

**United States Department of Labor
Employees' Compensation Appeals Board**

C.W., Appellant)	
)	
and)	Docket No. 20-0965
)	Issued: February 5, 2021
DEPARTMENT OF THE TREASURY, U.S.)	
MINT, West Point, NY, Employer)	
)	

Appearances:
Paul Kalker, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Deputy Chief Judge
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On March 23, 2020 appellant, through counsel, filed a timely appeal from a February 12, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over 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, following the February 12, 2020 decision, OWCP received additional evidence. 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 left thumb and wrist condition causally related to the accepted May 2, 2019 employment incident.

FACTUAL HISTORY

On May 6, 2019 appellant, then a 56-year-old die setter, filed a traumatic injury claim (Form CA-1) alleging that on May 2, 2019, when changing dies, she hit the anvil using a blow hammer and sustained a sharp pain in her left thumb and the inside of her left wrist while in the performance of duty. She stopped work on May 2, 2019.

In a report dated May 7, 2019, Mandi Zaccagnino, a nurse practitioner, indicated that appellant was disabled from work until cleared by an orthopedist. In another report dated May 7, 2019, prepared by an unidentified healthcare provider, appellant was treated for thumb and wrist pain. X-rays were negative for fracture. Appellant was diagnosed with left hand pain and left wrist pain.

On May 16, 2019 appellant was treated by Dr. Gina Del Savio, a Board-certified orthopedist, for left hand pain. Dr. Del Savio reported that on May 2, 2019, while working as a die setter, appellant hit an anvil with a plastic hammer and felt sharp left hand pain radiating from the left thumb into the wrist. She noted that a May 7, 2019 x-ray of the left hand and wrist revealed a .27 centimeter circumscribed spherical density along the ulnar carpal articulation, possibly a joint body or detached spur, mild degenerative joint disease (DJD) of the first carpometacarpal (CMC) articulation, and no fracture. Dr. Del Savio diagnosed left hand pain and recommended continued use of the brace.⁴ She opined that the May 2, 2019 employment incident was the competent cause of appellant's injury.

In an attending physician's report (Form CA-20) dated May 23, 2019, Dr. Del Savio diagnosed left hand pain and checked a box marked "Yes" indicating that appellant's condition had been caused or aggravated by an employment activity. She returned appellant to work with restrictions. In an accompanying work capacity evaluation (Form OWCP-5c) dated May 23, 2019, Dr. Del Savio advised that appellant could work eight hours a day with restrictions of no lifting or grasping with the left hand or any activity involving the left thumb and wrist.

In a June 6, 2019 development letter, OWCP advised that when appellant's claim was first received, it appeared to be a minor injury that resulted in minimal or no lost time from work. Therefore, payment of a limited amount of medical expenses was administratively approved without formal consideration of the merits of her claim. OWCP, however, had reopened appellant's claim for consideration of the merits. It advised her of the deficiencies of her claim and requested additional factual and medical evidence. OWCP afforded appellant 30 days to respond.

In response to OWCP's development letter, on June 11, 2019 appellant indicated that she had no similar symptoms or disability prior to this injury. She reported pain when hitting the die

⁴ In a May 16, 2019 return-to-work note, she returned appellant to work light duty on May 27, 2019.

tooling with the blow hammer to lock the anvil in place. Appellant reported following standard operating procedures when performing her job.

A June 14, 2019 magnetic resonance imaging (MRI) scan of the left hand revealed osteoarthritic change including prominent marrow edema of the first metacarpal.

On June 24, 2019 Dr. Del Savio treated appellant in follow up for left hand pain, which developed after a work injury on May 2, 2019. She reviewed the findings on the MRI scan and diagnosed left hand pain and arthritis of the CMC joint of the left thumb and recommended bracing and occupational therapy. Dr. Del Savio opined that the May 2, 2019 employment incident was the competent medical cause of appellant's injury. In an accompanying attending physician's report (Form CA-20) of even date, she diagnosed pain in the left hand and arthritis of the CMC joint of the left thumb and checked a box marked "Yes" indicating that appellant's condition had been caused or aggravated by an employment activity. Dr. Del Savio advised that appellant continue performing light-duty work.⁵

On June 28, 2019 Dr. Wael Fakhoury, a Board-certified family practitioner, evaluated appellant for acute traumatic left hand pain, which began on May 2, 2019, while working as a die setter. He reviewed the MRI scan of the left hand and diagnosed left hand pain, bilateral hand pain, and trigger finger of the right hand, unspecified finger. Dr. Fakhoury opined that the May 2, 2019 employment incident was the competent medical cause of appellant's injury. He excused appellant from work until cleared by an orthopedist.

By decision dated July 18, 2019, OWCP denied appellant's traumatic injury claim, finding that the medical evidence submitted was insufficient to establish causal relationship between a diagnosed medical condition and the accepted May 2, 2019 employment incident.

