United States Department of Labor
Employees' Compensation Appeals Board

A.M., Appellant	)	
and	)	
DEPARTMENT OF THE NAVY, NAVAL AIR STATION FLEET READINESS CENTER SOUTHWEST, San Diego, CA, Employer	)	**Docket No. 22-0313** **Issued: August 16, 2022**

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On December 29, 2021 appellant, through counsel, filed a timely appeal from a December 8, 2021 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.

[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*.

ISSUE

The issue is whether appellant has met his burden of proof to establish a right upper extremity condition causally related to the accepted factors of his federal employment.

FACTUAL HISTORY

On December 12, 2018 appellant, then a 47-year-old nondestructive testing mechanic, filed an occupational disease claim (Form CA-2) alleging that his right carpal tunnel syndrome (CTS), right wrist pain, right shoulder joint derangement, and right hand trigger finger were aggravated by factors of his federal employment, including lifting heavy slippery parts during inspections. He noted that he first became aware of his condition on June 20, 2007 and realized its relationship to his federal employment on May 17, 2016. Appellant stopped work on January 20, 2017. On the reverse side of the form, the employing establishment noted that he had not reported an employment-related condition and that he had been removed from employment.

A May 5, 2011 position description for nondestructive testing mechanic noted the physical requirements of the position.

Accompanying appellant's claim were medical records covering the period May 16, 2007 through November 24, 2014 noting treatment for acid burns of the cervical nerve compression fracture, right shoulder pain, bilateral eye corneas, left side of chest wall work injury, back pain, right wrist sprain, and right carpal tunnel syndrome.

Electromyogram and nerve conduction velocity (EMG/NCV) studies dated November 22, 2016 documented right cervical radiculopathy or possible multiple upper extremity nerve involvement.

In a September 10, 2018 report, Dr. Omar Ladas, an internist, diagnosed right carpal tunnel and right wrist and right shoulder pain. He noted that appellant related that his repetitive work duties of typing on a keyboard and lifting heavy, slippery objects contributed to his pain. Dr. Ladas opined that it was reasonable to assume that the identified work activities aggravated the diagnosed conditions.

In a November 28, 2018 narrative statement, appellant asserted that his carpal tunnel syndrome had been aggravated by repetitive lifting heavy slippery parts steeped in chemicals during inspection. Additionally, he asserted that his job aggravated his right shoulder and caused his right hand trigger finger. Appellant explained that he had undergone surgery for his trigger finger which resulted in damaged nerves and weakening of his hand.

OWCP, in a January 2, 2019 development letter, 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. In a separate development letter of even date, OWCP requested that the employing establishment provide a copy of appellant's position description and physical requirements of his job. It afforded both parties 30 days to respond.

OWCP received appellant's employing establishment health unit records covering the period August 13, 2006 to October 25, 2016.

In e-mail correspondence dated February 4, 2019, an employing establishment supervisor, indicated that appellant's position description did not involve excessive repetitive wrist and hand movement. In addition, she noted that when appellant was referred to occupational health for hand and wrist complaints, that the returned medical chit always indicated that he was fit for duty and was marked nonwork related for an occupational injury.

By decision dated March 12, 2019, OWCP denied appellant's claim finding the evidence of record insufficient to establish that the alleged events occurred as alleged. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On April 10, 2019 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. A telephonic hearing was held on August 14, 2019. At the hearing appellant described the job duties he claimed aggravated his preexisting right carpal tunnel syndrome and caused his right shoulder condition.

Dr. Ladas, in an August 20, 2019 report, noted that appellant was being seen at the Department of Veterans Affairs, VA San Diego Healthcare System for chronic radiculopathy, right shoulder hand, and wrist radiculopathy/pain, and trigger finger. On examination he reported significantly decreased grip strength and right index, middle, and ring finger numbness. Review of an October 31, 2013 x-ray demonstrated healed right distal clavicle fracture deformity. Dr. Ladas noted that appellant had physical therapy for right shoulder/hand/arm pain and trigger finger in 2013/2014 and had trigger finger surgery in July 2017. Subsequent to the trigger finger surgery, appellant developed paresthesias of three fingers and right middle finger contracture.

