

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

E.C., Appellant)

and)

DEPARTMENT OF ENERGY, NATIONAL)
NUCLEAR SECURITY ADMINISTRATION,)
Albuquerque, NM, Employer)

**Docket No. 13-839
Issued: June 26, 2013**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 26, 2013 appellant, through his attorney, filed a timely appeal from a January 25, 2013 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), the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met his burden of proof to establish a thumb condition causally related to a June 28, 2000 employment incident, as alleged.

On appeal counsel contends that OWCP's decision is contrary to fact and law.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On June 29, 2000 appellant, then a 46-year-old federal agent, filed a traumatic injury claim (Form CA-1) alleging that he hyperextended his right thumb in the performance of duty on June 28, 2000 during training.² He returned to full-time, light-duty work the next day.

Appellant submitted a July 23, 1999 x-ray report of the right thumb and hand which showed no acute findings.

In a June 29, 2000 report, Dr. Randal J. Lewis, a Board-certified family practitioner, took appellant off work for the period June 29 through July 29, 2000 on the basis that he could not shoot for a month until his thumb healed. On July 6, 2000 he diagnosed hyperextended right thumb and opined that appellant was partially disabled and was unable to perform his duties at that time.

On August 17, 2000 Dr. David A. Bernstein, a Board-certified orthopedic hand surgeon, indicated that appellant had an unstable thumb joint, which was the cause of his pain. He reported that appellant had a recent reagravation of a metacarpophalangeal (MCP) joint injury that was initially injured about a year before. Dr. Bernstein recommended surgery; appellant declined in favor of a cast. He released appellant to work with restrictions on shooting a gun if it caused him too much pain. On October 26, 2000 Dr. Bernstein diagnosed unstable MCP joint of the right thumb secondary to a rupture of the ulnar collateral ligament.

In a November 2, 2000 narrative statement, appellant explained that he originally sustained an injury to his right thumb at work approximately one year ago. Since the recurrence of the new injury, he was unable to fire his handgun due to the weapon's recoil and subsequent pain and swelling to the thumb.

In a letter dated February 21, 2012, OWCP notified appellant of the deficiencies of his claim and afforded 30 days for the submission of additional evidence.

Subsequently, appellant submitted a March 12, 2012 letter from his supervisor indicating that he had sustained a hyperextension injury to his right thumb during a required training and instructor certification course and had been reassigned in January 2001 due to his injury.

By decision dated March 21, 2012, OWCP denied the claim finding that the evidence failed to establish causal relationship between appellant's thumb condition and the June 28, 2000 employment incident.

On August 27, 2012 appellant, through his attorney, requested reconsideration³ and submitted reports from Dr. Bernstein for the period August 17, 2000 through January 22, 2001. In an August 2, 2012 report, Dr. Bernstein diagnosed ruptured ulnar collateral ligament of the

² Appellant also filed a claim for a schedule award on June 7, 2011.

³ On December 4, 2012 appellant, through his attorney, requested an oral hearing before an OWCP hearing representative. On December 18, 2012 he requested a withdrawal of the hearing request, which OWCP granted by decision dated December 31, 2012.

right thumb and reiterated his opinion that appellant sustained a hyperextension injury in July 2000 which aggravated a previous work injury to the right thumb.

In an August 24, 2012 report, Dr. Patrick Rivera, a Board-certified family practitioner, diagnosed right hand pain, prediabetes and dyslipidemia. He indicated that appellant was seen for a follow-up examination of the right hand which he injured 12 years ago. In the past few months, appellant had noted increasing pain and described weakness and tingling to the right thumb.

In a September 18, 2012 report, Dr. Hugh S. Brock, an orthopedic surgeon, indicated that appellant complained of right thumb MCP joint pain and had a history of an injury sustained at work 10 years ago, which resulted in a tear of his ulnar collateral ligament (gamekeeper's injury). He reported that x-rays of appellant's right hand revealed degenerative changes in the MCP joint. Dr. Brock diagnosed chronic right gamekeeper's injury and resultant arthritis in the MCP joints. He also diagnosed carpal tunnel syndrome, which he opined was unrelated to appellant's thumb condition.

By decision dated January 25, 2013, OWCP denied modification of the March 21, 2012 decision finding that the evidence submitted was not sufficient to establish causal relationship.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ 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 injury⁵ 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 employment injury.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. A fact of injury determination is based on two elements. 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. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment

⁴ 5 U.S.C. §§ 8101-8193.

