

FACTUAL HISTORY

On September 1, 2009 appellant, then a 49-year-old cook supervisor, filed an occupational disease claim alleging that his right carpal tunnel syndrome was due to repeated grasping and typing required in his duties. He first became aware of the condition on November 4, 2008, but did not realize it was employment related until January 7, 2009.

By letter dated September 17, 2009, OWCP advised appellant as to the factual and medical evidence required to support his occupational disease claim.

On September 24, 2009 OWCP received a November 4, 2008 electromyography (EMG) test from Dr. Angelo Sermas, an examining Board-certified neurologist, who diagnosed bilateral median neuropathies with the left being more affected than the right. Dr. Sermas related that the findings from the EMG report were “consistent with a potential clinical diagnosis of bilateral carpal tunnel syndrome.”

By decision dated October 21, 2009, OWCP denied appellant’s claim on the grounds that he failed to establish fact of injury.

In a January 29, 2010 progress note, Dr. Todd E. Siff, a treating Board-certified orthopedic surgeon with a hand subspecialty certification, reviewed diagnostic tests and provided physical findings. Appellant related symptoms of tingling, numbness and pain in his right hand. Dr. Siff related that a recent EMG study was consistent with a diagnosis of right carpal tunnel syndrome. He also noted that appellant’s left carpal tunnel condition had been accepted as employment related. Dr. Siff noted that appellant attributed the right carpal tunnel condition to his employment, which Dr. Siff found was entirely possible.

On August 11, 2010 appellant requested reconsideration and submitted January 8 and February 1, 2010 reports from Dr. Siff diagnosing right carpal tunnel syndrome. Dr. Siff reported that appellant had right hand pain, tingling and numbness. He reiterated that appellant’s left carpal tunnel syndrome had been approved as employment related. Dr. Siff stated that appellant’s right hand symptoms in 2008 were very similar to those experienced in the accepted left carpal tunnel syndrome claim. In both the January 8 and February 1, 2010 reports, he related appellant’s belief that the right carpal tunnel condition was employment related based on the acceptance of his left carpal tunnel condition as employment related.

By decisions dated September 7 and 16, 2010, OWCP accepted that fact of injury was established. However, it found the medical evidence insufficient to establish that the diagnosed right carpal tunnel syndrome was causally related to appellant’s employment.

On October 7, 2010 appellant requested reconsideration.

By decision dated January 14, 2011, OWCP denied reconsideration.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA has the burden of establishing the essential elements of his 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, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific conditions for which compensation is claimed are causally related to the employment injury.² 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.³

Whether an employee actually sustained an injury in the performance of duty begins with an analysis of whether fact of injury has been established.⁴ To establish fact of injury in an occupational disease claim, an employee must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.⁵

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.⁶ Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors.⁷ 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 the specific employment factors identified by the employee.⁸

ANALYSIS -- ISSUE 1

Appellant attributed his right carpal tunnel syndrome to the repetitive typing and grasping duties required in his position. OWCP accepted the occurrence of the identified employment factors, but denied his claim on the grounds that he failed to submit rationalized medical evidence establishing a causal relationship between the diagnosed medical condition and the identified work factors. The issue to be resolved is whether the medical evidence is sufficient to establish a causal relationship.

² *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁴ *See S.P.*, 59 ECAB 184, 188 (2007); *M.V.*, Docket No. 10-1169 (issued December 17, 2010).

⁵ *Roy L. Humphrey*, 57 ECAB 238, 241 (2005).

⁶ *A.D.*, 58 ECAB 149 (2006); *D'Wayne Avila*, 57 ECAB 642 (2006); *Y.J.*, Docket No. 08-1167 (issued October 7, 2008).

⁷ *Michael S. Mina*, 57 ECAB 379 (2006); *J.J.*, Docket No. 09-27 (issued February 10, 2009).

⁸ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, *supra* note 3.

