United States Department of Labor
Employees' Compensation Appeals Board

D.M., Appellant	)	
and	)	**Docket No. 16-0659**
	)	**Issued: July 25, 2016**
DEPARTMENT OF THE NAVY, MARINE CORPS BASE, Camp Lejeune, NC, Employer	)	

Appearances:
Martin Kaplan, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On February 19, 2016 appellant, through counsel, filed a timely appeal of an August 25, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the case.

ISSUE

The issue is whether appellant established a recurrence of disability as of December 23, 2014 due to his accepted bilateral carpal tunnel condition.

[1] 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.

[2] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This matter has previously been before the Board.

Appellant, then a 52-year-old mechanic, filed an occupational disease claim (Form CA-2) on November 20, 2003 alleging that he developed bilateral carpal tunnel causally related to employment factors. By decision dated September 21, 2004, OWCP accepted his claim for bilateral carpal tunnel syndrome. Appellant resigned from employment

By decision dated November 21, 2006, the Board remanded the case for further development of the medical evidence to determine the degree of permanent impairment of appellant's upper extremities causally related to his accepted bilateral carpal tunnel condition.[3] On May 20, 2008 the Board affirmed the denial of his claim for wage-loss compensation, as of May 27, 2004, because he had not established that he was disabled due to his accepted employment injury.[4]

In an order dated January 31, 2013, the Board remanded the case to address appellant's recurrence claims for periods of disability following the Board's May 28, 2008 decision.[5] By decision dated October 2, 2014, the Board affirmed the denial of a claimed recurrence of disability as of March 9, 2007. The Board again found that appellant had not submitted a reasoned medical opinion explaining why his alleged disability as of March 9, 2007 was causally related to the accepted bilateral carpal tunnel condition.[6] The facts and circumstances as presented in the prior appeals are incorporated herein by reference. The relevant facts following the Board's October 2, 2014 decision are as follows.

In a report dated January 29, 2015, Dr. Brian Battersby, Board-certified in orthopedic surgery, noted that he had examined appellant for complaints of bilateral carpal tunnel symptom, including pain, numbness, tingling, and weakness in both wrists. He related that appellant rated his pain as a 7 on a scale of 1 to 10, and that the pain radiated up his arms. Dr. Battersby had appellant undergo an electromyogram (EMG)/nerve conduction velocity (NCV) study, the results of which were mild with no denervation. He noted that appellant appeared to have ongoing carpal tunnel syndrome. However, Dr. Battersby opined that the EMG/NCV tests showed no denervation to suggest any worsening of the condition.

In a May 29, 2015 report, Dr. William A. Somers, Board-certified in family practice, advised that appellant had carpal tunnel symptoms in both arms and hands, include numbness and pain which awakened him at night and weakness in both hands preventing firm grip, fine manipulation, and lifting with his arms unsupported. He noted that since appellant's injury he had

[3] Docket No. 06-1609 (issued November 21, 2006). The record reflects that appellant has received schedule awards for 17 percent permanent impairment of the right upper extremity and 18 percent permanent impairment of the left upper extremity.

[4] Docket No. 07-2210 (issued May 20, 2008).

[5] Docket No. 12-1638 (issued January 31, 2013).

[6] Docket No. 14-0887 (issued October 2, 2014).

no significant therapy for his carpal tunnel syndrome. Dr. Somers reported that although appellant returned to work after his injury with symptoms related to carpal tunnel and ulnar nerve, he resigned from work for other reasons. He noted, however, that prior to appellant's resignation he was finding it increasingly difficult to do his job. Dr. Somers advised that the record contained multiple notes from appellant's treating physicians indicating that appellant would be unable to perform his date-of-injury job. He related that at the present time appellant was unable to lift like he used to due to hand, forearm, and upper arm strength problems. Dr. Somers noted that appellant had a generalized, diffuse tingling in his hands, a dull pain in his hands and forearm, as well as some muscle atrophy, and some fasciculation in his arm muscles.

Dr. Somers advised that the results of recent EMG/NCS tests dated January 20, 2015 were consistent with ulnar neuropathy at the cubital tunnel and mild carpal tunnel bilaterally. He opined that appellant could have some neurological disorder that was more diffuse than carpal tunnel and cubital tunnel syndromes, although he was unable to state that this problem was or was not present in the early 2000's. Dr. Somers noted that his current examination was consistent with a more diffuse neurologic problem as appellant had documented weakness and some atrophy in muscles proximal to the elbow, not totally isolated to the median and ulnar nerves, which included the suprascapular, musculocutaneous, and radial nerves. He advised that if appellant did have some upper motor neuron disease, it appeared to be slowly but definitely progressing. Dr. Somers recommended a complete neurological examination including x-rays and a magnetic resonance imaging scan to assess the spinal cord. He was unable to say whether this contributed in any way to the diagnoses given in the early 2000's.

