

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

<p>W.W., Appellant</p> <p>and</p> <p>DEPARTMENT OF VETERANS AFFAIRS, VETERANS HEALTH ADMINISTRATION, Northport, NY, Employer</p>	<p>)))))))))))</p>	<p>Docket No. 14-1267</p> <p>Issued: September 26, 2014</p>
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<p><i>Appearances:</i> <i>Appellant, pro se</i> <i>Office of Solicitor, for the Director</i></p>	<p><i>Case Submitted on the Record</i></p>
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DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 13, 2014 appellant filed a timely appeal from a December 12, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP) denying his traumatic injury claim. 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.

ISSUE

The issue is whether appellant met his burden of proof to establish that he sustained a left wrist injury in the performance of duty on August 18, 2013.

FACTUAL HISTORY

On October 24, 2013 appellant, then a 47-year-old nursing assistant, filed a traumatic injury claim (Form CA-1) alleging that on August 18, 2013 he sustained a left wrist injury when

¹ 5 U.S.C. § 8101 *et seq.*

he was covering a patient with a blanket and he was struck on the left wrist. He stopped work on October 21, 2013 and notified his supervisor on October 24, 2013. The employing establishment controverted the claim stating that appellant did not file his Form CA-1 within 30 days of the injury and failed to immediately notify his supervisor. Appellant's supervisor indicated that, following the incident, appellant notified the workers' compensation manager but refused medical treatment.

In support of his claim, appellant submitted the October 18 and 28, 2013 return-to-work notes from a physician's assistant at Amityville Family Practice.

In an October 30, 2013 medical note, Dr. Brett M. Spain, an osteopath, diagnosed left wrist pain, carpal tunnel syndrome and de Quervain's tenosynovitis. He noted that appellant was temporarily totally disabled due to left wrist pain.

By letter dated November 8, 2013, OWCP informed appellant that the evidence of record was insufficient to establish his claim. Appellant was advised of the factual and medical evidence needed and asked to submit a narrative report from his physician within 30 days.

In support of his claim, appellant submitted an August 19, 2013 emergency room triage note from Robert A. Milano, a registered nurse, who reported that appellant sought treatment for left wrist and arm pain after being struck by a patient.

In an August 19, 2013 diagnostic report, Dr. Vijay Chandnani, a Board-certified diagnostic radiologist, advised that an x-ray of the left wrist revealed no acute fracture, dislocation or significant bony abnormality.

In an August 19, 2013 report, Dr. Yelda Nouri, Board-certified in internal medicine, noted that appellant sought emergency treatment for complaints of left wrist pain after a patient struck him on the wrist the previous day. Upon physical examination and review of diagnostic testing, she diagnosed left wrist pain.

In a December 2, 2013 note, Dr. Elena Stybel, an osteopath, reported that appellant's left wrist was not fully healed, but that he could resume light-duty work.

By decision dated December 12, 2013, OWCP denied appellant's claim. It found that the medical evidence was insufficient to establish the causal relationship between the August 18, 2013 incident at work and his left wrist complaints.

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 filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed are causally related to the

employment injury.² 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.³

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 which is alleged to have occurred.⁴ The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background, supporting such a causal relationship.⁵ 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. This medical opinion must include an accurate history of the employee's employment injury and must explain how the condition is related to the injury. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.⁶

ANALYSIS

OWCP accepted that the August 18, 2013 incident occurred as alleged. The issue is whether appellant submitted sufficient medical evidence to establish that the employment incident caused a left wrist injury. The Board finds that he did not submit sufficient medical evidence to support that he sustained an injury causally related to the August 18, 2013 employment incident.⁷ The medical evidence is deficient on two grounds: first, it fails to provide a firm medical diagnosis; and second, there is no narrative opinion on causal relationship addressing how appellant's left wrist condition was caused or contributed to by the employment incident.

