

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

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| <b>J.C., Appellant</b>   | ) |                              |
|  | ) |                              |
| <b>and</b>   | ) | <b>Docket No. 20-0882</b>    |
|  | ) | <b>Issued: June 23, 2021</b> |
| <b>DEPARTMENT OF THE ARMY, MEDICAL<br/>COMMAND, Fort Benning, GA, Employer</b> | ) |                              |
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*Appearances:*  
*Alan J. Shapiro, Esq.,* for the appellant<sup>1</sup>  
*Office of Solicitor,* for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
JANICE B. ASKIN, Judge  
PATRICIA H. FITZGERALD, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On March 16, 2020 appellant, through counsel, filed a timely appeal from a February 26, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant has met his burden of proof to establish a medical condition causally related to the accepted May 15, 2014 employment incident.

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<sup>1</sup> 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.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

This case has previously been before the Board.<sup>3</sup> The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On January 27, 2017 appellant, then a 55-year-old maintenance mechanic, filed a traumatic injury claim (Form CA-1) alleging that on May 14, 2015 he injured his left elbow when he overextended it while in the performance of duty. He did not stop work.

Appellant submitted medical reports and treatment notes dated May 15, 2015 through April 6, 2016, wherein Dr. Phillip Hajeck and Dr. Benjamin Thomas, Board-certified orthopedic surgeons, noted that appellant sought treatment for complaints of left elbow pain beginning in August 2014. They diagnosed left upper extremity pain, left elbow pain, left medial epicondylitis, left median nerve neuritis, left carpal tunnel syndrome, left cubital tunnel syndrome, and hyperextension. OWCP also received a January 19, 2016 operative report, which indicated that he underwent carpal and cubital tunnel release surgery.

By decision dated March 24, 2017, OWCP accepted that the May 14, 2015 employment incident occurred, as alleged, but denied appellant's traumatic injury claim because the evidence of record did not include medical evidence containing a diagnosis in connection with the accepted employment incident. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On April 4, 2017 appellant requested a hearing before a representative of OWCP's Branch of Hearings and Review, which was held on October 12, 2017. He clarified that the date of injury was May 15, 2014 and that he first sought medical treatment in August 2014.

By decision dated December 13, 2017, OWCP's hearing representative modified the March 24, 2017 decision to find that the medical evidence of record was sufficient to establish medical diagnoses of left medial epicondylitis, left carpal tunnel syndrome, and left cubital tunnel syndrome. The claim remained denied, however, as the medical evidence of record was insufficient to establish causal relationship between the diagnosed conditions and the accepted May 15, 2014 employment incident.

On July 3, 2018 appellant, through counsel, requested reconsideration and submitted an April 3, 2018 report by Dr. Waldo E. Floyd, III, a Board-certified orthopedic surgeon. He described the May 15, 2014 employment incident and opined that this history was consistent with the diagnostic findings of a ruptured triceps tendon.

By decision dated October 3, 2018, OWCP denied modification of its prior decision.

Appellant filed an appeal before the Board. By decision dated June 18, 2019, the Board affirmed the October 3, 2018 decision.<sup>4</sup>

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<sup>3</sup> Docket No. 19-0310 (issued June 18, 2019).

<sup>4</sup> *Supra* note 3.

On January 6, 2020 appellant, through counsel, requested reconsideration.

In a December 30, 2019 report, Dr. Sami E. Moufawad, a Board-certified physical medicine and rehabilitation and pain medicine specialist, noted the May 15, 2014 date of injury and recounted that appellant was operating a hammer drill at work when the bit got caught and caused him to overextend his left shoulder and elbow. He discussed the medical treatment that appellant received, including three surgeries on his left elbow and wrist.<sup>5</sup> Dr. Moufawad recounted that appellant currently complained of burning and tingling in his left forearm from the elbow down to the left ring and little fingers, weakness, numbness, and tingling of the left elbow, and weak grip. Upon examination of appellant's left upper extremity, he observed decreased sensation to light touch on the ulnar aspect of the distal left forearm and ring and little fingers and decreased sensory to sharp and dull discrimination in the left ulnar nerve distribution. Dr. Moufawad also provided range of motion (ROM) findings for appellant's left shoulder and elbow. He noted that appellant was diagnosed with ulnar neuritis of the cubital tunnel and left triceps partial tear.

Dr. Moufawad explained that when the power drill got caught, the motor continued to work, forcing appellant's elbow and shoulder into hyperextension and abduction. He opined that, "[t]hese conditions are all the results of the mechanism of injury, whereas his elbow was forced in hyperflexion and abduction while holding the left handle of the hammer drill." Dr. Moufawad explained that with a wrist hyperextension injury, the median nerve must have been squeezed by these tendons against the transverse carpal ligament, which resulted in the development of carpal tunnel syndrome and median neuritis at the wrist. He also discussed the mechanism of injury of how the hyperextension and abduction of appellant's left upper extremity caused a stretching and tear of appellant's left triceps muscle. Dr. Moufawad requested that appellant's claim be expanded to include left carpal tunnel syndrome, left ulnar neuritis at the cubital tunnel, left medial epicondylitis, and left triceps partial tear.

By decision dated February 26, 2020, OWCP denied modification.<sup>6</sup>

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>7</sup> has the burden of proof to establish the essential elements of his or her claim, including 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,<sup>8</sup> 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

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<sup>5</sup> Dr. Moufawad also noted that appellant had retired due to disability, effective March 31, 2019.

