

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

G.G., Appellant	)	
	)	
and	)	Docket No. 23-0774
	)	Issued: October 25, 2023
U.S. POSTAL SERVICE, NORTH ADAMS	)	
POST OFFICE, North Adams, MA, Employer	)	
	)	

*Appearances:* *Case Submitted on the Record*  
David J. Barbuzzi, for the appellant<sup>1</sup>  
Office of Solicitor, for the Director

**DECISION AND ORDER**

Before:  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On May 8, 2023 appellant, through his representative, filed a timely appeal from a March 30, 2023 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.

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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.*

## ISSUE

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

## FACTUAL HISTORY

On January 16, 2019 appellant, then a 63-year-old retired city carrier, filed an occupational disease claim (Form CA-2) alleging that he developed left thumb osteoarthritis due to factors of his federal employment. He noted that he first became aware of his condition on February 14, 2016 and realized its relation to his federal employment on March 14, 2016. Appellant did not stop work. He retired from federal service effective January 3, 2017.

In a March 14, 2016 note, Dr. Stephen Payne, a Board-certified family medicine specialist, noted that appellant related complaints of pain in his left hand. He indicated that he had been woodworking and was retired. Dr. Payne performed a physical examination, which revealed tenderness at the first carpal metacarpal (CMC) joint and administered an injection.

Appellant also submitted reports from Dr. Michael Nancollas, a Board-certified orthopedic hand surgeon, dated October 27, 2016 through January 4, 2018. On October 27 and December 19, 2016 Dr. Nancollas administered injections, and on October 24, 2017 he performed left thumb basilar arthroplasty. He diagnosed left thumb osteoarthritis.

In a statement dated November 19, 2018, appellant indicated that he began working for the employing establishment in July 1975 as a clerk. His duties involved constant use of his hands to separate and case mail. Appellant then worked as a letter carrier from February 1977 until his retirement on January 3, 2017, which involved continual use of his left thumb to push and pull letters and flats. He further noted that, during his last few years of work, the employing establishment instituted a one-bundle system that further increased the strain on his left hand while he pulled down mail due to bulkiness and heavier weights associated with the magazine-sized mail. Appellant also attached two position descriptions for city carrier and letter carrier.

In a narrative report dated January 10, 2019, Dr. Payne noted that appellant had provided him with a detailed description of his employment duties. He opined, based upon the description of his duties, medical history regarding the left thumb, and the October 24, 2017 surgery, that his duties as a letter carrier contributed to his diagnosis of osteoarthritis. Dr. Payne explained that appellant's repetitive duties casing and delivering mail and squeezing mail with his left thumb placed considerable pressure and stressors on his left thumb joints, which caused increased inflammation and contributed to his degenerative condition. He noted that he had preexisting arthritic changes in the left thumb, which were permanently accelerated by 41 years and tens of thousands of hours of repetitive activities at work which involved use of his left thumb.

In a statement dated January 15, 2019, appellant discussed the medical care he received for his left thumb condition.

In a February 14, 2019 development letter, OWCP informed appellant of the deficiencies of his claim. It provided a questionnaire for his completion and advised him of the type of factual

and medical evidence necessary to establish his claim. OWCP afforded appellant 30 days to provide the necessary evidence.

In a March 25, 2019 response to OWCP's development questionnaire, appellant described his various hobbies and indicated that he relied upon his right hand for most activities.

By decision dated April 17, 2019, OWCP denied appellant's occupational disease claim, finding that the evidence of record was insufficient to establish that his diagnosed condition was causally related to the accepted factors of his federal employment.

On April 24, 2019 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review, which was held on July 24, 2019.

Dr. Payne, in a narrative report dated May 21, 2019, reiterated his opinion that the repetitive stressors of appellant's job duties over 41 years caused increased inflammation and degeneration in the left thumb, which contributed to his diagnosis of left CMC arthritis.

In a July 24, 2019 statement, appellant denied engaging in any activities outside of work that would have contributed to his left thumb condition. He indicated that his job duties required use of his left hand on a daily basis to hold, squeeze, and feed letters with his left thumb for eight hours per day, five days per week. Appellant further noted that he used his right hand for his woodworking hobbies.

By decision dated August 30, 2019, OWCP's hearing representative affirmed the April 17, 2019 decision.

