

FACTUAL HISTORY

On August 27, 2013 appellant, then a 42-year-old special agent, filed a traumatic injury claim alleging that on August 26, 2013 he injured his right wrist when he retrieved handcuffs and placed them on an individual he had pursued and disarmed.

By letter dated October 31, 2013, OWCP informed appellant that the evidence of record was insufficient to support his claim as no evidence was submitted. Appellant was advised as to the medical and factual evidence required to establish his claim and given 30 days to submit this information.

In response to OWCP's request, appellant stated that he did not seek medical treatment at the time of the August 26, 2013 incident or afterwards, but was currently looking for a physician.

By decision dated December 2, 2013, OWCP denied appellant's claim. It found that he failed to establish fact of injury as he did not submit any documentation in support of his claim.

On December 2, 2013 OWCP received medical evidence, including x-ray interpretations of appellant's hands. A November 15, 2013 report by Dr. Daniel Lewis, an examining physician, stated that appellant was seen for his right wrist. Appellant related that he injured his right wrist three months prior when he had to wrestle a gun away from an assailant. During the disarming of the assailant, appellant felt a pop in his wrist and experienced pain since the incident which occurred on August 26, 2013. On physical examination of the right wrist, there was no swelling, ecchymosis, erythema and wrist effusion. Dr. Lewis reported full right wrist pronosupination, extension and flexion and "point tenderness directly over the scapholunate interval with Watson shift test." A review of an x-ray of the right wrist showed no arthritis and a three millimeter scapholunate diastasis on grip view. Dr. Lewis diagnosed right wrist pain, likely acute scapholunate diastasis with radial sensory nerve distribution paresthesia without obvious findings of forminal stenosis or radiculopathy.

On December 9, 2013 appellant requested a review of the written record by an OWCP hearing representative.

By decision dated May 7, 2014, OWCP hearing representative affirmed the denial of appellant's claim.² She found that the history of injury was unclear as appellant attributed his condition to handcuffing an assailant and then to wrestling a gun away from the individual. Further, Dr. Lewis did not provide a firm medical diagnosis or opinion on causal relation.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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

² Following the May 7, 2014 decision, OWCP received additional evidence. However, the Board may only review evidence that was of record at the time OWCP issued its final decision. *See* 20 C.F.R. §§ 501.2(c)(1); *M.B.*, Docket No. 09-176 (issued September 23, 2009); *J.T.*, 59 ECAB 293 (2008); *G.G.*, 58 ECAB 389 (2007); *Donald R. Gervasi*, 57 ECAB 281 (2005); *Rosemary A. Kayes*, 54 ECAB 373 (2003).

³ 5 U.S.C. § 8101 *et seq.*

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.⁴ 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.⁵

OWCP regulations, at 20 C.F.R. § 10.5(ee), 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.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.⁷ 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.⁸ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁹

ANALYSIS

Appellant claimed a right wrist injury as the result of disarming and handcuffing an individual he had pursued. The issue is whether appellant sustained an injury as a result of the August 26, 2013 employment incident. The Board accepts that the incident occurred as alleged. The Board finds, however, that appellant did not meet his burden of proof to establish that he sustained a right wrist condition due to the accepted August 26, 2013 employment incident.

The medical evidence of record is insufficient to establish that the employment incident caused an injury. The only medical evidence submitted was a November 15, 2013 report by Dr. Lewis who diagnosed right wrist pain, likely an acute scapholunate diastasis or radial sensory nerve distribution paresthesias without obvious findings of forminal stenosis or radiculopathy. While Dr. Lewis noted that the injury occurred approximately three months prior to his examination when appellant wrestled a gun away from an assailant. He provided insufficient opinion as to whether the diagnosed conditions were caused or aggravated by the August 26, 2013 employment incident. Dr. Lewis did not explain how the incident resulted in the diagnosed conditions. Medical evidence which does not offer a rationalized opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹⁰

⁴ C.S., Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

⁵ S.P., 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ 20 C.F.R. § 10.5(ee); *Ellen L. Noble*, 55 ECAB 530 (2004).

⁷ B.F., Docket No. 09-60 (issued March 17, 2009); *Bonnie A. Contreras*, *supra* note 4.

⁸ D.B., 58 ECAB 464 (2007); *David Apgar*, 57 ECAB 137 (2005).

⁹ C.B., Docket No. 08-1583 (issued December 9, 2008); *D.G.*, 59 ECAB 734 (2008); *Bonnie A. Contreras*, *supra* note 4.

¹⁰ E.K., Docket No. 09-1827 (issued April 21, 2010); *A.F.*, 59 ECAB 714 (2008); *Michael E. Smith*, 50 ECAB 313 (1999).

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 condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.¹¹ Causal relationship must be established by rationalized medical opinion evidence and appellant has failed to submit such evidence.

OWCP advised appellant that it was his responsibility to provide a comprehensive medical report which described his symptoms, test results, diagnosis, treatment and a physician's opinion, with medical reasons, on the cause of his condition. Appellant failed to submit sufficient medical documentation in response to OWCP's request. As there is no probative, rationalized medical evidence addressing how his claimed right wrist condition was caused or aggravated by the August 26, 2013 employment incident, he has not met his burden of proof.

On appeal appellant provided a detailed description of the August 26, 2013 incident and contends that the evidence is sufficient to establish his claim. As noted, the Board finds that the evidence from Dr. Lewis does not adequately address the cause of his right wrist condition or how it was caused or aggravated by the August 26, 2013 employment incident. Appellant also argued that his condition had worsened. As noted, the Board may only review that evidence which was of record at the time OWCP issued its final decision.¹² Thus, the medical evidence referenced by appellant cannot be considered by the Board.

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 has failed to meet his burden of proof to establish that he sustained an injury in the performance of duty on August 26, 2013, as alleged.

¹¹ See *D.U.*, Docket No. 10-144 (issued July 27, 2010); *D.I.*, 59 ECAB 158 (2007); *Robert Broome*, 55 ECAB 339 (2004); *Anna C. Leanza*, 48 ECAB 115 (1996).

¹² See *supra* note 3.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 7, 2014 is affirmed.

Issued: November 17, 2014
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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