United States Department of Labor
Employees' Compensation Appeals Board

G.M., Appellant	)	
and	)	**Docket No. 13-1367**
	)	**Issued: November 19, 2013**
DEPARTMENT OF LABOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, Dallas, TX, Employer	)	

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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 20, 2013 appellant filed a timely appeal from a January 3, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met his burden of proof to establish that he has a right elbow condition that was caused or aggravated by factors of his federal employment.

FACTUAL HISTORY

On January 14, 2009 appellant, then a 37-year-old former claims examiner who stopped work on January 23, 2008, filed an occupational disease claim alleging that years of typing,

[1] 5 U.S.C. §§ 8101-8193.

filing, writing and other repetitive job duties caused pain and numbness of the right elbow. He stated that he was first aware of the illness and its relationship to employment on January 23, 2008. The employing establishment challenged the claim, stating that when appellant stopped work on January 24, 2008 he did not indicate that he had an elbow problem and had numerous preexisting medical conditions.

In support of his claim, appellant submitted a March 14, 2008 report in which Dr. John W. Ellis, Board-certified in family medicine, noted a history ofappellant being thrown from a boat in 1990 and sufferinga fracture at C5, followed by surgery and rehabilitation. Dr. Ellis indicated that appellant began work at OWCP in August 2003, at which time he walked with a right forearm crutch and had marked weakness in the left upper and lower extremities with some weakness in the right upper extremity and sequelae of Brown-Sequard syndrome. He stated that on January 24, 2008 appellant fell at work and reinjured his neck. Dr. Ellis described appellant's symptoms, medical treatment, examination findings and his diagnoses related to the 2008 fall.[2] Examination of the right elbow revealed hypertrophy of the medial epicondyle and some tenderness over the ulnar nerve and numbness on the radial aspect of the right forearm with some weakness of forearm muscles, consistent with sequelae from the 1990 spinal cord injury. Dr. Ellis diagnosed medial epicondylitis of the right elbow with ulnar nerve impingement, caused by appellant's job duties of repetitive data entry and writing.

On January 30, 2009 OWCP informed appellant of the evidence needed to support his claim. In a February 11, 2009 reply, appellant indicated that this claim was for the right elbow and described his regular job duties of writing, typing, reaching across the desk, answering the telephones and other miscellaneous duties, which he performed eight hours a day, seven days a week. Hestated that he began having intermittent right elbow pain and numbness in 2006, and it had not changed after he stopped work in January 2008.

In a February 10, 2009 report, Dr. Ellis again described the 1990 and January 24, 2008 injuries and reported a history that appellant began noticing pain in the right elbow in early 2006, and also developed burning pain in the middle, ring and little fingers of the right hand following data entry and typing. Hestated that there had been some improvement since appellant was seen in March 2008 but that the right elbow condition had not resolved. Examination of the right elbow demonstrated tenderness over the olecranon process and medial and lateral epicondyles. Dr. Ellis indicated that appellant had numbness of the right forearm and hand, caused by the 1990 injury and now had greater weakness and decreased range of motion in the right little and ring fingers which would be consistent with a direct injury to the right elbow and ulnar nerve on January 23, 2008. He concluded that repetitive use of the right elbow caused medial and lateral epicondylitis and ulnar nerve entrapment and cubital tunnel syndrome.

On March 31, 2009 the employing establishment controverted the claim. Kim Macklin, an injury compensation specialist, noted that appellant filed a traumatic injury claim, alleging that he fell at work and injured both feet, his left knee, lower and upper back and neck, face and

[2] Dr. Ellis reported that appellant had filed a traumatic injury claim for the January 24, 2008 fall. The record indicates that the traumatic injury claim is adjudicated by OWCP under file number xxxxxx169. The instant case is adjudicated under file number xxxxxx560.

left elbow with consequential bowel and bladder problems.[3] She reported that he did not return to work after the fall and moved from Texas to Oklahoma.Ms. Macklin indicated that the traumatic injury claim had been denied and was undergoing reconsideration. She stated that appellant had not told his supervisors that he had any problems with his right elbow and did not file the elbow claim until he had been away from work for nearly a year, noting that while employed he was seeing numerous medical providers but did not report right elbow pain.

