

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

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L.R., Appellant)	
)	
and)	Docket No. 16-1158
)	Issued: November 1, 2016
DEPARTMENT OF THE NAVY, NORFOLK)	
NAVAL SHIPYARD, Portsmouth, VA, Employer)	
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Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On May 11, 2016 appellant filed a timely appeal from a March 31, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 the case.

ISSUE

The issue is whether appellant has met his burden of proof to establish a right elbow injury causally related to a December 22, 2015 employment incident.

FACTUAL HISTORY

On February 17, 2016 appellant, then a 59-year-old insulator, filed a traumatic injury claim (Form CA-1), alleging that on December 22, 2015, while working in a small area in an engine room and pulling wire to tie pads, his right elbow struck a foundation in the funny bone area. He did not stop work.

¹ 5 U.S.C. § 8101 *et seq.*

In a statement dated February 16, 2016, appellant indicated that on December 22, 2015 he was working in a small area in an engine room pulling wire to tie pads and his right elbow struck the corner of the foundation in the funny bone area. He reported shaking off the pain and informing his supervisor that he was all right. Appellant indicated that five days later his arm started to ache and he sought treatment. His symptoms persisted and he scheduled surgical intervention in March 2016 consistent with treatment recommendations of his physician.

Appellant was treated by Dr. Gregory W. Pierce, a Board-certified family practitioner, on December 27, 2015, for right hand pain. He reported noticing pain in the right shoulder, upper limb, arm, and forearm. Appellant noted that he did not sustain a specific injury. Dr. Pierce noted findings on examination of mild tenderness to palpation of the trapezius and scapula on the right, intact range of motion of the cervical spine, no thoracic or lumbar tenderness, mild tenderness to palpation over the anterior aspect of the right shoulder, intact reflexes, and negative Tinel's sign bilaterally. He noted a December 28, 2015 x-ray of the cervical spine revealed anterior spondylolytic changes, multilevel degenerative disc disease, facet arthrosis, and mild torticollis. Dr. Pierce noted an x-ray of the right shoulder revealed arthritis of the acromioclavicular joint. He diagnosed cervical radiculopathy and pain in the right shoulder.

On January 4 and 14, 2016 appellant was treated by Dr. Nicholas K. Sablan, an orthopedist, for right elbow pain and numbness. He noted his symptoms were present since sustaining a direct blow to the medial side of his elbow in June 2015. Appellant noted symptoms of persistent medial sided elbow pain, radiation of symptoms to the right hand, and episodic pain which was worse with prolonged activities. Dr. Sablan noted findings on examination of normal alignment, isolated tenderness along the ulnar nerve, positive Tinel's and elbow flexion test, negative Spurling, no ulnar nerve subluxation, no lateral-sided tenderness, no crepitation, full range of motion of the elbow, no intrinsic atrophy, and sequela of a mallet finger affecting the index finger. He noted a January 4, 2016 x-ray of the right elbow revealed no evidence of fracture or dislocation with preserved radiocapitellar and ulnar trochlear joint space. Dr. Sablan diagnosed injury of the ulnar nerve at the right forearm level from striking it against other stationary object and right ulnar neuritis present for over six month. He recommended surgery.

Appellant submitted an electromyogram (EMG) dated January 6, 2016 which revealed median sensory neuropathy at the wrist consistent with mild left carpal tunnel syndrome and mild acute left C8 radiculopathy. He also submitted a position description for an insulator.

By letter dated February 26, 2016, OWCP advised appellant of the type of evidence needed to establish his claim, particularly requesting that appellant submit a physician's reasoned opinion addressing the relationship of his claimed condition and the work incident.

Appellant submitted an undated statement and reiterated the factual circumstances surrounding his right elbow injury. He submitted several notification of SF-50's personnel action from 2014 to 2015 which provided salary increases.

