

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

J.S., Appellant

and

**DEPARTMENT OF COMMERCE, CENSUS
BUREAU, Villa Park, CA, Employer**

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**Docket No. 13-1001
Issued: August 1, 2013**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On March 26, 2013 appellant filed a timely appeal of a November 20, 2012 merit decision of the Office of Workers' Compensation Programs' (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the case.

ISSUE

The issue is whether appellant has met his burden of proof to establish that he sustained a right wrist condition causally related to an April 17, 2009 employment injury.

FACTUAL HISTORY

On April 19, 2009 appellant, then a 61-year-old census enumerator, filed a traumatic injury claim alleging that on April 17, 2009 he was almost hit by a truck, but struck his head while leaping out of the way. He listed his injury-related conditions as left knee muscle strain,

¹ 5 U.S.C. § 8101 *et seq.*

concussion, neck and lower back pain, chipped tooth and sore jaw. On June 12, 2009 OWCP accepted a left knee tear of medial meniscus and sprain of the lumbosacral spine as a result of the April 17, 2009 employment injury. It included the additional condition of broken tooth on December 11, 2009.

On May 1, 2009 appellant reported tingling and numbness to his right hand to a physician's assistant. On January 28, 2010 Dr. Joseph Pierce Conaty, a Board-certified orthopedic surgeon and OWCP second opinion physician, found that appellant had normal range of motion of both wrists. He found that Phalen's test, Tinel's sign, shoulder impingement and tendinitis tests were all negative bilaterally.

In a telephone call to OWCP on July 23, 2010, appellant stated that he injured his right wrist in the April 17, 2009 employment injury.

Dr. Gabriel T. Fabella, a Board-certified orthopedic surgeon, completed a second opinion report on August 12, 2010 and noted appellant's accepted conditions due to his April 17, 2009 employment injury. He noted that appellant reported right wrist pain at the time of his 2009 employment injury. Dr. Fabella stated that appellant had problems with handling, gripping and grasping using his right hand due to his right wrist condition. Appellant reported tingling and numbness in his fingers on the right. He requested that his right wrist be evaluated and treated before he underwent surgical repair of the left knee medial meniscus. Dr. Fabella examined appellant's right wrist and found minimal tenderness with full range of motion and pain on full dorsiflexion and palmar flexion. Appellant had negative Tinel's signs and Phalen's test. Dr. Fabella stated that appellant had slight wrist pain with no clearcut indication that he had either osteoarthritic or significant carpal tunnel syndrome in the right hand.

OWCP referred appellant for vocational rehabilitation services on October 18, 2010.

By decision dated February 7, 2011, OWCP reduced appellant's compensation to zero effective February 13, 2010 due to his failure to cooperate with the vocational efforts.

On August 11, 2010 appellant underwent a magnetic resonance imaging (MRI) scan of his right upper extremity which demonstrated small enhancing erosions in the lunate, capitate and hamate as well as moderate synovitis involving the distal radicular joint suggestive of early inflammatory arthritis. He sought physical therapy for his right wrist pain on October 28, 2010. Appellant also sought treatment from an acupuncture clinic for his wrist condition. He submitted a note from a physician's assistant dated April 1, 2011 which stated that he had wrist pain and paresthesias associated with his April 2009 employment injury.

Appellant requested an oral hearing before an OWCP hearing representative and testified on June 20, 2011 regarding his wrist condition. He stated that during his first visit with his primary care physician he was unable to hold a cup in his right hand. Appellant stated that he was unable to turn his right wrist or lift.²

In notes dated October 28 and November 9, 2010, Dr. Patricia Nance, a physician Board-certified in physical medicine and rehabilitation, diagnosed right wrist pain, soft tissue injury in 2009 with persistent pain, likely complex regional pain syndrome type I.

By decision dated September 15, 2011, OWCP's hearing representative affirmed the finding that appellant's compensation benefits should be reduced to zero. The hearing representative further found that OWCP should proceed with development of the wrist condition and determine if it is causally related to appellant's accepted employment injury.

