

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

_____)	
J.S., Appellant)	
)	
and)	Docket No. 19-1392
)	Issued: February 13, 2020
DEPARTMENT OF THE NAVY, NAVAL)	
FACILITIES ENGINEERING, Norfolk, VA,)	
Employer)	
_____)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On July 29, 2019 appellant filed a timely appeal from a May 15, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that appellant submitted additional evidence on appeal. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether appellant has met his burden of proof to establish an injury in the performance of duty, as alleged.

FACTUAL HISTORY

On February 15, 2019 appellant, then a 71-year-old facility operations specialist, filed an occupational disease claim (Form CA-2) alleging that he sustained carpal tunnel syndrome due to factors of his federal employment. He indicated that he first became aware of his condition and realized that it was related to factors of his federal employment on November 1, 2018. Appellant did not stop work.

Appellant provided an August 22, 2016 position description. The position description noted his duties and responsibilities as using computerized management systems for planning and estimating, recordkeeping and preventative maintenance scheduling, and facilities inspection scheduling and recordkeeping, among other duties. The physical demands of the position were noted as moderate levels of physical exertion, including walking, crouching, sitting, and working in limited access areas.

In a January 24, 2019 medical report, Jennifer Brown, a family nurse practitioner provided that appellant experienced numbness in his hands as well as joint wrist pain that began approximately two to four months prior. She noted that he utilized his fingers a lot while at work and that his job consisted mostly of typing. In an attached diagnostic report of even date, Dr. Ivan Robinson, a Board-certified radiologist, noted arthritic changes consistent with arthrosis related to hemochromatosis in appellant's x-ray scans of his hands. Based on the diagnostic report, Ms. Brown noted that she suspected arthritis and that appellant's hand pain was not due to a work-related injury.

In January 28, 2019 progress notes from Dr. Nicholas Smerlis, a Board-certified orthopedic surgeon, he recounted appellant's history of bilateral hand pain and diagnosed bilateral carpal tunnel syndrome.

In a development letter dated February 5, 2019, OWCP advised appellant that it required additional factual and medical evidence to establish his claim. It attached a questionnaire, requesting that he provide a detailed description of the employment factors he believed contributed to his condition, including a description of his required duties, relevant dates, and how often he performed those duties. OWCP also requested that appellant's attending physician provide a comprehensive narrative medical report. It afforded appellant 30 days to submit the necessary evidence.

In a separate development letter of even date, OWCP requested that the employing establishment provide additional information regarding appellant's occupational disease claim, including comments from a knowledgeable supervisor regarding the accuracy of appellant's statements, and a copy of appellant's position description and physical requirements of his position. It afforded the employing establishment 30 days to respond.

No response was received. By decision dated May 15, 2019, OWCP denied appellant's occupational disease claim, finding that the evidence of record was insufficient to establish that he sustained an injury in the performance of duty. As such, it concluded that the requirements had not been met to establish an injury as defined by FECA.

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 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

OWCP's regulations define an occupational disease as a condition produced by the work environment over a period longer than a single workday or shift.⁷ To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant 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 identified employment factors.⁸

The employee's burden of proof includes the submission of a detailed description of the employment factors or conditions, which he or she believes caused or adversely affected a condition for which compensation is claimed.⁹

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish that he sustained an injury in the performance of duty, as alleged.

³ *Supra* note 2.

⁴ *T.W.*, Docket No. 18-0788 (issued July 22, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *T.W.*, *id.*; *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *Gary J. Watling*, 52 ECAB 278 (2001); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁶ *T.W.*, *id.*; *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁷ 20 C.F.R. § 10.5(q).

⁸ *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁹ *T.W.*, *supra* note 4; *J.C.*, Docket No. 16-1663 (issued January 18, 2017); *Lori A. Facey*, 55 ECAB 217 (2004).

To establish a claim for compensation in an occupational disease claim, an employee must submit a statement which identifies the factors of employment believed to have caused his or her condition.¹⁰ Appellant did not respond to OWCP's February 25, 2019 letter requesting that he provide detailed information concerning the occupational factors he believed contributed to his condition and respond to its questionnaire.¹¹ As noted, he bears the burden of submitting a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition.¹²

In support of appellant's claim, OWCP received a copy of his position description, as well as a January 24, 2019 medical report from Ms. Brown, a nurse practitioner, noting that appellant attributed his condition to utilizing his fingers to type at work; however, there is no information from appellant describing the specific employment-related activities which he believed contributed to his condition and the amount of time he spent engaging in such activities.¹³ The Board finds that this evidence is insufficiently detailed to meet appellant's burden of proof to establish the factual basis of his claim.¹⁴

The Board finds that, because appellant has not established the factual component of fact of injury, it is unnecessary to discuss whether he submitted medical evidence sufficient to establish a medical condition causally related to factors of his federal employment.¹⁵

Appellant may submit new evidence or argument 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 that he sustained an injury in the performance of duty, as alleged.

¹⁰ *E.V.*, Docket No. 19-0447 (issued June 25, 2019); *H.O.*, Docket No. 17-1176 (issued November 27, 2018).

¹¹ *A.H.*, Docket No. 19-0566 (issued August 22, 2019); *D.C.*, Docket No. 18-0082 (issued July 12, 2018).

¹² *Supra* note 10.

¹³ *L.W.*, Docket No. 19-0196 (issued July 2, 2019); *D.C.*, *supra* note 11.

¹⁴ *K.M.*, Docket No. 19-0367 (issued June 26, 2019).

ORDER

IT IS HEREBY ORDERED THAT the May 15, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 13, 2020
Washington, DC

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

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

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