Appellant attended occupational therapy treatment from July 1 through August 8, 2019.⁶

In a report dated July 15, 2019, Dr. Del Savio noted a history of the May 2, 2019 work injury and diagnosed left hand pain and arthritis of the CMC joint of the left thumb. She described the anatomy and pathophysiology of the condition, noting chronic left hand pain was caused by repetitive use of the hand to support a mold while striking pieces together with an anvil. Dr. Del Savio opined that the May 2, 2019 employment incident was the competent medical cause of appellant's injury.

On August 5, 2019 Dr. Del Savio treated appellant in follow up for a May 2, 2019 work injury. She diagnosed arthritis of the CMC joint of the left thumb and left hand pain. Dr. Del Savio opined that, after reviewing the anatomy and pathophysiology of the condition, the underlying thumb arthritis was aggravated by trauma at work, specifically, hitting a die held in the

⁵ In an attached note of even date, Dr. Del Savio reported treating appellant and released her to light duty.

⁶ Dr. Del Savio treated appellant on July 8, 2019 for right hand pain, which began at work on August 27, 2015, when she was carrying heavy machinery and stepped off a platform and fell, causing the tool she was carrying to fall on her right long finger. She diagnosed right middle finger trigger finger and requested authorization to perform a right long finger trigger release.

left hand. She noted improvement with occupational therapy. Dr. Del Savio opined that the May 2, 2019 employment incident was the competent medical cause of the injury.

In a September 30, 2019 letter, Dr. Del Savio noted that appellant presented on May 16, 2019 with left hand pain after a work accident on May 2, 2019. Appellant was treated in urgent care and provided a brace. Dr. Del Savio opined that the incident likely aggravated her preexisting arthritis causing her symptoms. Appellant returned on June 24, 2019 with persistent left hand pain. Dr. Del Savio noted that an MRI scan revealed thumb arthritis at the CMC joint and recommended occupational therapy. She treated appellant again on September 9, 2019 for ongoing complaints in both hands. Dr. Del Savio diagnosed left thumb CMC joint arthritis aggravated by a work injury and right hand long trigger finger secondary to another work injury. She noted that, due to the physical nature of appellant's job and the repetitive use of both hands for activities as a die setter, the injury to one hand causes the other to be aggravated in a cyclical fashion. Dr. Del Savio opined that, while the left thumb arthritis was not caused by the accident, it was aggravated by her activities as a die setter at work. She recommended therapy and bracing and advised that appellant was unable to work in any capacity.

Dr. Del Savio treated appellant again on October 7, 2019 and diagnosed arthritis of the CMC joint of the left thumb. She opined that the DJD of the thumb CMC was aggravated by the work injury. Dr. Del Savio recommended bracing and occupational therapy. She further opined that the May 2, 2019 employment incident was the competent medical cause of appellant's injury.

Appellant was treated in follow up by Dr. Del Savio on November 7, 2019 and reported chronic left hand pain with additional pain in the wrist on the left side. Dr. Del Savio diagnosed arthritis of the CMC joint of the left thumb and performed a Lidocaine injection. She again opined that the incident described was the competent medical cause of appellant's injury.

On November 15, 2019 appellant, through counsel, requested reconsideration.

By decision dated February 12, 2020, OWCP denied modification of the July 18, 2019 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁷ has the burden of proof to establish the essential elements of his or her claim, including 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,⁸ 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

⁷ *Supra* note 2.

⁸ *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

employment injury.⁹ 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.¹⁰

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged. The second component is whether the employment incident caused a personal injury and can be established only by medical evidence.¹¹

The medical evidence required to establish a causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.¹² 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.¹³

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a left thumb and wrist condition causally related to the accepted May 2, 2019 employment incident.

In a May 16, 2019 report, Dr. Del Savio treated appellant for left hand pain, which began on May 2, 2019, when, while working as a die setter, she hit an anvil with a plastic hammer and felt sharp left hand pain radiating from the left thumb into the wrist. She diagnosed left hand pain and mild degenerative joint disease (DJD) of the first carpometacarpal (CMC) articulation, and no fracture. Dr. Del Savio opined that the May 2, 2019 employment incident was the competent cause of appellant's injury. Similarly, in reports dated June 24, July 15, August 5, September 30, October 7, and November 7, 2019, Dr. Del Savio diagnosed left hand pain and arthritis of the CMC joint of the left thumb. She opined that, after reviewing the anatomy and pathophysiology of the condition, the DJD of the thumb CMC was aggravated by the work injury, specifically, hitting a die held in the left hand. Dr. Del Savio further opined that the May 2, 2019 employment incident was the competent medical cause of appellant's injury. Similarly, on June 28, 2019 Dr. Fakhoury diagnosed left hand pain, bilateral hand pain, and trigger finger of the right hand, and opined that the May 2, 2019 employment incident was the competent medical cause of appellant's injury.

