

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

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<b>M.B., Appellant</b>	)	
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<b>and</b>	)	<b>Docket No. 23-0758</b>
	)	<b>Issued: October 12, 2023</b>
<b>U.S. POSTAL SERVICE, OLD NATIONAL POST OFFICE, Atlanta, GA, Employer</b>	)	
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*Appearances:*  
Wayne Johnson, Esq., for the appellant<sup>1</sup>  
Office of Solicitor, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
JANICE B. ASKIN, Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On May 1, 2023 appellant, through counsel, filed a timely appeal from a November 2, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' 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.

**ISSUE**

The issue is whether appellant has met his burden of proof to establish a right elbow condition causally related to the accepted February 20, 2019 employment incident.

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<sup>1</sup> 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.

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

## **FACTUAL HISTORY**

On February 21, 2019 appellant, then a 57-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on February 20, 2019 he injured his right elbow when he pulled his arm back from a mailbox and felt a sharp pain in his elbow, while in the performance of duty. He did not stop work.

In a duty status report (Form CA-17) and a physician work activity status report, dated February 21, 2019, Dr. Ocila M. Fletcher, a Board-certified occupational medicine physician, noted appellant's February 20, 2019 incident, and diagnosed right elbow lateral epicondylitis and right elbow olecranon bursitis.

In a report dated February 25, 2019, Dr. Fletcher again diagnosed right elbow lateral epicondylitis. On physical examination of appellant's right elbow, she observed right elbow tenderness, no difficulty extending or flexing, no decreased range of motion (ROM), and no bruising, stiffness, or swelling.

In a development letter dated March 11, 2019, OWCP informed appellant that the evidence of record was insufficient to establish his claim. It advised him regarding the medical and factual evidence required to establish his claim. OWCP afforded appellant 30 days to provide the requested information.

OWCP subsequently received a report dated March 1, 2019 from Nancy Stewart, a physical therapist, noting appellant's history of injury and a diagnosis of right elbow lateral epicondylitis.

In a March 15, 2019 report, Dr. Rhonda King, a physician specializing in occupational medicine, noted a February 20, 2019 injury date, reviewed a March 15, 2019 right elbow x-ray, and diagnosed right elbow olecranon bursitis

In a March 22, 2019 report, Dr. Nicola Lee, a physician specializing in occupational medicine, noted an injury date of February 20, 2019 and diagnosed right elbow lateral epicondylitis.

By decision dated April 17, 2019, OWCP denied appellant's claim finding that causal relationship had not been established between the diagnosed conditions and the accepted employment incident of February 20, 2019.

OWCP continued to receive medical evidence. In a February 21, 2019 report, Tina Griffin, a certified physician assistant, diagnosed right elbow lateral epicondylitis. Appellant denied any acute injury, and attributed his right elbow pain to repetitive lifting and reaching to distribute mail. An examination of the right elbow showed tenderness in the olecranon bursa and lateral epicondyle; no swelling, ecchymosis, dislocation, or deformity; full ROM, negative ulnar Tinel's sign; and normal motor strength.

Dr. John Foster, III, a Board-certified orthopedic surgeon, in an April 9, 2019 report, noted appellant's February 20, 2019 employment incident, and diagnosed right elbow lateral epicondylitis. He related that appellant's physical examination showed tenderness over the lateral epicondyle, full ROM, normal motor, skin, and sensory examinations, and increased pain with resisted wrist extension. A review of a March 15, 2019 right elbow x-ray showed no acute abnormality.

In reports dated April 17 and 19, 2019, Shonteh Henderson, physical therapist, noted an injury date of February 20, 2019, and diagnosed right elbow lateral epicondylitis.

On April 17, 2020 appellant, through counsel, requested reconsideration and submitted additional medical evidence.

In an office visit note dated June 3, 2019, Dr. Jay V. Shukla, a Board-certified internist, reported that appellant was seen for elbow pain. He diagnosed right lateral epicondylitis and right olecranon bursa bursitis.

In a February 26, 2020 report, Dr. Murray D. Robinson, a Board-certified neurosurgeon, diagnosed cervical radiculopathy, herniated cervical and lumbar discs, and right elbow ulnar neuropathy. He noted a medical history including prior neck surgery and progressively worsening symptoms over the past year. On physical examination Dr. Robinson reported positive right elbow Tinel sign and diffuse decreased bilateral shoulder sensation.

By decision dated June 1, 2020, OWCP denied modification.

On May 28, 2021 appellant, through counsel requested reconsideration and submitted additional evidence.

Dr. Robinson, in a June 17, 2020 report, diagnosed cervical radiculopathy and right elbow ulnar neuropathy. He attributed appellant's cervical radiculopathy and right ulnar neuropathy to appellant's repetitive work as a letter carrier. In a note of even date, Dr. Robinson related that on February 20, 2019 appellant sustained an elbow injury when he pulled his arm back and felt a sharp pain in his right elbow like a bee sting while delivering mail. At that time appellant was diagnosed with right elbow lateral epicondylitis. On July 30, 2019 he sustained a left shoulder injury while loading mail into the back of his truck, and was assessed as having cervicgia. Dr. Robinson attributed the right elbow neuropathy to appellant's repetitive letter carrier duties.