In an August 19, 2013 medical report, Dr. Nouri reported that appellant sought emergency treatment for complaints of left wrist pain after a patient struck him on the wrist. Upon physical examination and review of diagnostic testing, she diagnosed left wrist pain. The

² Gary J. Watling, 52 ECAB 278 (2001); Elaine Pendleton, 40 ECAB 1143, 1154 (1989).

³ Michael E. Smith, 50 ECAB 313 (1999).

⁴ Elaine Pendleton, *supra* note 2.

⁵ See 20 C.F.R. § 10.110(a); John M. Tornello, 35 ECAB 234 (1983).

⁶ James Mack, 43 ECAB 321 (1991).

⁷ See Robert Broome, 55 ECAB 339 (2004).

Board finds that Dr. Nouri failed to provide a specific medical diagnosis of appellant's left wrist injury. Dr. Nouri's diagnosis of left wrist pain is a description of a symptom rather than a firm diagnosis of a compensable medical condition.⁸ While she noted the August 18, 2013 incident, Dr. Nouri did not provide a firm medical diagnosis that caused his left wrist pain. Dr. Nouri's report does not constitute probative medical evidence because she failed to provide a clear diagnosis and failed to adequately explain the cause of appellant's left wrist condition.⁹

In an October 30, 2013 medical note, Dr. Spain diagnosed left wrist pain, carpal tunnel syndrome and de Quervain's tenosynovitis. He found appellant temporarily totally disabled due to left wrist pain. The Board notes that Dr. Spain failed to provide a medical history, findings on physical examination, review of diagnostic testing or any details pertaining to the August 18, 2013 employment incident. Without any mention of the August 18, 2013 employment incident, his diagnosis of left wrist pain, carpal tunnel syndrome and de Quervain's tenosynovitis lacks any narrative addressing causal relationship to the incident accepted in this case. Dr. Spain's report does not establish that appellant's carpal tunnel syndrome and de Quervain's tenosynovitis were caused by the August 18, 2013 incident at work. Appellant has failed to meet his burden of proof.¹⁰

The remaining medical evidence of record is also insufficient to establish appellant's claim. Dr. Chandnani's diagnostic report indicated no acute bone injury. Dr. Stybel's December 2, 2013 note also failed to state a left wrist injury for which appellant was seeking treatment. The physician's assistant and nursing notes are also of no probative value. A registered nurse, licensed practical nurse, physician's assistant, or physical and occupational therapist, are not physicians as defined under FECA, and their opinions are of no probative value.¹¹

The Board has held that the fact that a condition manifests itself during a period of employment does not raise an inference of causal relation.¹² An award of compensation may not be based on surmise, conjecture, speculation or on the employee's own belief of causal relation.¹³ To establish a firm medical diagnosis and causal relationship, appellant must submit a physician's report that addresses the August 18, 2013 incident at work and how it caused a left wrist injury.¹⁴

⁸ The Board has consistently held that pain is a symptom, rather than a compensable medical diagnosis. *C.F.*, Docket No. 08-1102 (issued October 10, 2008).

⁹ *Ceferino L. Gonzales*, 32 ECAB 1591 (1981).

¹⁰ *S.Y.*, Docket No. 11-1816 (issued March 16, 2012).

¹¹ 5 U.S.C. § 8102(2) of FECA provides as follows: (2) physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law.

¹² *Daniel O. Vasquez*, 57 ECAB 559 (2006).

¹³ *D.D.*, 57 ECAB 734 (2006).

¹⁴ *Supra* note 3.

In the instant case, appellant established that the August 18, 2013 incident occurred as alleged. He failed, however, to submit medical evidence expressing how his left wrist condition is causally related to the accepted August 18, 2013 employment incident. Appellant has failed to meet his burden of proof.

Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 and 10.607.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he sustained a left wrist injury in the performance of duty on August 18, 2013.

ORDER

IT IS HEREBY ORDERED THAT the December 12, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 26, 2014
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board