Appellant submitted a report dated January 3, 2012 from Dr. S. Tang, a surgeon, diagnosing a fall injury with unresolved pain in the low back, left knee, right wrist and jaw since 2009. Dr. Tang indicated with a checkmark "yes" that appellant's condition was caused or aggravated by his employment activity.

OWCP referred appellant for a second opinion examination with Dr. Steven Ma, a Board-certified orthopedic surgeon on February 10, 2012. In a report dated March 12, 2012, Dr. Ma noted appellant's history of an employment-related fall on April 17, 2009. He noted that appellant reported pain in his right wrist and numbness in his right middle, ring and little fingers when he twisted his right wrist. Dr. Ma stated that examination of both of appellant's hands and wrists revealed no obvious deformities and no tenderness to palpation. Appellant had no swelling and normal range of motion. Dr. Ma stated that Tinel's sign and Phalen's test were negative as was Finkelstein's and Allen's test. He found normal strength with no evidence of thenar atrophy. Dr. Ma stated that appellant's sensory examination was intact and that x-ray examination showed no fractures or dislocations. Appellant had some erosion of the radial aspect of the index metacarpal head area. Dr. Ma diagnosed possible right wrist inflammatory arthropathy. He reviewed the medical records and responded to questions from OWCP noting that the cystic change in appellant's right hamate was not medically significant, that his electrodiagnostic studies were normal and that appellant's August 11, 2010 MRI scan showed findings of inflammatory arthritic changes which were not employment related. Dr. Ma stated that appellant's right wrist diagnosis was nonwork-related inflammatory arthritis. He stated that appellant's right wrist condition was unrelated to his employment injury.

In a report dated February 27, 2011, Dr. Sophie Thuy Nguyen, an acupuncturist, stated that appellant sought treatment beginning April 20, 2009 due to neck, low back, right wrist, leg and knee pain.

² Appellant failed an appeal with the Board. In an Order Dismissing Appeal, dated February 17, 2012, the Board noted that as he had participated in an oral hearing and as the hearing representative had not issued a final decision, the case was in an interlocutory posture and dismissed appellant's appeal. Docket No. 11-1717 (issued February 17, 2012).

By decision dated June 11, 2012, OWCP denied appellant's claim for a wrist condition as a result of his accepted April 17, 2009 employment injury.

Appellant requested an oral hearing on June 14, 2012. He submitted a form report dated July 18, 2012 from Dr. Sabrina M. Kobylinski, an osteopath, diagnosing right wrist strain, left knee strain, low back pain and jaw pain due to his April 17, 2009 employment injury. Dr. Kobylinski described the injury as appellant falling three or four feet when the asphalt gave way as he was walking from house to house. He indicated with a checkmark "yes" that appellant's condition was due to his employment injury and stated, "Obviously! Patient fell as a result of asphalt giving way. This caused injury to his wrist, back, jaw and knee."

By decision dated November 20, 2012, OWCP's hearing representative noted that Dr. Ma found that appellant's current right wrist condition was not due to his employment injury. She noted that there was no other medical evidence establishing a causal relationship between appellant's right wrist condition and his employment and affirmed OWCP's decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence, including the fact that the individual is an "employee of the United States" within the meaning of FECA and 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 or specific condition for which compensation is claimed is causally related to the employment injury.⁴ 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.⁵

OWCP defines a traumatic injury as, "[A] condition of the body caused by a specific event or incident or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain which is identifiable as to time and place of occurrence and member or function of the body affected."⁶ To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. 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.⁷ Second, the employee must submit

³ 5 U.S.C. §§ 8101-8193.

⁴ *Kathryn Haggerty*, 45 ECAB 383, 388 (1994); *Elaine Pendleton*, 41 ECAB 1143 (1989).

⁵ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁶ 20 C.F.R. § 10.5(ee).

