

FACTUAL HISTORY

This case has been previously before the Board. The facts and circumstances of the case as set forth in the Board's prior order are incorporated herein by reference.² The relevant facts are as follows.

On December 10, 2018 appellant, then a 41-year-old pharmacist/clinical specialist, filed an occupational disease claim (Form CA-2) alleging that he injured his neck, back, hands, and wrist due to factors of his federal employment, including repetitive motion. He noted that he had made a prior claim for injuries due to repetitive motion,³ and that he had experienced a new progression of symptoms due to his ongoing repetitive job duties. Appellant indicated that he first became aware of his condition and realized its relation to his federal employment on November 11, 2016. He did not stop work.

In a January 8, 2019 development letter, 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 to establish his claim and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the necessary evidence.

OWCP thereafter received a November 11, 2016 medical note by Nancy Patterson, a nurse practitioner, who noted that appellant related complaints of right thumb pain and swelling, which he attributed to working at a computer all day for the previous two months. Ms. Patterson performed a physical examination of the right thumb, which revealed mild swelling at the thenar eminence, positive Finklestein's test, and weakness. She diagnosed possible deQuervain's tenosynovitis and recommended a workstation assessment and other conservative treatment measures.

In a separate note also dated November 11, 2016, Gregory Martin, a registered nurse, noted that appellant related complaints of pain and swelling in the right wrist due to "the amount of time he was using a computer" during the last two months as a pharmacist for the employing establishment. He noted edema on examination and prescribed a wrist brace.

In an April 3, 2017 medical report, Dr. John F. Berry, a Board-certified physiatrist, noted that appellant related a history of right hand and wrist pain, which he attributed to keyboard and mouse work associated with his job duties as an administrative pharmacist. He noted that appellant was previously diagnosed with right-sided carpal tunnel syndrome (CTS) on June 18, 2015, that appellant sought treatment in November and December 2016 for right thumb pain, that appellant stopped working in March 2017 due to his symptoms, and that appellant's symptoms had improved after being off from work for 20 days. Dr. Berry performed a physical examination of the right hand and wrist, which revealed mildly positive Finklestein's test in ulnar deviation, mild

² *Order Remanding Case*, Docket No. 21-0807 (issued February 7, 2023).

³ OWCP assigned the present claim OWCP File No. xxxxxx318. Appellant has a previously denied August 10, 2017 traumatic injury claim for the neck and right hand due to overuse of a computer mouse and keyboard under OWCP File No. xxxxxx088.

discomfort with resisted thumb extension, and mildly positive Tinel's sign and Phalen's test. He diagnosed probable deQuervain's tendinitis in remission.

A report of magnetic resonance imaging (MRI) scan of the right wrist dated September 25, 2017 was normal.

A report of x-rays of the right wrist dated September 28, 2018 revealed mild-to-moderate degenerative changes most pronounced at the thumb carpometacarpal (CMC) joint, triscaphe, and dorsal carpal CMC joints and bone island at the central scaphoid waist. There was no evidence of acute injury.

In a January 14, 2019 response to OWCP's development questionnaire, appellant indicated that he began experiencing right thumb and wrist area pain and swelling in approximately September 2016. He noted that he first sought treatment on November 11, 2016, and requested that his supervisor, K.J., file a claim on his behalf on August 1, 2017. Appellant related that he worked at a computer, typed on a keyboard, and used a mouse eight hours per day, five days per week, which he believed caused pain in his thumb, wrist, and hand.

In a February 14, 2019 letter, S.A., an employing establishment human resources specialist, indicated that appellant's job duties included daily typing to complete medical documentation of patient encounters and frequent telephone conversations with patients. She further noted that the duties did not differ from those listed in his statement and that he was provided with an ergonomic keyboard and mouse and was able to work from home.

By decision dated April 2, 2019, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish a medical diagnosis in connection with the accepted employment factors. Consequently, it found that the requirements to establish a claim under FECA had not been established.

On April 24, 2019 appellant requested review of the written record by a representative of OWCP's Branch of Hearings and Review and submitted additional evidence.

