United States Department of Labor
Employees' Compensation Appeals Board

B.W., Appellant	)	
and	)	**Docket No. 20-1032**
	)	**Issued: November 17, 2020**
U.S. POSTAL SERVICE, MAIN POST OFFICE, St. Louis, MO, Employer	)	

Appearances:
Alan J. Shapiro, 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
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On April 15, 2020 appellant, through counsel, filed a timely appeal from a February 25, 2020 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.[3]

[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.*

[3] The Board notes that following the February 25, 2020 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.

ISSUE

The issue is whether appellant has met his burden of proof to establish bilateral carpal tunnel syndrome causally related to the accepted factors of his federal employment.

FACTUAL HISTORY

On February 22, 2019 appellant, then a 53-year-old automation clerk, filed an occupational disease claim (Form CA-2) alleging that he developed carpal tunnel syndrome in his hands due to factors of his federal employment. He explained that he was experiencing intense pains in his hand from "working the machines" and that the pain was causing him to have trouble sleeping. Appellant indicated that he first became aware of his condition and first realized it was caused or aggravated by his federal employment on February 22, 2019. He did not stop work.

In a February 25, 2019 letter, the employing establishment controverted appellant's claim, contending that he had not submitted medical evidence from a physician explaining how his condition was causally related to his employment.

In a medical report dated February 25, 2019, Dr. Denise Hooks-Anderson, Board-certified in family medicine, evaluated appellant for multiple conditions, including bilateral carpal tunnel syndrome. She prescribed a medication and instructed him to return if his symptoms continued.

In a development letter dated March 11, 2019, OWCP advised appellant of the factual and medical deficiencies of his claim. It asked him to complete a questionnaire to provide further details regarding the circumstances of his claimed injury and requested a narrative medical report from his treating physician, which contained a detailed description of findings and diagnoses, explaining how his work activities caused, contributed to, or aggravated his medical conditions. OWCP afforded appellant 30 days to respond.

In a March 9, 2019 medical note, Dr. Maria Scarbrough, Board-certified in emergency medicine, noted that appellant was seen on March 9, 2019 for "carpal tunnel syndrome on both sides." She referred him to follow up with Dr. Steven Morton, a Board-certified orthopedic surgeon, and advised that he could return to work on March 12, 2019.

In a March 14, 2019 medical note, Dr. Richard Hehmann, a Board-certified plastic surgeon, indicated that appellant was seen for his bilateral hand condition and advised that he could return to work on March 18, 2019.

In a March 26, 2019 diagnostic report, Dr. Boris Khariton, Board-certified in physical medicine, performed an electromyography and nerve conduction velocity (EMG/NCV) test and noted appellant's history of bilateral upper extremity pain and paresthesia. On examination, he found electrodiagnostic evidence of a severe bilateral median motor-sensory focal distal neuropathy at the wrist which could represent bilateral carpal tunnel syndrome.

In an April 15, 2019 medical note, Dr. Hehmann indicated that appellant would need to be held out of work from April 10, 2019 through approximately May 6, 2019 for surgery and recovery.

By decision dated April 24, 2019, OWCP denied appellant's occupational disease claim finding that the medical evidence of record was insufficient to establish that his diagnosed bilateral carpal tunnel syndrome was causally related to the accepted factors of his federal employment.

On May 11, 2019 appellant requested a review of the written record before a representative of OWCP's Branch of Hearings and Review.

In a May 2, 2019 medical note, Dr. Hooks-Anderson noted that appellant completed a stress test which was negative for ischemic changes and cleared him for carpal tunnel surgery.

In a May 7, 2019 medical note, Dr. Hehmann explained that appellant would be undergoing surgery on May 17, 2019 and would not be released to return to work until after his postoperative appointment on June 3, 2019.

In a May 9, 2019 medical note, Dr. Hooks-Anderson diagnosed carpal tunnel syndrome and opined that appellant's condition was the result of his frequent, repetitive work with his hands.

In response to OWCP's questionnaire, appellant submitted a May 11, 2019 statement in which he described his contributing work factors as working with a delivery bar code sorter (DBCS) machine to distribute and process mail. His responsibilities included feeding and pulling mail, sweeping and packing machines, and labeling trays. Appellant asserted that he performed these duties daily for 10 hours per day. He explained that his hands initially began hurting a year prior and that the pain had been present continuously. Appellant experienced numbness in his fingertips, pain in his wrists, as well as weakness and excruciating pain in his hands at night. He had no previous injuries or diagnoses to his hands, wrists, or arms prior to his current claim.

In a May 30, 2019 medical note, Dr. Hehmann opined that appellant would be unable to return to work until approximately June 24, 2019 as he was undergoing a left carpal tunnel release on June 7, 2019. In medical notes dated June 20 and August 5, 2019, he opined that appellant could return to work on July 8 and August 19, 2019, respectively.

By decision dated August 22, 2019, OWCP's hearing representative affirmed OWCP's April 24, 2019 decision.

OWCP continued to receive evidence. In operative reports dated May 17 and June 7, 2019, Dr. Hehmann indicated that appellant underwent a right and left carpal tunnel release, respectively, in order to treat his bilateral carpal tunnel syndrome. In a subsequent June 24, 2019 operative report, he indicated that appellant underwent an exploration, incision and drainage of a left carpal tunnel wound.

