

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

I.G., Appellant)	
)	
and)	Docket No. 19-0871
)	Issued: November 9, 2020
DEPARTMENT OF JUSTICE, FEDERAL)	
BUREAU OF INVESTIGATION, Quantico VA,)	
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
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On March 18, 2019 appellant filed a timely appeal from an October 29, 2018 merit decision and a February 28, 2019 nonmerit decision of the Office of Workers' Compensation Programs (OWCP).¹ 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.

ISSUES

The issues are: (1) whether appellant has met his burden of proof to establish a right wrist condition causally related to his March 30, 2017 employment injury; and (2) whether OWCP

¹ Appellant filed a timely request for oral argument, pursuant to 20 C.F.R. § 201.5(b). After exercising its discretion, the Board by July 20, 2020 order denied his request, noting that his arguments on appeal could be adequately addressed in a Board decision based on a review of the case record. *Order Denying Request for Oral Argument*, Docket No. 19-0871 (issued July 20, 2020).

² 5 U.S.C. § 8101 *et seq.*

properly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On April 3, 2017 appellant, then a 39-year-old criminal investigator, filed a traumatic injury claim (Form CA-1) alleging that on March 30, 2017 he developed a loss of feeling and weakness in his right hand due to using a thumb throttle to drive a snowmobile and pain in his left wrist while in the performance of duty. He did not stop work.

An unsigned report dated April 5, 2017 noted that appellant sought medical treatment for his right hand weakness and dysfunction. He was diagnosed with right hand weakness after training to drive a snowmobile.

In an April 19, 2017 development letter, OWCP advised appellant of the deficiencies of his claim. It requested additional factual and medical evidence and provided a questionnaire for his completion. OWCP afforded appellant 30 days to respond.

On April 27, 2017 the employing establishment reported that appellant was engaged in official duties when the injury occurred. He was operating a snowmobile while engaged in training.

By decision dated May 24, 2017, OWCP denied appellant's claim finding that he had not established the factual aspect of his claim as he did not respond to the development questionnaire.

On April 18, 2018 appellant requested reconsideration of the May 24, 2017 decision and submitted additional evidence. He provided a narrative statement and noted that he was operating a snowmobile during employing establishment training exercises on March 31, 2017.

Appellant also provided witness statements from M.F., a special agent, and R.H. and A.L., supervisory special agents, asserting that on March 31, 2017 the employing establishment engaged in job-required cold-weather mobility training, which included snowmobile operations. He operated a snowmobile for over seven hours through arduous terrain and extreme environmental conditions which required constant manipulation of the controls including the throttle on the right handgrip. Appellant informed his coworkers that he was experiencing significant pain and reduced range of motion in his right hand.

Appellant subsequently resubmitted the April 5, 2017 note diagnosing right hand weakness signed by Dr. Kevin E. Peltier, a Board-certified orthopedic surgeon.

Appellant also provided excerpts from internet publications regarding compression neuropathies.

By decision dated May 9, 2018, OWCP affirmed, as modified, its March 24, 2017 decision. It found that the March 30, 2017 incident occurred as alleged, however, appellant had not submitted medical evidence containing a medical diagnosis in connection with the accepted employment incident.

On July 27, 2018 appellant requested reconsideration of the May 9, 2018 decision. He provided a June 27, 2018 note from Dr. Peltier which diagnosed posterior interosseous nerve (PIN) and anterior interosseous nerve (AIN) palsies. Dr. Peltier found that appellant had gross weakness in his right hand after prolonged operation of a snowmobile and noted that prolonged holding of a throttle with vibration caused a radial nerve palsy. He determined that appellant's condition had returned to normal.

On June 21, 2017 appellant underwent electromyogram and nerve conduction velocity (EMG/NCV) studies which demonstrated mild slowing of the right median nerve across the wrist.

By decision dated October 29, 2018, OWCP denied modification of its prior decision.

On January 7, 2019 appellant requested reconsideration of the October 29, 2018 decision. He summarized Dr. Peltier's June 27, 2018 report.

By decision dated February 28, 2019, OWCP denied appellant's request for reconsideration of the merits of his claim.

LEGAL PRECEDENT -- ISSUE 1

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,³ 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.⁴ 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.⁵

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.⁶ The second component is whether the employment incident caused a personal injury.⁷

To establish causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical

³ *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁴ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁵ *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁶ *T.M.*, Docket No. 19-0380 (issued June 26, 2019); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁷ *M.H.*, Docket No. 18-1737 (issued March 13, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

opinion evidence.⁸ The opinion of the physician must be based on a complete factual and medical background of the employee, 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 factor(s) identified by the employee.⁹ The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.¹⁰

ANALYSIS -- ISSUE 1

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

In support of his claim, appellant submitted a June 27, 2018 note from Dr. Peltier which diagnosed right PIN and AIN palsies. Dr. Peltier found that appellant had gross weakness in his right hand after prolonged operation of a snowmobile and noted that prolonged holding of a throttle with vibration caused a radial nerve palsy.

Dr. Peltier recounted an accurate history of injury and an opinion regarding causal relationship in his June 27, 2018 note. Contrary to OWCP's findings, he provided diagnoses of PIN and AIN palsies. Dr. Peltier noted the specific employment duties of prolonged operation of the thumb throttle of a snowmobile and found that the vibrations caused a radial nerve palsy.

As the medical evidence of record establishes a diagnosed condition, the case must be remanded for consideration of the medical evidence with regard to the issue of causal relationship. Following any further development deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that this case is not in posture for decision.¹¹

⁸ S.A., Docket No. 18-0399 (issued October 16, 2018); *Robert G. Morris*, 48 ECAB 238 (1996).

⁹ *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

¹⁰ *D.R.*, Docket No. 19-0954 (issued October 25, 2019); *James Mack*, 43 ECAB 321 (1991).

¹¹ In light of the Board's disposition of Issue 1, Issue 2 is rendered moot.

ORDER

IT IS HEREBY ORDERED THAT the February 28, 2019 and October 29, 2018 decisions of the Office of Workers' Compensation Programs are set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: November 9, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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