United States Department of Labor
Employees' Compensation Appeals Board

J.R., Appellant	)	
and	)	**Docket No. 19-0812**
	)	**Issued: September 29, 2020**
U.S. POSTAL SERVICE, AKELEY POST OFFICE, Akeley, MN, Employer	)	

Appearances:
Appellant, pro se
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 March 8, 2019 appellant filed a timely appeal from a February 26, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP).[1] Pursuant to the Federal Employees' Compensation Act[2] and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[3]

[1] Appellant timely requested oral argument before the Board. 20 C.F.R. § 501.5(b). By order dated July 20, 2020, the Board exercised its discretion and denied the request, finding that the arguments on appeal could adequately be addressed based on the case record. *Order Denying Request for Oral Argument*, Docket No. 19-0812 (issued July 20, 2020).

[2] 5 U.S.C. § 8101 *et seq.*

[3] The Board notes that, following the February 26, 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 right carpal tunnel syndrome (CTS) causally related to the accepted factors of his federal employment.

FACTUAL HISTORY

On January 11, 2019 appellant, then a 38-year-old rural carrier, filed an occupational disease claim (Form CA-2) alleging that he sustained right-sided CTS causally related to factors of his federal employment. He indicated that he first became aware of his condition and its relationship to his federal employment on November 21, 2018. Appellant did not stop work.

In a development letter dated January 22, 2019, OWCP informed appellant that the evidence of record 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. The questionnaire requested that appellant describe in detail the employment duties which he believed contributed to his condition and requested that he provide a physician's opinion, supported by medical rationale, as to how those duties caused or aggravated his medical condition. It afforded him 30 days to submit additional evidence and to respond to its inquiries.

On January 27, 2019 appellant completed the questionnaire. He explained that he had delivered mail for 12 years out of a right-sided vehicle window, and that he had used his dominant hand for sorting mail. Appellant alleged that these repetitive motions had aggravated an already-weak right arm and wrist. He indicated that he performed the described activities of sorting and delivering mail for 8 hours per day, 40 hours per week. Appellant noted that he had recently undergone a right elbow repair. Regarding the development of his condition, he indicated that he had noticed it intermittently for two years, and that the condition was aggravated by the volume of mail and delivery with the right hand. Appellant further noted that it had become a daily issue as of October 2018 with symptoms including numbness of the hand and pain of the wrist. He explained that steroid injections had allowed him to work through Christmas and that he required surgery.

In a supplemental statement dated January 11, 2019, received on February 4, 2019, appellant explained that, on October 2, 2018, he was seen for on-going pain in his wrist, which required splints and a steroid injection for the diagnosed CTS condition. He alleged that the CTS was due to repetitive motion in his federal employment.

OWCP also received occupational therapy progress notes dated November 15, 2018, wherein Ashlee M. Lee, an occupational therapist, described decreased range of motion, strength, edema, and pain of the right upper extremity. Ms. Lee noted a diagnosis of right cubital tunnel syndrome and right CTS and a method of injury of overuse. She recommended a right long arm elbow splint and a right volar wrist splint with nerve glides.

In progress notes dated November 17, 2018, Dr. Tibor T. Warganich, a Board-certified orthopedic surgeon, indicated that he had examined appellant for complaints of numbness and tingling in the median nerve distribution of the right upper extremity. He noted that appellant was right-hand dominant with no significant past medical history. Dr. Warganich indicated that appellant performed occasional heavy lifting and light construction work at home. He noted a

history of right lateral epicondylitis status post-surgery two years prior. On physical examination of the right upper extremity, Dr. Warganich observed pink and perfused digits with no evidence of acute compressive neuropathy. He further observed a mild Tinel's sign bilaterally, more on the right than the left, and negative compression, Phalen's, and reverse Phalen's tests bilaterally. Two-point discrimination was less than six millimeters in the median and ulnar nerve distributions. Dr. Warganich noted no thenar or intrinsic atrophy and no Tinel's sign at the cubital tunnels. He diagnosed mild intermittent right CTS. Dr. Warganich recommended use of a volar splint and administered a corticosteroid injection. He opined that he suspected appellant's CTS was a chronic condition that may have been exacerbated by work. Dr. Warganich further observed that appellant did not have any high-vibration tools at work that could be linked the CTS.

In progress notes dated January 5, 2019, Dr. Warganich examined appellant for increasing symptoms of right-sided CTS despite conservative treatment, along with bilateral medial epicondylitis. He told appellant that he likely had ongoing and chronic CTS exacerbated by work, but that he had not worked with high-vibration tools, which were the most widely accepted work-related cause of CTS. On physical examination of the right upper extremity, Dr. Warganich observed a positive compression test at 20 seconds in the right carpal tunnel, a mild Tinel's sign for bilateral cubital tunnel syndrome, and two-point discrimination at six millimeters in the bilateral median and ulnar nerve distributions. He noted that an electromyogram (EMG) demonstrated mild right-sided CTS. Dr. Warganich diagnosed right-sided CTS and recommended surgery.

