United States Department of Labor
Employees' Compensation Appeals Board

R.C., Appellant	)	
and	)	**Docket No. 17-0643**
	)	**Issued: July 23, 2018**
DEPARTMENT OF DEFENSE, DEFENSE LOGISTICS AGENCY, New Cumberland, PA, Employer	)	

Appearances:
Alan J. Shapiro, *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
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On February 1, 2017 appellant, through counsel, filed a timely appeal from a December 7, 2016 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 over the merits of this case.

ISSUE

The issue is whether appellant has met his burden of proof to establish an injury causally related to the accepted factors of his federal employment duties.

[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

On December 3, 2015 appellant, then a 59-year-old packer, filed an occupational disease claim (Form CA-2) alleging that he sustained carpal tunnel syndrome and nerve damage to his elbow while in the performance of duty. He explained that he had a previous work-related injury to his spine and in July 2015, his fingers and hands kept going numb.[3] Appellant indicated that he first became aware of the injury and its relation to his work on July 7, 2015. He did not stop work. The employing establishment noted that appellant was "still working within his current restrictions."

In a July 28, 2015 report, Dr. William J. Beutler, a Board-certified orthopedic surgeon, noted that appellant had complaints of numbness throughout all the fingers of both hands. He described a discomfort at both wrists with pain and discomfort primarily at work. Dr. Beutler indicated that appellant "does a lot of piecework repetitively as he works as a packer." He noted that an electromyography (EMG) scan, from a few years ago, revealed chronic C6 radicular issues. However, the symptoms were diffuse, and far more of a carpal tunnel etiology. Dr. Beutler indicated that appellant found himself shaking his hands at night. Additionally, he found that appellant also had neck pain, which was higher in the axial neck then when he had surgery. Dr. Beutler noted that appellant had a history of fusion from C5-C7. He advised that appellant continued with a sedentary work restriction and noted that he was concerned with regard to appellant doing repetitive work with his hands and repetitive bending with his neck. Dr. Beutler suspected that appellant had carpal tunnel and was exacerbating his upper cervical spondylosis. He examined appellant and found that the hand grasp was nearly normal and that Tinel's was positive at each wrist, and negative at the elbow. Dr. Beutler also indicated that the magnetic resonance imaging (MRI) scans revealed bulging discs at C3-C4 and C4-C5 with fusion from C5-C7. He opined that the axial symptoms were related to the spondylosis from C3-C5 and further surgical intervention would potentially be a fusion from C3-C7. Dr. Beutler advised that there were concerns with this as there were no radicular symptoms or findings. Regarding his bilateral hand numbness, he explained that EMG findings were old and his symptoms strongly suggested a carpal tunnel etiology. Dr. Beutler recommended an evaluation by a hand surgeon.

In an August 21, 2015 progress note, Dr. Robert Maurer, a Board-certified hand surgeon, noted that appellant's chief complaint was pain, numbness, and paresthesias in both hands. He noted that appellant was right-hand dominant and advised that his symptoms occurred at work. Dr. Maurer opined, "[i]t is work related, he works in packing boxes." He noted that appellant used Ibuprofen for his pain relief and, at the present time, his pain was 6 out of 10, localized to the hands and wrist. Dr. Maurer noted that any use of the hands, lifting, pushing, pulling, and twisting caused increased pain. He also noted that appellant had some paresthesias and numbness at night. Dr. Maurer examined appellant and determined that he had full-age appropriate range of motion of both shoulders, elbows, wrists, and all digits, with a positive median nerve compression test, Tinel's and Phalen's test bilaterally. He found no signs of median or ulnar nerve entrapment at the elbow. Dr. Maurer indicated that the Basal joint grind test was negative, there were no signs of volar or dorsal stenosing tenosynovitis, and the Wartenberg sign and Formant's test were negative. He found no abnormal skin markings, lesions, abrasions, or ecchymosis, and no atrophy.

[3] Appellant also referenced a shoulder surgery from 2008 in a prior File No. xxxxxx061 and reported that he underwent carpal tunnel surgeries in the late 1990's and early 2000, and had a 2010 right carpal tunnel surgery.

Dr. Maurer reported that findings from x-rays of both wrists showed normal carpal height and alignment. He found no evidence of fracture, subluxation, normal bone density and soft tissue, and no evidence of instability. Dr. Maurer diagnosed work-related bilateral carpal tunnel syndrome. He recommended a steroid injection and median nerve block on the left wrist, which was worse.

In a September 28, 2015 progress note, Dr. Maurer noted that appellant was poststeroid injection, however, he advised that appellant indicated the injection helped minimally, but he now had pain in both arms, numbness and paresthesias from the elbow distally. He indicated that appellant's symptoms were 6 out of 10 with regard to pain, and advised that any repetitive use of the arm caused increased pain and swelling. Additionally, he noted that lifting, pushing, pulling, and twisting motion caused increased symptoms. Dr. Maurer advised that appellant denied a new injury. He indicated that radiographic studies were reviewed and diagnosed bilateral median and ulnar neuritis.

