

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

M.K., Appellant)	
)	
and)	Docket No. 17-1956
)	Issued: March 6, 2018
)	
U.S. POSTAL SERVICE, HARTFORD)	
PROCESSING & DISTRIBUTION CENTER,)	
Hartford, CT, Employer)	
)	

Appearances:
Appellant, pro se
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
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On September 20, 2017 appellant filed a timely appeal from an August 21, 2017 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 this case.²

ISSUE

The issue is whether appellant met his burden of proof to establish a left elbow injury causally related to the accepted September 28, 2016 employment incident.

¹ 5 U.S.C. § 8101 *et seq.*

² Appellant submitted new evidence on appeal. However, the Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its final decision. Therefore, the Board is precluded from reviewing this new evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

On September 28, 2016 appellant, then a 59-year-old mail processing equipment technician, filed a traumatic injury claim (Form CA-1) alleging that on that day he injured his elbow and from his arm to his hand while putting on parts on machine belts, rollers, gates, and bearings at work. He did not stop work at that time.

OWCP received an unsigned work status note dated September 30, 2016 from Premier Urgent Care diagnosed left-sided lateral epicondylitis. The note also indicated that appellant was fit for duty without restrictions that day.

OWCP also received a September 30, 2016 work status duty report (Form CA-17) from Michelle L. Caudle, a physician assistant, who noted a history that on September 29, 2016 appellant injured his elbow and arm to hand while putting on parts on machine belts, rollers, gates, and bearings. Ms. Caudle described clinical findings, diagnosed lateral epicondylitis due to injury, and advised that appellant could perform his regular work duties. Documents from Physical Therapy & Sports Medicine Centers indicated that appellant had appointments on various dates during the period October 6 through November 10, 2016 for the treatment of his elbow.

In a work status note dated October 14, 2016 and narrative reports dated October 14 and 21 and November 10, 2016, Dr. Cliff W. Wagner, an attending physician Board-certified in emergency medicine, indicated that appellant had been seen for a follow-up visit for left elbow pain. He reported appellant's history and findings on examination. Dr. Wagner diagnosed lateral epicondylitis, unspecified elbow stable/improved. He advised that appellant was fit for duty without restrictions.

In reports and work status notes dated September 30 and October 21, 2016, Ms. Caudle again noted appellant's history and findings. She diagnosed lateral epicondylitis and indicated that appellant could only work within restrictions.

A physical therapy recertification note dated November 10, 2016, signed by a physical therapist and cosigned by Ms. Caudle, listed diagnoses of left elbow lateral epicondylitis, pain in the left elbow and left arm, and weakness.

OWCP, by letter dated November 17, 2016, advised appellant of the deficiencies of his claim. It attached a development questionnaire for his completion and afforded him 30 days to submit additional medical and factual evidence.

OWCP subsequently received an additional document from Physical Therapy & Sports Medicine Centers which noted appellant's upcoming appointments.

On November 25, 2016 appellant responded to OWCP's November 17, 2016 development questionnaire. He essentially reiterated the factual history of injury he provided on the September 28, 2016 CA-1 form. Appellant related that he had no similar disability or symptoms prior to his claimed injury.

OWCP received a November 28, 2016 report signed by Dr. Wagner. Dr. Wagner noted that appellant was seen in urgent care on various dates from September 30 through

November 10, 2016 due to pain in his left elbow which developed while he was at work on September 28, 2016. He related that this was brought on and aggravated by his job at the employing establishment where he was required to perform repetitive motions with his left elbow throughout the day. Dr. Wagner provided examination findings and restated his prior diagnosis of lateral epicondylitis. He reported that appellant's physical therapy treatment was very helpful and was alleviating his pain and symptoms. Based on appellant's description of his work-related duties and symptoms, and examination findings, Dr. Wagner opined that his lateral epicondylitis was caused or aggravated by his job-related responsibilities.

OWCP also received additional documents from Physical Therapy & Sports Medicine Centers which noted appellant's upcoming appointments.

Physical therapy addendum reports dated October 4 and November 10, 2016, cosigned by Dr. Wagner, noted a history that appellant injured his left elbow while lifting/gripping and pulling while working on a machine at the employing establishment. Dr. Wagner reiterated his diagnosis of left elbow lateral epicondylitis. He also diagnosed pain in the left elbow and arm, and weakness. Dr. Wagner provided a history of appellant's medical treatment and discussed his findings. In the October 4, 2016 addendum report, he determined that appellant was currently unable to work at full capacity due to his inability to tolerate gripping, lifting, pulling, or pushing secondary to impaired "ms" performance, joint mobility, posture, and pain associated with symptoms consistent with lateral epicondylalgia. In the November 10, 2016 addendum report, Dr. Wagner provided an assessment that appellant's lateral elbow pain had improved with active and passive range of motion and grip strength, but that he continued to experience elbow pain when gripping or lifting.