By decision dated September 26, 2019, OWCP's hearing representative affirmed OWCP's March 12, 2019 decision as modified. He found appellant's description of his job duties at the hearing sufficient to establish the employment factors. However, the hearing representative found the medical evidence insufficient to establish that the diagnosed conditions were caused or aggravated by the accepted employment factors.

On May 6, 2020 counsel requested reconsideration. In support of his request, he submitted an April 13, 2020 report by Dr. Neil Allen, a Board-certified neurologist internist, who indicated that he had reviewed appellant's medical records and that the patient was contacted for a statement. Dr. Allen noted that appellant began working as a non-destructive testing mechanic in 2004. The duties of the position required lifting up to 60 pounds; pinching, grasping, and holding onto small, lubricated parts during inspections; repetitively reaching at, above, and below the chest level; and rotating, pulling, and pushing parts of various sizes for 8 to 10 hours per day, five to six days per week depending on overtime availability. In 2007 appellant noticed a worsening of hand and wrist pain, tingling in his right 2nd, 3rd, and 4th digits, and right shoulder pain with overhead reaching and lifting. A review of an October 31, 2013 x-ray demonstrated right healed distal clavicle fracture deformity and a February 21, 2020 electromyograph/nerve conduction study (EMG/NCS) showed evidence of mild-to-moderate right and mild left wrist median neuropathy. Dr. Allen diagnosed right rotator cuff tendinitis and right carpal tunnel syndrome, which he attributed to appellant's work duties. He reported that it was well documented that individuals who performed

repetitive lifting or overhead activities are at a greater risk of developing rotator cuff tendinitis. Dr. Allen explained that these activities stretch, strain and repeatedly breakdown the soft tissues of the shoulder leading to inflammation, which then led to pain, tenderness, and reduced mobility in appellant's shoulder. He noted that appellant had been previously diagnosed with right carpal tunnel and had been asymptomatic for several years prior to his nondestructive testing mechanic job. Dr. Allen explained that a common etiology for carpal tunnel are jobs requiring "repeated forceful wrist flexion," and violent or forceful overextension of a joint may result in mechanical neuritis and repeated small traumas resulting in median nerve injury. He concluded that appellant's repetitive/prolonged inspection of small to large parts required by his position combined all of the noted insulting activities leading to compression and injury to the median nerve.

By decision dated September 24, 2020, OWCP denied modification.

On September 13, 2021 counsel requested reconsideration and submitted a September 1, 2021 report from Dr. Allen. In the September 1, 2021 report, Dr. Allen addressed the deficiencies OWCP noted in the September 24, 2020 decision. He explained that he had reviewed the position description for the nondestructive-testing mechanic. Dr. Allen listed the duties in the position description and related that it would be impossible to perform these tasks without repetitive pinching and grasping of the hands as described by appellant. He opined that appellant's repetitive hand and wrist activity resulted in mechanical stress of the joints, leading to inflammation and subsequent compression of the median nerve, which lead to the pain and numbess in his right writst and hand. Appellant's February 21, 2020 EMG confirmed the diagnosis. Dr. Allen also noted that appellant had indicated that he lifted up to 60 pounds; however, if he lifted, pushed and pulled parts weighing up to 40 pounds, these activities would still expose appellant's shoulder, wrist and hand to undue mechanical stress and wear. He then explained that while a 2007 medical report indicated that appellant had wrist and hand symptoms during his military service and while typing reports for school, these activities had ended by 2000, and after rest, appellant's carpal tunnel and tendinitis resolved and remained asymptomatic until appellant's employment as a nondestructive-testing mechanic.

By decision dated December 8, 2021, OWCP denied modification.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] 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,[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

[3] *Id*.