By decision dated August 10, 2021, OWCP denied modification.

In a report dated January 26, 2022, Dr. Robinson noted appellant's diagnosis of ulnar elbow neuropathy.

A March 9, 2022 x-ray noted an upper limb ulnar nerve lesion.

Dr. Robinson, in a March 11, 2022 report, diagnosed ulnar elbow neuropathy.

By decision dated November 2, 2022, OWCP denied modification.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</sup> 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

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<sup>3</sup> *Id.*

limitation of FECA,<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup>

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. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, 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.<sup>7</sup>

The medical evidence required to establish a causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.<sup>8</sup> 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.<sup>9</sup>

### ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a right elbow condition causally related to the accepted February 20, 2019 employment incident.

OWCP received several reports from Dr. Robinson. In reports dated from February 26, 2020, Dr. Robinson diagnosed right elbow/ulnar neuropathy. In a report dated June 17, 2020, he opined that appellant sustained an elbow injury when he pulled his arm back and felt a sharp pain like a bee sting in his right elbow. In separate June 17, 2020 report, Dr. Robinson attributed his right elbow neuropathy to his repetitive letter carrier duties. The Board has held that a medical opinion must provide an explanation of how specific employment incidents or factors physiologically caused or aggravated the diagnosed conditions.<sup>10</sup> Dr. Robinson reiterated appellant's description of appellant's injury, but he did not provide his own medical opinion

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<sup>4</sup> *D.A.*, Docket No. 21-1002 (issued April 17, 2023); *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).

<sup>5</sup> *J.E.*, Docket No. 21-0810 (issued April 13, 2023); *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).

<sup>6</sup> *D.A.*, *supra* note 4; *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).

<sup>7</sup> *D.A.*, *id.*; *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).

<sup>8</sup> *J.E.*, *supra* note 5; *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).

<sup>9</sup> *D.A.*, *supra* note 4; *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>10</sup> *See A.P.*, Docket No. 18-1690 (issued December 12, 2019).

regarding causal relationship. Without offering his own rationalized medical opinion explaining causal relationship, the reports from Dr. Robinson are insufficient to establish ‘appellant’s claim.’<sup>11</sup>

Appellant also submitted reports dated February 21 and 25, 2019, from Dr. Fletcher diagnosing right elbow lateral epicondylitis and right elbow olecranon bursitis; a March 15, 2019 report from Dr. King diagnosing right elbow olecranon bursitis; a March 22, 2019 report from Dr. Lee diagnosing right elbow lateral epicondylitis; a report dated April 9, 2019 from Dr. Foster diagnosing right elbow lateral epicondylitis, and a June 3, 2019 report from Dr. Shulka diagnosing right elbow lateral epicondylitis and right olecranon bursa bursitis. However, none of these physicians offered any opinion on the issue of causal relationship. The Board has held that a medical report that does not contain a rationalized medical opinion addressing causal relationship is of no probative value.<sup>12</sup> Thus, the opinions of these physicians are insufficient to establish appellant’s claim.

The record also contains reports from a certified physician assistant, and physical therapy reports. However, the Board has held that certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered physicians as defined under FECA.<sup>13</sup> Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.<sup>14</sup>

OWCP also received diagnostic studies. However, diagnostic studies standing alone, lack probative value as they do not address whether the employment incident caused any of the diagnosed conditions.<sup>15</sup>

The Board finds that appellant has not submitted rationalized, probative medical evidence sufficient to establish a right elbow condition causally related to his February 20, 2022 employment incident.<sup>16</sup> Appellant, therefore, has not met his burden of proof.

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<sup>11</sup> *K.G.*, Docket No. 18-1598 (issued January 7, 2020); *see A.B.*, Docket No. 16-1163 (issued September 8, 2017).

<sup>12</sup> *W.O.*, Docket No. 22-0418 (issued February 15, 2023); *L.E.*, Docket No. 19-0470 (issued August 12, 2019); *M.J.*, Docket No. 18-1114 (issued February 5, 2019); *see also J.B.*, Docket No. 22-0872 (issued August 22, 2022); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

<sup>13</sup> 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* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *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).

<sup>14</sup> *D.P.*, Docket No. 19-1295 (issued March 16, 2020); *G.S.*, Docket No. 18-1696 (issued March 26, 2019); *see M.M.*, Docket No. 17-1641 (issued February 15, 2018); *K.J.*, Docket No. 16-1805 (issued February 23, 2018); *David P. Sawchuk*, *id.*

<sup>15</sup> *C.C.*, Docket No. 22-1311 (issued April 7, 2023); *A.O.*, Docket No. 21-0968 (issued March 18, 2022); *see M.S.*, Docket No. 19-0587 (issued July 22, 2019).

<sup>16</sup> *See J.E.*, *supra* note 5; *T.J.*, Docket No. 18-1500 (issued May 1, 2019); *see D.S.*, Docket No. 18-0061 (issued May 29, 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 right elbow condition causally related to the accepted February 20, 2019 employment incident.

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 2, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 12, 2023  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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