

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

G.N., Appellant	)	
	)	
and	)	<b>Docket No. 16-1327</b>
	)	<b>Issued: December 27, 2016</b>
<b>DEPARTMENT OF THE ARMY, CORPUS CHRISTI ARMY DEPOT, Corpus Christi, TX, Employer</b>	)	
	)	

*Appearances:*

*Alan J. Shapiro, Esq., for the appellant<sup>1</sup>  
Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge  
COLLEEN DUFFY KIKO, Judge  
ALEC J. KOROMILAS, Alternate Judge

**JURISDICTION**

On June 14, 2016 appellant filed a timely appeal from an April 26, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

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<sup>1</sup> In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## ISSUE

The issue is whether appellant met his burden of proof to establish that he sustained an occupational disease claim causally related to factors of his employment.

## FACTUAL HISTORY

On November 6, 2013 appellant, then a 66-year-old sandblaster, filed an occupational disease claim (Form CA-2) alleging that factors of his employment caused a hand, wrist, knee, and left shoulder condition. He alleged that he first became aware of his condition on June 6, 2001 and its relation to his federal employment on September 18, 2013. Appellant attributed his condition to wear and tear from sandblasting for 29 years, which included holding parts at 45 to 90 degree angles and derubbing parts. He retired on May 30, 2014.

In a September 18, 2013 report, Dr. Praxton Longwell, a Board-certified neurologist, advised that appellant complained of bilateral arm and hand pain for the past 12 years that was worse on the left with nocturnal exacerbation. Examination revealed normal muscle tone, positive Tinel's on percussion of the median nerves at both wrists, and median nerve hypoesthesia over both upper extremities. Dr. Longwell explained that an electromyogram (EMG) and nerve conduction velocity (NCV) study revealed significant bilateral carpal tunnel syndrome, more severe on the left. He indicated that appellant would likely benefit from surgical decompression, if he did not improve with conservative treatment.

In a November 27, 2013 diagnostic report, Dr. Jennifer Turner, a Board-certified diagnostic radiologist, advised that a right hand x-ray revealed mild degenerative changes primarily affecting the thumb and atherosclerotic vascular disease.

In a November 27, 2013 Texas Workers' Compensation Work Status Report, Dr. James Rose, a family medicine practitioner, advised that appellant injured both hands on September 18, 2013. He noted that appellant was able to return to work that day without restrictions. In an unsigned November 27, 2013 report, appellant was diagnosed with bilateral carpal tunnel syndrome. The report described the injury as work related and noted that he worked as a sandblaster for the past 29 years.

In a December 19, 2013 report, Dr. Robert Williams, a Board-certified orthopedic surgeon, advised that appellant was referred by Dr. Rose. He noted that appellant reported a long history of carpal tunnel syndrome and repetitive trauma while working at the employing establishment. Dr. Williams advised that bilateral wrist x-rays were unremarkable and noted that appellant elected to undergo an open carpal tunnel release surgery. He indicated that a September 18, 2013 EMG and NCV study revealed bilateral carpal tunnel syndrome worse on the left.

By letter dated January 15, 2014, the employing establishment controverted appellant's claim. It argued that medical evidence was insufficient to establish his claim as there was no physician's opinion as to how the employment activities caused or contributed to the diagnosed condition.

By letter dated January 30, 2014, OWCP advised appellant of the type of evidence needed to establish his claim and afforded him 30 days to submit responsive evidence.

In a February 22, 2014 narrative statement, appellant advised that he worked as a sandblaster for 29 years. He noted that he experienced hand and wrist pain mainly on the left for years and advised that he used a wrist support since 1998. Appellant also noted that he was having problems with his left knee and shoulder. He also submitted evidence related to an October 16, 2000 work-related left shoulder injury where he hit his left shoulder on a door while entering the building.

By decision dated July 17, 2014, OWCP denied appellant's claim. It found that medical evidence of record was insufficient to establish that the diagnosed condition was causally related to factors of his employment.