⁹ *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

¹⁰ *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

¹¹ *T.H.* Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

¹² *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).

¹³ *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).

While Drs. Del Savio and Fakhoury indicated that appellant's left hand and thumb condition was work related, they failed to provide medical rationale explaining the basis of their opinion. Drs. Del Savio and Fakhoury did not explain how striking a die with an anvil aggravated the underlying DJD of the thumb. To be of probative medical value, a medical opinion must explain how physiologically the movements involved in the employment incident caused or contributed to the diagnosed conditions.¹⁶ The Board has held that a medical report is of limited probative value on a given medical issue if it contains an opinion which is unsupported by medical rationale.¹⁴ As such, Drs. Del Savio's and Fakoury's reports are insufficient to establish appellant's claim.

In a May 16, 2019 return-to-work note, Dr. Del Savio returned appellant to work light duty on May 27, 2019. Similarly, in a work capacity evaluation (Form OWCP-5c) dated May 23, 2019, she advised that appellant could work eight hours a day with restrictions. In these notes, Dr. Del Savio did not offer an opinion as to whether a diagnosed condition was causally related to the accepted employment incident. The Board has held that medical evidence that does not include an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.¹⁵ These notes from Dr. Del Savio are therefore insufficient to establish appellant's claim.

In Form CA-20 reports dated May 23 and June 24, 2019, Dr. Del Savio diagnosed left hand pain and arthritis of the CMC joint of the left thumb and indicated by checking a box marked "Yes" indicating that appellant's condition had been caused or aggravated by an employment activity. However, the Board has held that an opinion on causal relationship with an affirmative check mark, without more by way of medical rationale, is insufficient to establish the claim.¹⁶ Moreover, pain is a symptom and not a clear diagnosis of a medical condition.¹⁷ As such, these reports are insufficient to establish appellant's claim.

Appellant submitted physical therapy treatment notes and a report dated May 7, 2019, by Mandi Zaccagnino, a nurse practitioner, who indicated that appellant was disabled from work until cleared by an orthopedist. Certain healthcare providers such as nurse practitioners and physical

¹⁴ *B.M.*, Docket No. 19-1341 (issued August 12, 2020); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

¹⁵ *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁶ *See C.S.*, Docket No. 18-1633 (issued December 30, 2019); *D.S.*, Docket No. 17-1566 (issued December 31, 2018).

¹⁷ *D.S.*, *id.*; *see also P.S.*, Docket No. 12-1601 (issued January 2, 2013).

therapists, however,¹⁸ are not considered physicians as defined under FECA.¹⁹ Consequently, these reports will not suffice for purposes of establishing entitlement to FECA benefits.²⁰

Appellant also submitted a May 7, 2019 note prepared by an unidentified healthcare provider who diagnosed left hand pain and left wrist pain. There is no evidence that this provider is a physician. Medical documents not signed by a physician and lacking proper identification do not constitute probative medical evidence.²¹

The record also contains a left wrist and hand MRI scan and x-rays as interpreted by diagnostic radiologists. The Board has held that diagnostic tests, standing alone, lack probative value on the issue of causal relationship as they do not address whether the employment incident caused a diagnosed condition.²²

As the medical evidence of record does not contain rationalized medical evidence establishing causal relationship between appellant's diagnosed conditions and the accepted May 2, 2019 employment incident, the Board finds that appellant has not met her burden of proof.

On appeal counsel argues that the evidence submitted firmly supports causal relationship and disability. However, as explained above, the evidence of record lacks adequate medical rationale on causal relationship and is, therefore, insufficient to meet appellant's burden of proof to establish the claim.

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 left thumb and wrist condition causally related to a May 2, 2019 employment incident.

¹⁸ *V.W.*, Docket No. 16-1444 (issued March 14, 2017) (physical therapy reports do not constitute competent medical evidence because a physical therapist is not considered a "physician" as defined under FECA).

¹⁹ 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).

²⁰ 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). *See also* 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); *C.P.*, Docket No. 19-1716 (issued March 11, 2020) (a physician assistant is not considered a physician as defined under FECA).

²¹ *See R.M.*, 59 ECAB 690 (2008); *Bradford L. Sullivan*, 33 ECAB 1568(1982) (a medical report may not be considered as probative medical evidence if there is no indication that the person completing the report qualifies as a "physician" as defined in FECA).

²² *V.Y.*, Docket No. 18-0610 (issued March 6, 2020).

ORDER

IT IS HEREBY ORDERED THAT the February 12, 2020 decision of the Office of Workers' Compensation Programs is affirmed.²³

Issued: February 5, 2021
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

²³ Christopher J. Godfrey, Deputy Chief Judge, who participated in the preparation of the decision, was no longer a member of the Board after January 20, 2021.