In support of his request, appellant submitted an updated copy of Ms. Patterson's November 11, 2016 report, signed by Dr. Joseph Lehner, an osteopathic orthopedic physician, on April 8, 2019. He also submitted a June 15, 2018 medical report by Dr. Ray Devashish, an internist, who diagnosed depression and early CTS on the right.

By decision dated August 2, 2019, OWCP's hearing representative modified the April 2, 2019 decision, finding that appellant had submitted sufficient evidence to establish a diagnosis of right wrist arthritis. However, appellant's claim remained denied as he had not submitted sufficient rationalized medical evidence to establish that the accepted employment factors caused or aggravated his diagnosed condition.

OWCP continued to receive evidence. In a June 10, 2019 medical report, Dr. Adam R. Cochran, a Board-certified orthopedic surgeon, noted that appellant related a two-year history of right-hand pain, intermittent numbness, and tingling across the metacarpophalangeal (MCP) and proximal interphalangeal (PIP) joint of the long finger. He performed a physical examination of the right hand, which revealed reduced strength in finger flexion and extension and positive Tinel's

sign and compression tests at the carpal tunnel. Dr. Cochran diagnosed right CTS and right long finger early trigger finger and recommended a brace and an electromyography/nerve conduction velocity (EMG/NCV) study.

In a follow-up report dated July 22, 2019, Dr. Cochran reviewed a July 19, 2019 EMG/NCV study, which he noted revealed mild-to-moderate demyelinating right sensory motor neuropathy of the median nerve at the carpal tunnel. He recommended a steroid injection to the right wrist.

In a narrative dated August 26, 2019, Dr. Anjum B. Qazi, a Board-certified internist, opined that “most likely than not that the patient’s CTS is the result of excessive use of the wrist joint, as in use of computer work.”

On December 5, 2019 appellant requested reconsideration of OWCP’s August 2, 2019 decision.

By decision dated March 5, 2020, OWCP denied modification of its August 2, 2019 decision.

On April 15, 2020 appellant requested reconsideration of OWCP’s March 5, 2020 decision. In support of his request, he submitted a March 20, 2020 narrative by Dr. Qazi, who indicated that he reviewed various medical records. Dr. Qazi noted that, on November 11, 2016, April 3, 2017, and June 15, 2018, appellant related complaints of right thumb and hand pain, which he attributed to repetitive use of a keyboard and mouse. He opined that “it is most likely than not that patient’s right thumb, wrist, and hand pain that occurred as a result of the repetitive use of a computer mouse and keyboard was diagnosed with CTS based on the medical records above.”

By decision dated July 17, 2020, OWCP denied modification of its March 5, 2020 decision.

On January 2, 2021 appellant requested reconsideration of OWCP’s July 17, 2020 decision. In support of his request, he submitted an August 24, 2020 letter by Dr. Luis O. Vasconez, a Board-certified plastic surgeon, who noted that appellant had clinical signs and symptoms of CTS on the right. Dr. Vasconez noted that appellant’s “symptoms could be exacerbated by his job description given his use of a keyboard.”

By decision dated February 25, 2021, OWCP denied modification of its July 17, 2020 decision.

On May 3, 2021 appellant appealed the February 25, 2021 decision to the Board.

By order dated February 27, 2023,⁴ the Board set aside OWCP’s February 25, 2021 decision and remanded the case to OWCP to administratively combine OWCP File No. xxxxxx088 with the current file and issue a *de novo* decision on appellant’s occupational disease claim.

⁴ *Supra* note 2.

OWCP subsequently administratively combined OWCP File Nos. xxxxxx318 and xxxxxx088, with the latter serving as the master file.

By *de novo* decision dated March 20, 2023, OWCP denied the claim, finding that the evidence was insufficient to establish an injury or medical condition causally related to the accepted employment factors.

On March 29, 2023 appellant requested reconsideration of OWCP's March 20, 2023 decision. In support of his request, he submitted a statement outlining his medical treatment, job duties, and symptoms.

