

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

R.C., Appellant)	
)	
and)	Docket No. 23-0413
)	Issued: December 4, 2023
U.S. POSTAL SERVICE, POST OFFICE,)	
Peekskill, NY, Employer)	
)	

Appearances:

Thomas Harkins, Esq., for the appellant¹
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 February 6, 2023 appellant, through counsel, filed a timely appeal from an August 26, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (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 medical condition causally related to the accepted December 28, 2020 employment incident.

FACTUAL HISTORY

On January 21, 2021 appellant, then a 56-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that, on December 28, 2020, he sustained injuries to his left elbow and right ankle when his foot got caught under a forklift and he tripped and fell while in the performance of duty. He stopped work on September 9, 2021.

In a January 13, 2021 statement, appellant indicated that on December 28, 2020 his right foot became caught under a forklift, which caused him to fall and land on his left elbow. He related that he primarily injured his left elbow, but also wrenched his back and injured his left hip, right foot, and right ankle. Appellant further related that the veins in his left arm appeared more pronounced, and he experienced constant pain in the left elbow, which worsened with any type of lifting.

In an attending physician's report, Part B of an authorization for examination and/or treatment (Form CA-16), dated January 14, 2021, Dr. Ingrid Van Hollebeke, an osteopathic internal medicine physician, noted the history of appellant's December 28, 2020 employment incident and diagnosed pain in the right ankle and left elbow. She checked a box marked "Yes" indicating that his condition was caused by an employment activity. Dr. Van Hollebeke referred appellant to physical medicine and rehabilitation and released him to light-duty work with no lifting.

In a medical report dated March 4, 2021, Dr. Amit Dholakia, a Board-certified physical medicine and rehabilitation specialist, noted that appellant related complaints of left forearm, left elbow, and right ankle pain, which he attributed to falling at work on December 28, 2020. He performed a physical examination, which revealed exquisite tenderness along the left medial epicondyle and a normal right ankle. Dr. Dholakia diagnosed right ankle pain and medial epicondylitis of the left elbow and noted that he "did not see anything wrong with [appellant's] right ankle at this point." He administered a left medial epicondyle steroid injection and opined that he was unable to return to his date-of-injury position.

In a duty status report (Form CA-17) of even date, Dr. Dholakia released appellant to work with restrictions of no lifting, pushing, or pulling greater than 15 pounds.

In a follow-up report dated April 19, 2021, Dr. Dholakia administered a second left medial epicondyle steroid injection, with ultrasound guidance. He diagnosed left medial epicondylitis.

In a May 11, 2021 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence necessary and provided a questionnaire for his completion. OWCP afforded appellant 30 days to respond.

OWCP thereafter received a May 14, 2021 Form CA-17, wherein Dr. Dholakia diagnosed left medial epicondylitis due to the December 28, 2020 injury. Dr. Dholakia released appellant to

return to work with restrictions regarding climbing, kneeling, bending, squatting, pulling, pushing, simple grasping, fine manipulation, reaching above shoulder height, and driving a vehicle.

In a May 19, 2021 narrative report, Dr. Van Hollebeke indicated that she had examined appellant on January 14, 2021 for the December 28, 2020 employment incident and observed that there was no visible injury to the right ankle. Regarding the left elbow, she noted that he related that he had developed some mild swelling and had constant pain and difficulty moving the left elbow. Dr. Van Hollebeke indicated that she obtained x-rays on January 14, 2021 of appellant's right ankle, which were normal; and of the left elbow, which revealed a small epicondylar spur and insertional triceps enthesopathy. She opined that "the condition he is experiencing was caused by the injury which he sustained at work on the date reported to us."

In a May 21, 2021 report, Dr. Oghenechuko E. Metitiri, a Board-certified orthopedic surgeon (hand surgery), noted the history of the December 28, 2020 employment incident and appellant's treatment, including the injections by Dr. Dholakia. He performed a physical examination of the left upper extremity, which revealed tenderness with palpation of the ulnar nerve immediately proximal to the cubital tunnel, medial elbow discomfort with elbow flexion, and minimal pain at the left elbow with resisted left wrist flexion. Dr. Metitiri reviewed the January 14, 2021 left elbow x-rays, which revealed no evidence of acute bony pathology or degenerative disease. He diagnosed left medial epicondylitis, numbness and tingling in the left arm, and paresthesia of skin, which he opined were "related to the workers' compensation claim." Dr. Metitiri recommended magnetic resonance imaging (MRI) scan of the left elbow and an electromyography and nerve conduction study (EMG/NCV) of the left upper extremity to evaluate possible cubital tunnel syndrome.