[4] *N.H.*, Docket No. 21-1113 (issued February 25, 2022); *F.H.*, Docket No.18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

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, an employee 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 employment factors identified by the employee.[7]

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.[8] A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment incident 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 the specific employment factors identified by the claimant.[10]

In any case where a preexisting condition involving the same part of the body is present and the issue of causal relationship, therefore, involves aggravation, acceleration, or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.[11]

ANALYSIS

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

In support of his reconsideration request, appellant submitted an April 13, 2020 report by Dr. Allen who indicated that he had reviewed appellant's medical records and that appellant had

[5] *M.H.*, Docket No. 19-0930 (issued June 17, 2020); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[6] *Y.L.*, Docket No.. 21-1011(issued January 12, 2022); *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

[7] *Y.L., id.*; *P.L.*, Docket No. 19-1750 (issued March 26, 2020); *R.G.*, Docket No. 19-0233 (issued July 16, 2019); *Delores C. Ellyett, id.*

[8] *Y.L., id.*; *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

[9] *Y.L., id.*; *C.F.*, Docket No. 18-0791 (issued February 26, 2019); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[10] *See Y.L., id.*; *P.M.*, Docket No. 18-0287 (issued October 11, 2018); *John W. Montoya*, 54 ECAB 306 (2003).

[11] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); *N.H., supra* note 4; *J.D.*, Docket No. 20-0404 (issued July 22, 2020); *K.G.*, Docket No. 18-1598 (issued January 7, 2020); *M.S.*, Docket No. 19-0913 (issued November 25, 2019).

been contacted for a statement. Dr. Allen reported that it was well documented that individuals who perform repetitive lifting or overhead activities are at a greater risk of developing rotator cuff tendinitis. He further explained that these activities stretch, strain and repeatedly breakdown the soft tissues of the shoulder leading to inflammation, and that these activities had led to pain, tenderness, and reduced mobility in appellant's shoulder. Dr. Allen noted that appellant had been previously diagnosed with right carpal tunnel and had been asymptomatic for several years prior to his nondestructive-testing mechanic job. He explained that a common etiology for carpal tunnel were jobs that required repeated forceful wrist flexion, and violent or forceful overextension of a joint may result in mechanical neuritis and repeated small traumas resulting in median nerve injury. Dr. Allen explained that appellant's repetitive/prolonged inspection of small to large parts required by his position combined all the noted insulting activities leading to compression and injury to the median nerve. He concluded that given appellant's description of work duties and the clinical presentation documented by appellant's treating physicians within the medical record of the case, caused appellant's right rotator cuff tendinitis and aggravated his right carpal tunnel syndrome.

In his November 1, 2021 report, Dr. Allen further addressed OWCP's noted deficiencies in his prior report. He listed the duties in appellant's position description and related that it would be impossible to perform these tasks without repetitive pinching and grasping of the hands. Dr. Allen opined that appellant's repetitive hand and wrist activity resulted in mechanical stress of the joints, leading to inflammation and subsequent compression of the median nerve, which lead to the pain and numbess in his right wrist and hand, which was confirmed by apellant's February 21, 2020 EMG. He also noted that appellant had indicated that he lifted up to 60 pounds, however if he lifted, pushed and pulled parts weighing up to 40 pounds, these activities would still expose appellant's shoulder, wrist and hand to undue mechanical stress and wear.

OWCP determined that Dr. Allen's April 13, 2020 and September 1, 2021 reports were insufficient to establish causal relationship because they did not include a well-rationalized opinion explaining how a diagnosed condition was related to the claimed exposures at work. Factors considered by OWCP in weighing medical reports include whether the opinion is based on a complete, accurate, and consistent history covering both the medical and factual aspects of the case; whether the opinion was well reasoned and well rationalized; whether the physician has the expertise and credentials to provide a medical opinion in this case; and whether the medical opinion was speculative or equivocal.[12] The Board has long 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.[13]

The Board finds that Dr. Allen provided an affirmative opinion on causal relationship. Dr. Allen identified employment factors which appellant claimed caused his condition and explained how the identified employment factors, specifically the repetitive reaching at, above and below chest level physiologically caused the right rotator cuff tendinitis and the repetitive hand

[12] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.810.6a (September 2010); *see S.M.*, Docket No. 18-1195 (issued January 6, 2020).

