

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

D.D., Appellant)	
)	
and)	Docket No. 19-0393
)	Issued: June 24, 2019
DEPARTMENT OF JUSTICE, U.S. MARSHALS)	
SERVICE, Houston, TX, Employer)	
)	

Appearances:
Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On December 13, 2018 appellant, through counsel, filed a timely appeal from an August 28, 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 met his burden of proof to establish that his diagnosed upper extremity conditions are causally related to the accepted factors of his federal employment.

FACTUAL HISTORY

On December 18, 2017 appellant, then a 52-year-old property management specialist, filed an occupational disease claim (Form CA-2), alleging that he developed bilateral hand pain and numbness due to daily use of a computer and keyboard while in the performance of duty. He noted that he became aware of his condition and realized its relation to his federal employment on July 13, 2015. Appellant did not stop work.

By development letter dated January 14, 2018, OWCP requested that appellant submit additional evidence in support of his claim. It advised him of the type of factual and medical evidence needed and provided a questionnaire for his completion. By separate development letter of even date, OWCP also requested additional information from the employing establishment. It afforded both appellant and the employing establishment 30 days for submission of the requested evidence.

In a January 16, 2018 report, Dr. Mark D. Khorsandi, a hand surgeon, noted appellant's complaints of bilateral hand numbness and tingling starting in 2015 and gradually worsening. Appellant was diagnosed with carpal tunnel syndrome and underwent steroid injections into the carpal tunnel in 2016 and 2017, which provided temporary relief. He reported working in a job since 2014 which involved typing and driving. Appellant complained of weakness of grip strength and pain radiating into the forearm. Dr. Khorsandi noted findings on examination of positive Phalen's test bilaterally, positive Tinel's sign bilaterally, and mild tenderness on the carpometacarpal thumb on the left. He diagnosed bilateral carpal tunnel syndrome, pronator syndrome, right cubital tunnel syndrome, and chronic migraine. Dr. Khorsandi opined that there was reason to believe that appellant's new job and job criteria contributed to his carpal tunnel syndrome. He recommended electrodiagnostic testing.

In an undated statement, the employing establishment noted that appellant began employment in 2014. Appellant's duties included assisting in hands-on inventories, inspections, and weapon breakdowns. The employing establishment indicated that appellant worked eight to nine hours a day and could take breaks as needed. Appellant's primary tool was a computer and a mouse. In February 2016 he reported to the employment establishment that he was having difficulty using his right hand to perform his work duties due to numbness and tingling. Appellant continued to experience symptoms in both hands; however, his responsibilities had changed and his work load diminished. Attached was a position description for a property management specialist.

On January 11, 2016 Harold Becker, a physician assistant, evaluated appellant for complaints of numbness and tingling of both hands. He noted findings of no edema or effusion of the wrists, no atrophy at the thenar eminence, negative Tinel's and Phalen's signs at the wrists bilaterally, intact motor strength, and decreased sensation to light touch in the median nerve distribution, bilaterally. X-rays of the bilateral wrists revealed no abnormalities. Mr. Becker

diagnosed bilateral carpal tunnel syndrome, administered a steroid injection into the bilateral carpal tunnel, and recommended night splints.

By decision dated March 6, 2018, OWCP denied appellant's occupational disease claim, finding that the medical evidence of record was insufficient to establish causal relationship between appellant's diagnosed conditions and the accepted employment factors.

On March 27, 2018 appellant, through counsel, requested a telephonic hearing before an OWCP hearing representative, which was held on July 25, 2018.

By decision dated August 28, 2018, an OWCP hearing representative affirmed the March 6, 2018 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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,⁴ 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.⁵ 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.⁶

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.⁷

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁸ A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a

³ *Id.*

⁴ *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *R.R.*, Docket No. 19-0048 (issued April 25, 2019); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁷ *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁸ *T.H.*, 59 ECAB 388, 393 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

complete factual and medical background.⁹ Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s).¹⁰

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish that his diagnosed upper extremity conditions are causally related to the accepted factors of his federal employment.

In a January 16, 2018 report, Dr. Khorsandi diagnosed bilateral carpal tunnel syndrome, pronator syndrome, and right cubital tunnel syndrome. He opined that there was reason to believe that appellant's new job and job criteria had contributed to the cause of his carpal tunnel syndrome. Appellant reported working in a desk job since 2014, which involved typing and driving. The Board finds that, although Dr. Khorsandi supported causal relationship, he did not provide medical rationale explaining the basis of his conclusory opinion regarding the causal relationship between appellant's upper extremity condition(s) and the factors of employment.¹¹ Dr. Khorsandi did not describe appellant's alleged repetitive work duties or explain the process by which appellant's work duties caused the diagnosed condition and why such condition would not be due to any nonwork factors. Therefore, his January 16, 2018 report is insufficient to meet appellant's burden of proof to establish causal relationship.

The report from a physician assistant dated January 11, 2016 is of no probative medical value in establishing appellant's claim. Certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered "physician[s]" as defined under FECA.¹² Consequently, their medical findings and/or opinions do not suffice for purposes of establishing entitlement to FECA benefits.¹³ As such, Mr. Becker's January 11, 2016 report is insufficient to satisfy appellant's burden of proof.

Because appellant has not provided rationalized medical evidence establishing causal relationship, the Board finds he has not met his burden of proof to establish his occupational disease claim.

⁹ *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

¹⁰ *Id.*

¹¹ *See T.M.*, Docket No. 08-975 (issued February 6, 2009) (a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

¹² 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).

¹³ *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006).

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 that his diagnosed upper extremity conditions are causally related to the accepted factors of his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the August 28, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 24, 2019
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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