

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

R.W., Appellant

and

**DEPARTMENT OF THE ARMY,
INSTALLATION MANAGEMENT
COMMAND, Fort Stewart, GA, Employer**

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**Docket No. 13-1573
Issued: January 2, 2014**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On June 20, 2013 appellant filed a timely appeal from the February 25, 2013 and April 30, 2013 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 over the merits of this case.

ISSUES

The issues are: (1) whether appellant established that he sustained a right hand condition in the performance of duty; and (2) whether OWCP properly refused to reopen appellant's case for reconsideration under 5 U.S.C. § 8128.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On September 4, 1985 appellant, a 36-year-old logistics management specialist, filed a claim, alleging that he injured a knuckle on his right hand in the performance of duty on August 29, 1985.

By decision dated January 22, 2001, OWCP denied appellant's traumatic injury claim for a right hand injury.

On May 17, 2012 appellant filed a Form CA-2 occupational disease claim for a right hand condition causally related to employment factors.

On May 23, 2012 OWCP advised appellant that it required additional factual and medical evidence to determine whether he was eligible for compensation benefits. It asked him to submit a comprehensive report from a treating physician describing his symptoms and the medical reasons for his condition, with an opinion as to whether his claimed condition was causally related to his federal employment. OWCP requested that appellant submit the evidence within 30 days.

By decision dated June 26, 2012, OWCP denied appellant's claim. It found that he failed to submit medical evidence sufficient to establish a right hand condition sustained in the performance of duty.

In a report dated July 23, 2012, Dr. William E. Kropp, a Board-certified hand surgeon, stated that appellant had complaints of pain in his right ring finger at the proximal interphalangeal (PIP) joint. He advised that he initially examined appellant for a similar complaint in May 2004, which he attributed to a 1985 injury. Dr. Kropp stated that appellant had been living with his right hand condition; he advised, however, that his job required a lot of keying and typing, which bothered him. He stated on examination that appellant had considerable swelling around the PIP joint of the right ring finger with a bit of flexion contracture. Dr. Kropp diagnosed post-traumatic arthritis and swelling of the right ring finger at the PIP joint. He recommended that appellant undergo a fusion procedure or an arthroplasty.

On August 22, 2012 appellant requested reconsideration.

By decision dated November 30, 2012, OWCP denied modification of the January 26, 2012 denial of compensation.

In a December 18, 2012 report, Dr. R. Glenn Carter, Board-certified in geriatrics, stated that appellant sustained an injury to his right hand at work in 1985 when it slipped off a wrench. He struck a knuckle on his equipment. Appellant experienced pain and swelling which became progressively worse with his daily job duties over the past few years. Dr. Carter related that appellant's job duties required repetitive motion of his fingers and hands while using mechanical tools. He also performed office duties which included typing documents, opening and closing doors, climbing into vehicles, and holding steering wheels on company vehicles, all of which aggravated his condition. Dr. Carter stated that appellant was considering surgery to ameliorate post-traumatic arthritis of the right ring finger and PIP joint, in addition to a right hand deformity attributable to his past employment duties and aggravated by his current position.

By decision dated February 25, 2013, OWCP denied modification of the November 30, 2012 decision.

On April 16, 2013 appellant requested reconsideration.

In a report dated March 21, 2013, Dr. Carter stated that appellant's current job required him to use a keyboard to type and enter data daily into the computer system. This required repetitive motions of his fingers and hands while using different mechanical tools. Appellant was also required to grip, turn, twist, pull and hold. Appellant also drove distances over uneven roads, and terrains, which caused discomfort while gripping the steering wheel to remain in control of the vehicle. He noted that arthritis involved the breakdown of cartilage which protected the joint and allowed it to move smoothly. Dr. Carter advised that without the normal amount of cartilage the bones rubbed together and caused pain, swelling, inflammation and stiffness.

By decision dated April 30, 2013, OWCP denied appellant's application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence sufficient to require OWCP to review its prior decision.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA² has the burden of establishing that 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.³ 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.⁴

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 is usually rationalized medical 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

² *Id.*

³ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *Victor J. Woodhams*, 41 ECAB 345 (1989).