By decision dated April 5, 2024, OWCP denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA⁵ 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,⁶ 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.⁷ 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.⁸

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 employee.⁹

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.¹⁰ The opinion of the physician must be based upon a complete

⁵ *Id.*

⁶ *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).

⁷ *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).

⁸ *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).

⁹ *P.L.*, Docket No. 19-1750 (issued March 26, 2020); *R.G.*, Docket No. 19-0233 (issued July 16, 2019); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett, id.*

¹⁰ *I.J.*, Docket No. 19-1343 (issued February 26, 2020); *T.H.*, 59 ECAB 388 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

factual and medical background, 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.¹¹

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.¹²

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met his burden of proof to establish a medical condition causally related to the accepted factors of his federal employment.

In his August 26, 2019 and March 20, 2020 narratives, Dr. Qazi diagnosed right-sided CTS and opined that the condition was most likely due to excessive use of a computer and keyboard. While these reports generally support causal relationship, he did not offer medical rationale sufficient to explain how and why he believed that the accepted employment factors resulted in or contributed to the diagnosed condition.¹³ Moreover, the Board finds that Dr. Qazi's opinion that appellant's diagnosed condition was "most likely" caused by the accepted factors of his federal employment is speculative in nature.¹⁴ Medical opinions that are speculative or equivocal in character are of diminished probative value.¹⁵ Accordingly, Dr. Qazi's reports are insufficient to establish appellant's claim.

In his August 24, 2020 letter, Dr. Vasconez noted that appellant had clinical signs and symptoms of CTS on the right. He opined that "his symptoms could be exacerbated by his job description given his use of a keyboard." The Board finds that his opinion that appellant's employment diagnosed condition "could be" caused by the accepted factors of his federal employment is speculative in nature.¹⁶ As noted above, medical opinions that are speculative or equivocal in character are of diminished probative value.¹⁷ Accordingly, Dr. Vasconez' opinion is insufficient to establish appellant's claim.

In his April 3, 2017 medical report, Dr. Berry diagnosed possible deQuervain's tenosynovitis in remission on the right. Dr. Devashish, in a June 15, 2018 medical report,

¹¹ *D.C.*, Docket No. 19-1093 (issued June 25, 2020); *see L.B.*, Docket No. 18-0533 (issued August 27, 2018).

¹² Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013). *See R.D.*, Docket No. 18-1551 (issued March 1, 2019).

¹³ *E.P.*, Docket No. 22-0606 (issued March 23, 2023); *M.S.*, Docket No. 22-0586 (issued July 12, 2022).

¹⁴ *See P.D.*, Docket No. 18-1461 (issued July 2, 2019); *E.B.*, Docket No. 18-1060 (issued November 1, 2018); *Leonard J. O'Keefe*, 14 ECAB 42 (1962).

¹⁵ *D.B.*, Docket No. 18-1359 (issued May 14, 2019); *Ricky S. Storms*, 52 ECAB 349 (2001).

¹⁶ *Supra* note 14.

¹⁷ *Supra* note 15.

diagnosed depression and right-sided CTS. In his June 10 and July 22, 2019 medical reports, Dr. Cochran diagnosed right-sided CTS and long finger early trigger finger. However, none of these physicians provided an opinion on causal relationship between appellant's diagnosed conditions and the accepted employment factors. The Board has held that a medical report lacking an opinion on causal relationship is of no probative value.¹⁸ Therefore, the Board finds that the reports of Drs. Berry, Devashish, and Cochran are insufficient to establish the claim.

OWCP also received a report by Ms. Patterson, a nurse practitioner, and Mr. Martin, a registered nurse. This Board has long held that certain healthcare providers such as nurses and nurse practitioners are not considered physicians as defined under FECA.¹⁹ Their medical findings, reports and/or opinions, unless cosigned by a qualified physician²⁰ will not suffice for purposes of establishing entitlement to FECA benefits.²¹ Consequently, these reports are also insufficient to meet appellant's burden of proof.

Appellant submitted an updated copy of Ms. Patterson's November 11, 2016 report, signed by Dr. Lehner, on April 8, 2019. However, Dr. Lehner did not provide an opinion on causal relationship. 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.²² This report, therefore, is insufficient to establish appellant's claim.