On July 22, 2014 appellant, through counsel, requested an oral telephone hearing.

On November 26, 2014 Dr. Sergio Solorzano, a family medicine practitioner, completed a form entitled Rationalized Medical Opinion Form to establish Causal Relationship. He noted that appellant hurt his shoulder in 1998 and the pain went to his arms and hands, which worsened as the years passed. Dr. Solorzano diagnosed carpal tunnel syndrome and noted that appellant complained of tingling and numbness in the hands and wrist. The bottom of the page read: "In my medical opinion, the facts of injury are the direct and proximate cause of the diagnosis that I cited above. This is based on reasonable medical probability. There may be other causes for this medical problem, but one of the causes is clearly the activities of work described [by appellant] and described above".

On February 11, 2015 an oral telephone hearing took place. Appellant described his work duties which included blasting parts in a booth. He explained that he had to hold the nozzle with his right hand and the part with his left hand at either a 45- or 90-degree angle depending on the part.

By decision dated March 17, 2015, an OWCP hearing representative set aside the July 17, 2014 decision and remanded the case for OWCP to refer appellant to a second opinion physician. The hearing representative found that Dr. Solorzano's report was sufficient to warrant further development of the record.

On May 26, 2015 OWCP referred appellant, together with the medical record and a statement of accepted facts, to Dr. Walter Del Gallo, a Board-certified orthopedic surgeon, for an opinion on whether appellant's diagnosed conditions were causally related to factors of his employment. In a June 11, 2015 report, Dr. Del Gallo advised that appellant was employed as a sandblaster for 29 years and detailed his treatment history. He noted that appellant complained of left hand numbness and tingling and shoulder soreness despite overall improvement following a 2001 surgery. On examination Dr. Del Gallo noted full bilateral shoulder range of motion, mild-to-moderate thenar atrophy of both thumbs, positive Tinel's and Phalen's test worse on the left, negative Tinel's test at the ulnar nerve at both elbows, no left knee effusion, full left knee range of motion, and mild left knee tenderness of the medial and lateral joint lines. He opined that appellant's carpal tunnel syndrome was not caused or aggravated by factors of his federal

employment. Dr. Del Gallo quoted the sixth edition of the American Medical Association, *Guides to Evaluation of Disease and Injury Causation* (hereinafter A.M.A., *Guides*),<sup>3</sup> which in part stated that “carpal tunnel syndrome has an indistinct multi factorial etiology; often a single cause cannot be identified. [Dr. Del Gallo] indicated that the publication noted that there was inconsistent evidence regarding whether work factors caused carpal tunnel syndrome and very strong evidence that age was a contributing factor. He concluded based on this evidence that there was no data to support that appellant’s carpal tunnel syndrome was secondary to his work. [Dr. Del Gallo] opined that appellant’s carpal tunnel syndrome was age related as his condition worsened as he aged. He also concluded that appellant’s left shoulder and knee conditions were not work related as there were scant medical records related to these conditions.

In a July 1, 2015 decision, OWCP denied appellant’s claim because the medical evidence of record was insufficient to establish that his diagnosed conditions were causally related to work factors.

By letter dated July 8, 2015, appellant, through counsel, requested an oral telephone hearing.

Appellant provided medical reports documenting his treatment since 2001. In a November 2, 2001 report, Dr. Robert Lewis, a Board-certified orthopedic surgeon, advised that appellant injured his left shoulder two years prior at work when he tried to catch a large transmission that was tipping over. He noted that appellant reinjured his shoulder on October 16, 2000 when a door hit his left shoulder. January 6 and May 23, 2001 and January 14 and May 1, 2002 disability status reports from Dr. Lewis diagnosed left shoulder impingement syndrome and restricted appellant’s lifting to 20 pounds with no overhead use of the left arm. In a September 23, 2003 report, Dr. Lewis advised that appellant had a work-related left shoulder condition, which required surgery in January 2001. He noted that appellant was able to return to work, but still experienced residual symptoms. Several physical therapy reports were submitted.

