United States Department of Labor
Employees' Compensation Appeals Board

R.M., Appellant	)	
and	)	**Docket No. 20-0342**
	)	**Issued: July 30, 2020**
DEPARTMENT OF THE ARMY, TOBYHANNA ARMY DEPOT, Tobyhanna, PA, Employer	)	

Appearances:
Aaron B. Aumiller, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On December 2, 2019 appellant, through counsel, filed a timely appeal from a July 15, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (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 bilateral carpal tunnel syndrome (CTS) causally related to the accepted factors of his federal employment.

FACTUAL HISTORY

On December 2, 2016 appellant, then a 60-year-old sheet metal worker, filed an occupational disease claim (Form CA-2) alleging that he developed bilateral CTS due to factors of his federal employment including assembling approximately 700 helmet brackets a day. He noted that the assembly work required torqueing small screws. Appellant first became aware of his condition on January 2, 2015 and realized that it was causally related to his federal employment on December 17, 2015. He did not immediately stop work.

Appellant was treated in the employing establishment health clinic by Dr. Richard A. Lippin, Board-certified in occupational medicine, on December 17, 2015 for numbness in both hands that appellant attributed to repetitive work assembling helmet brackets. Dr. Lippin diagnosed "bilateral strain injury, overuse syndrome, rule out [CTS], and blindness." In a December 17, 2015 work-related injury and illness report, appellant reported that he was building helmet brackets when his symptoms commenced. Dr. Lippin diagnosed repetitive strain injury and prescribed a brace. In a work restrictions form, he again diagnosed repetitive strain injury and returned appellant to work with no excessive repetitive use of hands.

On February 3, 2016 appellant was treated by Christine H. Fick, a registered nurse, for repetitive strain injury that he attributed to assembling helmet brackets at work.

In a development letter dated December 27, 2016, OWCP informed appellant that the evidence submitted was insufficient to establish his claim. It advised him of the type of factual and medical evidence needed and provided a questionnaire for his completion. In a separate letter of the same date, OWCP also requested additional information from the employing establishment. It afforded both appellant and the employing establishment 30 days to respond.

In an undated narrative statement, appellant indicated that he was responsible for helmet bracket assembly, which required inserting two screws into a bracket, torqueing them by hand, inserting a rubber grommet, bagging the bracket and ballistic screw, and stapling and labeling each bag. He noted performing this job since 2013, nine hours a day initially assembling 750 brackets per day until January 5, 2016 when the ergonomic team recommended he cut back to 250 brackets a day. Appellant indicated being visually impaired.

In a statement dated January 20, 2017, W.L., appellant's supervisor, indicated that appellant reported his injury on December 17, 2015. He clarified that appellant was required to assemble 250 brackets a day over a 9-hour day, but he voluntarily worked a 12-hour day with overtime assembling 700 brackets. Ergonomic audits were performed once a year. Attached was a position description for a sheet metal worker.

An electromyogram (EMG) dated December 5, 2013 revealed bilateral median neuropathies at the wrists, moderate left and mild right and suspected mild left C7 radiculopathy.

Appellant was evaluated by Dr. John T. Rich, a Board-certified orthopedist, on December 16, 2013, who diagnosed bilateral CTS. Dr. Rich performed steroid injections into both carpals and prescribed splints.

Appellant was treated by Dr. Patrick D. Conaboy, Board-certified in family medicine, from July 1, 2016 to January 30, 2017 for bilateral CTS. He was treated with braces, injections, and work modification without resolution of symptoms.

On February 2, 2017 Dr. Casey J. Burke, a Board-certified orthopedist, evaluated appellant for bilateral hand pain, numbness, and tingling occurring from overuse. An x-ray of the wrists revealed bilateral carpometacarpal (CMC) joint narrowing. Dr. Burke diagnosed CTS and recommended bilateral CTS releases.

