



## **FACTUAL HISTORY**

On February 24, 2014 appellant, then a 46-year-old custodian/laborer, filed an occupational disease claim (Form CA-2) under File No. xxxxxx429 alleging that on September 17, 2013 he first became aware of numbness and weakness in his left hand and left wrist, inability to bend, move, or grip with the same hand and wrist, and weakness, giving away, burning, and pain in both elbows. He further alleged that on February 17, 2014 he first realized that his conditions were caused or aggravated by his federal employment. Appellant maintained that on each workday, he repeatedly grasped empty trash cans which cramped his left hand and caused pain in both of his elbows, polished workroom floors, and replaced paper towels, toilet tissue, and soap receptacles which locked his left hand and wrist. In a March 17, 2014 narrative statement, he described his symptoms. Appellant noted that he worked six hours a day, five days a week. He contended that his repetitive work duties prevented him from working on computers as a hobby.

In a February 17, 2014 work tolerance limitations form report, Dr. Christopher R. Mann, an attending occupational medicine physician, diagnosed bilateral ulnar neuropathy and left carpal tunnel syndrome. He advised that appellant could not perform his regular unrestricted job assignment, but he could work eight hours a day with restrictions.

On the Form CA-2 and in an undated narrative statement, the employing establishment controverted the claim. It contended that, since November 7, 2013, appellant had been on the periodic rolls under claim number xxxxxx098.<sup>3</sup> The employing establishment had accommodated him with a modified job six hours a day, five days a week. It related that work was available within his restrictions once he returned to work. The employing establishment contended that appellant's computer hobby was likely a contributing factor to his injury.

By letter dated March 4, 2014, OWCP advised appellant that the evidence submitted was insufficient to establish his claim. It afforded him 30 days to submit a factual statement detailing the employment-related activities that contributed to his condition and activities outside his federal employment and a medical report from an attending physician which included an explanation of how his employment activities caused, contributed to, or aggravated his medical condition. OWCP requested that the employing establishment submit any medical evidence, if appellant had been treated at its medical facility.

Appellant submitted a December 5, 2013 report from Dr. Scott T. Stoll, a Board-certified physiatrist, who noted that electromyogram/nerve conduction studies (EMG/NCS) revealed mild-to-moderate bilateral axonometric C8 radiculopathies, mild left neuropraxic carpal tunnel syndrome, moderate-to-severe bilateral neuropraxic ulnar neuropathy at the elbows, and bilateral cervical paraspinal muscular hypertonicity (muscle spasm). He noted that the diagnosed

---

<sup>3</sup> On September 11, 2009 OWCP accepted appellant's claim under OWCP File No. xxxxxx098 for cervical sprain sustained on July 4, 2009 while in the performance of duty as a custodian/laborer. On December 17, 2003 it accepted his claim for a recurrence of disability beginning November 6, 2013. The claim was expanded to include sprain of the left shoulder and upper arm in other unspecified sites, degeneration of cervical intervertebral disc, and anxiety disorder.

conditions, except for bilateral cervical paraspinal muscular hypertonicity (muscle spasm), had worsened since a January 5, 2012 EMG/NCS.

In a February 17, 2014 report, Dr. Mann provided appellant's history, which included his employment during the last 13 years as a custodian and the prior three years as a letter carrier at the employing establishment. Appellant related to him that on September 17, 2013 he was performing his limited-duty job when he experienced an insidious onset of bilateral elbow inflammation that radiated tingling and burning down the ulna side of both forearms to the hands. He further related that, although he was performing limited-duty work, he still lifted trash cans of all sizes and dumped them which required a repetitive wrist-twisting action. Appellant also reported bad spells of numbness, tingling, and weakened grip when he mopped for more than 15 minutes at a time. Dr. Mann noted the treatment appellant received for his work-related cervical injury. He reported findings and reiterated his diagnoses of bilateral ulnar neuropathy and left carpal tunnel syndrome. Dr. Mann opined that appellant sustained bilateral elbow, forearm, and wrist injuries as a direct result of the activities he performed most of the last three years as a custodian but noted that his injuries were initially irritated by 13 years of frequent arm use as a carrier. He noted that appellant was disabled due to severe cervical radiculopathy.

In a July 18, 2014 decision, OWCP denied appellant's occupational disease claim. It found that he did not respond to its March 4, 2014 request for additional factual information. Consequently, OWCP found that appellant failed to establish an injury as alleged.

