

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

M.F., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Las Vegas, NV, Employer**

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**Docket No. 11-347
Issued: September 21, 2011**

Appearances:
Philip J. Trenchak, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 26, 2010 appellant filed a timely appeal from an August 16, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP) denying his occupational injury claim and an October 6, 2010 nonmerit decision denying his request for reconsideration. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant met his burden of proof to establish that he sustained right-handed carpal tunnel syndrome (CTS) and trigger finger causally related to factors of his employment; and (2) whether OWCP properly denied his request for further merit review under 5 U.S.C. § 8128(a).

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On June 28, 2010 appellant, then a 66-year-old group leader, filed an occupational disease claim (Form CA-2) alleging that he developed right-handed CTS and trigger finger from repetitive use of his hands. He first became aware of his condition and of its relationship to his employment on January 12, 2009 and noted that he had complained about this condition in the past. Appellant notified his supervisor on June 29, 2010.

By letter dated June 29, 2010, appellant requested light duty due to upcoming surgery for his hand and feet in July 2010.

In a May 25, 2010 medical report, Dr. Elvira Acosta, Board-certified in family medicine, reported that appellant had a history of moderate CTS on the right hand and a prior history of carpal tunnel release on the left hand. Upon physical examination and an electromyogram (EMG) examination, Dr. Acosta diagnosed moderate bilateral CTS, noting that appellant had already had carpal tunnel release on the left hand.

By letter dated July 15, 2010, OWCP informed appellant that the evidence of record was insufficient to support his claim. It requested additional factual and medical evidence and asked that he respond to the provided questions within 30 days.

By letter dated July 20, 2010, appellant, through his attorney, responded to OWCP's development letter. Appellant stated that as a group leader in the mail handling department, his duties consisted of constant grabbing and pulling of mail hampers and wire mail carriers all day long. He further noted that the pain in his right arm began around July 20, 2009 and that he had experienced recurring pain in his left arm since 2002. Appellant's pain became worse when he grabbed and pulled objects. He stated that he had carpal tunnel surgery on his left hand in 2002.

In a June 20, 2010 note, Dr. Leo Germin, a Board-certified neurologist, referred appellant to Dr. Andrew Bronstein for evaluation and management of his CTS.

By decision dated August 16, 2010, OWCP denied appellant's claim finding that the evidence was insufficient to establish that he sustained an injury. It found that the occupational exposure occurred as alleged; but the evidence failed to provide a firm medical diagnosis which could be reasonably attributed to the accepted employment factors.

On September 7, 2010 appellant requested reconsideration of OWCP's decision. He did not submit any evidence in support of his request.

By decision dated October 6, 2010, OWCP denied appellant's request for reconsideration finding that he neither raised substantive legal questions nor included new and relevant evidence.²

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA has the burden of establishing 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 filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.³ These are the essential elements of every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁴

In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.⁵ The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

To establish a causal relationship between the condition, and any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background, supporting such a causal relationship.⁶ The opinion of the physician must be based on a complete factual and medical background of the claimant, 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 the specific employment factors identified by the claimant. This medical opinion must include an accurate history of the employee's employment injury and must explain how the condition is related to the injury. The weight of medical evidence is determined by its reliability,

² The Board notes that appellant submitted additional evidence after OWCP rendered its October 6, 2010 decision. The Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its final decision and therefore, this additional evidence cannot be considered on appeal. 20 C.F.R. § 510.2(c)(1); *Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952). Appellant may submit this evidence to OWCP, together with a formal request for reconsideration, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606(b)(2).

³ *Gary J. Watling*, 52 ECAB 278 (2001); *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

⁴ *Michael E. Smith*, 50 ECAB 313 (1999).

⁵ *Elaine Pendleton*, *supra* note 3.