By decision dated June 15, 2021, OWCP denied the claim, finding that the medical evidence of record was insufficient to establish causal relationship between the diagnosed conditions and the accepted December 28, 2020 employment incident.

OWCP continued to receive evidence. In a June 3, 2021 medical report, Dr. Jeontaik J. Kwon, a Board-certified vascular surgeon, noted that appellant related left forearm pain and vein bulging following an accident at work. He performed an examination and diagnosed pain in the left arm. Dr. Kwon opined that there was no evidence of superficial vein thrombosis and that appellant's condition was likely musculoskeletal rather than vascular in nature.

On June 3, 2022 appellant, through counsel, requested reconsideration of OWCP's June 15, 2021 decision.

By decision dated August 26, 2022, OWCP denied modification of its June 15, 2021 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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

³ *Id.*

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 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 determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. The first component is whether the employee has established that he or she actually experienced the employment incident at the time and place, and in the manner alleged. The second component is whether the employment incident caused a personal injury and can be established only by medical evidence.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 appellant's specific employment incident.¹⁰

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a medical condition causally related to the accepted December 28, 2020 employment incident.

In her January 14, 2021 form medical report, Dr. Van Hollebeke diagnosed pain in the right ankle and left elbow and checked a box marked "Yes" indicating that appellant's condition was caused by his federal employment. In her subsequent May 19, 2021 narrative report, she opined "the condition he is experiencing was caused by the injury which he sustained at work on the date reported to us," but did not provide a medical diagnosis. In both reports, Dr. Hollebeke failed to

⁴ *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).

⁵ *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *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 *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

⁸ *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 *C.F.*, Docket No. 18-0791 (issued February 26, 2019); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

¹⁰ *Id.*

explain with adequate rationale how the accepted employment incident either caused or contributed to appellant's diagnosed conditions. The Board has held that a medical opinion should reflect a medically-sound and rationalized explanation by the physician of how the specific employment incident physiologically caused or aggravated the diagnosed conditions.¹¹ An opinion on causal relationship with an affirmative checkmark, without more by the way of medical rationale, is insufficient to establish the claim.¹² This evidence is therefore insufficient to establish the claim.

Dr. Metitiri, in his May 21, 2021 report, diagnosed left medial epicondylitis, numbness and tingling in the left arm, and paresthesia of skin, which he opined were "related to the workers' compensation claim." He did not, however, provide a rationalized explanation of how the accepted employment incident physiologically caused or aggravated the diagnosed conditions.¹³ Therefore, Dr. Metitiri's report is also of limited probative value and is insufficient to establish the claim.

Dr. Dholakia, in a May 14, 2021 Form CA-17, diagnosed left medial epicondylitis due to the December 28, 2020 injury and provided work restrictions. He did not, however, provide a rationalized explanation of how the accepted employment incident physiologically caused or aggravated the diagnosed condition.¹⁴ Therefore, Dr. Dholakia's May 14, 2021 Form CA-17 is also insufficient to establish the claim.

In his March 4 and April 19, 2021 reports, Dr. Dholakia diagnosed right ankle pain and medial epicondylitis of the left elbow. He administered left medial epicondyle steroid injections and opined that appellant was not able to return to his time-of-injury position due to his left elbow condition. Dr. Kwon, in his June 3, 2021 medical report, diagnosed pain in the left arm and opined that there was no evidence of superficial vein thrombosis. These physicians did not, however, provide an opinion as to the cause of the diagnosed conditions. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.¹⁵ This evidence is therefore also insufficient to establish the claim.

As the medical evidence of record is insufficient to establish causal relationship between the diagnosed conditions and the accepted December 28, 2020 employment incident, the Board finds that appellant has not met his burden of proof.

¹¹ *T.G.*, Docket No. 21-0175 (issued June 23, 2021); *J.D.*, Docket No. 19-1953 (issued January 11, 2021); *see K.W.*, Docket No. 19-1906 (issued April 1, 2020).

¹² *See C.S.*, Docket No. 18-1633 (issued December 30, 2019); *D.S.*, Docket No. 17-1566 (issued December 31, 2018).

¹³ *Supra* note 11.

¹⁴ *Id.*

¹⁵ *D.C.*, Docket No. 19-1093 (issued June 25, 2020); *see L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

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.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a medical condition causally related to the accepted December 28, 2020 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the August 26, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 4, 2023
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