

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

D.B., Appellant	)	
	)	
and	)	Docket No. 20-1280
	)	Issued: March 2, 2021
DEPARTMENT OF LABOR, OFFICE OF	)	
WORKERS' COMPENSATION PROGRAMS,	)	
Philadelphia, 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  
 JANICE B. ASKIN, Judge  
 PATRICIA H. FITZGERALD, Alternate Judge

**JURISDICTION**

On June 18, 2020 appellant filed a timely appeal from a June 5, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP).<sup>1</sup> 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.

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<sup>1</sup> The Board notes that following the June 5, 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. *Id.*

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

## ISSUE

The issue is whether appellant has met his burden of proof to establish that acceptance of his claim should be expanded to include the additional condition of right lateral epicondylitis as causally related to his accepted May 1, 2019 employment injury.

## FACTUAL HISTORY

On May 13, 2019 appellant, then a 48-year-old claims examiner, filed an occupational disease claim (Form CA-2) alleging that he developed left lateral epicondylitis due to factors of his federal employment, including constant and extensive computer key-entry and typing on a consistent and daily basis. He indicated that he first became aware of his condition and its relation to his federal employment on May 1, 2018. Appellant did not stop work.

In a report dated March 7, 2019, Dr. Matthew Ramsey, a Board-certified orthopedic surgeon, examined appellant due to left lateral elbow pain and diagnosed lateral epicondylitis. He opined that this condition was directly related to appellant's repetitive work activities as a claims examiner, specifically, repetitive typing. Dr. Ramsey concluded that the excessive typing was the core of appellant's work as a claims examiner and resulted in his left lateral elbow pain such that it was a work-related injury.

In an April 30, 2019 statement, appellant asserted that he typed throughout his entire shift for 8 to 10 hours a day, 4 days a week. He noted that he was employed as a claims examiner, performing extensive typing, for the past seven years. Appellant denied any hobbies or activities outside of his federal employment.

On May 23, 2019 OWCP accepted the claim for left elbow lateral epicondylitis. On August 2, 2019 appellant underwent an OWCP-approved left common extensor tendinopathy. OWCP authorized wage-loss compensation on the supplemental rolls from August 5 through November 9, 2019.

Dr. Ramsey examined appellant on October 8, 2019 for a follow up evaluation. He noted that appellant had not had symptomatic relief from his left elbow surgery and continued to have exquisite pain. Dr. Ramsey further noted that appellant had difficulty with repetitive activities of both the left and right elbows and found that he was totally disabled from work. He diagnosed lateral epicondylitis of both elbows and elbow pain. Dr. Ramsey recommended additional left elbow surgery, an open debridement with tendon repair. In a form report of even date, he diagnosed lateral epicondylitis of both elbows and again recommended left elbow surgery. Dr. Ramsey indicated by checking a box marked "Yes" that appellant's injuries were causally related to the May 1, 2018 injury.

On October 21, 2019 appellant underwent an OWCP approved open debridement with tendon repair of the left elbow.

On November 13, 2019 OWCP authorized wage-loss compensation on the periodic rolls, effective October 27, 2019.

In a January 14, 2020 report, Dr. Ramsey opined that appellant could return to light-duty work with no repetitive typing. The employing establishment was unable to accommodate this restriction. Dr. Ramsey repeated this restriction on February 25, 2020.

In a March 25, 2020 addendum, Dr. Ramsey requested that OWCP accept the additional diagnosis of right lateral epicondylitis as he found that this diagnosis was directly caused by appellant's excessive typing at work.

On April 8, 2020 appellant requested that his claim be expanded to include the additional diagnosis of right lateral epicondylitis based on Dr. Ramsey's reports.

In an April 17, 2020 letter, OWCP informed appellant that his claim was accepted only for left lateral epicondylitis. It directed him to file a new claim in support of his alleged right lateral epicondylitis with appropriate supporting documentation. On April 22, 2020 appellant disagreed and asserted that his current claim should be developed for the additional condition of right elbow lateral epicondylitis. He further responded, "You incorrectly determined that I was not requesting a consequential claim expansion which is exactly what I am requesting."

In an April 30, 2020 development letter, OWCP noted that appellant was asserting a possible consequential condition of right lateral epicondylitis as a result of his accepted condition of left lateral epicondylitis. It referenced Dr. Ramsey's March 25, 2020 addendum indicating that it was insufficient to support his claim and requested additional factual and medical evidence in support of the claim for right lateral epicondylitis. OWCP afforded 30 days to respond.