<sup>6</sup> OWCP noted that it was denying modification of the June 18, 2019 decision. However, OWCP has no jurisdiction to review a Board decision. The decisions and orders of the Board are final as to the subject matter appealed and such decisions and orders are not subject to review, except by the Board. *See* 20 C.F.R. § 501.6(d). The proper subject of review was OWCP's October 3, 2018 merit decision.

<sup>7</sup> *Supra* note 2.

<sup>8</sup> *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

employment injury.<sup>9</sup> 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.<sup>10</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, OWCP must first determine whether fact of injury has been established.<sup>11</sup> There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged.<sup>12</sup> Second, the employee must submit evidence, in the form of probative medical evidence, to establish that the employment incident caused a personal injury.<sup>13</sup>

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 opinion evidence.<sup>14</sup> 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.<sup>15</sup> 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.<sup>16</sup>

### ANALYSIS

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

Preliminary, the Board notes that it is unnecessary for the Board to consider the evidence that was previously considered in its June 18, 2019 decision, which found that appellant had not

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<sup>9</sup> *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>10</sup> *R.R.*, Docket No. 19-0048 (issued April 25, 2019); *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).

<sup>11</sup> *D.B.*, Docket No. 18-1348 (issued January 4, 2019); *S.P.*, 59 ECAB 184 (2007).

<sup>12</sup> *D.S.*, Docket No. 17-1422 (issued November 9, 2017); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

<sup>13</sup> *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *David Apgar*, 57 ECAB 137 (2005); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>14</sup> *See S.A.*, Docket No. 18-0399 (issued October 16, 2018); *see also Robert G. Morris*, 48 ECAB 238 (1996).

<sup>15</sup> *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>16</sup> *James Mack*, 43 ECAB 321 (1991).

met his burden of proof to establish his traumatic injury claim.<sup>17</sup> Findings made in prior Board decisions are *res judicata*, absent any further review by OWCP under section 8128 of FECA.<sup>18</sup>

Following OWCP's October 3, 2018 decision, appellant submitted a December 30, 2019 report by Dr. Moufawad. He described the May 15, 2014 employment incident and discussed the medical treatment that appellant had received. Dr. Moufawad provided examination findings and noted that appellant was diagnosed with ulnar neuritis of the cubital tunnel and left triceps partial tear. He explained that when the power drill got caught, the motor continued to work and forced appellant's elbow and shoulder into hyperextension and abduction. Dr. Moufawad opined that, "[t]hese conditions are all the results of the mechanism of injury, whereas his elbow was forced in hyperflexion and abduction while holding the left handle of the hammer drill." He further discussed the mechanism of injury of how hyperextension and abduction of appellant's left upper extremity contributed to appellant's carpal tunnel syndrome, medial epicondylitis, and tear of his left triceps muscle.

The Board finds that, while Dr. Moufawad's report was not completely rationalized, it is sufficient to require further development of the medical evidence.<sup>19</sup> Dr. Moufawad accurately described the May 15, 2014 employment incident and provided an explanation as to how the hyperextension and abduction of appellant's left upper extremity resulted in his diagnosed left upper extremity conditions. Further, he is a Board-certified physician who is qualified in his field of medicine to render an opinion on causal relationship. The Board has held that it is unnecessary that the evidence of record in a case be so conclusive as to suggest causal connection beyond all possible doubt. Rather, the evidence required is only that necessary to convince the adjudicator that the conclusion drawn is rational, sound, and logical.<sup>20</sup> Although Dr. Moufawad's opinion is insufficiently rationalized to establish causal relationship, it does raise an uncontroverted inference regarding causal relationship between the diagnosed condition and the accepted employment incident sufficient to require that OWCP further develop the medical evidence in the claim.<sup>21</sup>

It is well established that proceedings under FECA are not adversarial in nature and, while appellant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.<sup>22</sup> OWCP has an obligation to see that justice is done.<sup>23</sup>

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<sup>17</sup> Docket No. 19-310, *supra* note 3.

<sup>18</sup> *G.B.*, Docket No. 19-1448 (issued August 21, 2020); *E.B.*, Docket No. 17-1497 (issued March 19, 2019); *Robert G. Burns*, 57 ECAB 657 (2006).

<sup>19</sup> *See E.G.*, Docket No. 20-1184 (issued March 1, 2021).

<sup>20</sup> *W.M.*, Docket No. 17-1244 (issued November 7, 2017); *E.M.*, Docket No. 11-1106 (issued December 28, 2011).

<sup>21</sup> *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *D.S.*, Docket No. 17-1359 (issued May 3, 2019); *William J. Cantrell*, 34 ECAB 1223 (1983).

<sup>22</sup> *E.G.*, Docket No. 19-1296 (issued December 19, 2019); *A.P.*, Docket No. 17-813 (issued January 3, 2018); *Jimmy A. Hammons*, 51 ECAB 219 (1999).

<sup>23</sup> *See B.C.*, Docket No. 15-1853 (issued January 19, 2016); *E.J.*, Docket No. 09-1481 (issued February 19, 2010); *John J. Carlone*, 41 ECAB 354 (1989).

On remand, OWCP shall refer appellant, the case record, and a statement of accepted facts to a specialist in the appropriate field of medicine for an evaluation and a well-rationalized opinion as to whether his diagnosed left upper extremity conditions are causally related to the accepted May 15, 2014 employment incident. If the physician opines that the diagnosed conditions are not causally related to the employment incident, he or she must provide a rationalized explanation as to why their opinion differs from that articulated by Dr. Moufawad. After this and other such further development of the case record 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 February 26, 2020 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: June 23, 2021  
Washington, DC

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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

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