On February 10, 2016 an oral telephone hearing took place. Counsel argued that there was a medical conflict and asserted that Dr. Del Gallo had his mind set that carpal tunnel syndrome could never be work related. He also argued that 95 percent of Dr. Del Gallo’s opinion on causal relationship was quoted from the A.M.A., *Guides* publication.

By decision dated April 26, 2016, an OWCP hearing representative affirmed the July 1, 2015 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA has the burden to establish 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, that an injury was sustained in the performance of duty as alleged and that any disabilities and/or specific conditions for which compensation is claimed are causally related to

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<sup>3</sup> A.M.A., *Guides* (2<sup>nd</sup> ed. 2013).

the employment injury.<sup>4</sup> 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.<sup>5</sup>

Whether an employee actually sustained an injury in the performance of duty begins with an analysis of whether fact of injury has been established. To establish an occupational disease claim, an employee must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.<sup>6</sup>

Causal relationship is a medical issue and the evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is generally required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, 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.<sup>7</sup> 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.<sup>8</sup>

### ANALYSIS

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

OWCP referred appellant for a second opinion examination with Dr. Del Gallo. In his May 26, 2015 report, Dr. Del Gallo opined that appellant's carpal tunnel syndrome was not caused or aggravated by factors of his federal employment. He quoted the second edition of the A.M.A., *Guides*, which in part specified that "carpal tunnel syndrome has an indistinct multi factorial etiology; often a single cause cannot be identified." Dr. Del Gallo indicated that the publication noted that there was inconsistent evidence regarding whether work factors caused carpal tunnel syndrome and very strong evidence that age was a contributing factor. He concluded based on this that there was no data to support that appellant's carpal tunnel syndrome was secondary to his work. Dr. Del Gallo opined that appellant's carpal tunnel syndrome was age related as his condition worsened as he got older. He also concluded that appellant's left shoulder and knee conditions were not work related as there was scant medical evidence regarding these conditions. OWCP determined that Dr. Del Gallo's report represented the weight of the medical evidence.

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<sup>4</sup> *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>5</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>6</sup> *R.H.*, 59 ECAB 382 (2008); *Ernest St. Pierre*, 51 ECAB 623 (2000).

<sup>7</sup> *I.J.*, 59 ECAB 408 (2008); *supra* note 5.

<sup>8</sup> *James Mack*, 43 ECAB 321 (1991).

Although Dr. Del Gallo noted that the A.M.A., *Guides* publication specifies that there is insufficient evidence to support that certain work factors cause carpal tunnel syndrome, the Board has held that newspaper clippings, medical texts, and excerpts from publications are of no evidentiary value in establishing the causal relationship between a claimed condition and an employee's federal employment. Such materials are of general application and are not determinative as to whether the specific condition claimed is related to the particular employment factors alleged by the employee.<sup>9</sup> The Board finds that Dr. Del Gallo's medical opinion is not sufficiently rationalized. Dr. Del Gallo explained that there was no evidence to support that appellant's carpal tunnel syndrome was secondary to his work and opined that it was age related because it worsened as he aged. However, he failed to discuss appellant's specific work duties and simply relied on the general principle found in a publication.

As Dr. Del Gallo's opinion is not sufficiently rationalized, appellant must be referred to another Board-certified specialist. It is well established that proceedings under FECA are not adversarial in nature and, while the claimant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.<sup>10</sup> Once OWCP undertakes development of the medical evidence, it has the responsibility to do so in a proper manner.<sup>11</sup>

### **CONCLUSION**

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

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<sup>9</sup> *William C. Bush*, 40 ECAB 1064, 1075 (1989).

<sup>10</sup> *Richard E. Simpson*, 55 ECAB 490 (2004).

<sup>11</sup> *Melvin James*, 55 ECAB 406 (2004).

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 26, 2016 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this decision.

Issued: December 27, 2016  
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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