United States Department of Labor
Employees' Compensation Appeals Board

A.S., Appellant	)	
	)	**Docket No. 18-0376**
and	)	**Issued: July 18, 2018**
	)	
DEPARTMENT OF HOMELAND SECURITY, FEDERAL AIR MARSHAL SERVICE, West Orange, NJ, 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:
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On December 14, 2017 appellant, through counsel, filed a timely appeal from a November 9, 2017 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.

[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.*

ISSUE

The issue is whether appellant has met his burden of proof to establish bilateral carpal tunnel syndrome causally related to the accepted factors of his federal employment.

On appeal counsel contends that appellant's claim should have been allowed as his physician explained causation in stating that appellant's carpal tunnel syndrome resulted from repeated forceful wrist flexion.

FACTUAL HISTORY

This case has previously been before the Board.[3] The facts of the case as presented in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On August 29, 2014 appellant, then a 47-year-old supervisory federal air marshal, filed an occupational disease claim (Form CA-2) alleging that he developed bilateral carpal tunnel syndrome. He alleged that he first became aware of the condition and its relationship to his federal employment on August 15, 2014. Appellant attributed his claimed condition to repetitive movements of his hand and wrist during daily use of his work computer. He also attributed his claimed condition to participating in mandatory agency training since 2002. On the reverse side of the claim form, appellant's supervisor noted that appellant's work assignment had changed as he had been performing "administrative duties" since August 15, 2014.

By decision dated December 5, 2014, OWCP accepted his alleged employment factors, but denied appellant's occupational disease claim. It found that the medical evidence of record was insufficient to establish that he sustained bilateral carpal tunnel syndrome causally related to the accepted employment factors.

In a December 15, 2014 letter, appellant, through counsel, requested a telephone hearing before an OWCP hearing representative. A hearing was held on June 26, 2015. By decision dated September 9, 2015, an OWCP hearing representative affirmed the December 5, 2014 decision. He found that the medical evidence submitted by appellant did not contain a rationalized medical opinion explaining how his diagnosed bilateral carpal tunnel syndrome was causally related to accepted factors of his federal employment.

On November 2, 2015 OWCP received counsel's request for reconsideration of the September 9, 2015 decision. By decision dated March 29, 2016, it denied modification of the September 9, 2015 decision because none of the medical evidence submitted by appellant contained a sufficiently rationalized medical opinion on causal relationship between his bilateral wrist condition and the established employment factors.

Appellant, through counsel, appealed to the Board on April 19, 2016. By decision dated August 17, 2016, the Board affirmed OWCP's March 29, 2016 decision. The Board found that

[3] Docket No. 16-1028 (issued August 17, 2016).

appellant failed to submit a medical report containing a rationalized opinion which related his diagnosed bilateral carpal tunnel syndrome to the established federal employment factors.

On August 17, 2017 appellant, through counsel, requested reconsideration of the merits of his claim. He submitted an August 15, 2017 letter from Dr. Neil Allen, a Board-certified internist and neurologist. Dr. Allen did not examine appellant, but reviewed his medical records and the Board's August 17, 2016 decision. He noted that, according to the Board's decision, appellant was employed as a supervisory air marshal when he began to experience gradually worsening numbness and tingling in his hands. Dr. Allen related that records indicated that appellant felt his symptoms were related to repetitive use of his forearm and administrative duties, specifically typing, required by his position. He further related that, while clinical studies confirmed the diagnosis of carpal tunnel syndrome, appellant's treating physicians had failed to establish whether his condition was related to his employment. Dr. Allen reported that appellant's past medical history was unremarkable for a bilateral hand injury sustained prior to August 15, 2014. He indicated that an August 15, 2014 electromyogram/nerve conduction study of the bilateral upper extremity revealed evidence of a moderate bilateral motor and sensory demyelinating and axonal median neuropathy at the wrist, which was consistent with a clinical diagnosis of carpal tunnel syndrome. Dr. Allen provided an impression that appellant's bilateral wrist condition was work related and that his case should be accepted under the diagnoses bilateral carpal tunnel syndrome. He related that appellant denied symptoms related to carpal tunnel syndrome prior to his employment as a supervisory air marshal. In support of his causation opinion, Dr. Allen cited the Merck Manual, which noted that the compression of the carpal tunnel produces paresthesia in the radial-palmar aspect of the hand plus pain in the wrist, in the palm, or sometimes proximal to the compression site in the forearm, and sensory deficit in the palmar aspect of the first three digits and/or weakness of thumb opposition. He maintained that appellant's symptoms were consistent with the description in the Merck Manual. Dr. Allen further noted that the Merck Manual described possible etiologies related to carpal tunnel syndrome and occupations that require repeated forceful wrist flexion and violent muscular activity or forcible overextension of a joint. He indicated that the Merck Manual under electromyography states that slowed conduction may also confirm a suspected entrapment neuropathy. Dr. Allen maintained that appellant's August 15, 2014 electrodiagnostic findings, which revealed slowed conduction of the median nerve, were again consistent with the Merck Manual. He opined that for those reasons appellant's work duties led to the development of carpal tunnel syndrome in the bilateral wrists due to repetitive activity.

