

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

L.S., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
West Racine, WI, Employer**

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**Docket No. 13-1710
Issued: May 12, 2014**

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

Oral Argument April 22, 2014

DECISION AND ORDER

Before:

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

JURISDICTION

On July 10, 2013 appellant filed a timely appeal from the March 1 and April 18, 2013 merit decisions of the Office of Workers' Compensation Programs (OWCP) which denied his claim. His appeal is also timely filed from the May 13, 2013 nonmerit decision of OWCP denying his request for reconsideration. 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 an employment-related injury to his right arm, as alleged; and (2) whether OWCP properly denied appellant's request for reconsideration under 5 U.S.C. § 8128(a).

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On January 16, 2013 appellant, then a 51-year-old city carrier, filed a traumatic injury claim alleging that on March 3, 2012, while delivering mail, he felt pain in his right forearm and sustained a strain.

In a work status report completed on November 20, 2012, Dr. Michael Birndorf, a physician Board-certified in plastic surgery and surgery of the hand, found that appellant could return to restricted/alternative/modified duty from November 20 to 25, 2012, and to regular work on November 26, 2012.

By letter dated January 25, 2013, OWCP informed appellant that further information was needed in support of his claim. It requested a physician's opinion addressing the causal relationship between the diagnosed condition and the employment incident.

Appellant submitted a November 20, 2012 letter from Dr. Birndorf who advised that the compression of the median nerve was related to activities of flexion and extension of the elbow in addition to pronation and supination of the elbow. He noted that the nerve traversed under the musculature and the activities could have caused the compression and injury to his median nerve. Dr. Birndorf listed appellant's date of injury as December 14, 2010.

By decision dated March 1, 2013, OWCP denied appellant's claim. It found that he did not establish that his medical condition was causally related to the accepted work incident.

On March 26, 2013 appellant requested reconsideration. In a March 19, 2013 report, Dr. Birndorf noted that appellant was initially diagnosed as having lateral epicondylitis and right elbow pain. It became evident, however, that his problems were more distal and seemingly related to compression of a nerve. Dr. Birndorf noted that follow-up nerve studies were obtained which confirmed a diagnosis of compression of his median nerve in the proximal forearm and his care progressed to a surgical decompression. He opined that appellant's compression of the median nerve was related to the activities of flexion and extension and to pronation and supination of the elbow. Dr. Birndorf stated that the work activities appellant performed involved such activities as repetitive grasping of mail with his right arm, repetitive rotating of right arm to place mail in mailboxes and steering his vehicle with his right arm while holding mail in his left hand. He noted that the median nerve traverser under the musculature and appellant's work activities could cause compression and injury to the median nerve more proximally in the forearm. Dr. Birndorf opined that appellant's work activities were a direct cause of his condition. Appellant also submitted Dr. Birndorf's November 12, 2012 progress notes.

By decision dated April 18, 2013, OWCP denied modification of the March 1, 2013 decision. It noted that appellant filed a prior claim in File No. xxxxxx443 alleging a work injury on March 3, 2012 that was accepted for a right elbow strain on May 30, 2012. The case was expanded to include right lateral epicondylitis on September 13, 2012. OWCP advised that, if appellant believed a new incident contributed to a worsening of his diagnosed condition, then a new occupational disease claim should be completed; but if the condition arose out of the work

injury in File No. xxxxxx443, appellant should send a statement requesting that the claim be amended to include the new condition.²

On April 30, 2013 appellant requested reconsideration. He did not submit new evidence.

By decision dated May 13, 2013, OWCP denied appellant's request for reconsideration without conducting a merit review.

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 claim is predicated upon a traumatic injury or an occupational disease.³ OWCP's 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.⁴

In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components, which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident or exposure, which is alleged to have occurred.⁵ In order to meet his or her burden of proof to establish the fact that he or she sustained an injury in the performance of duty, an employee must submit sufficient evidence to establish that he or she actually experienced the employment injury or exposure at the time, place and in the manner alleged.⁶

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.⁷ The medical evidence required to establish causal relationship is usually rationalized medical evidence. Rationalized medical

² The record indicates that appellant filed five prior claims. File No. xxxxxx443 is appellant's most recent prior claim.

³ *Jussara L. Arcanjo*, 55 ECAB 281, 283 (2004).

⁴ 20 C.F.R. § 10.5(e).

⁵ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803(2)(a) (June 1995).

⁶ *Linda S. Jackson*, 49 ECAB 486 (1998).

⁷ *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

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 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.⁸

ANALYSIS

OWCP denied appellant's claim. It found that he did not establish a causal relationship between a March 3, 2012 incident and the medical condition in his right arm. The Board finds that this case is not in posture for decision.

Appellant filed an earlier claim in File No. xxxxxx443. The record does not contain any medical evidence submitted in that claim. The record currently on appeal also does not contain OWCP's decisions in that case. Due to the overlapping nature of the claims and the fact that the same body part is at issue, File No. xxxxxx443 bears on appellant's claim in the instant case. Without the case record in File No. xxxxxx443, the Board is unable to make a fully informed decision as to appellant's claim.

Because it is essential for the Board to review the medical evidence contained in File No. xxxxxx443 in order to render a full and fair adjudication of the present appeal, the case will be remanded for OWCP to consolidate case File No. xxxxxx443 with File No. xxxxxx398.⁹ Reconstruction of the record will be followed by a *de novo* decision on the merits of the claim, in order to protect appellant's appeal rights.

CONCLUSION

The Board finds that this case is not in posture for decision as OWCP must consolidate the case file in File No. xxxxxx398 and File No. xxxxxx443, and then issue a *de novo* decision.

⁸ *Judith A. Peot*, 46 ECAB 1036 (1995); *Ruby I. Fish*, 46 ECAB 276 (1994).

⁹ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8 (February 2000).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated May 13, April 18 and March 1, 2013 are set aside and the case is remanded for further development consistent with this decision of the Board.

Issued: May 12, 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