In support of his claim, appellant submitted reports and progress notes from Dr. Siff who diagnosed right carpal tunnel syndrome based on an EMG study and physical findings. In both his January 8 and 29, 2010 reports, Dr. Siff noted that an EMG study was consistent with the diagnosis of right carpal tunnel syndrome, which he attributed to appellant's employment. He noted that appellant's left carpal tunnel condition had been accepted as employment related. In addition, Dr. Siff related that the symptoms appellant was experiencing with his right hand were very similar to those he had experienced with the employment-related left carpal tunnel condition. However, he did not specifically attribute appellant's right carpal tunnel syndrome to specific work factors. Dr. Siff's reports lack sufficient medical reasoning explaining how appellant's work activities as a cook supervisor contributed to or aggravated his right carpal tunnel condition and, thus, are of limited probative value on the issue of causal relationship.⁹

Appellant also submitted the results of a November 4, 2008 EMG study diagnosing bilateral median neuropathies with the left being more affected than the right. The EMG study, however, does not address causation and thus is of little probative value.¹⁰

An award of compensation may not be based on surmise, conjecture or speculation.¹¹ Neither the fact that appellant's claimed condition became apparent during a period of employment nor his belief that his condition was aggravated by his employment is sufficient to establish causal relationship.¹² The fact that a condition manifests itself or worsens during a period of employment¹³ or that work activities produce symptoms revelatory of an underlying condition¹⁴ does not raise an inference of causal relationship between a claimed condition and an employment incident.

The Board finds that the medical evidence of record does not provide a fully-rationalized medical opinion explaining how the established work-related duties caused or aggravated the claimed right carpal tunnel condition. Appellant has not met his 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.

⁹ See *Elizabeth H. Kramm (Leonard O. Kramm)*, 57 ECAB 117 (2005); *Mary E. Marshall*, 56 ECAB 420 (2005) (medical reports that do not contain rationale on causal relationship have little probative value); *F.T.*, Docket No. 09-919 (issued December 7, 2009).

¹⁰ See *K.W.*, 59 ECAB 271 (2007); *Ellen L. Noble*, 55 ECAB 530 (2004).

¹¹ *D.D.*, 57 ECAB 734 (2006); *Paul E. Thams*, 56 ECAB 503 (2005); *E.J.*, Docket No. 09-1481 (issued February 19, 2010).

¹² *Sandra D. Pruitt*, 57 ECAB 126 (2005); *W.D.*, Docket No. 09-658 (issued October 22, 2009).

¹³ *E.A.*, 58 ECAB 677 (2007); *Albert C. Haygard*, 11 ECAB 393 (1960).

¹⁴ *D.E.*, 58 ECAB 448 (2007); *Fabian Nelson*, 12 ECAB 155 (1960).

LEGAL PRECEDENT -- ISSUE 2

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,¹⁵ OWCP's regulations provide that a claimant must: (1) show that OWCP erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by OWCP; or (3) constitute relevant and pertinent new evidence not previously considered by OWCP.¹⁶ To be entitled to a merit review of an OWCP decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.¹⁷ When a claimant fails to meet one of the above standards, OWCP will deny the application for reconsideration without reopening the case for review on the merits.¹⁸

ANALYSIS -- ISSUE 2

In his October 7, 2010 request for reconsideration, appellant asked only that his case be reviewed. He did not allege or demonstrate that OWCP erroneously applied or interpreted a specific point of law, or advance a relevant legal argument not previously considered by OWCP. Appellant also did not submit any evidence with his reconsideration request. Consequently, he is not entitled to further merit review of his claim under section 10.606(b)(1)-(3).¹⁹

The Board finds that OWCP did not abuse its discretion by denying his reconsideration.²⁰

CONCLUSION

The Board finds that appellant failed to establish that his right carpal tunnel condition was sustained in the performance of duty, causally related to factors of his federal employment. The Board further finds that OWCP properly refused to reopen his claim for further review of the merits pursuant to 5 U.S.C. § 8128(a).

¹⁵ 5 U.S.C. §§ 8101-8193. Section 8128(a) of FECA provides that the Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application.

¹⁶ 20 C.F.R. § 10.606(b)(2). See *Susan A. Filkins*, 57 ECAB 630 (2006); *J.M.*, Docket No. 09-218 (issued July 24, 2009).

¹⁷ *Id.* at § 10.607(a). See *Robert G. Burns*, 57 ECAB 657 (2006); *S.J.*, Docket No. 08-2048 (issued July 9, 2009).

¹⁸ *Id.* at § 10.608(b). See *Tina M. Parrelli-Ball*, 57 ECAB 598 (2006); *Y.S.*, Docket No. 08-440 (issued March 16, 2009).

¹⁹ *Id.* at § 10.606(b)(1)-(3). See *L.D.*, 59 ECAB 648 (2008); *Desiderio Martinez*, 55 ECAB 245 (2004).

²⁰ See *Susan A. Filkins*, 57 ECAB 630 (2006).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated January 14, 2011 and September 16 and 7, 2010 are affirmed.

Issued: January 5, 2012
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