

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

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<b>C.A., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 22-0764</b>
	)	<b>Issued: November 30, 2022</b>
	)	
<b>DEPARTMENT OF JUSTICE, FEDERAL</b>	)	
<b>BUREAU OF PRISONS, NAVAL AIR</b>	)	
<b>STATION, Fort Worth, TX, Employer</b>	)	
_____	)	

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
JANICE B. ASKIN, Judge

**JURISDICTION**

On April 20, 2022 appellant filed a timely appeal from a March 4, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP).<sup>1</sup> Pursuant to the Federal Employees'

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<sup>1</sup> Appellant submitted a timely request for oral argument before the Board. 20 C.F.R. § 501.5(b). Pursuant to the Board's *Rules of Procedure*, oral argument may be held in the discretion of the Board. 20 C.F.R. § 501.5(a). In support of his oral argument request, appellant asserted that oral argument should be granted because he would like to explain his reasoning of the evidence submitted with his file. The Board, in exercising its discretion, denies appellant's request for oral argument because the arguments on appeal can adequately be addressed in a decision based on a review of the case record. Oral argument in this appeal would further delay issuance of a Board decision and not serve a useful purpose. As such, the oral argument request is denied and this decision is based on the case record as submitted to the Board.

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.<sup>3</sup>

### **ISSUE**

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

### **FACTUAL HISTORY**

On October 5, 2020 appellant, then a 56-year-old correctional officer, filed an occupational disease claim (Form CA-2) alleging that he developed bilateral carpal tunnel syndrome and bilateral flexor and extensor tendinitis due to factors of his federal employment. He noted that he first became aware of his conditions on August 6, 2018 and realized their relation to his federal employment on September 12, 2019.<sup>4</sup>

In support of his claim, appellant submitted additional evidence, including a September 23, 2020 statement and a copy of his position description. He attributed his medical conditions to restraining and transporting inmates to and from their medical appointments.

In a September 3, 2019 report, Dr. Scott T. Stoll, an osteopathic Board-certified physiatrist, reported that appellant's electromyography/nerve conduction velocity (EMG/NCV) testing was consistent with a diagnosis of mild, bilateral, neuropraxic carpal tunnel syndrome, right worse than left. He further opined that physical examination findings were consistent with a diagnosis of mild-to-moderate bilateral flexor and extensor tendinitis (tennis and golfer's elbows).

In a June 1, 2020 report, Dr. Melvin R. Manning, a physiatrist, indicated that appellant's NCV study was consistent with cervical radiculopathy involving the left upper extremity. Other diagnostic considerations included radial/medial sensory mononeuropathy and cervical radiculopathy involving the left C6 myotome.

In an October 16, 2020 development letter, OWCP informed appellant of the deficiencies in his claim. It advised him of the type of medical evidence necessary, which provided a physician's rationalized opinion as to how factors of his federal employment resulted in a diagnosed condition. OWCP afforded appellant 30 days to respond. No further evidence was received.

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

<sup>3</sup> The Board notes that, following the March 4, 2022 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>4</sup> The present claim was assigned OWCP File No. xxxxxx255. Appellant has a prior claim under OWCP File No. xxxxxx179, which was accepted for right hip strain, right hip osteoarthritis, right knee sprain, and right knee osteoarthritis.

By decision dated November 18, 2020, OWCP denied appellant's occupational disease claim, finding that the medical evidence of record was insufficient to establish causal relationship between his diagnosed conditions and the accepted factors of his federal employment.

On February 2, 2021 appellant requested reconsideration of the November 18, 2020 decision.

Evidence was submitted in support of the request for reconsideration. This evidence included: November 9, 2020 x-rays of appellant's bilateral shoulders, elbows, wrists, and hands; November 30, 2020 magnetic resonance imaging (MRI) scans of appellant's bilateral wrists and shoulders; December 3, 2020 x-rays of appellant's bilateral hands; a December 24, 2020 MRI scan of appellant's right elbow; and December 31, 2020 MRI scan of his left elbow.

OWCP received several reports from Dr. Rory Allen, an osteopath specializing in family medicine. In his initial report of October 30, 2020, Dr. Allen indicated that appellant sustained an occupational injury while employed as a correctional officer on August 6, 2018 primarily performing prisoner transport as an escort officer. He described appellant's employment duties, which he had performed for 28 years. Dr. Allen related that appellant typically performed duties, which included applying and removing handcuffs, repetitive pushing and pulling of equipment, carrying of a gun and gun belt, and restraining of inmates by use of handcuffs, belly chains, and leg irons. He related that these duties required constant fine manipulation and twisting of the fingers, wrists and hands. Dr. Allen provided physical examination findings and reviewed appellant's diagnostic testing. He provided assessments of right shoulder sprain, left shoulder sprain, right elbow sprain, left elbow sprain, right wrist sprain and left wrist sprain. Dr. Allen noted that appellant could work limited duty eight hours a day, but indicated that appellant was off work due to another injury.