By decision dated April 16, 2009, OWCP denied the claim, finding that the medical evidence was insufficient to establish causal relationship. It noted that Dr. Ellis' February 10, 2009 report contained inconsistencies since he reported that the right elbow injury was caused by a fall on January 23, 2008 and also caused by repetitive work duties.

On April 7, 2010 appellant requested reconsideration and submitted a July 14, 2009 electrodiagnostic study of the upper extremities that showed no evidence of acute or chronic denervation or of cervical motor radiculopathy and was consistent with bilateral carpal and cubital tunnel syndromes. In a June 19, 2009 report, Dr. Ellis indicated that due to data entry work on a straight keyboard and using a mouse with the right hand, in about 2006 appellant began having pain in his right elbow but that he did not report it because he was afraid he would lose his job. He advised that when appellant fell on January 23, 2008 he was having right elbow and finger pain and that this had not changed since he stopped work. In a January 14, 2010 report, Dr. Ellis indicated that, when working, appellant had to do extra work with his right arm due to the 1990 spinal cord injury. Hereported the July 14, 2009 electrodiagnostic study findings, repeated that right elbow pain began in 2006 and indicated that appellant still had radiating right elbow pain and numbness and was losing more grip strength on the right. Right elbow examination demonstrated hypertrophy over the medial epicondyle with tenderness of the elbow and wrist and positive Tinel's signs over the ulnar and median nerves respectively. Dr. Ellis diagnosed bilateral medial epicondylitis with hypertrophy causing impingement of the ulnar nerve which caused cubital tunnel syndrome and bilateral tendinitis of both wrists causing hypertrophy and impingement of the median nerve at both wrists which caused bilateral carpal tunnel syndrome. He advised that, with reasonable medical certainty, appellant's previous job duties of data entry with a straight keyboard which required him to ulnarly deviate his wrists caused strain on the medial epicondyle of the elbows and that, due to strain, the tendons had to hypertrophy to continue doing the work. Dr. Ellis explained that the hypertrophy or enlarged tendons, then impinged on the nerves at the elbows which caused cubital tunnel syndrome and impinged on the median nerve at the wrists, which caused carpal tunnel syndrome. He concluded that appellant had not been temporarily totally disabled due to the elbows and wrists.

In correspondence dated July 6, 2010, Ms. Macklin again challenged the right elbow claim.

In a merit decision dated July 12, 2010, OWCP concluded that the medical evidence was insufficient to establish that appellant had bilateral cubital or carpal tunnel syndrome due to his former work duties and denied modification of the prior decision. On July 1, 2011 appellant requested reconsideration and submitted September 13, 2010 correspondence in which Dr. Ellis

[3] *Id.*

stated that it was obvious that appellant's preexisting neck injury and his subsequent work for OWCP caused bilateral upper extremity nerve entrapment syndromes consisting of a lesion of the ulnar nerve on the right, right lateral epicondylitis and right medial epicondylitis.

In a May 16, 2011 report, Dr. Richard Hutchison, a Board-certified orthopedic and hand surgeon, noted review of the electrodiagnostic study that demonstrated bilateral cubital and carpal tunnel syndromes. Examination of the right upper extremity showed absent two-point discrimination in all five fingers and full range of motion of his fingers, wrist and elbow and some medial tenderness on the elbow. Tinel's sign was positive at the ulnar nerve at the elbow and median nerve at the wrist. Compression test was positive at the wrist and elbow. Dr. Hutchison diagnosed right carpal tunnel syndrome and right cubital tunnel syndrome.

