

FACTUAL HISTORY

In July 31, 2018 appellant, then a 45-year-old rigger, filed an occupational disease claim (Form CA-2) alleging that he sustained carpal tunnel syndrome due to constant lifting, pushing, and twisting of his hands. He indicated that he first became aware of his condition, and its relationship to factors of his federal employment, on September 24, 2017. On the reverse side of the claim form, the employing establishment noted that appellant first reported his condition to his supervisor on July 10, 2018, and indicated that he had not stopped work.

In a supplemental statement accompanying the Form CA-2, appellant listed his employment activities which included pushing, pulling, climbing, turning wrenches, shackling screws, carrying heavy tool bags, lifting heavy objects, and fine hand manipulation in tying knots.

In a report dated June 18, 2018, Dr. Arthur W. Wardell, a Board-certified orthopedic surgeon, diagnosed carpal tunnel syndrome based on appellant's physical and electrodiagnostic examinations. He related that he reviewed appellant's employment activities, and opined that these activities were "a significant factor in the development of [appellant]'s carpal tunnel syndrome." Dr. Wardell also attached a nerve conduction study report dated October 24, 2017.

In a report dated July 25, 2018, Dr. Wardell noted that appellant was out of work from September 13, 2017 to July 29, 2018, and that he could resume light-duty work on July 30, 2018.

In a development letter dated August 14, 2018, OWCP advised appellant of the deficiencies of his claim, and informed him of the type of factual and medical evidence needed to establish his claim. It requested that he respond to a questionnaire to substantiate the factual elements of his claim and to submit a comprehensive narrative medical report. OWCP afforded appellant 30 days to submit the necessary evidence.

In a separate development letter, OWCP requested that the employing establishment provide comments from a knowledgeable supervisor on the accuracy of all statements provided by appellant relative to his claim. It also requested a description of appellant's employment duties that required repetitive hand and wrist movements, and a copy of his position description and physical requirements of his job. OWCP afforded the employing establishment 30 days to submit the requested evidence.

On August 20, 2018 OWCP received a notification that appellant had retired effective August 6, 2018.

In a memorandum dated August 31, 2018, the employing establishment indicated that it "concur[s] with the accuracy of this claim." However, by letter dated September 10, 2018, it challenged appellant's occupational disease claim. The employing establishment indicated that he was on temporary total disability for a right shoulder injury from April 7 to July 24, 2016, and that he was on temporary restrictions from July 25 to September 6, 2016. At that time, appellant's restrictions included no repetitive motion of his right arm. The employing establishment noted that he was again totally disabled from September 7, 2016 to June 21, 2017, and returned to work with temporary restrictions from June 22 to August 18, 2017. Appellant's restrictions at that time included intermittent grasping/manipulation of his right arm. The employing establishment related

that he was also on temporary total disability from September 13 to October 9, 2017 for a left shoulder injury.³ It contended that appellant never reported any carpal tunnel symptoms.

In a letter dated September 12, 2018, Dr. Wardell diagnosed right median neuropathy of the wrist and right ulnar neuropathy of the elbow based on physical and electrodiagnostic examination and a review of appellant's symptoms. He opined that appellant's employment activities were a significant factor in the development of his conditions.

By decision dated September 17, 2018, OWCP denied appellant's claim finding that the evidence of record was insufficient to establish that the injury or events occurred as alleged. It noted that he had not responded to OWCP's August 14, 2018 development letter. OWCP concluded, therefore, that appellant had not met the requirements to establish an injury as defined by FECA.

LEGAL PRECEDENT

A claimant 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 timely filed within the applicable time limitation of FECA,⁵ that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.⁶ These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁷

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant 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.⁸

An injury does not have to be confirmed by an eyewitness in order to establish the fact that an employee sustained an injury while in the performance of duty. However, the employee's

³ The record reflects that appellant has an accepted claim under OWCP File No. xxxxxx861 for an April 6, 2016 injury, for right shoulder strain and partial right rotator cuff tear. Appellant also has an accepted claim under OWCP File No. xxxxxx692, for an August 21, 2017 left shoulder sprain.

⁴ *Supra* note 1.

⁵ *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁷ *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁸ *M.S.*, Docket No. 18-1554 (issued February 8, 2019); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action.⁹ Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury and failure to obtain medical treatment may cast doubt on an employee's statements in determining whether he or she had established a *prima facie* claim for compensation. However, an employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong and persuasive evidence.¹⁰

ANALYSIS

The Board finds that this case is not in posture for decision.

OWCP denied appellant's claim because he failed to establish that the claimed work events occurred as alleged. The evidence of record supports that his job duties required performing repetitive tasks including pushing, pulling, climbing, turning wrenches, shackling screws, carrying heavy tool bags, lifting heavy objects, and using his hands to tie several knots. On August 13, 2018 OWCP requested that the employing establishment provide comments from a knowledgeable supervisor on the accuracy of statements provided on the Form CA-2. The employing establishment responded twice. First, on August 31, 2018, it responded noting that it concurred with the accuracy of appellant's claim. Then, on September 10, 2018, it controverted appellant's claim stating that appellant was on temporary total disability and on temporary restrictions for numerous months throughout 2016 and 2017, and that it was never notified of appellant's alleged carpal tunnel symptoms. However, the employing establishment admitted that appellant's temporary work restrictions from June 22 to August 18, 2017 allowed intermittent grasping/manipulation with the right arm. As noted previously, an employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong and persuasive evidence.¹¹ The Board finds that the evidence establishes appellant's employment duties as a rigger which included repetitive activities using his wrists and hands.

As appellant has established accepted factors of his federal employment, OWCP must base its decision on an analysis of the medical evidence. The case will therefore be remanded to OWCP to analyze and develop the medical evidence of record.¹² After this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision on the merits of this claim.

CONCLUSION

The Board finds that this case is not in posture for decision.

⁹ *M.S., id.*; see *B.B.*, Docket No. 12-0165 (issued July 26, 2012); *Mary Jo Coppolino*, 43 ECAB 988 (1992).

¹⁰ *Id.*

¹¹ *Id.*

¹² See *D.K.*, Docket No. 17-0115 (issued June 1, 2018).

ORDER

IT IS HEREBY ORDERED THAT the September 17, 2018 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this opinion.

Issued: July 12, 2019
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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