In a November 20, 2020 report, Dr. Allen provided assessments of right shoulder strain (aggravation of preexisting condition); left shoulder impingement syndrome (aggravation of preexisting condition); left shoulder sprain, right and left elbow sprain; left elbow osteoarthritis, post-traumatic (aggravation of preexisting condition); right wrist sprain; right wrist osteoarthritis, post-traumatic (aggravation of preexisting condition); right hand sprain; right hand osteoarthritis, post-traumatic (aggravation of preexisting condition); left wrist sprain; left hand sprain; and left hand osteoarthritis, post-traumatic (aggravation of preexisting condition).

In his December 4, 9, and 28, 2020 reports, Dr. Allen provided additional assessments of right shoulder complete tear (supraspinatus tendon), left shoulder partial tear (aggravation of preexisting condition), left shoulder impingement syndrome (aggravation of preexisting condition), left and right wrist tear (scapholunate ligament) and left and right wrist tear (triangular fibrocartilage complex ligament).

In his January 6 and February 8, 2021 reports, Dr. Allen added additional assessments of right and left elbow partial tear (common extensor tendon) and left elbow partial tear (radial collateral ligament). In duty status reports (Form CA-17s) dated December 28, 2020, January 6 and February 8, 2021, he indicated that appellant could resume full-time work eight hours a day with restrictions.

In a January 6, 2021 report, Dr. Allen opined that appellant sustained an occupational injury while employed as a correctional officer, primarily performing prisoner transport as an escort officer. He again noted appellant's repetitive job duties, including handcuffing and restraining inmates. Dr. Allen indicated that appellant underwent repetitive compression, torsional and rotational forces to the bilateral -- shoulder joints, bilateral elbow joints, and bilateral wrists/hands joints stretching the soft tissues, ligaments and tendons beyond normal physiological limits, which directly caused left wrist and hand sprain.

By decision dated March 8, 2021, OWCP denied modification of its November 18, 2020 decision.

On May 5, 2021 appellant requested reconsideration of the March 8, 2021 decision.

In an April 1, 2021 report, Dr. Fredric D. Johnson, a Board-certified family practitioner, indicated that on August 14, 2019 appellant complained of tingling/numbness in his hands and that the EMG/NCV study confirmed a mild, bilateral neuropraxic carpal tunnel syndrome, right worse than left. Dr. Johnson opined that appellant developed carpal tunnel syndrome from continued repetitive movement in the hands and wrists.

Additional progress notes from Dr. Allen dated April 7 and May 5, 2021, as well as Form CA-17 duty status reports dated March 8, April 7, and May 5, 2021 were received. Dr. Allen continued to opine that appellant's diagnoses related to the bilateral upper extremities were caused or aggravated by his federal employment. In the duty status reports, he also continued to advise that appellant could perform limited duty.

In an April 20, 2021 report, Dr. Allen provided a description of appellant's duties, as outlined by appellant. He continued to opine that appellant underwent repetitive compression, torsional, and rotational forces to the bilateral wrist and hand joints, stretching the soft tissues, ligaments, and tendons beyond normal, physiologically causing left wrist and hand sprains.

By decision dated May 10, 2021, OWCP denied modification of its prior decision.

On May 24, 2021 appellant requested reconsideration. In a May 13, 2021 statement, he explained the duties of his position and the medical evidence he believed established causal relationship.

In a May 17, 2021 report, Dr. Allen again provided a detailed description of appellant's duties. He explained that, due to appellant's long career, appellant had sustained the diagnosed conditions by direct cause and aggravation. Dr. Allen related that appellant underwent repetitive compression, torsional, and rotational forces to the bilateral shoulder joints, elbows, wrists, and hands, stretching the soft tissues, ligaments, and tendons beyond normal, physiologically causing bilateral sprains of the shoulders, elbows, wrists, and hands.

By decision dated May 28, 2021, OWCP denied appellant's request for reconsideration of the merits of his claim.

On January 3, 2022 appellant again requested reconsideration.

In treatment notes dated June 1 and 30, July 28, and August 27, 2021, Dr. Allen continued to report that appellant sustained an occupational injury while employed as a correctional officer on August 6, 2018. He also again described appellant's work duties in detail. Dr. Allen repeated his diagnoses and opined that appellant could perform limited-duty work. In Form CA-17s dated June 2 and 30, 2021, he released appellant to work with restrictions.

July 12, 2021 x-rays of the bilateral wrists and hands were also received.

In treatment notes dated September 29, November 17, December 15 and 29, 2021 and February 16, 2022, Dr. Ravi Patel, a Board-certified internist, noted that appellant sustained an occupational injury while employed as a correctional officer. He described appellant's work duties, noting that he had performed those work duties for 28 years. Dr. Patel provided examination findings and provided the same diagnoses as provided by Dr. Allen. He also opined that appellant could work limited duty. In Form CA-17s dated September 29, November 17, and December 14, 2021, Dr. Patel released appellant to work with restrictions, but noted he was off work due to another injury.