In an August 19, 2019 medical note, Dr. Hehmann advised that appellant would need to remain out of work until his next appointment on September 9, 2019.

In therapy treatment notes dated from August 22 to 29, 2019, Katie Biggs, an occupational therapist, made note of the May 17 and June 7, 2019 carpal tunnel release surgeries appellant underwent in order to treat his bilateral carpal tunnel syndrome. She evaluated the pain he continued to experience in his hands and provided updates for the therapy he underwent to treat his remaining symptoms.

In a September 20, 2019 medical note, Dr. Hooks-Anderson diagnosed carpal tunnel syndrome status post carpal tunnel release surgery and opined that appellant's condition was caused by the repetitive actions of his employment.

On December 12, 2019 appellant requested reconsideration of OWCP's August 22, 2019 decision.

In an August 20, 2019 therapy information sheet, Dr. Hehmann referred appellant to hand therapy related to surgeries he underwent on April 15 and June 7, 2019.

In radiology reports dated December 30, 2019, Dr. Timothy J. LeeBurton, a Board-certified orthopedic surgeon, indicated that appellant underwent a magnetic resonance imaging (MRI) scan of his left and right wrists and reported no acute osseous abnormalities in either examinations.

By decision dated February 25, 2020, OWCP denied modification of its August 22, 2019 decision.

LEGAL PRECEDENT

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,[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] A physician's opinion on whether there is causal relationship

[4] *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *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] *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).

[7] *R.G.*, Docket No. 19-0233 (issued July 16, 2019). *See also Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

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

between the diagnosed condition and the implicated employment factor(s) must be based on a 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 bilateral carpal tunnel syndrome causally related to the accepted factors of his federal employment.

In medical notes dated May 9 and September 20, 2019, Dr. Hook-Anderson diagnosed carpal tunnel syndrome and opined that appellant's condition was the result of the frequent and repetitive actions of his federal employment. While she provided an affirmative opinion on causal relationship, she did not offer any medical rationale sufficient to explain why she believes appellant's employment duties could have resulted in or contributed to his diagnosed condition. Without explaining how the frequent and repetitive actions of appellant's employment caused or aggravated his bilateral carpal tunnel syndrome, Dr. Hooks-Anderson's medical notes are of limited probative value.[11]

Dr. Hooks-Anderson's remaining medical notes dated February 25 and May 2, 2019 noted her examination of appellant for his bilateral carpal tunnel syndrome and explained that he was cleared to move forward with surgery after completing a stress test. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.[12] For this reason, Dr. Hooks-Anderson's remaining medical evidence is insufficient to meet appellant's burden of proof.

In operative reports dated from May 17 to June 24, 2019, Dr. Hehmann detailed right and left carpal tunnel releases appellant underwent to treat his bilateral carpal tunnel syndrome, as well as an exploration, incision and drainage of a left carpal tunnel wound. In medical notes dated from March 14 to August 19, 2019, he noted the dates of appellant's surgical procedures and provided estimated dates of when he would be able to return to work. As stated above, however, medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.[13] For this reason, Dr. Hehmann's medical evidence is insufficient to meet appellant's burden of proof.

In her March 11, 2019 medical note, Dr. Scarbrough evaluated appellant for carpal tunnel syndrome on both sides and referred him for a follow up appointment with Dr. Morton. As she

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

[10] *Id*.; *Victor J. Woodhams, supra* note 7.

[11] *See A.P.*, Docket No. 19-0224 (issued July 11, 2019).

[12] *S.J.*, Docket No. 19-0696 (issued August 23, 2019); *M.C.*, Docket No. 18-0951 (issued January 7, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[13] *Id*.

did not offer an opinion regarding the cause of appellant's condition, Dr. Scarbrough's medical note is of no probative value on the issue of causal relationship.[14]

Appellant submitted diagnostic reports dated March 26 and December 30, 2019 from Drs. Khariton and LeeBurton, respectively. Dr. Khariton's EMG test found electrodiagnostic evidence, which he explained could represent bilateral carpal tunnel syndrome while Dr. LeeBurton's MRI scans of appellant's wrists found no acute osseous abnormalities. The Board has held, however, that diagnostic test reports standing alone lack probative value on the issue of causal relationship as they do not address the relationship between accepted employment factors and a diagnosed condition.[15] For this reason, these diagnostic reports are insufficient to meet appellant's burden of proof.

The remaining medical evidence consists of therapy notes dated from August 22 to 29, 2019 from an occupational therapist. Certain healthcare providers such as physical therapists, nurses, physician assistants, and social workers are not considered physician[s] as defined under FECA.[16] Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.

As appellant has not submitted rationalized medical evidence establishing that his bilateral carpal tunnel syndrome is causally related to the accepted factors of his federal employment, the Board finds that he has not met his burden of proof to establish his claim.

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 bilateral carpal tunnel syndrome causally related to the accepted factors of his federal employment.

[14] *Id.*

[15] *W.M.*, Docket No. 19-1853 (issued May 13, 2020); *L.F.*, Docket No. 19-1905 (issued April 10, 2020).

[16] 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t); *see M.F.*, Docket No. 17-1973 (issued December 31, 2018); *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006). A report from a physician assistant or certified nurse practitioner will be considered medical evidence if countersigned by a qualified physician. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013).

ORDER

IT IS HEREBY ORDERED THAT the February 25, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 17, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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