In a November 9, 2015 report, Dr. Edwin A. Aquino, specializing in physical medicine and rehabilitation indicated that appellant was injured at work on November 21, 2008 and diagnosed with cervical spondylosis. He also found that appellant underwent anterior cervical discectomy and fusion surgery in 2009 and bilateral carpal tunnel releases in 2013. Dr. Aquino noted that appellant indicated that his pain had worsened. He explained that his physical examination revealed that the deep tendon reflexes of both upper extremities were depressed. There was softening of the thenar muscles bilaterally and abnormal touch sensation of all the digits of both hands. Dr. Aquino provided findings regarding the nerve conduction velocity (NCV) studies. He found that the median and ulnar nerves were within normal limits and stimulation of the Axillary nerves revealed normal findings. Dr. Aquino noted that electromyography (EMG) studies were abnormal and compatible with bilateral C5 and or C6 radiculopathy. Furthermore, there was no evidence of brachial plexopathy or peripheral neuropathy.

In a November 20, 2015 treatment note, Dr. Maurer diagnosed left median neuritis.

By development letter dated December 16, 2015, OWCP informed appellant of the type of evidence needed to support his claim and requested that he submit such evidence within 30 days. It particularly requested that appellant have his physician provide an opinion, supported by a medical explanation, as to how work activities caused or aggravated his claimed condition. OWCP requested that appellant provide additional information regarding his employment-related activities, which he believed contributed to his condition. It also requested that appellant describe all duties which required exertion or repeated movement of the wrist or hand, how often the duties were performed, and for how long.

In a December 22, 2015 statement, appellant explained that he was packer, whose duties consisted of labeling and packing boxes every day for seven years. Appellant noted that outside of his work, his activities were limited due to his spine injury, and he did not play any sports or use a computer. He explained that he first noticed the numbness and tingling in his hands and fingers back in July 2015. Appellant explained that he had constant numbness and pain in his hands and fingers and repetitive work made it worse. He noted that his symptoms were numbness and tingling in his hands and fingers. Appellant also noted that he had carpal tunnel surgeries in the late 90's and early 2000.

In a letter dated January 11, 2016, F.S., an injury compensation specialist with the employing establishment, controverted the claim. She indicated that appellant did not identify a specific work function that caused his condition. F.S. noted that appellant was placed on a permanent job offer on September 2, 2010 due to his November 21, 2008 shoulder injury under File No. xxxxxx061. She indicated that the job offer was amended on March 19, 2014 due to a management change in duty station so that appellant was able to work at his own pace and worked in preservation packaging and marking. She indicated that his duties were mostly relabeling small, light, repackaged items, which typically weighed less than two pounds each and occasionally closer to five pounds. F.S. enclosed a position description.

On January 13, 2016 appellant indicated that in 2008 he did not have a right shoulder injury, but rather, he had surgery for a spine injury. He explained that his duties as a packer consisted of going above and beyond his weight limit and the packages he handled were not limited to his weight limit as set forth in the job description. Appellant indicated that he did a lot of repetitive work and noted that his current project was "at least a hundred thousand pieces. I'm not doing them all myself but I'm doing a lot."

By decision dated March 1, 2016, OWCP denied appellant's claim. It found that the claim was denied on the fifth basic element, causal relationship. OWCP explained that the medical evidence was insufficient to establish that the medical condition is causally related to the accepted work events.

In an April 18, 2016 treatment note, Dr. Beutler diagnosed cervical stenosis.

By letter dated March 7, 2016, counsel requested a telephonic hearing, which was held before an OWCP hearing representative on October 4, 2016. During the hearing, appellant testified that he was performing his packing duties since about 2010. He explained his duties as a packer, which required that he repack the boxes and other little things that needed to be remarked and repacked. Appellant explained that he just finished a pack job yesterday and he had to "pack a hundred thousand packages of fives but I touched every package." He indicated "[i]n fact it was 112,000." Appellant noted that he started to notice problems with his hands a couple of years ago." He explained that he initially believed it was due to his neck surgery, but the physician explained it was carpal tunnel. Appellant also noted that he did not have any activities besides work.

By decision dated December 7, 2016, OWCP's hearing representative affirmed the March 1, 2015 decision.[4]

[4] The Board notes that the hearing representative wrote in her decision that there were "many inconsistencies in the factual and medical record" which compelled her to conclude that claimant has not met his burden of proof to demonstrate that he sustained an injury in performance of duty as claimed. Regardless, she continued on to give consideration to the medical evidence of record.

LEGAL PRECEDENT

An employee seeking benefits under FECA[5] has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence, including that an injury was sustained in the performance of duty as alleged, and that any specific condition or disability claimed is causally related to the employment injury.[6]

To establish that an injury was sustained in the performance of duty in an occupational disease claim, an employee must submit: (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 diagnosed condition is causally related to the identified employment factors.[7]

Causal relationship is a medical question that generally requires rationalized medical opinion evidence to resolve the issue.[8] A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.[9] Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s).[10]

Causal relationship is a medical question that generally requires rationalized medical opinion evidence to resolve the issue.[11] A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.[12] Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s).[13]

In any case where a preexisting condition involving the same part of the body is present and the issue of causal relationship therefore involves aggravation, acceleration, or precipitation,

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[5] *See supra* note 2.