In a June 2, 2015 report, Dr. Somers advised that appellant ceased work on July 12, 2004. He asserted, however, that this was not related to appellant's on-the-job injury. Dr. Somers reviewed diagnostic tests from 2006 and 2007, and noted that appellant's current work restrictions were more severe based on his progressive weakness. He reported that appellant was able to carry up to 10 pounds in either hand and restricted him from lifting more than 4 pounds above the chest. Dr. Somers advised that appellant was able to sit at a desk, but could not perform work involving fine motor skills because of the nerve problems in his hands.

On June 15, 2015 appellant filed a notice of recurrence of disability (Form CA-2a) commencing on December 23, 2014, which was causally related to his accepted bilateral carpal tunnel condition.

In a July 13, 2015 letter, OWCP informed appellant that he needed to provide additional factual and medical evidence was needed, including medical evidence establishing that his accepted work-related conditions subsequently worsened without intervening cause. Appellant was afforded 30 days to submit the requested information. No additional evidence was submitted.

By decision dated August 25, 2015, OWCP denied appellant's claim, finding that he failed to submit medical evidence sufficient to establish that he sustained a recurrence of his accepted bilateral carpal tunnel condition as of December 23, 2014.

LEGAL PRECEDENT

A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which has resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.[7]

A person who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable, and probative evidence that the disability for which he or she claims compensation is causally related to the accepted injury. This burden of proof requires that an employee furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.[8] Where no such rationale is present, medical evidence is of diminished probative value.[9]

ANALYSIS

The Board finds that appellant has failed to submit a medical report containing a rationalized, probative opinion which relates his claimed recurrence of disability from work as of December 23, 2014 to his accepted bilateral carpal tunnel condition. For this reason, appellant has not met his burden of proof to establish his claim for a recurrence of disability as a result of his accepted employment condition.

In Dr. Battersby's January 29, 2015 report, he noted that appellant had complaints of bilateral carpal tunnel symptoms, including pain, numbness, tingling, and weakness in both wrists. He opined that appellant appeared to have ongoing carpal tunnel syndrome, however, he asserted that the EMG/NCV tests showed no denervation to suggest any worsening of the condition.

Dr. Somers advised in his May 29, 2015 report that appellant had carpal tunnel symptoms in both arms and hands, include numbness and pain, and weakness in both hands preventing firm grip, fine manipulation, and lifting with his arms unsupported. He advised that appellant was unable to lift like he used to due to hand, forearm, and upper arm strength problems. Dr. Somers also had generalized, diffuse tingling in his hands, and a dull pain in his hands and forearm. He advised that the results of recent EMG/NCS tests dated January 20, 2015 were consistent with ulnar neuropathy at the cubital tunnel and mild carpal tunnel bilaterally. Dr. Somers opined that appellant could have some neurological disorder that is more diffuse than carpal tunnel and cubital tunnel syndromes, although he was unable to conclude that this problem was or was not present in the early 2000's.

[7] *R.S.*, 58 ECAB 362 (2007); 20 C.F.R. § 10.5(x).

[8] *I.J.*, 59 ECAB 408 (2008); *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

[9] *See Ronald C. Hand*, 49 ECAB 113 (1957); *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

Neither Dr. Battersby nor Dr. Somers provided a rationalized, probative medical opinion indicating that appellant sustained a recurrence of disability on December 23, 2014 causally related to his accepted bilateral carpal tunnel syndrome. Their opinions regarding causal relationship are of limited probative value in that they did not provide adequate medical rationale in support of their conclusions.[10] While these physicians made findings on examination, described symptoms, and complaints of pain that appellant experienced as a result of bilateral carpal tunnel syndrome, their statements are broad and vague. There is no medical evidence of record that explains the medical process competent to cause work-related disability on or after December 23, 2014 due to the accepted conditions.[11] Neither physician described, with supporting objective evidence, that appellant's accepted condition had progressed to the point where he was disabled from his former federal employment. The medical evidence of record did not explain how appellant's accepted bilateral carpal tunnel syndrome contributed to his claimed disability as of December 23, 2014.[12]

Appellant has not submitted a physician's reasoned opinion that explains why his disability from work as of December 23, 2014 was causally related to the accepted bilateral carpal tunnel condition.[13]

For these reasons, the Board finds that the medical evidence is insufficient to establish a recurrence of disability as of December 23, 2014 causally related to the accepted bilateral carpal tunnel condition.

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 not met his burden to establish a recurrence of disability as of December 23, 2014 causally related to his accepted bilateral carpal tunnel condition.

[10] *William C. Thomas*, 45 ECAB 591 (1994).

[11] *See L.R.*, Docket No. 16-0520 (issued June 13, 2016).

[12] *C.L.*, Docket No. 16-0004 (issued June 14, 2016).

[13] *Supra* note 9.

ORDER

IT IS HEREBY ORDERED THAT the August 25, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 25, 2016
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board