On August 8, 2011 OWCP reviewed the merits of appellant's claim and found that the medical evidence submitted on reconsideration was insufficient to establish that his claimed condition was caused by workfactors. On August 7, 2012 appellant, through his attorney, requested reconsideration and submitted a July 23, 2012 report in which Dr. Robert S. Unsell, a hand surgeon, noted a history of the 1990 cervical spine injury. Dr. Unsell indicated that appellant was completely dependent on the right upper extremity as he had no functional use of the left upper extremity and had complaints of bilateral hand numbness. Right upper extremity physical examination demonstrated no gross atrophy and a positive carpal compression test and equivocal Tinel's sign of the carpal tunneland a positive Tinel's sign of the cubital tunnel and positive elbow flexion test. Dr. Unsell diagnosed history of bilateral carpal and cubital tunnel syndrome and cervical trauma. He recommended a current electrodiagnostic study.

In a merit decision dated January 3, 2013, OWCP denied modification of the prior decision.

LEGAL PRECEDENT

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. These are the essential elements of each and every compensation claim, regardless of whether the asserted claim involves traumatic injury or occupational disease, an employee must satisfy this burden of proof.[4]

OWCP regulations define the term "occupational disease or illness" as a condition produced by the work environment over a period longer than a single workday or shift."[5] 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

[4] *Roy L. Humphrey*, 57 ECAB 238 (2005).

[5] 20 C.F.R. § 10.5(ee).

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 diagnosed condition is causally related to the employment factors identified by the claimant. The medical opinion 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.[6]

Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence.[7] 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 employee.[8] Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[9]

ANALYSIS

The Board finds that appellant did not meet his burden of proof to establish that he sustained a right elbow or other upper extremity condition caused by his federal job duties because the medical evidence is insufficient to establish causal relationship.

The July 14, 2009 electrodiagnostic study did not provide a cause of any diagnosed conditions and 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] Likewise, a report dated May 6, 2011 from Dr. Hutchinson and a July 23, 2012 report from Dr. Unselldo not include an opinion as to the cause of any diagnosed condition.

Dr. Ellis, an attending family physician, submitted reports dated from March 14, 2008 to September 13, 2010. While he reported as early as March 14, 2008 that appellant's repetitive work duties of data entry and writing caused right elbow medial epicondylitis and ulnar impingement and later expanded the diagnoses to include cubital and carpal tunnel syndrome, in a report dated February 10, 2009, he indicated that appellant's right elbow condition was caused by a direct injury to the right elbow on January 23, 2008 and also opined in the same report that the condition was caused by appellant's repetitive job duties. Medical opinions based upon an incomplete history or which are speculative or equivocal in character have little probative value.[11] The Board finds Dr. Ellis' reports insufficient to meet appellant's burden as he did not

[6] *Supra* note 4.

[7] *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[8] *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

[9] *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

[10] *Willie M. Miller*, 53 ECAB 697 (2002).

[11] *Frank Luis Rembisz*, 52 ECAB 147 (2000).

provide an adequate explanation or opinion regarding the cause of appellant's upper extremity conditions.

Finally, the Board notes that there is no medical evidence indicating that appellant is totally disabled due to an upper extremity condition. As described above, appellant has severe sequelae due to the nonemployment-related 1990 injury and Dr. Ellis has failed to clarify what effect that condition had on the diagnosis of the elbow. Such rationale is crucial in trying to distinguish the origin of the elbow condition especially in light of the preexisting Brown-Sequard syndrome.

The opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to his federal employment and such relationship must be supported with affirmative evidence, explained by medical rationale and be based upon a complete and accurate medical and factual background of the claimant.[12] It is appellant's burden to establish that his claimed back condition is causally related to factors of his federal employment. In this case, he submitted insufficient evidence to show that he sustained a degenerative lumbar condition caused by his employment duties.

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 establish that he sustained an upper extremity condition causally related to factors of his federal employment in this occupational disease claim.

[12] *A.D.*, 58 ECAB 149 (2006).

ORDER

IT IS HEREBY ORDERED THAT the January 3, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 19, 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