

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

R.P., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Cleveland, OH, Employer**

)
)
)
)
)
)
)
)
)
)
)
)

**Docket No. 17-1914
Issued: November 27, 2018**

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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On September 5, 2017 appellant filed a timely appeal from a June 29, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.

ISSUE

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

¹ Appellant filed a timely request for oral argument. By order dated October 2, 2018, the Board, after exercising its discretion, denied his request as his arguments could be adequately addressed in a decision based on a review of the case record. *Order Denying Request for Oral Argument*, Docket No. 17-1914 (issued October 2, 2018).

² 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On June 7, 2016 appellant, then a 64-year-old mail processing clerk, filed an occupational disease claim (Form CA-2) alleging that he developed a ganglion cyst on his right hand as a result of repetitively lifting and scanning parcels required in his job. He first became aware of his condition and realized that it was related to his federal employment on May 19, 2016. Appellant continued to be exposed to the conditions alleged to have caused his illness.

In a May 19, 2016 report, Dr. Cary C. Scott, Board-certified in emergency medicine, treated appellant for a ganglion cyst of the right wrist. He prescribed Ibuprofen and provided discharge instructions for a ganglion cyst.

In a June 30, 2016 claim development letter, OWCP requested that appellant submit additional factual and medical information including a comprehensive medical report from his treating physician regarding how specific work factors contributed to his claimed right wrist condition. It provided a questionnaire for his completion to substantiate the factual elements of his claim and afforded him 30 days to submit the requested information.

In an emergency room report dated May 19, 2016, Dr. Scott treated appellant for a lump on the dorsum of the right wrist. Appellant reported that his job involved repetitive motions and the lump was gradually growing. Findings on examination revealed full range of motion of the extremity, intact sensation and motor function, a one centimeter diameter round rubbery lesion on the back of the right hand, nontender to touch, not erythematous, and normal grip strength. Dr. Scott opined that the clinical examination was suggestive of a ganglion cyst.

A July 19, 2016 report by Dr. Bruce Hensley, an osteopath, noted appellant's treatment for a nonpainful lump on his right hand. Appellant reported that on May 19, 2016 he noticed a right wrist lesion on top of his wrist which was not improving. He indicated that his job required that he use a hand held scanner and lift trays of mail. Findings on examination of the right wrist revealed no abrasion, swelling, bruising, erythema, open wound or pain on range of motion, intact strength, and there was a two-by-two centimeter raised, rubbery, nontender, fixed lesion at the dorsal surface of the wrist. Dr. Hensley diagnosed bursal cyst of the right wrist. He opined that the ganglion cyst was not a work-related injury. Appellant was returned to regular-duty work on July 19, 2016 and referred to his primary care provider for further care. A July 19, 2016 duty status report (Form CA-17) from Dr. Hensley noted clinical findings of bursal cyst, right wrist. Appellant was returned to full-duty work. In a report dated July 19, 2016, Dr. Hensley noted that appellant had a lump on his right hand which occurred on May 19, 2016. He diagnosed ganglion cyst and noted that appellant's injury was not causally related to an industrial incident.

In a statement dated July 25, 2016, appellant indicated that he used his right hand to constantly lift mail and to use a scanner for eight hours a day while at work. He reported working in this position for three years and he believed that the repetitive motion caused the ganglion cyst on the back of his right wrist.

By decision dated September 19, 2016, OWCP denied appellant's claim finding that he had failed to establish that his claimed medical condition was causally related to the accepted factors of his employment.

In an appeal request form dated September 27, 2016, postmarked October 3, 2016, appellant requested a telephonic oral hearing before an OWCP hearing representative which was held on May 17, 2017. He submitted a July 19, 2016 report from a physician's assistant.

By decision dated June 29, 2017, an OWCP hearing representative affirmed the decision dated September 19, 2016.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim. When an employee claims an injury in the performance of duty, the employee must submit sufficient evidence to establish that he or she experienced a specific event, incident, or exposure occurring at the time, place, and in the manner alleged. The employee must also establish that such event, incident, or exposure caused an injury.³

Whether an employee actually sustained an injury in the performance of duty begins with an analysis of whether fact of injury has been established.⁴ To establish fact of injury in an occupational disease claim, an employee must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.⁵

The medical evidence required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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.⁶

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish an occupational disease causally related to the accepted factors of his federal employment. In an emergency room report dated May 19, 2016, Dr. Scott treated appellant for a lump on the dorsum of his right wrist. Appellant reported that his job involved repetitive motions and the lump gradually grew. Findings

³ See *Walter D. Morehead*, 31 ECAB 188, 194 (1979) (occupational disease or illness); *Max Haber*, 19 ECAB 243, 247 (1967) (traumatic injury). See generally *John J. Carlone*, 41 ECAB 354 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *S.P.*, 59 ECAB 184, 188 (2007).

⁵ *R.R.*, Docket No. 08-2010 (issued April 3, 2009); *Roy L. Humphrey*, 57 ECAB 238, 241 (2005).

⁶ *Solomon Polen*, 51 ECAB 341 (2000).

on examination revealed a one centimeter diameter round rubbery lesion on the back of the right hand, nontender to touch, and not erythematous. Dr. Scott opined that the clinical examination was suggestive of a ganglion cyst. He repeated the history of injury as reported by appellant, however, he did not provide his own opinion regarding whether his condition was work related. To the extent that Dr. Scott is providing his own opinion, he failed to provide a rationalized opinion regarding the causal relationship between appellant's ganglion cyst and the factors of employment believed to have caused or contributed to such condition. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.⁷ Therefore, this report is insufficient to meet appellant's burden of proof.

On July 19, 2016 Dr. Hensley treated appellant for a non painful lump to the right hand. Appellant reported that on May 19, 2016 he noticed a right wrist lesion on top of his wrist which was not improving. He indicated that at work he used a hand held scanner and lifted trays of mail. Findings on examination of the right wrist revealed a two-by-two centimeter raised, rubbery, nontender, fixed lesion at the dorsal surface of the wrist. Dr. Hensley diagnosed bursal cyst of the right wrist. He opined that the ganglion cyst was not a work-related injury. Similarly, in a report dated July 19, 2016, Dr. Hensley noted that appellant had a lump on his right hand which occurred on May 19, 2016. He diagnosed ganglion cyst and noted that appellant's injury was not causally related to an industrial incident. These reports do not support causal relationship, rather, Dr. Hensley opines that the diagnosed ganglion cyst was not work related. Therefore, the reports are insufficient for appellant to establish his claim.

A July 19, 2016 duty status report (Form CA-17) from Dr. Hensley noted clinical findings of bursal cyst, right wrist and returned appellant to work full duty. However, he did not provide a history of injury or specifically address whether the factors of employment caused or aggravated a diagnosed medical condition. Medical opinions based on an incomplete history or which are speculative or equivocal in character have little probative value.⁸

Appellant also submitted a July 19, 2016 report from a physician assistant. However, reports of physician assistants have no probative value as medical evidence.⁹ Therefore, this report was not considered medical evidence as a physician assistant is not considered a physician under FECA¹⁰ and is not competent to render a medical opinion under FECA.

⁷ See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

⁸ *Frank Luis Rembisz*, 52 ECAB 147 (2000).

⁹ See *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

¹⁰ See *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA); 5 U.S.C. § 8101(2) (this subsection defines a "physician" as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law).

As the medical evidence does not contain a physician's reasoned opinion regarding the causal relationship between appellant's claimed conditions and the accepted factors of his federal employment, he has not met his burden of proof to establish his occupational disease claim.

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 occupational disease causally related to the accepted factors of his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the June 29, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 27, 2018
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