

FACTUAL HISTORY

On April 7, 2011 appellant, then a 55-year-old carpenter, filed an occupational disease claim alleging that he had tingling and pain in his fingers and forearms for about 12 years and was diagnosed with carpal tunnel syndrome. He first became aware of the condition and its relation to his work on March 29, 2011. Appellant did not stop work. The employing establishment advised that he was still working without any restrictions.

In letters dated April 15, 2011, OWCP requested additional factual and medical evidence from appellant and the employing establishment.

In an April 19, 2011 statement, appellant described his job duties since 1985 as including carpentry, blacksmithing, and welding with use of tools such as hammers, drills and nail guns. He also performed custodial duties that involved mopping, sweeping and dumping trash. Appellant listed volunteer carpentry work at Christmas for Habitat for Humanity, although he last did this in 2005. He did not have any hobbies or recreational activities due to a hip replacement in 1998. Appellant began having problems in his forearms and wrists many years prior and, more recently, would be awakened by a tingling sensation and numbness. He saw his physician on March 29, 2011. Appellant also noted that he had arthritis.

In a March 29, 2011 report, Dr. Salman N. Malik, a Board-certified neurologist, noted that appellant related a 20-year history of tingling, numbness and paresthesias in his hands, which had worsened in the past few months. Appellant stated that repetitive hand motion worsened his symptoms. Dr. Malik examined appellant and obtained nerve conduction and electromyography (EMG) studies. He diagnosed moderate right and left carpal tunnel syndrome and no evidence of entrapment neuropathy, peripheral neuropathy, myopathy or radiculopathy. Dr. Malik indicated that motor effort was limited during the EMG examination due to pain.

By decision dated June 23, 2011, OWCP denied appellant's claim. While the evidence supported that the claimed work exposures occurred appellant failed to submit the sufficient medical evidence in support of his claim. The only medical evidence submitted diagnosed bilateral carpal tunnel syndrome but did not address causal relation.

Appellant requested reconsideration on July 5, 2011. He submitted a July 14, 2011 claim for compensation requesting that wage-loss compensation be paid for 12.11 hours from June 20 to July 6, 2011.

By decision dated August 1, 2011, OWCP denied appellant's request for reconsideration without a review of the merits finding that it was insufficient to warrant further review.

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 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 condition 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

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish causal relationship, generally, is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. 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.⁴

ANALYSIS -- ISSUE 1

Appellant alleged tingling and pain in his fingers and forearms due to carpentry, blacksmithing, welding and custodial work that involved use of hammers, drills and nail guns. He also performed mopping, sweeping and dumping trash. There is no dispute that appellant performed these duties over a number of years. The Board finds that appellant has not established his claim as he did not submit sufficient medical evidence to establish that he sustained bilateral carpal tunnel syndrome (CTS) due to his employment duties.

In a March 29, 2011 report, Dr. Malik noted that appellant related that he had a 20-year history of tingling, numbness, and paresthesias in his hands, which had worsened in the past few months. Appellant stated that repetitive hand motion worsened his symptoms. Dr. Malik noted findings and diagnosed moderate right and left carpal tunnel syndrome. He provided no discussion explaining how any particular factors of appellant's employment, such as his 20-year history of duties as a carpenter and mechanic, would cause or contribute to the carpal tunnel condition. Appellant presented no other medical evidence prior to OWCP's June 23, 2011 denial of his claim which supported that specific work factors caused or aggravated his claimed condition. OWCP informed appellant of the type of medical evidence needed to establish his claim in a letter dated April 15, 2011. However, appellant did not submit a medical report from his physician that explained how specific duties of his federal employment caused or aggravated his diagnosed condition.

² *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

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

⁴ *Id.*

The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.⁵ Neither the fact that the condition became apparent during a period of employment nor the belief that the condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.⁶ Causal relationship must be substantiated by reasoned medical opinion evidence, which is appellant's responsibility to submit.

On appeal, appellant contended that his injury was work related. He also noted that on July 19, 2011, his family physician submitted a report on causal relationship to OWCP. The Board notes that subsequent to OWCP's August 1, 2011 decision, OWCP received a July 19, 2011 report from Dr. James R. La Salle, a Board-certified family practitioner and osteopath. The Board has no jurisdiction to review this evidence for the first time on appeal.⁷ 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.

LEGAL PRECEDENT -- ISSUE 2

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,⁸ OWCP's regulations provide that a claimant's application for reconsideration must be submitted in writing and set forth arguments or contain evidence that either: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.⁹ To be entitled to a merit review of OWCP's decision denying or terminating a benefit, a claimant must file his or her application for review within one year of the date of that decision.¹⁰ 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.¹¹

ANALYSIS -- ISSUE 2

Appellant requested reconsideration on July 5, 2011. However, he offered no legal argument or new medical evidence to support his reconsideration request. The only evidence submitted was appellant's claim for compensation. As noted, his claim was denied because of

⁵ See *Joe T. Williams*, 44 ECAB 518, 521 (1993).

⁶ *Id.*

⁷ 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35 (1952).

⁸ 5 U.S.C. § 8128(a). Under section 8128(a) of FECA, the Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application.

⁹ 20 C.F.R. §§ 10.609(a) and 10.606(b).

¹⁰ *Id.* at § 10.607(a).

¹¹ *Id.* at § 10.608(b).

insufficient medical evidence addressing how particular employment factors caused or aggravated his diagnosed carpal tunnel syndrome. A claim for compensation is not relevant to the point at issue in this claim.

Appellant did not show that OWCP erroneously applied or interpreted a specific point of law, did not advance a relevant legal argument not previously considered by OWCP or submit relevant and pertinent new evidence not previously considered, OWCP properly denied his reconsideration request.

CONCLUSION

The Board finds that appellant has not met his burden of proof in establishing that he sustained an injury in the performance of duty. The Board further finds that OWCP properly denied appellant's request for reconsideration.

ORDER

IT IS HEREBY ORDERED THAT the August 1 and June 23, 2011 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: March 21, 2012
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

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

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