On January 8, 2015 appellant requested reconsideration. In an accompanying statement, he explained that when he initially stated that he could not work on computers as a hobby, he did not mean that he tore down computers and put them back together. Appellant meant that he checked his e-mail several times a week.

In a December 22, 2014 report, Dr. Mann reviewed OWCP's July 18, 2014 decision and contended that appellant's statements about checking his e-mail and working on computers were erroneously described as a hobby and suggested that he actually built computers. He only understood that appellant was on the computer briefly most evenings to check his e-mail. Thus, Dr. Mann related that he did not list this activity as a hobby or otherwise. On March 2, 2015 he contended that the employing establishment violated federal regulations as it required appellant to return to work with no supportive medical opinion. Dr. Mann maintained that a return to work would worsen the medical conditions in both of his claims, OWCP File Nos. xxxxxx429 and xxxxxx098. In a January 12, 2015 attending physician's report (Form CA-20), he indicated with an affirmative mark that appellant had cervical degenerative disc with increased radiculopathy, cervical sprain, left shoulder sprain, and anxiety disorder caused by the accepted July 4, 2009 work injury.

Appellant submitted a January 6, 2015 anesthesia record signed by Martin Simpson, a certified registered nurse anesthetist.

In a March 27, 2015 letter, the employing establishment contested appellant's request for reconsideration. It contended that neither the facts of the claim, nor causal relationship had been established. The employing establishment noted that appellant was off work from November 13, 2013 through February 22, 2015 due to his previous claim under OWCP File No. xxxxxx098.

Appellant returned to work on February 23, 2015 for 4.5 hours and then went home. He did not return. The employing establishment maintained that appellant had not submitted any medical evidence pertaining to the instant claim since February 17, 2014, or any statements to support fact of injury. The fact that appellant had not worked since November 13, 2013 indicated there was no fact of injury during the performance of duty.

In a June 8, 2015 decision, OWCP denied modification of the July 18, 2014 decision, finding that appellant had not sustained a work-related injury as claimed. It found that the factual evidence was too vague and general with respect to the employment factors that he attributed to his claimed medical conditions. OWCP also found that Dr. Mann's March 2, 2015 report did not provide a rationalized medical opinion to establish a causal relationship between appellant's diagnosed conditions and his federal employment.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>4</sup> 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 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.<sup>5</sup> 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.<sup>6</sup>

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.

An employee's statement that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.<sup>7</sup> Moreover, an injury does not have to be confirmed by eyewitnesses. The employee's statement, however, must be consistent with the surrounding facts and circumstances and his subsequent course of action. An employee has not met his or her burden in establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim. Circumstances such as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury, and failure to

---

<sup>4</sup> *Supra* note 1.

<sup>5</sup> C.S., Docket No. 08-1585 (issued March 3, 2009); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>6</sup> *S.P.*, 59 ECAB 184 (2007); *Victor J. Woodhams*, 41 ECAB 345 (1989); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>7</sup> *R.T.*, Docket No. 08-408 (issued December 16, 2008); *Gregory J. Reser*, 57 ECAB 277 (2005).

obtain medical treatment may, if otherwise unexplained, cast doubt on an employee's statement in determining whether a *prima facie* case has been established.<sup>8</sup>

### **ANALYSIS**

Appellant claimed that he sustained left hand, left wrist, and bilateral elbow conditions due to performing his work duties. OWCP found that he failed to establish the factual component of his claim. The Board finds, however, that the evidence establishes that appellant was a custodian/laborer and performed employment duties as such. In his Form CA-2 and March 17, 2014 narrative statement, appellant attributed his claimed employment injuries to repeatedly grasping empty trash cans, policing workroom floors, and replacing paper towels, toilet tissue, and soap receptacles six hours a day, five days a week. The Board notes that there is no evidence refuting that the claimed employment factors of grasping trash cans, policing workroom floors, and replacing paper towels, toilet tissue, and soap receptacles, occurred as alleged.

Consequently, the Board finds that appellant has established the factual component of this claim, including that he grasped empty trash cans, policed workroom floors, and replaced paper towels, toilet tissue, and soap receptacles at work. This case shall be remanded to OWCP for consideration of the evidence as it relates to the accepted employment factors identified by appellant and thereafter issue a *de novo* decision.

### **CONCLUSION**

The Board finds that the case is not in posture for decision and is remanded to OWCP for further development.

---

<sup>8</sup> *Betty J. Smith*, 54 ECAB 174 (2002).

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 8, 2015 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this decision of the Board.

Issued: March 3, 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