In a December 29, 2021 letter of causation, Dr. Patel discussed appellant's employment activities in detail, which he noted resulted in a repetitive injury sustained on August 6, 2018. He stated that, even with past injuries, appellant continued to work his employment duties. Dr. Patel noted appellant's symptoms, discussed diagnostic testing of file and diagnosed medical conditions of the upper extremities. These were noted as right shoulder complete tear (supraspinatus tendon); right shoulder strain; shoulder impingement syndrome (aggravation of preexisting condition); left shoulder impingement syndrome (aggravation of preexisting condition); left shoulder sprain (aggravation of preexisting condition); right elbow partial tear (common extensor tendon) (radial collateral ligament); left elbow partial tear; left elbow sprain; left elbow, osteoarthritis, post-traumatic (aggravation of preexisting condition); right wrist sprain, left wrist osteoarthritis, post-traumatic (aggravation of preexisting condition); left wrist sprain; right wrist tear (scapholunate ligament), right wrist tear (triangular fibrocartilage complex ligament); wrist osteoarthritis, post-traumatic (aggravation of preexisting condition), left hand sprain, and left hand osteoarthritis, post-traumatic (aggravation of preexisting condition). Dr. Patel opined that the injuries appellant suffered were the result of constant and repetitive physical demands of his employment as a correctional officer. He noted the results of diagnostic testing and appellant's employment activities. Dr. Patel stated that repetitive stress injuries were caused by a variety of motions or activities and commonly occur in the upper extremities, but can also affect the neck, back, and lower extremities. He opined that, in the absence of other causal factors, appellant's bilateral wrist and hand conditions were a result of repetitive and continuous grasping, lifting, carrying and twisting through his 28 years of employment.

By decision dated March 4, 2022, OWCP denied modification of its May 10, 2021 decision.

## LEGAL PRECEDENT

An employee seeking benefits under FECA<sup>5</sup> has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence, including the fact that the individual is an “employee of the United States” within the meaning of FECA and that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.<sup>6</sup> These are the essential elements of every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.<sup>7</sup>

OWCP’s regulations define an occupational disease as “a condition produced by the work environment over a period longer than a single workday or shift.”<sup>8</sup> 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 employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.<sup>9</sup>

The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon a complete factual and medical background, showing a causal relationship between the claimed condition and identified factors.<sup>10</sup> The opinion of the physician must be based on a complete factual and medical background of the claim, 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 specific employment activity or factors identified by the claimant.<sup>11</sup>

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<sup>5</sup> *Supra* note 2.

<sup>6</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>7</sup> *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>8</sup> 20 C.F.R. § 10.5(q).

<sup>9</sup> *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *R.H.*, 59 ECAB 382 (2008).

<sup>10</sup> *A.M.*, Docket No. 18-1748 (issued April 4, 2019); *T.H.*, 59 ECAB 388 (2008).

<sup>11</sup> *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *I.J.*, 59 ECAB 408 (2008); *A.D.*, 58 ECAB 149 (2006).

## ANALYSIS

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

Appellant submitted multiple reports from Dr. Allen, including January 6 and April 20, 2021 reports wherein he noted in substantial detail appellant's repetitive job duties, including handcuffing and restraining inmates. Dr. Allen explained that, in performing these duties, appellant underwent repetitive compression, torsional and rotational forces to the bilateral shoulder joints, bilateral elbow joints, and bilateral wrists/hands joints stretching the soft tissues, ligaments and tendons beyond normal physiological limits. He concluded that performing these duties directly caused appellant's left wrist and hand sprain.

The Board finds that, while these reports from Dr. Allen are not fully rationalized, they did provide a pathophysiological explanation that appellant sustained bilateral sprains of the shoulders, elbows, wrists, and hands due to the repetitive motions required in restraining and transporting inmates. Although these reports are insufficient to meet appellant's burden of proof to establish the claim, they are sufficient to require OWCP to further develop the medical evidence.<sup>12</sup>

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.<sup>13</sup> It has the obligation to see that justice is done.<sup>14</sup>

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. The referral physician shall provide a rationalized opinion on whether the diagnosed bilateral upper extremity sprain conditions are causally related to the accepted employment incident. If the physician opines that the diagnosed conditions are not causally related, he or she must explain with rationale how or why his or her opinion differs from that of Dr. Allen. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

## CONCLUSION

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

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<sup>12</sup> *M.R.*, Docket No. 20-0101 (issued September 14, 2021), *Richard E. Simpson*, 55 ECAB 490, 500 (2004); *John J. Carlone*, 41 ECAB 354, 360 (1989).

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 4, 2022 decision of the Office of Workers' Compensation Programs is set aside and this case is remanded for further proceedings consistent with this decision of the Board.

Issued: November 30, 2022  
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board