Appellant was seen by Dr. Sablan on February 29, 2016 for a history and physical prior to surgery. He reported that appellant's symptoms had been present since sustaining a direct blow to the medial side of his elbow in June 2015. Dr. Sablan noted examination findings of no cervical tenderness, negative Spurling test, normal alignment, tenderness along the ulnar nerve, positive Tinel's and elbow flexion test, no ulnar nerve subluxation, no crepitation, full elbow

range of motion with no instability, no intrinsic atrophy and sequela of a mallet finger affecting the index finger. He diagnosed injury of ulnar nerve at right forearm level, striking against other stationary object and right elbow ulnar neuropathy. In a report dated March 10, 2016, Dr. Sablan noted that appellant was treated status post right elbow ulnar nerve decompression. Appellant reported a dramatic decrease in pain and weakness in the right hand after surgery. He noted findings of benign incision, full range of motion of the elbow, intact sensation and reflexes were positive, and symmetrical. Dr. Sablan diagnosed injury of the ulnar nerve at the forearm, right arm. On March 10, 2016 he noted that appellant would be out of work through March 22, 2016 due to right elbow surgery. Dr. Sablan noted that appellant could return to duty on March 23, 2016 with restrictions on lifting.

In a March 31, 2016 decision, OWCP denied appellant's claim because he failed to establish an injury or medical condition causally related to the accepted work incident of December 22, 2015.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof 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 of FECA, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed is causally related to the employment injury. 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.²

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place, and in the manner alleged. Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.³

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.⁴

ANALYSIS

It is undisputed that on December 22, 2015 while working in a small area in an engine room pulling wire to tie pads his right elbow struck a foundation. However, the Board finds that

² *Gary J. Watling*, 52 ECAB 357 (2001).

³ *T.H.*, 59 ECAB 388 (2008).

⁴ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

appellant failed to submit sufficient medical evidence to establish that this work incident caused or aggravated his diagnosed right elbow condition.

Appellant submitted reports from Dr. Sablan dated January 4 and 14, 2016, who treated him for right elbow pain and, numbness with radiation which began after sustaining a direct blow to the medial side of his elbow in June 2015. Dr. Sablan noted findings and diagnosed injury of the ulnar nerve at the right forearm level, striking against other stationary object, and right ulnar neuritis. He recommended surgery. In a report dated February 29, 2016, Dr. Sablan noted that appellant related that his symptoms had been present since sustaining a direct blow to the medial side of his elbow in June 2015. Likewise, on March 10, 2016 he noted that appellant was status post right elbow ulnar nerve decompression with a dramatic decrease in pain and weakness with the right hand. Dr. Sablan diagnosed injury of the ulnar nerve at the forearm, right arm. On March 10, 2016 he noted that appellant would be out of work through March 22, 2016 due to right elbow surgery. None of Dr. Sablan's reports, however, provide a history of injury⁵ or specifically address whether appellant's employment activities had caused or aggravated a diagnosed medical condition.⁶ Instead, Dr. Sablan indicates that appellant's symptoms relate to a June 2015 incident instead of the accepted December 22, 2015 work incident. Therefore, these reports are insufficient to establish appellant's claim.

Appellant submitted a December 27, 2015 report from Dr. Pierce who treated him for right hand, shoulder and right upper limb pain which began two weeks prior. Dr. Pierce indicated that appellant had not sustained a specific injury, but worked as an insulator for years. He noted findings and diagnosed cervical radiculopathy and pain in the right shoulder. Dr. Pierce's report is insufficient to establish the claim as the physician failed to provide a history of injury⁷ or specifically address whether the employment incident had caused or aggravated a diagnosed medical condition.⁸ Although Dr. Pierce noted that appellant worked as an insulator he did not specifically describe how the accepted incident caused a right elbow condition on or about December 22, 2015. Therefore this report is insufficient to meet appellant's burden of proof.

The remainder of the medical evidence fails to provide an opinion on the causal relationship between appellant's work incident and his diagnosed right elbow neuropathy. For this reason, this evidence is not sufficient to meet appellant's burden of proof.⁹

An award of compensation may not be based on surmise, conjecture, or speculation. Neither the fact that appellant's condition 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. Causal relationships must be established by

⁵ *Frank Luis Rembisz*, 52 ECAB 147 (2000) (medical opinions based on an incomplete history or which are speculative or equivocal in character have little probative value).

⁶ *A.D.*, 58 ECAB 149 (2006) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

⁷ *Frank Luis Rembisz*, *supra* note 5.

⁸ *A.D.*, *supra* note 6.

⁹ *Supra* note 6.

rationalized medical opinion evidence.¹⁰ Appellant failed to submit such evidence, he has not met his burden of proof.

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 did not meet his burden of proof to establish a right elbow injury causally related to a December 22, 2015 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the March 31, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 1, 2016
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

¹⁰ See *Dennis M. Mascarenas*, 49 ECAB 215 (1997).