In a letter dated January 28, 2019, the employing establishment challenged appellant's claim. It contended that based on a January 5, 2019 report by Dr. Warganich, appellant had not established causal relationship between work factors and his diagnosed right-sided CTS.

In an after visit summary from a physician with an illegible signature, dated January 22, 2019, noted a diagnosis of CTS of the right upper limb and explained that the injury was incurred from repetitive motions of the wrist while delivering mail. The physician noted that appellant had undergone an injection and that surgery was scheduled to occur the following week.

In another report from a physician with an illegible signature, dated January 22, 2019, it was noted that appellant was examined for complaints of right wrist pain. The report described appellant's history of injury as repetitive motions from using the wrist to deliver mail. On physical examination of the right wrist, the physician observed pain over the radial-carpal articulation and diagnosed CTS of the right upper limb. The physician noted that appellant had surgery on January 30, 2019 for CTS.

In an after visit summary dated February 19, 2019, Megan Askelson, a certified nurse practitioner, indicated that appellant was on restricted work duty, due to right carpal tunnel syndrome. She also noted that appellant had sustained a right wrist injury from repetitive motions while delivering mail. In a report dated February 21, 2019, Ms. Askelson examined appellant for complaints of right wrist pain. She described appellant's history of injury as repetitive motions from using the wrist to deliver mail. Appellant told Ms. Askelson that he was doing well after surgery and that his subjective symptoms had ceased to include numbness, but tingling, some weakness, some range of motion restriction, and minimal pain remained. On physical examination of the right wrist, Ms. Askelson observed limited range of motion and strength with scarring over the wrist extensor surface. She diagnosed CTS of the right upper limb, post carpal tunnel release.

Ms. Askelson recommended work restrictions of occasional lifting of no more than five pounds with the right wrist.

By decision dated February 26, 2019, OWCP denied appellant's claim finding that the medical evidence of record was insufficient to establish that his diagnosed condition was causally related to the accepted factors of his federal employment.

LEGAL PRECEDENT

An employee seeking benefits under FECA[4] 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 of FECA, 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.

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.[6]

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.[7] The opinion of the physician must be based on a complete factual and medical background, 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.[8]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish right CTS causally related to the accepted factors of his federal employment.

On November 17, 2018 Dr. Warganich diagnosed mild intermittent right CTS. He opined that he suspected appellant's CTS was a chronic condition that may have been exacerbated by

[4] *Supra* note 2.

[5] *C.K.*, Docket No. 19-1549 (issued June 30, 2020); *R.G.*, Docket No. 19-0233 (issued July 16, 2019); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[6] *L.D.*, Docket No. 19-1301 (issued January 29, 2020); *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[7] *I.J.*, Docket No. 19-1343 (issued February 26, 2020); *T.H.*, 59 ECAB 388 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

[8] *D.J.*, Docket No. 19-1301 (issued January 29, 2020).

work. Dr. Warganich observed that appellant did not have any high-vibration tools at work that could be linked to the CTS. On January 5, 2019 he opined that appellant likely had ongoing and chronic CTS exacerbated by work, but again noted that appellant did not work with any high-vibration tools, which were the most widely accepted work-related cause of CTS. The Board has found that, while the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, it must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty.[9] Dr. Warganich's opinions as to the cause of appellant's right wrist CTS was not expressed in terms of a reasonable degree of medical certainty, instead referring to a suspicion that it was a chronic condition and that it may have been or likely was exacerbated by his work. The Board thus finds that the medical reports of Dr. Warganich are not well rationalized and are of limited probative value on the issue of causal relationship.

Appellant submitted reports and notes from a physician with an illegible signature. The Board has held that a report bearing an illegible signature lacks proper identification and cannot be considered probative medical evidence.[10] Thus, these reports remain of no probative value and are insufficient to establish appellant's claim.

Appellant also submitted treatment records from occupational therapists and from Ms. Askelson, a nurse practitioner. However, these records do not constitute competent medical evidence because occupational therapists and nurse practitioners are not considered physicians as defined under FECA.[11] As such, this evidence is of no probative value and is insufficient to meet appellant's burden of proof.

As the medical evidence of record is insufficient to establish that appellant's right CTS was causally related to the accepted employment factors, the Board finds that appellant 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.

[9] *P.W.*, Docket No. 20-0407 (issued July 17, 2020); *Ricky S. Storms*, 52 ECAB 349 (2001).

[10] *C.N.*, Docket No. 16-1597 (issued August 10, 2017); *see A.B.*, Docket No. 17-0545 (issued June 15, 2017); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

[11] 5 U.S.C. § 8101(2) provides that a physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law. *See also* 20 C.F.R. § 10.5(t); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *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). *E.B.*, Docket No. 19-1548 (issued July 14, 2020) and *R.S.*, Docket No. 16-1303 (issued December 2, 2016) (an occupational therapist is not considered a physician under FECA); *L.C.*, Docket No. 16-1717 (issued March 2, 2017) (a nurse practitioner is not considered a physician under FECA).

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish right CTS causally related to the accepted factors of his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the February 26, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 29, 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