United States Department of Labor
Employees' Compensation Appeals Board

J.M., Appellant	)	
and	)	**Docket No. 14-115**
	)	**Issued: April 3, 2014**
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Akron, OH, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 21, 2013 appellant, through his attorney, filed a timely appeal from a September 6, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP) denying his occupational disease claim. 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 sustained a bilateral hand or arm condition causally related to factors of his federal employment.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On June 14, 2012 appellant, then a 60-year-old mail handler, filed an occupational disease claim alleging that he sustained severe pain in both hands and arms due to factors of his federal employment. He did not stop work.

By letter dated June 26, 2012, OWCP requested that appellant submit additional factual and medical information, including a detailed report from his attending physician addressing the relationship between any diagnosed condition and his work duties.

In a report dated April 7, 2011, received by OWCP on July 24, 2012, Dr. John X. Biondi, a Board-certified orthopedic surgeon, evaluated appellant for increased symptoms of bilateral carpal tunnel syndrome. On examination, he found a positive Tinel's sign and Phalen's test and "some tenderness to palpation along the flexor sheath on the right ring finger with obvious locking and catching with flexion and extension." Dr. Biondi diagnosed bilateral carpal tunnel syndrome and flexor tenosynovitis of the right ring finger. He stated that appellant was going to file for workers' compensation: "I would agree that it is probably work related. Dr. Biondi has been working for the [employing establishment] for several years."

A June 2, 2012 nerve conduction study revealed severe bilateral carpal tunnel syndrome.

On June 18, 2012 Dr. Biondi discussed appellant's continued symptoms of discomfort in the hands and catching of the right ring finger.[2] He diagnosed carpal tunnel syndrome bilaterally and tenosynovitis of the right ring finger. Dr. Biondi indicated that he would schedule appellant for a right carpal tunnel release and tenosynovectomy of the right ring finger after his retirement.

In a report dated June 18, 2012, Dr. Biondi diagnosed bilateral carpal tunnel syndrome and found that appellant could work without restrictions. He noted that appellant related that he did not want to file for workers' compensation. On June 18, 2012 Dr. Biondi found that he should stop work on June 26, 2012 for surgery scheduled July 17, 2012 and return to work around August 20, 2012.[3]

On June 24, 2012 appellant described his employment duties in detail. He experienced pain in his elbows, biceps and wrists and finger numbness that began on the right side but was now bilateral. Appellant related that he initially attributed his symptoms to an injury to his head and neck.

On July 5, 2012 appellant requested compensation for disability beginning June 16, 2012.

By decision dated February 5, 2013, OWCP denied appellant's claim. It found that the medical evidence was insufficient to establish that he sustained a medical condition causally related to the accepted work factors.

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[2] On January 17, 2012 Dr. Stanley R. Anderson, Board-certified in family practice, diagnosed bilateral carpal tunnel syndrome, worse on the right, acquired trigger finger and actinic keratosis.

[3] On August 13, 2012 Dr. Biondi found that appellant could return to work on September 15, 2012 following surgery on July 31, 2012.

On February 11, 2013 appellant, through his attorney, requested a telephone hearing before an OWCP hearing representative.

On July 17, 2012 appellant underwent a right carpal tunnel release and a flexor tenosynovectomy of the right ring finger.

On July 26, 2012 Dr. Biondi indicated that appellant was status post right carpal tunnel release and tenosynovectomy of the right finger. He diagnosed left carpal tunnel syndrome. Dr. Biondi noted that appellant worked for the employing establishment and related that his condition was "more than likely secondary to his work."

On November 29, 2012 Dr. Biondi diagnosed flexor tenosynovitis of the left thumb and left carpal tunnel syndrome. On December 28, 2012 he performed a left carpal tunnel release and left flexor tenosynovectomy.

In a progress report dated January 10, 2013, Dr. Biondi found that appellant was doing well following a left carpal tunnel release and tenosynovectomy of the wrist flexor. On April 29, 2013 he evaluated appellant for left thumb pain. Dr. Biondi diagnosed left trigger thumb and scheduled a trigger thumb release.

At the telephone hearing held on June 17, 2013, appellant related that he had retired from work. He described his work duties.