⁶ *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.⁷

ANALYSIS -- ISSUE 1

OWCP accepted that the occupational exposure occurred as alleged. The issue, therefore, is whether appellant submitted sufficient medical evidence to establish that the employment exposure caused right CTS and trigger finger. The Board finds that he did not submit sufficient medical evidence to support that he sustained an injury causally related to factors of his employment as a group leader.⁸

In a May 25, 2010 medical report, Dr. Acosta reported that appellant had a history of moderate CTS on the right hand and a prior history of carpal tunnel release on the left hand. Upon physical examination and an EMG examination, Dr. Acosta diagnosed moderate bilateral CTS, noting that appellant had already had carpal tunnel release on the left hand.

While Dr. Acosta's report establishes a diagnosis, it is not rationalized as to the issue of causal relation. His report failed to address appellant's prior medical history and specifically failed to address appellant's history of CTS. Dr. Acosta did not mention appellant's employment activities or explain how these employment activities contributed to or caused his bilateral CTS. Without medical reasoning explaining how appellant's employment factors caused his right CTS, Dr. Acosta's reports are insufficient to meet appellant's burden of proof.⁹

Dr. Germin's June 20, 2010 referral note for the evaluation and management of appellant's CTS is also insufficient to meet appellant's burden of proof. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹⁰

On appeal, appellant has alleged that his right CTS is causally related to factors of his employment as a group leader. His honest belief that work caused his medical problem is not in question. But that belief, however sincerely held, does not constitute the medical evidence necessary to establish causal relationship. In the instant case, the record is without rationalized medical evidence establishing a causal relationship between the right-handed CTS and the cited work factors. Appellant has failed to meet his burden of proof.

LEGAL PRECEDENT -- ISSUE 2

To require OWCP to reopen a case for merit review under FECA section 8128(a), OWCP regulations provide that the evidence or argument submitted by a claimant must: (1) show that OWCP erroneously applied or interpreted a specific point of law; (2) advance a relevant legal

⁷ *James Mack*, 43 ECAB 321 (1991).

⁸ *See Robert Broome*, 55 ECAB 339 (2004).

⁹ *C.B.*, Docket No. 08-1583 (issued December 9, 2008).

¹⁰ *S.E.*, Docket No. 08-2214 (issued May 6, 2009); *C.B.*, Docket No. 09-2027 (issued May 12, 2010).

argument not previously considered by OWCP; or (3) constitute relevant and pertinent new evidence not previously considered by OWCP.¹¹ Section 10.608(b) of OWCP regulations provide that when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), OWCP will deny the application for reconsideration without reopening the case for a review on the merits.¹²

ANALYSIS -- ISSUE 2

The Board finds that the refusal of OWCP to reopen appellant's case for further consideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a), did not constitute an abuse of discretion.

The second issue presented on appeal is whether appellant met any of the requirements of 20 C.F.R. § 10.606(b)(2), requiring OWCP to reopen the case for review of the merits of the claim. In his September 7, 2010 application for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law. He did not advance a new and relevant legal argument. Appellant failed to submit any medical evidence. The decisive issue in this case was whether appellant's right CTS was causally related to the accepted employment factors as a group leader. That issue must be proven by relevant medical evidence.¹³ A claimant may obtain a merit review of OWCP's decision by submitting new and relevant evidence. In this case, appellant did not submit any new and relevant medical evidence.

Evidence submitted by appellant after the final decision cannot be considered by the Board. As previously noted, the Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its decision.¹⁴ Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.606 and 10.607.

The Board finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(2). He did not show that OWCP erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by OWCP, or submit relevant and pertinent evidence not previously considered. Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review in the October 6, 2010 decision.¹⁵

¹¹ *D.K.*, 59 ECAB 141 (2007).

¹² *K.H.*, 59 ECAB 495 (2008).

¹³ See *Bobbie F. Cowart*, 55 ECAB 746 (2004).

¹⁴ 20 C.F.R. § 501.2(c)(1).

¹⁵ *Sherry A. Hunt*, 49 ECAB 467 (1998).

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he sustained right-handed CTS and trigger finger in the performance of duty, as alleged. OWCP properly denied his request for reconsideration without a merit review.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decisions dated October 6 and August 16, 2010 are affirmed.

Issued: September 21, 2011
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board