In a March 1, 2017 decision, OWCP denied appellant's traumatic injury claim as the medical evidence of record did not contain a rationalized medical opinion sufficient to establish a causal relationship between his diagnosed condition and the accepted September 28, 2016 employment-related incident.

On March 24, 2017 appellant requested reconsideration. He submitted an undated narrative statement in which he described the September 28, 2016 work incident and indicated that his injury was immediately reported to his supervisor. Appellant also submitted a description of his mail processing equipment technician position, photographs of the equipment on which he worked and parts he changed on the equipment, and assignment work sheets. He described his medical treatment and claimed that he continued to perform his regular work duties despite having pain and wearing an elbow support.

By decision dated August 21, 2017, OWCP conducted a merit review as the reconsideration decision was delayed beyond 90 days.³ It denied modification of its March 1,

³ OWCP procedure provides: "When a reconsideration decision is delayed beyond 90 days, and the delay jeopardizes the claimant's right to review of the merits of the case by the Board, OWCP should conduct a merit review. That is, the basis of the original decision and any new evidence should be considered and, if there is no basis to change the original decision, an order denying modification (rather than denying the application for review) should be prepared." Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.7(a) (October 2011); *M.D.*, Docket No. 13-1344 (issued November 7, 2013).

2017 decision as the factual evidence submitted was immaterial to the underlying medical issue in the case.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence⁵ including that he or she sustained an injury in the performance of duty and that any specific condition or disability for work for which compensation is claimed is causally related to that employment injury.⁶

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.⁷ There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time and place, and in the manner alleged.⁸

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.⁹ The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing causal relationship between the claimed condition and the identified factors.¹⁰ The belief of the claimant that a condition was caused or aggravated by the employment is insufficient to establish a causal relationship.¹¹

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish that a traumatic injury was caused by the September 28, 2016 employment incident. Appellant failed to submit sufficient medical evidence to establish that he had a left elbow injury causally related to the accepted employment incident.

Dr. Wagner's November 28, 2016 report noted a history of the September 28, 2016 work injury and appellant's description of his work duties which required him to perform repetitive motions with his left elbow. He discussed examination findings and diagnosed left elbow lateral

⁴ *Supra* note 1.

⁵ *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

⁶ *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁷ *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

⁸ *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

⁹ *John J. Carlone*, 41 ECAB 354 (1989); *see supra* note 1 at § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(ee), 10.5(q) (traumatic injury and occupational disease defined, respectively).

¹⁰ *Lourdes Harris*, 45 ECAB 545 (1994); *see Walter D. Morehead*, 31 ECAB 188 (1979).

¹¹ *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

epicondylitis. Dr. Wagner opined that, based on appellant's description of his job duties and symptoms, and results on examination, the diagnosed condition was caused or aggravated by his job-related responsibilities. However, he did not provide a probative, rationalized opinion regarding whether the September 28, 2016 employment incident caused a personal injury.¹² Dr. Wagner did not sufficiently explain why, medically, appellant would have sustained a left elbow injury because he put parts on machine belts, rollers, gates, and bearings at work on September 28, 2016. While his remaining reports dated October 4 and November 10, 2016 noted a history of the September 28, 2016 employment incident and noted left elbow diagnoses, he did not opine whether appellant's conditions and resultant disability were caused by the accepted employment incident.¹³ Thus, the Board finds that Dr. Wagner's reports are insufficient to meet appellant's burden of proof.

Appellant also provided physical therapy records and notes from a physician assistant. This evidence has no probative medical value. The Board has held that neither a physician assistant nor a physical therapist is considered a physician as defined under FECA.¹⁴ As such, this evidence is also insufficient to meet appellant's burden of proof.

The Board finds that appellant has failed to submit rationalized, probative medical evidence sufficient to establish that he sustained a left elbow injury causally related to the September 28, 2016 employment incident. Appellant therefore did not meet 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 has not met his burden of proof to establish a left elbow injury causally related to the September 28, 2016 employment incident.

¹² 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).

¹³ *A.D.*, 58 ECAB 159 (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).

¹⁴ The term physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. 5 U.S.C. § 8102(2); *Sean O'Connell*, 56 ECAB 195 (2004) (physician assistants); *Jennifer L. Sharp*, 48 ECAB 209 (1996) (physical therapists). See also *Gloria J. McPherson*, 51 ECAB 441 (2000); *Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (a medical issue such as causal relationship can only be resolved through the submission of probative medical evidence from a physician).

ORDER

IT IS HEREBY ORDERED THAT the August 21, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 6, 2018
Washington, DC

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

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

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