By decision dated March 2, 2017, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish causal relationship between his bilateral CTS and the accepted factors of his federal employment.

On March 23, 2017 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review. On February 13, 2017 Dr. Burke performed a right carpal tunnel release and tenosynovectomy of the flexor tendons and carpal tunnel. He diagnosed right CTS.

In a letter dated March 21, 2017, Dr. Conaboy indicated that appellant had complaints of bilateral hand pain for years and failed conservative treatment and underwent CTS releases. He opined that appellant's carpal tunnel "could be" attributed to the repetitive use of appellant's hands associated with his employment as a sheet metal worker.

By decision dated July 5, 2017 an OWCP hearing representative affirmed the March 2, 2017 decision.

On October 23 2017 appellant requested reconsideration. In support of his request, he submitted an October 4, 2017 report from Dr. Conaboy who indicated that appellant was responsible for assembling helmet brackets which required fine manipulation using screws. Dr. Conaboy noted that appellant would average 700 helmets a day and opined that "it is believed that [appellant's] carpal tunnel can be contributed to this."

By decision dated January 19, 2018, OWCP denied modification of the July 5, 2017 decision.

On April 2, 2018 appellant requested reconsideration. He submitted a March 1, 2018 note from Dr. Conaboy who opined that appellant's job of repetitive fine manipulation directly contributed to his bilateral CTS.

By decision dated June 29, 2018, OWCP denied modification of the January 19, 2018 decision.

OWCP received a January 18, 2012 report from Dr. Lippin who performed a preemployment physical and noted that appellant was blind and met the requirements for a job

accommodated sheet metal worker. Dr. Lippin noted no history of hand pain. In reports dated February 28 and March 3, 2017, he advised that appellant was status post right carpal tunnel release on February 13, 2017 and diagnosed CTS, right upper limb. Dr. Lippin referenced reports from Dr. Conaboy as supporting causal relationship of the diagnosed CTS and the repetitive use of appellant's hands associated with his employment as a sheet metal worker. In a report dated December 17, 2015, appellant stated that he worked on helmet brackets which required torqueing small screws down. In reports dated April 11, 2017 and July 16, 2018, Dr. Lippin diagnosed CTS, bilateral upper limbs, status postsurgery in 2017, pain in the bilateral hands, and legal blindness. Appellant reported working as a sheet metal worker assembling helmet brackets since 2013 which caused pain in the dorsum of both hands.

On March 7, 2017 Dr. Burke performed a left carpal tunnel release and diagnosed left CTS. On April 28, 2017 appellant was reevaluated status post carpal tunnel release on February 13 and March 7, 2017. Dr. Burke diagnosed bilateral CTS. On October 11, 2018 appellant presented with symptoms of tenderness of the mid shaft of the right and left thumb metacarpal. Dr. Burke diagnosed bilateral CTS, pain of the bilateral wrists, mass of the wrist, and osteoarthrosis of the CMC joint of the thumb. He performed a steroid injection to the bilateral thumb CMC joint.

An EMG performed on November 1, 2018 revealed mild residual median mononeuropathy at the wrists predominately on the left side with minimal findings on the right.

On December 17, 2018 appellant requested reconsideration. In a report dated December 28, 2018, Dr. Burke reviewed the most recent EMG findings and diagnosed bilateral CTS, mass of the wrist, and osteoarthrosis of the CMC joint of the thumb.

On April 15, 2019 Dr. Daniel Shust, a Board-certified family practitioner, examined appellant for a history of bilateral CTS. Appellant reported performing repetitive hand motions using a screw driver for nine hours daily, turning approximately 1,500 screws in that time period. Dr. Shust noted positive Tinel's and Phalen's signs and positive EMG pre- and post-surgery which demonstrated bilateral CTS. He noted that it was well known in medical literature and occupational health and safety data that repetitive hand motions are risk factors for CTS. Dr. Shust opined that appellant had CTS due to his employment risk factors.

