

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

_____)
K.W., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Harrisburg, PA, Employer)
_____)

Docket No. 21-0389
Issued: January 31, 2023

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
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On January 21, 2020 appellant filed a timely appeal from an August 7, 2020 merit decision and a November 9, 2020 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant has met his burden of proof to establish a diagnosed medical condition in connection with the accepted factors of his federal employment; and (2) whether OWCP properly denied appellant's request for an oral hearing as untimely filed, pursuant to 5 U.S.C. § 8124(b).

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On May 14, 2020 appellant, then a 59-year-old maintenance mechanic, filed an occupational disease claim (Form CA-2) alleging that he developed pain in his left hand, thumb, wrist, and forearm due to factors of his federal employment. He explained that he began feeling pain in his thumb and hand around April 11, 2020, which progressively worsened until he ultimately experienced a popping sensation in his thumb and wrist. Appellant noted that he first became aware of his conditions on April 11, 2020 and realized their relation to his federal employment on April 18, 2020. He stopped work on May 4, 2020.

In a May 4, 2020 medical report, Dr. Joseph F. Ciecko, Board-certified in family practice, noted that appellant presented with complaints of left hand pain. Appellant related that he had worked 39 days consecutively, requiring repetitive use of his hand. He further related that his pain started in his thumb and then migrated to the top of his hand, amplifying while using a banding machine at work. Dr. Ciecko diagnosed thumb tendinitis and wrist tendinitis of the left hand. In a medical note of even date, he noted that appellant was under his care and excused him from work from May 4 through 18, 2020.

In a May 5, 2020 statement, appellant noted that his daily work tasks included vacuuming letter sorting machines, requiring repetitive twisting of his hands, fingers, and wrists. He explained that his work duties required use of both hands because the hose of the vacuum pulled downward while he maneuvered the crevice tools or other attachment into the areas needed to be vacuumed. Appellant contended that this put a lot of pressure on his hands, fingers, thumbs, and wrists. He noted that his other tasks involved opening and closing numerous doors with a large machine key, which made his hands move 90 degrees to the right to open and 90 degrees to the left to close. Appellant indicated that he was sometimes in charge of conducting mail searches on a parcel sorting machine and this task involved going under the machine in awkward positions while using a rake or squeegee to retrieve the packages that had fallen under, or gotten caught somewhere inside the machine. He asserted that this task required more twisting of his hands and wrists, which put more pressure on his thumb when maneuvering the rake in different angles and positions to retrieve the packages. Appellant noted that since the COVID-19 pandemic, he was the only maintenance mechanic working the dayshift. He asserted that he only had one day off between March 15 and April 29, 2020 and worked 43 days for 12 hours each day. Appellant denied having any strenuous activities outside of work that were relevant to his conditions. He contended that he realized that he needed medical assistance on April 29, 2020 while using a handheld banding device to strap batteries to pallets when the pressure to press down on the device caused a sharp pain in the top of his hand to the point where he had to stop using the device numerous times while performing his assigned task.

In a development letter dated May 19, 2020, OWCP 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 attached a factual questionnaire for his completion. A separate development letter of even date was sent to the employing establishment requesting information surrounding the circumstances of the alleged injury. OWCP afforded both parties 30 days to respond.

In a May 18, 2020 medical report, Dr. Ciecko noted that appellant had no new symptoms and diagnosed left thumb and wrist tendinitis.

In a June 16, 2020 response to OWCP's development questionnaire, appellant reiterated that his work duties, including vacuuming and conducting mail searches on letter/parcel sorting machines, as well as using a banding machine to strap batters down for shipping purposes, contributed to his conditions. He again explained that his vacuuming tasks involved repetitive twisting of his hands, fingers, and wrists. Appellant reiterated that he had to retrieve lost parcels with tools twisting awkwardly under sorting machines. He indicated that he performed his work duties daily and that since the COVID-19 pandemic, he worked alone during his shift, which dramatically increased his workload, sometimes twice as many machines to cover as usual. Appellant asserted that he experienced pain in his thumb, wrist, and forearm. He contended that overuse of his hand made his pain worse while resting helped relieve it. Appellant alleged that he never had severe pain in his hand and had no issue except for trigger finger, which was surgically treated in 1986.

In response to the May 19, 2020 development letter, OWCP received a position description for a maintenance mechanic, and a June 19, 2020 letter from the employing establishment, which controverted appellant's claim, noting that his duties as a maintenance mechanic were not repetitive or excessive in nature.

