

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

J.C., Appellant

and

**DEPARTMENT OF THE ARMY, MEDICAL
COMMAND, Fort Benning, GA, Employer**

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**Docket No. 19-0310
Issued: June 18, 2019**

Appearances:

*Alan J. Shapiro, for the appellant¹
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
JANICE B. ASKIN, Judge

JURISDICTION

On November 27, 2018 appellant, through counsel, filed a timely appeal from an October 3, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (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 left upper extremity conditions causally related to the accepted May 15, 2014 employment incident.

FACTUAL HISTORY

On January 27, 2017 appellant, then a 55-year-old maintenance mechanic, filed a traumatic injury claim (Form CA-1) alleging that on “May 14, 2015” he sustained a left elbow injury when he was drilling through a concrete wall with a hammer drill which jammed, causing him to overextend his left elbow while in the performance of duty.³ On the reverse side of the claim form, appellant’s supervisor noted that the alleged incident occurred in the performance of duty. Appellant did not stop work.

In a development letter dated February 16, 2017, OWCP informed appellant that the evidence of record was insufficient to establish his claim. It advised him as to the type of medical and factual evidence required to establish his claim and afforded him 30 days to respond.

Appellant submitted medical reports from Dr. Phillip Hajek and Dr. Benjamin Thomas, Board-certified orthopedic surgeons, from Musculoskeletal Associates (MSA). The quality of these reports was extremely poor and much of the content was illegible, including the dates of these reports. From what could be deciphered, appellant sought treatment beginning in August 2014 due to complaints of left elbow pain from one month prior after he lifted an object and felt a snap at his elbow. Dr. Hajek diagnosed left upper extremity pain, left medial epicondylitis, left median nerve neuritis, left carpal tunnel syndrome, left cubital tunnel syndrome and hyperextension. A January 19, 2016 operative report was provided from Dr. Thomas who performed left carpal tunnel and cubital tunnel release. Postoperative reports dated through April 6, 2016 reflect treatment due to complaints of continued pain and numbness in the left upper extremity. In a February 7, 2016 report, Dr. Thomas noted that appellant denied a specific injury, but that one day at work he was operating a drill and felt that he overextended his elbow.

By letter dated March 9, 2017, the employing establishment controverted the claim, contending that appellant failed to submit the required factual and medical evidence.

By decision dated March 24, 2017, OWCP denied appellant’s claim, finding that the evidence of record was insufficient to establish a firm medical diagnosis which could be reasonably attributed to the accepted May 14, 2015 employment incident.

On April 11, 2017 appellant requested an oral hearing before an OWCP hearing representative.

A hearing was held on October 12, 2017 during which appellant testified that his left elbow injury occurred around May 15, 2014 and not on May 14, 2015 as reported, explaining that he mistakenly wrote the wrong date on his Form CA-1. He testified that he was sure the injury

³ While appellant initially alleged that the employment incident occurred on May 14, 2015, by decision dated December 13, 2017 an OWCP hearing representative found that the incident occurred on May 15, 2014.

occurred on this date when he was working at a clinic because a backflow preventer was leaking water into the basement. Appellant reported standing on a ladder two steps high while holding a left-hand drill handle and a coworker was holding the right-hand handle. They were hammering/drilling through concrete when the drill bit jammed/stopped, but the motor did not. Appellant explained that he could not remove his finger from the trigger before it reversed on his left elbow and pushed his arm backwards in the sideways position. He reported that his left elbow overextended and snapped. However, appellant continued to work regular duty despite continued pain. He reported that he first sought treatment for his left elbow condition on August 1, 2014. The hearing representative noted that one of the medical reports in the file made reference to him being injured as a result of a lifting incident, however, appellant reported that this was incorrect. He noted that he had surgery in January 2015, February 2017, and again in October 2017. The first surgery was for his cubital and carpal tunnel, the second surgery was to repair his triceps muscle, and the third surgery was done for scar tissue which had formed in the left hand. Appellant reported notifying his immediate supervisor on the date of the incident who informed him that he would file the necessary paperwork. He explained the delay in filing his claim, noting that his supervisor never filed the paperwork and he did not follow-up with him. Appellant noted that ultimately, a magnetic resonance imaging (MRI) scan was ordered which revealed a left ruptured triceps tendon. He confirmed that there were no other injuries sustained between the time of the May 15, 2014 employment incident and the date it was reported on his CA-1 Form. Appellant was advised of the medical evidence needed in support of his claim and the record was held open for 30 days.

By decision dated December 13, 2017, OWCP's hearing representative affirmed the March 24, 2017 decision, as modified. She found that appellant had established firm medical diagnoses of left medial epicondylitis, left carpal tunnel syndrome, and left cubital tunnel syndrome. The hearing representative further modified the prior decision to reflect the date of injury as May 15, 2014, noting the incident was accepted as having occurred as alleged while in the performance of duty. She denied the claim for failing to establish causal relationship, finding that the evidence of record was insufficient to establish that the diagnosed left elbow conditions were causally related to the accepted May 15, 2014 employment incident.

On July 3, 2018 appellant, through counsel, requested reconsideration.⁴ Counsel noted submission of a medical report from Dr. Waldo E. Floyd, III, a Board-certified orthopedic surgeon, in support of appellant's claim.