On May 13, 2020 appellant submitted additional medical evidence including a May 12, 2020 report from Dr. Ramsey in which he diagnosed mild right lateral epicondylitis. Dr. Ramsey opined that this condition was the direct result of extensive typing as a claims examiner. Appellant also resubmitted Dr. Ramsey's October 8, 2019 notes diagnosing lateral epicondylitis of both elbows.

Appellant provided a May 4, 2020 narrative statement and asserted that his right lateral epicondylitis began in 2018 and existed contemporaneously with his left lateral epicondylitis but was not as painful. He attributed his right lateral epicondylitis to extensive typing as a claims examiner. Appellant alleged that he typed on a consistent daily basis and that he used both hands and arms to type. He asserted that he was requesting an expansion of his claim.

In a May 19, 2020 treatment note, Dr. Ramsey reported that appellant was seeking treatment for both elbows. He noted that appellant's predominate complaint was the left elbow as he was recovering from surgery. Dr. Ramsey diagnosed lateral epicondylitis of both elbows. He released appellant to return to full-duty work with no restrictions on June 22, 2020. Dr. Ramsey advised that appellant's left elbow would reach maximum medical improvement on that date and that he would be discharged from care with respect to the left elbow.

By decision dated June 5, 2020, OWCP denied appellant's request to expand acceptance of his claim to include a consequential injury of right lateral epicondylitis. It found that the medical evidence did not demonstrate that weakness or impairment caused by his accepted work-related injury or illness led to an aggravation of the original injury or to a new injury as required for coverage under FECA.

## LEGAL PRECEDENT

Where an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.<sup>3</sup>

To establish causal relationship between the condition as well as any attendant disability claimed and the employment injury, an employee must submit rationalized medical evidence.<sup>4</sup> 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 factors identified by the claimant.<sup>5</sup> The weight of 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>6</sup>

In discussing the range of compensable consequences, once the primary injury is causally connected with the employment, the question is whether compensability should be extended to a subsequent injury or aggravation related in some way to the primary injury. The rules that come into play are essentially based upon the concepts of direct and natural results and of the claimant's own conduct as an independent intervening cause. The basic rule is that, a subsequent injury, whether an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury.<sup>7</sup>

## ANALYSIS

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

OWCP denied expansion of acceptance of appellant's claim finding that the medical evidence did not establish a consequential right elbow condition. It did not, however, discuss whether the evidence was sufficient to establish expansion of the acceptance of the claim for the additional condition of right elbow lateral epicondylitis which appellant alleged was causally related to the accepted employment injury.<sup>8</sup> OWCP therefore failed to set forth findings of fact and a clear statement of reasons explaining its disposition so that appellant could understand the

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<sup>3</sup> *S.H.*, Docket No. 19-1128 (issued December 2, 2019); *M.M.*, Docket No. 19-0951 (issued October 24, 2019); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

<sup>4</sup> *T.K.*, Docket No. 18-1239 (issued May 29, 2019); *M.W.*, 57 ECAB 710 (2006); *John D. Jackson*, 55 ECAB 465 (2004).

<sup>5</sup> *D.S.*, Docket No. 18-0353 (issued February 18, 2020); *T.K., id.; I.J.* 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>6</sup> See *P.M.*, Docket No. 18-0287 (issued October 11, 2018).

<sup>7</sup> See *V.K.*, Docket No. 19-0422 (issued June 10, 2020).

<sup>8</sup> *Y.C.*, Docket No. 19-1712 (issued November 6, 2020); *L.B.*, Docket No. 19-0775 (issued January 16, 2020).

basis for the decision, as well as the precise defect and the evidence needed to overcome the denial of his request to expand his occupational disease claim.<sup>9</sup>

FECA provides that OWCP shall determine and make findings of fact in making an award for or against payment of compensation after considering the claim presented by the employee and after completing such investigation as OWCP considers necessary with respect to the claim.<sup>10</sup> The Board, therefore, must set aside the June 5, 2020 decision of OWCP and remand the case so that it may make proper findings of fact and provide reasons for its decision, pursuant to the standards set forth in section 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.126.<sup>11</sup> Following such further development as it deems necessary, OWCP 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 June 5, 2020 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision.

Issued: March 2, 2021  
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

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<sup>9</sup> *Y.C., id.*; *M.J.*, Docket No. 18-0605 (issued April 12, 2019); *R.M.*, Docket No. 16-0532 (issued August 9, 2017).

<sup>10</sup> 5 U.S.C. § 8124(a)(2).

<sup>11</sup> *Y.C., supra* note 8; *M.M.*, Docket No. 19-1741 (issued May 5, 2020); *C.M.*, Docket No. 20-0428 (issued August 25, 2020).