In a June 21, 2020 letter, Dr. Ciecko noted that appellant was seen for thumb, hand, and forearm pain. He reported that his symptoms coincided with an increased workload, working 12 hours each day for approximately two months. Dr. Ciecko noted that the nature of appellant's symptoms and his physical examination findings were consistent with an overuse or repetitive motion disorder. He opined that appellant's condition was consistent with a work-related injury.

By decision dated August 7, 2020, OWCP denied appellant's claim, finding that he had not met his burden of proof to establish a diagnosed medical condition in connection with the accepted factors of his federal employment. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

In a September 21, 2020 letter, Dr. Daniel Torres, a Board-certified orthopedic surgeon, diagnosed left thumb/middle trigger finger, left radial tunnel syndrome, and left carpometacarpal arthritis aggravation. He opined that appellant's diagnosed conditions were aggravated by the recent increase in work. In a progress report of even date, Dr. Torres noted that appellant presented for follow-up evaluation of his left-hand pain. He indicated that he received a left thumb trigger injection on June 4, 2020. Dr. Torres noted that appellant had an increase in his workload and believed that that may have aggravated his symptoms. He diagnosed left thumb trigger finger, left middle trigger finger, and osteoarthritis.

In an October 5, 2020 letter, Dr. Ciecko noted that he evaluated appellant on May 4, 2020. He opined that his physical examination findings were consistent with an overuse/repetitive injury.

On October 13, 2020 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

By decision dated November 9, 2020, OWCP's hearing representative denied appellant's request for an oral hearing, finding that the request was untimely filed. The hearing representative informed appellant that the issues had been considered by OWCP in its August 7, 2020 decision

and could be further addressed by requesting reconsideration and submitting evidence not previously considered.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA² has the burden of proof to establish the essential elements of his or her claim, including the fact 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 period of FECA,³ and 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.⁴ 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.⁵

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit: (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 claimant.⁶

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical opinion evidence.⁷ 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 specific employment factors identified by the employee.⁸

² *Supra* note 2.

³ *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁴ *T.H.*, Docket No. 18-1736 (issued March 13, 2019); *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁵ *T.E.*, Docket No. 18-1595 (issued March 13, 2019); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *LM.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁶ *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *R.H.*, 59 ECAB 382 (2008).

⁷ *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *T.H.*, 59 ECAB 388, 393 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

⁸ *R.G.*, Docket No. 18-0792 (issued March 11, 2020); *D.J.*, Docket No. 19-1301 (issued January 29, 2020); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

ANALYSIS -- ISSUE 1

The Board finds that appellant has established a diagnosed condition in connection with the accepted factors of his federal employment.

In his May 4, 2020 medical report, Dr. Ciecko noted appellant's complaint of left hand pain that he developed while at work. He diagnosed thumb tendinitis and wrist tendinitis of the left hand. In a May 18, 2020 medical report, Dr. Ciecko again diagnosed left thumb and wrist tendinitis. In a June 21, 2020 letter, Dr. Ciecko noted that appellant reported that his symptoms coincided with an increased workload, and opined that appellant's diagnosed condition was consistent with a work-related injury caused by an overuse or repetitive motion disorder. In an October 5, 2020 letter, Dr. Ciecko again opined that his physical examination findings were consistent with an overuse/repetitive injury. Similarly, in a progress report and letter dated September 21, 2020, Dr. Torres diagnosed left thumb trigger finger, left middle trigger finger, left radial tunnel syndrome, osteoarthritis, and left carpometacarpal arthritis aggravation. The Board finds that appellant has established diagnosed medical conditions in connection with the accepted employment factors and, therefore, established both components of fact of injury.⁹

As OWCP has not yet reviewed the medical evidence of record with regard to the issue of causal relationship, the case must therefore be remanded.¹⁰ Following such further development as deemed necessary, OWCP shall issue a *de novo* decision as to whether appellant has met his burden of proof to establish that his diagnosed medical conditions are causally related to the accepted factors of his federal employment.¹¹

CONCLUSION

The Board finds that appellant has met his burden of proof to establish diagnosed medical conditions causally related to the accepted employment factors. The Board further finds, however, that the case is not in posture for decision with regard to whether appellant's diagnosed medical conditions are causally related to the accepted employment factors.

⁹ *D.F.*, Docket No. 20-0631 (issued September 23, 2020); *M.B.*, Docket No. 20-0265 (issued June 17, 2020); *K.A.*, Docket No. 18-0999 (issued October 4, 2019).

¹⁰ *See D.F., id.*

¹¹ In light of the disposition as to Issue 1, Issue 2 is rendered moot.

ORDER

IT IS HEREBY ORDERED THAT the August 7, 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: January 31, 2023
Washington, DC

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

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

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board