[13] *D.M.*, Docket No. 20-0551 (issued July 21, 2021); *W.M.*, Docket No. 17-1244 (issued November 7, 2017); *E.M.*, Docket No. 11-1106 (issued December 28, 2011); *Kenneth J. Deerman*, 34 ECAB 641, 645 (1983).

pinching and grasping aggravated appellant's preexisting right carpal tunnel syndrome. He provided a pathophysiological explanation as to how the accepted employment factors were sufficient to cause the diagnosed conditions. The Board finds that Dr. Allen's opinion while insufficiently rationalized to meet appellant's burden of proof, is sufficient, given the absence of any opposing medical evidence, to require further development of the record.[14]

Proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter. While it is appellant's burden of proof to establish the claim, OWCP shares responsibility in the development of the evidence.[15] It has the obligation to see that justice is done.[16] The Board will therefore remand the case to OWCP for further development of the medical evidence. On remand OWCP shall refer appellant, a statement of accepted facts, and the medical evidence of record to a physician in the appropriate field of medicine for a rationalized opinion as to whether appellant's diagnosed right shoulder conditions are causally related to the accepted factors of his federal employment. If the physician opines that the diagnosed condition is not causally related to the accepted employment factors, he or she must explain with rationale how or why their opinion differs from that of Dr. Allen. Following this and any other further development as deemed necessary, OWCP shall issue a *de novo* decision on his claim.

CONCLUSION

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

[14] *R.A.*, Docket No. 19-0650 (issued January 15, 2020); *B.M.*, Docket No. 18-0448 (issued January 2, 2020); *E.G.*, Docket No. 19-1296 (issued December 18, 2019).

[15] *Id*.

[16] *Id*.

ORDER

IT IS HEREBY ORDERED THAT December 8, 2021 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: August 16, 2022
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

Alec J. Koromilas, Chief Judge, dissenting,

The majority opinion finds that, although the April 13, 2020 and September 1, 2021 medical reports of Dr. Neil Allen were insufficient to meet appellant's burden of proof to establish their claim, it was sufficient to require the Office of Workers' Compensation Programs to further develop the medical evidence with regard to expansion. I disagree.[1]

While considered a treating physician, Dr. Allen never saw in person nor physically examined appellant. He premised his opinion solely on what he characterized as "medical records that he had reviewed" and that the "patient was contacted for a statement."

[1] *See D.R.*, Docket No. 20-1104 (issued January 29, 2021); *S.B.*, Docket No. 19-1778 (issued October 23, 2020); *S.J.*, Docket No. 19-1029 (issued October 22, 2020); *M.O.*, Docket No. 19-0278 (issued February 19, 2020); *J.H.*, Docket No. 18-1637(issued January 29, 2020); *C.C.*, Docket No. 18-1453 (issued January 28, 2020); *K.P.*, Docket No.18-0056 (issued January 27, 2020); *K.P.*, Docket No.18-0056 (issued January 27, 2020).

The Federal Employees' Compensation Act Procedural Manual sets out parameters for the weighing of medical evidence.[2] It describes a comprehensive report as one which reflects that all testing and analysis necessary to support the physician's final conclusions were performed.

I believe certain basic medical examination parameters must be met. Dr. Allen espoused an opinion on causal relationship without the benefit of direct physical examination or observations. He based his findings on EMG/NCS studies and-rays without reference to any previous treating physicians. This is the type of injury that lends itself to an examination for the purposes of diagnosis and causation, where the physician is able at a minimum to see the patient, question and receive a first-hand account of the injury and compare same. This remains critical even when the only issue is causation. For example, visualizing the locus of injury is informative to the examining treating physician relative to issues of atrophy, dislocation, contusion, and, congenital malformation which could possibly cause the same symptoms along with other factors that may relate to the finding of causal relationship. I do not agree that words of causation in the ordinary course alone can be separated from some type of examination of appellant by appellant's physician.

If Dr. Allen was able to view, speak with and examine appellant, I would be inclined to perhaps be satisfied with his knowledge and understanding along with his pathophysiological explanation and agree with the majority that his opinion would be sufficient to remand for OWCP to further develop the medical evidence. However, the majority finding in my view, without the benefit of a conversation coupled with a visualized examination effectively shifts the burden of proof to OWCP to disprove the claim based on a medical report that is of questionable probative value.

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

[2] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.810.6(a)(4) (September 2010).