July 3, 2019 report, Dr. McGuire noted a history of injury and clinical findings of the right thumb. He opined that appellant's employment-related activities, while at the employing establishment, was the major cause of her thumb injury. However, Dr. McGuire's report is of limited probative value regarding appellant's consequential claim as he did not provide a rationalized medical opinion.¹⁶ As such, his report is insufficient to establish appellant's claim.

¹² *P.M., id.*

¹³ *C.H., supra* note 10.

¹⁴ *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁵ *L.F.*, Docket No. 20-1021 (issued July 30, 2021); *J.K.*, Docket No. 20-1313 (issued May 17, 2021); *D.B.*, Docket No. 18-1359 (issued May 14, 2019).

¹⁶ *T.S.*, Docket No. 20-0968 (issued August 17, 2021); *see J.M.*, Docket No. 19-1926 (issued March 19, 2021); *M.B.*, Docket No. 19-0882 (issued November 6, 2019).

As the medical evidence of record does not include a rationalized opinion explaining how appellant's accepted employment injury caused or contributed to the development of right thumb CMC arthritis, the Board finds that she 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.

CONCLUSION

The Board finds that appellant has not met her burden of proof to expand the acceptance of her claim to include degenerative arthritis of the right thumb as a consequence of her accepted December 7, 1999 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the October 20, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 1, 2021
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