

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

FACTUAL HISTORY

On July 10, 2017 appellant, then a 54-year-old ordnance equipment mechanic, filed an occupational disease claim (Form CA-2) alleging that he sustained bilateral hand/arm conditions caused by factors of his federal employment. He noted that he first became aware of his claimed condition and its relationship to his federal employment on July 19, 2016 when his hands and arms became numb while scraping sealant from missile pods. Appellant did not stop work. On the reverse side of the claim form the employing establishment noted that he first reported his claimed injury to a supervisor on June 26, 2017.

In a June 27, 2017 medical report, Dr. Stephen J. Milback, a Board-certified family practitioner, advised that appellant was seen for bilateral upper extremities numbness which he reported occurred as a result of repetitive work of scraping sealant off missile tubes. Appellant reported a one-year history of sensory disturbance and reduced grip strength in the bilateral upper extremities, with the left upper extremity more affected than the right upper extremity, with progressive symptoms especially with use of hand tools and vibrating power tools. He was noted to have a prior history of bilateral carpal tunnel surgery in 2003 and repair of bicep tendon left arm in 2014/2015. Dr. Milback diagnosed probable carpal tunnel syndrome. He recommended light duty for six weeks. Appellant was referred for diagnostic studies of his bilateral upper extremities.

In a June 27, 2017 return to work slip, Dr. Milback diagnosed “bilateral hand/arm pain numbness.” He also checked a box marked “yes” indicating that the injury was work related.

By development letter dated July 31, 2017, OWCP advised appellant that it required additional factual and medical evidence to determine whether he was eligible for FECA benefits. It requested that he respond to its questionnaire and submit medical evidence which contained a firm diagnosis and a physician’s opinion supported by a medical explanation as to how work activities in his federal employment caused, contributed to, or aggravated his medical condition. Appellant was afforded 30 days to submit the requested evidence.

In response, OWCP received a March 19, 2017 notification of personnel action for a general adjustment in pay, a position description, and appellant’s responses to OWCP’s questionnaire signed on August 23, 2017. It also received an August 23, 2017 e-mail response from appellant’s supervisor indicating that his work required the use of his hands and arms. Appellant’s duties were described as driving a forklift, truck, or van, cleaning, rebuilding, repacking, refurbishment, and scraping, sanding and sealing material with the use of power tools.

In a July 24, 2017 report, Dr. Robert J. Maurer, a Board-certified orthopedic hand surgeon, reported the history of appellant’s symptoms, which stemmed from his federal employment as a mechanic. Examination and July 24, 2017 x-ray findings of appellant’s hands and of the cervical spine were provided. Dr. Maurer provided an assessment of probable recurrent bilateral carpal

tunnel syndrome versus ulnar neuritis. In an August 25, 2017 return to work form, he indicated that appellant could continue to work with medium work restrictions.

In an August 28, 2017 return to work form, Dr. Milback diagnosed bilateral arm numbness and indicated that appellant could work restricted/modified duty. He checked a box marked “yes” indicating that the diagnosed condition was work related.

Dr. Jeffrey Finn, Board-certified in emergency medicine, related that appellant’s August 14, 2017 electromyogram and nerve conduction velocity (EMG/NCV) study was abnormal. He noted that the findings were suggestive of, though not diagnostic for, bilateral mid-to-lower cervical radiculopathies. Dr. Finn also suspected, based on appellant’s description, bilateral ulnar neuritis at the elbow.

By decision dated September 15, 2017, OWCP denied appellant’s claim. It accepted that the claimed employment events occurred as alleged, but found that he failed to establish the medical component of fact of injury.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ 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, and that any 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

In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.⁷ The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

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

⁴ *Supra* note 2.

⁵ C.S., Docket No. 08-1585 (issued March 3, 2009); *Elaine Pendleton*, 40 ECAB 1143 (1989).

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

⁷ *Elaine Pendleton*, *supra* note 5.

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.⁸

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.

OWCP received medical evidence from Dr. Milback. In a June 27, 2017 report, Dr. Milback noted appellant's past medical history involving his hands and arms and his current complaints stemming from his work duties. He diagnosed probable carpal tunnel syndrome. The Board has held that medical opinions that are speculative or equivocal in character are of diminished probative value.⁹ Thus, this is not a firm diagnosis. In a June 27, 2017 return to work slip, Dr. Milback diagnosed "bilateral hand/arm pain numbness" and, in an August 28, 2017 return to work form, he diagnosed bilateral arm numbness. However, pain and numbness are considered symptoms rather than a clear diagnosis of a medical condition. Furthermore, Dr. Milback indicated by checkmark on a form report that appellant's injury was causally related to his federal employment duties. The Board has held that a physician's opinion on causal relationship which consists only of checking a box marked "yes" to a form question, without explanation or rationale, is of diminished probative value and is insufficient to establish a claim.¹⁰ As such, Dr. Milback's reports are insufficient to establish a valid medical diagnosis in connection with the accepted work factors.

In his July 24, 2017 medical report, Dr. Maurer reported that appellant's symptoms stemmed from his job as a mechanic. In his medical and radiology reports, he provided an assessment of probable recurrent bilateral carpal tunnel syndrome versus ulnar neuritis. However, Dr. Maurer did not provide a firm diagnosis of a medical condition and therefore it is speculative and equivocal in nature.¹¹ He did not provide any diagnosis in his August 25, 2017 return to work form. Accordingly, the reports of Dr. Maurer are insufficient to establish the medical component of fact of injury.

On the August 14, 2017 EMG/NCV study, Dr. Finn noted findings suggestive of bilateral mid-to-lower cervical radiculopathies. He also indicated that, based on appellant's description, bilateral ulnar neuritis at the elbow was suspected. While a medical opinion need not be of absolute medical certainty, it cannot be speculative.¹² Moreover, Dr. Finn merely interpreted the

⁸ See generally *John J. Carlone*, 41 ECAB 354 (1989); see also 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. § 10.5(q) and (ee) (1999) (occupational disease or illness and traumatic injury defined). See *Victor J. Woodhams*, *supra* note 6 regarding a claimant's burden of proof in an occupational disease claim. See also *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

⁹ *D.D.*, 57 ECAB 734, 738 (2006); *Kathy A. Kelley*, 55 ECAB 206 (2004).

¹⁰ See *M.W.*, Docket No. 17-1063 (issued November 2, 2017).

¹¹ See *supra* note 8.

¹² See *J.J.*, Docket No. 13-0021 (issued May 8, 2013).

EMG/NCV study. He failed to provide an opinion causally relating a firm diagnosed condition to the accepted employment activities.¹³ Accordingly, the EMG/NCV study is of limited probative value and insufficient to meet appellant's burden of proof.

For these reasons, the Board finds that there is no medical evidence of record establishing that appellant sustained an injury causally related to his accepted employment activities. Accordingly, the medical component of fact of injury is not established.

On appeal counsel alleges that OWCP failed to adjudicate the claim in accordance with the standard of causation. As discussed above, appellant failed to establish the medical component of fact of injury. As such, he has not met his burden of proof to establish an injury causally related to his accepted federal employment duties.

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.

¹³ *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *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).

ORDER

IT IS HEREBY ORDERED THAT the September 15, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 13, 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