The remaining evidence of record consisted of various diagnostic studies. The Board has held that diagnostic studies, standing alone, lack probative value and are insufficient to establish the claim.²³ Consequently, this additional evidence is insufficient to meet appellant's burden of proof.

As the medical evidence of record is insufficient to establish a medical condition causally related to the accepted employment factors, the Board finds that appellant has not met his burden of proof.

¹⁸ *S.P.*, Docket No. 23-0537 (issued October 31, 2023); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁹ Section 8101(2) of FECA provides that physician "includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law." 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). *See supra* note 12 at Chapter 2.805.3a(1) (January 2013); *M.M.*, Docket No. 23-0651 (issued October 18, 2023) (a registered nurse is not considered a physician as defined under FECA); *E.H.*, Docket No. 23-0373 (issued July 7, 2023) (nurse practitioners are not considered physicians as defined under FECA); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA).

²⁰ *Id.*; *K.W.*, 59 ECAB 271, 279 (2007).

²¹ The Board notes that Ms. Patterson's note reflected "receipt acknowledge by" Dr. Lehner, however, the note was not cosigned by a physician. *Id.*

²² *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, *supra* note 18.

²³ *J.K.*, Docket No. 20-0591 (issued August 12, 2020); *A.B.*, Docket No. 17-0301 (issued May 19, 2017).

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.

LEGAL PRECEDENT -- ISSUE 2

Section 8128(a) of FECA does not entitle a claimant the review of an OWCP decision as a matter of right.²⁴ OWCP has discretionary authority in this regard and has imposed certain limitations in exercising its authority.²⁵ One such limitation is that the request for reconsideration must be received by OWCP within one year of the date of the decision for which review is sought.²⁶

A timely request for reconsideration, including all supporting documents, must set forth arguments, and contain evidence that either: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.²⁷ When a timely request for reconsideration does not meet at least one of the above-noted requirements, OWCP will deny the request for reconsideration without reopening the case for a review on the merits.²⁸

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

Appellant has not alleged or demonstrated that OWCP erroneously applied or interpreted a specific point of law. Moreover, he has not advanced a relevant legal argument not previously considered. Consequently, appellant is not entitled to a review of the merits of his claim based on the first and second above-noted requirements under 20 C.F.R. § 10.606(b)(3).

Appellant also did not submit any relevant and pertinent new medical evidence in support of his request for reconsideration. The underlying issue on reconsideration is whether he has met his burden of proof to establish a medical condition causally related to the accepted factors of his federal employment. This is a medical issue which can only be addressed by submission of

²⁴ 5 U.S.C. § 8128(a).

²⁵ 20 C.F.R. § 10.607.

²⁶ *Id.* at § 10.607(a). For merit decisions issued on or after August 29, 2011, a request for reconsideration must be received by OWCP within one year of OWCP's decision for which review is sought. *Supra* note 12 at Chapter 2.1602.4 (September 2020). Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the received date in the Integrated Federal Employees' Compensation System (iFECS). *Id.* at Chapter 2.1602.4b.

²⁷ *Id.* at § 10.606(b)(3); *see L.F.*, Docket No. 20-1371 (issued March 12, 2021); *B.R.*, Docket No. 19-0372 (issued February 20, 2020).

²⁸ *Id.* at § 10.608.

rationalized medical evidence not previously considered.²⁹ Thus, appellant is not entitled to further review of the merits of his claim based on the third requirement under 20 C.F.R. § 10.606(b)(3).

The Board, therefore, finds that appellant has not met any of the requirements of 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a medical condition causally related to the accepted factors of his federal employment. The Board further finds that OWCP properly denied his request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the April 5 and March 20, 2023 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: November 15, 2023
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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

²⁹ *Y.L.*, Docket No. 20-1025 (issued November 25, 2020); *Eugene F. Butler*, 36 ECAB 393 (1984); *Edward Matthew Diekemper*, 31 ECAB 224 (1979).