In a report dated July 18, 2013, Dr. Biondi asserted:

> "I can state with reasonable medical certainty that [appellant's] carpal tunnel as well as the ring finger tenosynovitis is a direct and proximate result of the highly repetitive activities that he performed at work. I first saw [him] around 2005 and at that time he was diagnosed as having bilateral carpal tunnel. I then saw [appellant] back in 2009 and gave him another set of injections. He did pretty well until I started seeing him again in April 2011."

Dr. Biondi discussed his treatment of appellant beginning in April 2011 for tenosynotitis of the right ring finger and carpal tunnel syndrome. He performed bilateral carpal tunnel releases and a flexor tenosynovectomy of the right finger. Appellant subsequently experienced left thumb locking. Dr. Biondi stated, "It is my opinion that [appellant] occupation has caused his problems. Again, his carpal tunnel and tenosynovitis is a direct and proximate result of his occupation."

By decision dated September 6, 2013, OWCP's hearing representative affirmed the February 5, 2013 decision. She found that Dr. Biondi, in his July 18, 2013 report, did not specifically describe appellant's work duties and provided no rationale for his opinion.

On appeal, appellant's attorney argues that OWCP placed an unreasonable burden of proof on appellant and that the medical evidence supported causal relationship.

LEGAL PRECEDENT

An employee seeking benefits under FECA[4] 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 filed within the applicable time limitation; that an injury was sustained while 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.[5] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[6]

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;[7] (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;[8] and (3) medical evidence establishing 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.[9]

Proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, OWCP shares responsibility to see that justice is done.[10] The nonadversarial policy of proceedings under FECA is reflected in OWCP's regulations at section 10.121.[11]

ANALYSIS

Appellant alleged that he sustained a bilateral hand and arm condition as a result of his work duties. On April 7, 2011 Dr. Biondi diagnosed bilateral carpal tunnel syndrome and flexor tenosynovitis of the right ring finger. He indicated that the conditions probably arose from employment. On July 17, 2012 Dr. Biondi performed a right carpal tunnel release and right ring finger flexor tenosynovectomy. In a report dated July 26, 2012, he diagnosed left carpal tunnel syndrome and found that appellant's condition was "more than likely secondary to his work." On December 28, 2012 Dr. Biondi performed a left carpal tunnel release and left wrist flexor

[4] 5 U.S.C. § 8101 *et seq.*

[5] *Tracey P. Spillane*, 54 ECAB 608 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[6] *See Ellen L. Noble*, 55 ECAB 530 (2004).

[7] *Michael R. Shaffer*, 55 ECAB 386 (2004).

[8] *Marlon Vera*, 54 ECAB 834 (2003); *Roger Williams*, 52 ECAB 468 (2001).

[9] *Beverly A. Spencer*, 55 ECAB 501 (2004).

[10] *See Jimmy A. Hammons*, 51 ECAB 219 (1999).

[11] 20 C.F.R. § 10.121.

tenosynovectomy. In a report dated July 18, 2013, he determined that appellant's bilateral carpal tunnel syndrome and right ring finger tenosynovitis were the "direct and proximate result of the highly repetitive activities that he performed at work."

Proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence to see that justice is done.[12] The Board has reviewed Dr. Biondi's reports and finds that he provided a clear opinion that appellant sustained bilateral carpal tunnel syndrome and tenosynovitis causally related to his work duties. Dr. Biondi discussed appellant's history of repetitive work duties. His opinion is supportive, unequivocal, bolstered by objective findings and based on a firm diagnosis and an accurate work history. Additionally, Dr. Biondi's opinion is not contradicted by any medical evidence of record. While the medical evidence from him is insufficiently rationalized to meet appellant's burden of proof to establish that he sustained a bilateral hand or arm condition due to factors of his federal employment, it raises an undisputed inference of causal relationship sufficient to require further development by OWCP.[13] Accordingly, the Board will remand the case to OWCP. On remand, it should further develop the medical record to determine whether appellant sustained a bilateral upper extremity condition due to his work duties. Following this and such further development as OWCP deems necessary, it shall issue a *de novo* decision.

CONCLUSION

The Board finds that the case is not in posture for decision.

[12] *See A.A.*, 59 ECAB 726 (2008); *Phillip L. Barnes*, 55 ECAB 426 (2004).

[13] *Id*.

ORDER

IT IS HEREBY ORDERED THAT the September 6, 2013 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: April 3, 2014
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