⁷ *John J. Carlone*, 41 ECAB 354 (1989).

sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁸

A medical report is of limited probative value on a given medical question if it is unsupported by medical rationale.⁹ Medical rationale includes a physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment activity. The opinion of the physician must be based on a complete factual and medical background of the claim, must be one of reasonable medical certainty and must be supported by medical reasoning explaining the nature of the relationship between the diagnosed condition and specific employment activity or factors identified by the claimant.¹⁰

ANALYSIS

Appellant alleged that, in addition to the conditions accepted by OWCP as arising from his April 17, 2009 employment injury, he also sustained a right wrist condition. In support of his claim, he submitted notes from a physician's assistant. As physician's assistants do not qualify as physicians under FECA, the Board finds that these notes do not constitute probative medical evidence.¹¹ Appellant also submitted reports from an acupuncturist. Section 8101(2) of FECA provides that the term physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by state law.¹² Lay individuals such as acupuncturists are not physicians as defined under FECA and thus their reports do not constitute competent medical evidence.¹³

The medical evidence in support of appellant's claim consists of notes from Dr. Nance dated October 28 and November 9, 2010 which included the diagnosis of right wrist pain, soft tissue injury in 2009 with persistent pain, likely complex regional pain syndrome type 1. These notes are not sufficient to meet appellant's burden of proof as Dr. Nance did not include a history of injury and did not provide any opinion on the causal relationship between his diagnosed wrist condition and his accepted employment incident.

Dr. Tang completed a form report on January 3, 2012 describing a fall injury. He diagnosed unresolved pain in the low back, left knee, right wrist and jaw since 2009. Dr. Tang indicated with a checkmark "yes" that appellant's condition was caused or aggravated by his employment activity. The Board has held that an opinion on causal relationship which consists only of a physician checking "yes" to a medical form report question on whether the claimant's condition was related to the history given is of little probative value. Without any explanation or

⁸ *J.Z.*, 58 ECAB 529 (2007).

⁹ *T.F.*, 58 ECAB 128 (2006).

¹⁰ *A.D.*, 58 ECAB 149 (2006).

¹¹ *B.D.*, Docket No. 11-464 (issued September 19, 2011); *Merton J. Sills*, 39 ECAB 572 (1988).

¹² 5 U.S.C. § 8101(2).

¹³ *B.P.*, Docket No. 07-420 (issued May 31, 2007).

rationale for the conclusion reached, such report is insufficient to establish causal relationship.¹⁴ Dr. Tang did not provide a detailed history of injury and did not explain how appellant's fall resulted in his right wrist condition. Furthermore, the Board has held that the mere diagnosis of "pain," without more by way of an explanation, does not constitute the basis for payment of compensation.¹⁵

Dr. Kobylinski completed a form report diagnosing right wrist strain, left knee strain, low back pain and jaw pain. She provided a history of injury which included a fall of three or four feet when the asphalt gave way as appellant was walking from house to house. Dr. Kobylinski also indicated with a checkmark "yes" that appellant's condition was due to his employment incident. In further explanation she stated, "Obviously! Patient fell as a result of asphalt giving way. This caused injury to his wrist, back, jaw and knee." The Board notes that Dr. Kobylinski's report is not based on an accurate history of injury. Dr. Kobylinski's description of appellant's fall does not correspond with his history of the accepted employment injury that he leaped out of the way of an oncoming truck. For this reason her report is not sufficient to meet his burden of proof.

OWCP referred appellant to three second opinion physicians, Dr. Conaty on January 28, 2010, Dr. Fabella on August 12, 2010 and Dr. Ma on February 10, 2012. These physicians did not support appellant's claim for a wrist condition as a result of his 2009 employment injury. Dr. Fabella examined appellant's wrist and found slight wrist pain. Dr. Ma provided extensive findings on physical examination and noted appellant had some erosion of the radial aspect of the index metacarpal head area on x-ray. He diagnosed nonwork-related inflammatory arthritis of the right wrist.

The Board finds that appellant has not submitted the necessary medical opinion evidence to meet his burden of proof to establish that he sustained a right wrist condition due to his April 19, 2009 employment injury as alleged.

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 the favorable medical evidence is not sufficiently detailed and based on a proper factual background to establish appellant's claim for an additional traumatic injury on April 17, 2009

¹⁴ *Lucrecia M. Nielson*, 41 ECAB 583, 594 (1991).

¹⁵ *See Robert Broome*, 55 ECAB 339 (2004).

ORDER

IT IS HEREBY ORDERED THAT the November 20, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 1, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board