United States Department of Labor
Employees' Compensation Appeals Board

P.M., Appellant	)	
and	)	**Docket No. 19-1618**
	)	**Issued: March 16, 2020**
DEPARTMENT OF THE ARMY, TOBYHANNA ARMY DEPOT, Tobyhanna, PA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
CHRISTOPHER J. GODFREY, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On July 25, 2019 appellant filed a timely appeal from an April 15, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (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, following the April 15, 2019 decision, OWCP received additional evidence. 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 a hand, wrist, cervical spine, or neck condition causally related to the accepted December 12, 2018 employment incident.

FACTUAL HISTORY

On December 14, 2018 appellant, then a 69-year-old electronics mechanic, filed a traumatic injury claim (Form CA-1) alleging that on December 12, 2018 he experienced sharp pain in both hands and wrists, the right shoulder, and the neck when removing and replacing electronics equipment while in the performance of duty. He noted that he disassembled components that could not be removed with normal effort. On the reverse side of the claim form, appellant's supervisor acknowledged that he was in the performance of duty at the time of the claimed employment incident. Appellant did not stop work. In a December 13, 2018 injury report, appellant's supervisor noted that the employment incident occurred while appellant was performing normal work activity.

In a December 26, 2018 report, Dr. John Paglia, a Board-certified orthopedic surgeon, noted appellant's complaints of neck pain and numbness and pain in both hands and noted that appellant's symptoms began on December 12, 2018 while he was working on equipment at the employing establishment. He examined appellant and diagnosed cervical disc degeneration, neck pain, bilateral hand pain, and bilateral wrist pain. Dr. Paglia also diagnosed possible bilateral carpal tunnel syndrome and possible right cervical radiculopathy. He referred appellant for physical therapy. In an accompanying work status form, Dr. Paglia noted that appellant could return to work with the restriction that he not lift more than 25 pounds.

In a January 23, 2019 report, Dr. Paglia saw appellant in follow up and noted that he had started physical therapy. He diagnosed cervical disc degeneration, bilateral hand pain, and bilateral wrist pain. Dr. Paglia again indicated that appellant had possible bilateral carpal tunnel syndrome and possible right cervical radiculopathy.

Dr. Paglia noted in a February 20, 2019 report that appellant still had some pain in his right arm and experienced intermittent numbness and tingling in both hands. He diagnosed neck pain, bilateral hand pain, bilateral wrist pain, cervical disc degeneration, right cervical radiculopathy, and bilateral carpal tunnel syndrome. Dr. Paglia recommended obtaining a magnetic resonance imaging (MRI) scan of appellant's cervical spine. He opined that appellant should continue not lifting more than 25 pounds at work.

Appellant also submitted physical therapy treatment reports dated January 5 through February 25, 2019.

In a development letter dated March 15, 2019, OWCP indicated that when appellant's claim was received it appeared to be a minor injury that resulted in minimal or no lost time from work and, based on these criteria and because the employing establishment did not controvert continuation of pay or challenge the case, payment of a limited amount of medical expenses was administratively approved. It explained that it had reopened the claim for consideration because

appellant had not returned to work in a full-time capacity. OWCP requested additional factual and medical evidence and provided a questionnaire for appellant's completion. It afforded appellant 30 days to submit the necessary evidence.

A February 27, 2019 MRI scan of appellant's cervical spine revealed severe reciprocal marrow edema and multilevel secondary disc and facet changes with moderate-to-severe foraminal stenosis at C3-4 and mild-to-moderate foraminal stenosis at C5-6. No disc herniation or canal stenosis was found.

In a March 6, 2019 report, Dr. Paglia noted that appellant felt significant improvement following physical therapy. He reported that appellant only had occasional minor discomfort in his neck and the numbness in his hands had improved substantially. Appellant indicated that he felt 98 percent improvement and that he could return to his normal work duties. Dr. Paglia reviewed the February 27, 2019 MRI scan of appellant's cervical spine and x-rays of appellant's wrists and cervical spine and diagnosed neck pain, bilateral hand pain, bilateral wrist pain, cervical disc degeneration, right cervical radiculopathy, and bilateral carpal tunnel syndrome. He noted that he found advanced degenerative changes of the right thumb metacarpophalangeal joint, mild-to-moderate degenerative changes of the carpometacarpal joints in both hands, and mild-to-moderate degenerative disc changes, particularly at C5-6 and C6-7. Dr. Paglia also opined that appellant experienced significant improvement with his right cervical radiculopathy and bilateral carpal tunnel syndrome.