⁵ OWCP regulations define 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. 20 C.F.R. § 10.5(ee).

⁶ See *T.H.*, 59 ECAB 388 (2008). See also *Steven S. Saleh*, 55 ECAB 169 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

incident caused a personal injury. An employee may establish that the employment incident occurred as alleged but fail to show that his or her condition relates to the employment incident.⁷

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. 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

OWCP has accepted that the employment incident of June 28, 2000 occurred at the time, place and in the manner alleged. The issue is whether appellant's thumb condition resulted from the June 28, 2000 employment incident. The Board finds that appellant did not meet his burden of proof to establish a causal relationship between the condition for which compensation is claimed and the employment incident.

On August 17, 2000 Dr. Bernstein reported that appellant reagravated an MCP joint injury that was initially injured about a year before. On October 26, 2000 he diagnosed unstable MCP joint of the right thumb secondary to a rupture of the ulnar collateral ligament. Nearly 12 years later, on August 2, 2012, Dr. Bernstein diagnosed ruptured ulnar collateral ligament of the right thumb and reiterated his opinion that appellant sustained a hyperextension injury in July 2000, which aggravated a previous work injury to the right thumb. He did not provide medical rationale explaining the mechanism of how appellant's thumb condition was caused or aggravated by training on June 28, 2000. Dr. Bernstein noted that appellant's conditions occurred after training at work. However, such generalized statements do not establish causal relationship because they merely repeat appellant's allegations and are unsupported by adequate medical rationale explaining how this physical activity actually caused the diagnosed conditions.⁹ Lacking thorough medical rationale on the issue of causal relationship, Dr. Bernstein's reports are of limited probative value and insufficient to establish that appellant sustained an employment-related injury in the performance of duty on June 28, 2000.

On September 18, 2012 Dr. Brock diagnosed chronic right gamekeeper's injury and resultant arthritis in the MCP joints. He also diagnosed carpal tunnel syndrome, which he opined was unrelated to appellant's thumb condition. Dr. Brock indicated that appellant had a history of an injury sustained at work 10 years ago, which resulted in a tear of his ulnar collateral ligament (gamekeeper's injury). He reported that x-rays of appellant's right hand revealed degenerative changes in the MCP joint. Dr. Brock did not provide sufficient medical rationale explaining how appellant's conditions were caused or aggravated by training on June 28, 2000. Thus, the Board finds that appellant did not meet his burden of proof to establish a causal relationship between a

⁷ *Id.* See Shirley A. Temple, 48 ECAB 404 (1997); John J. Carlone, 41 ECAB 354 (1989).

⁸ *Id.* See Gary J. Watling, 52 ECAB 278 (2001).

⁹ See K.W., Docket No. 10-98 (issued September 10, 2010).

new condition or an aggravation of a preexisting condition and the June 28, 2000 employment injury.

On June 29, 2000 Dr. Lewis diagnosed hyperextended right thumb and opined that appellant was disabled for work. On August 24, 2012 Dr. Rivera diagnosed right hand pain, prediabetes and dyslipidemia. He indicated that appellant injured his right hand 12 years ago and had recently noted increasing pain. The Board has held that 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 Thus, appellant has not met his burden of proof with these submissions.

The March 12, 2012 letter from appellant's supervisor does not constitute medical evidence as it was not prepared by a physician.¹¹ As the Board has held, lay persons are not competent to render medical opinions.¹² Thus, the Board finds that appellant did not meet his burden of proof with this submission.

Similarly, the July 23, 1999 x-ray report is diagnostic in nature and therefore does not address causal relationship. As such, the Board finds that it is insufficient to establish appellant's claim.

As appellant has not submitted any rationalized medical evidence to support his allegation that he sustained an injury causally related to a June 28, 2000 employment incident, he has failed to meet his burden of proof to establish a claim for compensation.

On appeal counsel contends that OWCP's decision is contrary to fact and law. For the reasons stated above, the Board finds the attorney's arguments are not substantiated.

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 did not meet his burden of proof to establish that his thumb condition is causally related to a June 28, 2000 employment incident, as alleged.

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

¹¹ See 5 U.S.C. § 8101(2).

¹² *James A. Long*, 40 ECAB 538, 542 (1989).

ORDER

IT IS HEREBY ORDERED THAT the January 25, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 26, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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