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.⁵

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between his claimed right hand condition and his federal employment. This burden includes providing medical evidence from a physician who concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.⁶

ANALYSIS -- ISSUE 1

The Board finds that appellant failed to submit sufficient medical evidence to establish that his claimed right hand condition was related to factors of his employment. For this reason, he has not discharged his burden of proof.

In support of his claimed conditions appellant submitted reports from Drs. Kropp and Carter. Dr. Kropp noted appellant's complaints of right hand pain and swelling and flexion contracture on examination in his July 23, 2012 report. He diagnosed post-traumatic arthritis and swelling of the right ring finger at the PIP joint and opined that this stemmed from appellant's 1985 injury. Dr. Kropp advised that appellant's job required a lot of keying and typing, which irritated him. Dr. Carter related appellant's history of injury in his December 18, 2012 report and stated that his pain and swelling had increased with his daily work duties. He advised that his job duties required repetitive motion of his fingers and hands in addition to typing documents, opening and closing doors, climbing into vehicles, and holding steering wheels on company vehicles, all of which aggravated his right hand condition.

The reports from Drs. Kropp and Carter did not provide a rationalized medical opinion addressing how the claimed condition or disability was causally related to his employment duties. The weight of medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of physician's knowledge of the facts of the case, the medical history provided, the care of analysis manifested and the medical rationale expressed in support of stated conclusions.⁷ The physicians of record did not sufficiently describe appellant's job duties or explain the medical process through which such duties would have been competent to cause the claimed conditions. Accordingly, the reports from Drs. Kropp and Carter did not sufficiently explain how appellant's diagnosed conditions resulted from factors of his employment. These physicians did not address appellant's preexisting conditions in any detail or how appellant's work duties were competent to cause this condition.⁸

⁵ *Id.*

⁶ See *Nicolea Brusco*, 33 ECAB 1138, 1140 (1982).

⁷ See *Anna C. Leanza*, 48 ECAB 115 (1996).

⁸ *William C. Thomas*, 45 ECAB 591 (1994).

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's conditions became apparent during a period of employment nor the belief that his conditions were caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.⁹ Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence.

OWCP advised appellant of the evidence required to establish his claim; however, he failed to submit such evidence. Consequently, appellant has not met his burden of proof in establishing that his claimed right hand condition was causally related to his employment.

LEGAL PRECEDENT -- ISSUE 2

Under 20 C.F.R. § 10.606(b), a claimant may obtain review of the merits of his or her claim by showing that OWCP erroneously applied or interpreted a specific point of law; by advancing a relevant legal argument not previously considered by OWCP; or by constituting relevant and pertinent evidence not previously considered by OWCP.¹⁰ Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.¹¹

ANALYSIS -- ISSUE 2

In the present case, OWCP rejected appellant's claim on the grounds that he had submitted insufficient evidence to establish a causal relationship factor of his federal employment and any claimed condition or disability. In requesting reconsideration appellant did not attempt to show that OWCP had erroneously applied or interpreted a specific point of law, nor did he advance a relevant legal argument not previously considered by OWCP. Appellant did submit a new medical report.

He submitted a second report from Dr. Carter dated March 21, 2013. In this report Dr. Carter advised that without the normal amount of cartilage the bones can rub together and cause additional pain, swelling, inflammation, and stiffness. The panel finds that Dr. Carter's March 21, 2013 report to be substantially similar to his December 18, 2013 report where he outlined the diagnosis of traumatic arthritis and his job duties. In the March 21, 2013 report he repeats his findings and adds a new paragraph wherein he makes a general statement describing arthritis. As such, the report does not address how appellant's actual job duties caused or aggravated the diagnosed condition, the relevant issue in this case. The Board therefore finds that the March 21, 2013 report does not fulfill the requirements of 5 CFR 10.606(b).

CONCLUSION

The Board finds that appellant failed to meet his burden of proof in establish that his claimed right hand condition was sustained in the performance of duty. The Board also finds

⁹ See *Anna C. Leanza*, *supra* note 7.

¹⁰ 20 C.F.R. § 10.606(b). See generally 5 U.S.C. § 8128(a).

¹¹ *Howard A. Williams*, 45 ECAB 853 (1994).

that OWCP did not abuse its discretion by refusing to reopen his case for reconsideration of the merits under 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the February 25, and April 30, 2013 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: January 2, 2014
Washington, DC

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

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

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