By decision dated April 15, 2019, OWCP denied appellant's claim finding that the medical evidence of record was insufficient to establish a causal relationship between his diagnosed medical conditions and the accepted December 12, 2018 employment incident.

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]

[3] *Supra* note 1.

[4] *T.G.*, Docket No. 19-1441 (issued January 28, 2020); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

[5] *I.M.*, Docket No. 19-1038 (issued January 23, 2020); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[6] 20 C.F.R. § 10.115; *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

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. 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.[7] The second component is whether the employment incident caused a personal injury.[8]

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.[9] 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 incident identified by the claimant.[10] 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.[11]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a hand, wrist, cervical spine, or neck condition causally related to the accepted December 12, 2018 employment incident.

Appellant submitted medical reports from his treating physician, Dr. Paglia, dated December 26, 2018, and January 23, February 20, and March 6, 2019. Dr. Paglia diagnosed neck pain, bilateral hand pain, bilateral wrist pain, cervical disc degeneration, right cervical radiculopathy, and bilateral carpal tunnel syndrome. In so far as he offered pain as a diagnosis, the Board has held that pain is a symptom, not a compensable medical diagnosis.[12] Furthermore, regarding the diagnoses of cervical disc degeneration, right cervical radiculopathy, and bilateral carpal tunnel syndrome, Dr. Paglia noted a history of injury, but did not provide an opinion on causal relationship in any of his reports. Medical evidence that does not offer an opinion regarding the cause of a diagnosed condition is of no probative value on the issue of causal relationship.[13] Accordingly, these reports are insufficient to establish appellant's claim.

Additionally, appellant submitted physical therapy treatment reports dated January 7 through February 25, 2019. The Board has held that reports signed solely by physical therapists

[7] *A.S.*, Docket No. 18-1684 (issued January 23, 2020); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[8] *M.L.*, Docket No. 18-0153 (issued January 22, 2020); *John J. Carlone*, 41 ECAB 354 (1989).

[9] *T.G.*, *supra* note 4; *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[10] *I.M.*, *supra* note 5; *Leslie C. Moore*, 52 ECAB 132 (2000).

[11] *K.N.*, Docket No. 18-0060 (issued January 22, 2020); *Gary L. Fowler*, 45 ECAB 365 (1994).

[12] *I.M.*, *supra* note 5.

[13] *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

are of no probative value as physical therapists are not considered physicians as defined under FECA.[14] These reports are thus insufficient to establish appellant's claim.

Finally, appellant submitted a February 27, 2019 MRI scan of his cervical spine which revealed severe reciprocal marrow edema and multilevel secondary disc and facet changes with moderate-to-severe foraminal stenosis at C3-4 and mild-to-moderate foraminal stenosis at C5-6. The Board has held that a diagnostic study, like an MRI scan, lacks probative value on the issue of causal relationship as it does not provide an opinion as to whether the accepted employment incident was sufficient to have caused a diagnosed condition.[15] As such, this evidence is insufficient to establish appellant's claim.

As appellant has not submitted rationalized medical evidence explaining the causal relationship between his diagnosed medical conditions and the accepted December 12, 2018 employment incident, the Board finds that he has not met his burden of proof.

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 a hand, wrist, cervical spine, or neck condition causally related to the accepted December 12, 2018 employment incident.

[14] Section 8101(2) of FECA provides that physician "includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law." 5 U.S.C. § 8101(2). *See also David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA); *D.H.*, Docket No. 18-0072 (issued January 21, 2020) (physical therapists are not considered physicians under FECA).

[15] *M.L.*, *supra* note 8.

ORDER

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

Issued: March 16, 2020
Washington, DC

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

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

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