By decision dated November 9, 2017, OWCP denied modification of the decision dated March 29, 2016 as it found that the August 15, 2017 letter from Dr. Allen was insufficiently rationalized.

LEGAL PRECEDENT

An employee seeking benefits under FECA[4] 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; that an injury was sustained while in the performance of duty as alleged and that any

[4] *Supra* note 2.

disability or specific condition for which compensation is claimed is causally related to the employment injury.[5] 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.[6]

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.

The medical evidence required to establish causal relationship is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable certainty, and must be supported by medial rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.[7]

ANALYSIS

OWCP accepted as factual that appellant performed daily repetitive keyboard entry and other administrative work duties while working as a supervisory federal air marshal. The Board finds, however, that the medical evidence of record is insufficient to establish that he sustained a bilateral wrist condition caused or aggravated by work factors.

Appellant submitted an August 15, 2017 report from Dr. Allen, who had not examined him, but had reviewed his medical records. Dr. Allen generally noted appellant's job duties, his medical history, and reported symptoms. He advised that his reported symptoms and work factors were consistent with the Merck Manual's description of possible etiologies for carpal tunnel syndrome. Dr. Allen opined that appellant's bilateral wrist injury was work related and his case should be accepted for bilateral carpal tunnel syndrome. Although he supported causal relationship, he did not provide sufficient medical rationale explaining the basis of his conclusory opinion regarding the causal relationship between appellant's diagnosed condition and his work duties.[8] He did not explain how or why performing appellant's daily repetitive work duties would have caused or aggravated the diagnosed condition. Instead, Dr. Allen cited medical literature in support of his

[5] *L.F.*, Docket No. 17-0689 (issued May 9, 2018); *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[6] *L.F., id*.; *S.P.*, 59 ECAB 184 (2007); *Victor J. Woodhams*, 41 ECAB 345 (1989); *Joe D. Cameron*, 41 ECAB 153 (1989).

[7] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams, id.*

[8] *M.G.*, Docket No. 16-1791 (issued February 22, 2017); *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value); *Jimmie H. Duckett*, 52 ECAB 332 (2001).

conclusion. The Board has held that excerpts from publications have little probative value in resolving medical questions unless a physician shows the applicability of the general medical principles discussed in the articles to the specific factual situation in a case.[9] Here, Dr. Allen provided little medical rationale to explain how the cited medical journal applied to appellant's particular situation. He also noted that appellant had denied carpal tunnel symptoms prior to his employment with the employing establishment. The Board, however, has held that an opinion that a condition is causally related to an employment injury because the employee was asymptomatic before the injury is insufficient, without supporting rationale, to support causal relationship.[10] Therefore, the report of Dr. Allen is insufficient to meet appellant's burden of proof.[11]

The Board finds that appellant has failed to submit rationalized, probative medical evidence sufficient to establish bilateral carpal tunnel syndrome causally related to the accepted employment factors. Appellant, therefore, has not met his burden of proof.[12]

On appeal counsel contends that appellant's claim should have been allowed as his physician explained causation in concluding that appellant's carpal tunnel syndrome resulted from repeated forceful wrist flexion. However, for the reasons stated above, Dr. Allen failed to provide medical rationale explaining how the accepted employment factors caused or aggravated appellant's diagnosed bilateral wrist condition.[13] Thus, his opinion is insufficient to establish that appellant sustained a bilateral wrist condition causally related to the accepted employment factors.

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 failed to meet his burden of proof to establish bilateral carpal tunnel syndrome causally related to the accepted factors of his federal employment.

[9] *See S.P.*, Docket No. 17-1708 (issued February 23, 2018); *Roger G. Payne*, 55 ECAB 535 (2004).

[10] *R.G.*, Docket No. 16-0271 (issued May 18, 2017); *Kimper Lee*, 45 ECAB 565 (1994).

[11] *See L.D.*, Docket No. 09-1503 (issued April 15, 2010) (the fact that a condition manifests itself during a period of employment does not raise an inference that there is causal relationship between the two).

[12] *See J.H.*, Docket No. 17-0248 (issued May 10, 2017).

[13] *Supra* note 7.

ORDER

IT IS HEREBY ORDERED THAT the November 9, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 18, 2018
Washington, DC

Patricia H. Fitzgerald, Deputy 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