By decision dated March 15, 2019, OWCP denied modification of the prior decision. On April 16, 2019 appellant requested reconsideration.

On May 13, 2019 Dr. Burke diagnosed bilateral CTS and mass of the left wrist by EMG and recommended a hand therapy evaluation. Appellant attended occupational therapy treatment on May 17, 2019.

By decision dated July 15, 2019, OWCP denied modification of the prior decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] 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,[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 the following: (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.[7]

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.[8] The opinion of the physician must be based on a complete factual and medical background of the claimant, 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 factors identified by the claimant.[9] Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents, is sufficient to establish causal relationship.[10]

ANALYSIS

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

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[3] *Id*.

[4] *E.W.*, Docket No. 19-1393 (issued January 29, 2020); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

[5] *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[6] 20 C.F.R. § 10.115; *E.S.*, Docket No. 18-1580 (issued January 23, 2020); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

[7] *See T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[8] *J.F.*, Docket No. 18-0492 (issued January 16, 2020); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[9] *A.M.*, Docket No. 18-0562 (issued January 23, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

[10] *E.W.*, *supra* note 4; *Gary L. Fowler*, 45 ECAB 365 (1994).

In support of his claim, appellant submitted medical reports from his attending physicians who consistently diagnosed upper extremity conditions including bilateral CTS, for which he underwent surgery on February 13 and March 7, 2017 with Dr. Burke.

In a March 1, 2018 note, Dr. Conaboy opined that appellant's job of repetitive fine manipulation directly contributed to his bilateral CTS. In a subsequent letter, he opined that appellant's carpal tunnel could be attributed to the repetitive use of his hands associated with his employment as a sheet metal worker. In a prior October 23, 2017 report, Dr. Conaboy had noted the fine manipulation required of appellant's job working with an average of 700 helmets a day and noted these duties were sufficient to contribute to the bilateral CTS.

In April 15, 2019, Dr. Shust reported that appellant performed repetitive hand motions using a screw driver for nine hours daily, turning approximately 1,500 screws during the time period his CTS developed. He explained that repetitive hand motions, as performed by appellant in his position, are risk factors for CTS and that based upon appellant's duties the injury was work related.

In addition, appellant's supervisor, W.L., indicated that appellant reported that at the time he developed his injury he was required to assemble 250 brackets a day over a 9-hour day, but he voluntarily worked a 12-hour day with overtime assembling 700 brackets. He confirmed that ergonomic audits were performed once a year and is consistent with appellant's statement that on January 5, 2016 the ergonomic team had recommended appellant cut back to 250 brackets a day due to overuse of his upper extremities.

The Board finds that the medical reports, when read together, contain a complete factual history confirming the accepted employment factors and accurately note the medical history and course of treatment for the bilateral CTS for which he underwent surgery. The Board finds that the opinions, while insufficiently rationalized to meet appellant's burden of proof, are sufficient, given the absence of opposing medical evidence, to require further development of the record as to whether his upper extremity conditions are causally related to the accepted factors of his federal employment.[11]

It is well established that, proceedings under FECA are not adversarial in nature, and that while appellant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence. OWCP has an obligation to see that justice is done.[12] The nonadversarial policy of proceedings under FECA is reflected in OWCP's regulations at section 10.121.[13]

The case will therefore be remanded to OWCP for further development of the medical evidence and a referral to an appropriate medical specialist for an examination and opinion on the issue of whether appellant sustained bilateral CTS or other upper extremity conditions causally

[11] *G.M.*, Docket No. 19-0657 (issued September 13, 2019); *see also John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

[12] *S.C.*, Docket No. 19-0920 (issued September 25, 2019).

[13] 20 C.F.R. § 10.121.

related to the accepted factors of his federal employment. After this and other such further development as OWCP deems necessary, it shall issue a *de novo* decision.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the July 15, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: July 30, 2020
Washington, DC

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

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

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