[6] 20 C.F.R. § 10.115(e), (f); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

[7] *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[8] *Robert G. Morris*, 48 ECAB 238 (1996).

[9] *Supra* note 7.

[10] *Id.*

[11] *Supra* note 8.

[12] *Supra* note 7.

[13] *Id.*

the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.[14]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish an injury causally related to the accepted factors of his federal employment duties.

Appellant alleged that he developed a bilateral carpal tunnel condition due to repetitive duties as part of his work as a packer. OWCP accepted that he engaged in repetitive work as part of his packer duties. However, appellant submitted insufficient medical evidence to establish that his condition was caused or aggravated by these activities or any other specific factors of his federal employment. This is especially important as there is a record of preexisting conditions and surgeries to include; carpal tunnel surgeries reported by Dr. Aquino. Furthermore, appellant referenced a shoulder surgery from 2008 in a prior File No. xxxxxx061 and reported that he underwent carpal tunnel surgeries in the late 1990's and early 2000, and had a 2010 right carpal tunnel surgery.

The evidence submitted by appellant includes reports from Dr. Beutler. In his July 28, 2015 report, Dr. Beutler noted that appellant had complaints of numbness throughout all the fingers of both hands. He noted that appellant "does a lot of piecework repetitively as he works as packer." Dr. Beutler further noted that an earlier EMG scan revealed chronic C6 radicular issues, but the symptoms were diffuse and far more of a carpal tunnel etiology. He noted that appellant had a prior history of fusion from C5-C7. Dr. Beutler advised that appellant continued with a sedentary work restriction and noted that he was concerned with regard to appellant doing repetitive work with his hands and repetitive bending with his neck. He indicated that he suspected that appellant had carpal tunnel and was exacerbating his upper cervical spondylosis. The Board finds that Dr. Beutler merely provided a speculative opinion in this report and did not provide a firm diagnosis. The Board has held that medical opinions which are speculative or equivocal in character have little probative value.[15] In an April 18, 2016 treatment note, Dr. Beutler diagnosed cervical stenosis. However, he provided no opinion on causal relationship. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[16] The Board finds that these reports are of limited probative value.

In an August 21, 2015 progress note, Dr. Maurer noted that appellant's chief complaint was pain, numbness, and paresthesias in both hands. He noted that appellant was right-hand dominant and advised that the symptoms occurred at work. Dr. Maurer opined "[i]t is work-related, he works in packing boxes." He explained that any use of the hands, lifting, pushing, pulling and twisting, caused increased pain. Dr. Maurer examined appellant and determined that he had full-age appropriate range of motion of both shoulders, elbows, wrists, and all digits, with a positive median nerve compression test, Tinel's and Phalen's test bilaterally. He found no signs

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[14] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013).

[15] *T.M.*, Docket No. 08-0975 (issued February 6, 2009).

[16] *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

of median or ulnar nerve entrapment at the elbow. Dr. Maurer diagnosed work-related bilateral carpal tunnel syndrome. However, he did not appear to be aware of any of appellant's prior surgeries or his medical history, which, as noted above, included several carpal tunnel surgeries in the 1990's and 2000 as well as a shoulder surgery. Dr. Maurer's conclusion is not supported by an accurate history. It is well established that medical reports must be based on a complete and accurate factual and medical background, and medical opinions based on an incomplete or inaccurate history are of little probative value.[17]

Likewise, Dr. Maurer in his September 28 and November 20, 2015 progress notes, diagnosed bilateral median and ulnar neuritis. However, he did not provide an opinion on causal relationship. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[18]

In a November 9, 2015 report, Dr. Aquino indicated that appellant was injured at work on November 21, 2008 and diagnosed with cervical spondylosis. He also found that appellant underwent ACDF in 2009 and bilateral carpal tunnel releases in 2013. Dr. Aquino noted that appellant indicated that his pain had worsened. He examined appellant and noted that EMG studies were abnormal and compatible with bilateral C5 and or C6 radiculopathy. Dr. Aquino found no evidence of brachial plexopathy or peripheral neuropathy. However, he did not offer an opinion on causal relationship, and thus his report is of limited probative value.[19]

Appellant did not provide any accurate reports from a physician with medical reasoning, or rationale, explaining why his work activities as a packer caused or aggravated a particular diagnosed condition.[20] The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.[21] Neither the fact that the condition became apparent during a period of employment nor the belief that the condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[22]

As there is no reasoned medical evidence explaining how appellant's employment duties caused or aggravated a medical condition involving his hands, appellant has not met his burden of proof in establishing that he sustained a medical condition causally related to the accepted factors of his federal employment.

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[17] *Douglas M. McQuaid*, 52 ECAB 382 (2001).

[18] *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

[19] *See id.*

[20] *See George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

[21] *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

[22] *Id.*

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 of proof to establish an injury causally related to the accepted factors of his federal employment duties.

ORDER

IT IS HEREBY ORDERED THAT the December 7, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 23, 2018
Washington, DC

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

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

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