In an April 3, 2018 report, Dr. Floyd related that appellant was referred to him for an evaluation in early 2017 following a left upper extremity MRI scan that demonstrated a rupture of the left distal triceps tendon. He noted that appellant had previously been treated nonsurgically. On February 1, 2017 appellant was found to have a central rupture of the triceps tendon. Dr. Floyd noted a history of injury that appellant was holding a drill that torqued causing his elbow to extend forcibly and pop. He noted that this history was consistent with appellant's MRI scan and operative findings of a ruptured triceps tendon. Dr. Floyd noted that an incident such as this was

⁴ The record reflects that on March 26, 2018 appellant, through counsel, requested an appeal before the Board. By letter dated April 26, 2018, counsel requested that the Board withdraw the appeal filed on March 26, 2018. On June 29, 2018 the Board issued an order granting appellant's request for the dismissal of his appeal. *Order Dismissing Appeal*, Docket No. 18-0916 (issued June 29, 2018).

associated with rupture of the distal triceps and he had no other history of an injury that may have ruptured his distal triceps. He concluded that the timeline was consistent with the 2015 injury with a drill torque, hyperextending his left elbow being the event that ruptured the left distal triceps.

By decision dated October 3, 2018, OWCP denied modification of the December 13, 2017 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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 period 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 determine if an employee has sustained a traumatic 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 that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.⁸ The second component is whether the employment incident caused a personal injury.⁹

Rationalized medical opinion evidence is required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, 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 incident.¹⁰

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish left upper extremity conditions causally related to the accepted May 15, 2014 employment incident.

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 *F.P.*, Docket No. 19-0159 (issued May 7, 2019); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁸ *C.B.*, Docket No. 18-0071 (issued May, 13, 2019); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁹ *M.H.*, Docket No. 18-1737 (issued March 13, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

¹⁰ *S.S.*, Docket No. 18-1488 (issued March 11, 2019).

In support of his claim, appellant submitted medical reports dated August 1, 2014 through April 6, 2016 from Drs. Hajek and Thomas. The Board finds that the reports of Dr. Hajek and Thomas are not well rationalized. While the physicians provided firm diagnoses of left medial epicondylitis, left median nerve neuritis, left carpal tunnel syndrome, and left cubital tunnel syndrome, they failed to provide probative rationalized opinion regarding the cause of appellant's conditions. These reports failed to provide a detailed and consistent history of injury pertaining to the May 15, 2014 employment incident. Dr. Hajek's August 1, 2014 report noted a lifting injury when appellant felt his elbow snap while Dr. Thomas' February 1, 2016 report noted complaints of left elbow pain for approximately one year, stating that one day at work he was operating a drill and felt he overextended his left elbow. Without a proper understanding of the employment incident, an opinion on causal relationship is of limited probative value as the physician is unable to describe how the incident caused the diagnosed conditions.¹¹ The Board has found that a physician must provide a narrative description of the identified employment incident and a reasoned opinion on whether the employment incident described caused or contributed to appellant's diagnosed medical conditions.¹² Therefore, these reports are insufficient to establish appellant's claim.¹³

Dr. Floyd's April 3, 2018 report is also insufficient to establish appellant's traumatic injury claim. He noted a history of injury when appellant was holding a drill that torqued, causing him to forcibly extend his left elbow which popped. Dr. Floyd opined that the timeline was consistent with the 2015 injury when the drill torque hyperextended his left elbow, the event that caused his ruptured left distal triceps tendon. The Board notes that it does not appear that Dr. Floyd has an accurate history of injury as appellant alleged his left elbow condition occurred on May 15, 2014. Furthermore, his generalized statements do not establish causal relationship because they merely repeat appellant's allegations and are unsupported by adequate medical rationale explaining how this physical activity actually caused the diagnosed condition.¹⁴ As Dr. Floyd's report lacks the specificity and detail needed to establish a May 15, 2014 work-related traumatic injury, it is of limited probative value.¹⁵

The Board finds that the record lacks rationalized medical evidence establishing causal relationship between the accepted May 15, 2014 employment incident and appellant's diagnosed left upper extremity conditions.¹⁶ Thus, appellant has not met his burden of proof.

¹¹ See *L.M.*, Docket No. 14-0973 (issued August 25, 2014); *R.G.*, Docket No. 14-0113 (issued April 25, 2014); *K.M.*, Docket No. 13-1459 (issued December 5, 2013); *A.J.*, Docket No. 12-0548 (issued November 16, 2012).

¹² See *V.J.*, Docket No. 17-0358 (issued July 24, 2018); *John W. Montoya*, 54 ECAB 306 (2003).

¹³ *K.S.*, Docket No. 18-1781 (issued April 8, 2019).

¹⁴ *T.W.*, Docket No. 18-1436 (issued April 10, 2019).

¹⁵ *P.O.*, Docket No. 14-1675 (issued December 3, 2015); *S.R.*, Docket No. 12-1098 (issued September 19, 2012).

¹⁶ *K.L.*, Docket No. 18-1029 (issued January 9, 2019).

Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's 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 left upper extremity conditions causally related to the accepted May 15, 2014 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the October 3, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 18, 2019
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board