On August 24, 2020 appellant requested reconsideration of the August 30, 2019 decision. In support of his request, he submitted an August 14, 2020 report from Dr. Suk Namkoong, a Board-certified orthopedic surgeon, who noted his history of repetitive use of his left thumb as a mail carrier for which he underwent CMC arthroplasty in 2017. Dr. Namkoong further noted that appellant related that he had difficulty completing a round of golf due to pain and difficulty with grasping and gripping. He diagnosed left thumb metacarpophalangeal (MCP) osteoarthritis, status post CMC arthroplasty. Dr. Namkoong opined that appellant's MCP and CMC arthritis was "likely caused by his overuse with regards to work."

By decision dated September 22, 2020, OWCP denied modification of its August 30, 2019 decision.

On May 18, 2021 appellant requested reconsideration of OWCP's September 22, 2020 decision. In support of his request, he submitted a May 6, 2021 narrative report from Dr. Namkoong, who reviewed the treatment records of Drs. Payne and Nancollas and x-rays dated August 14, 2020. Dr. Namkoong opined that appellant's employment duties, especially using his left thumb as a feeder to grip mail and repetitive sliding of the top letter forward while gripping a mail bundle, contributed to the diagnoses of CMC and MCP osteoarthritis. He explained that the pressures placed on the thumb joints from those duties "certainly accelerated" the osteoarthritis. Dr. Namkoong indicated that the amount of arthritis was quite severe and beyond what he would normally expect from activities of daily living, especially considering that appellant was right-

hand dominant. He opined that his nonwork activities contributed somewhat to his condition, but the most significant contribution was the exposure at work.

By decision dated May 24, 2021, OWCP denied modification of its September 22, 2020 decision.

On January 13, 2022 appellant requested reconsideration of OWCP's May 24, 2021 decision. In support of his request, he submitted a narrative report from Dr. Namkoong dated January 10, 2022, who reiterated that appellant's left CMC and MCP osteoarthritis would not be explained by activities of daily living, as he was right-handed. He further explained that the pressure of gripping increased joint forces across both joints, which eventually wore away the cartilage and caused the bones to rub against one another, which led to osteoarthritis.

By decision dated April 13, 2022, OWCP denied modification of its May 24, 2021 decision.

On January 12, 2023 appellant requested reconsideration of OWCP's April 13, 2022 decision. In support of his request, he submitted a June 29, 2022 statement which indicated that his repetitive use of his left hand while working far exceeded any use of his left hand while engaged in his hobby of woodworking.

By decision dated March 30, 2023, OWCP denied modification of its April 13, 2022 decision.

### **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 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 establish that an injury was sustained in the performance of duty in an occupational disease claim, an employee 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

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

<sup>4</sup> *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> *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> *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).

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.<sup>7</sup>

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.<sup>8</sup> A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factors must be based on a complete factual and medical background.<sup>9</sup> 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 factors.<sup>10</sup>

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.<sup>11</sup>

### ANALYSIS

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

Appellant alleged that he injured his left thumb due to factors of his federal employment of 41 years, which included use of his nondominant left hand and thumb to hold, squeeze, and feed letters with his left thumb and pinch, grab, and pull mail repetitively for eight hours per day, five days per week. Dr. Namkoong, in his narrative reports dated May 6, 2021 and January 10, 2022 diagnosed left CMC and MCP osteoarthritis. He opined that appellant's employment duties contributed to these conditions and explained that the pressure of gripping increased forces across both joints, which eventually wore away the cartilage and caused the bones to rub against one another which led to osteoarthritis. Dr. Namkoong further differentiated between appellant's preexisting arthritis and his occupational exposure, noting that his left CMC and MCP osteoarthritis was quite severe and beyond what he would normally expect from activities of daily living, especially considering that appellant was right-handed, and that the most significant contribution was the exposure at work.

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<sup>7</sup> *R.G.*, Docket No. 19-0233 (issued July 16, 2019). See also *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>8</sup> *A.K.*, Docket No. 21-0278 (issued July 12, 2021); *T.H.*, 59 ECAB 388, 393 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>9</sup> *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

<sup>10</sup> *Id.*; *Victor Woodhams*, *supra* note 7.

<sup>11</sup> 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).

It is well established that proceedings under FECA are not adversarial in nature and, while appellant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility for the development of the evidence and to see that justice is done.<sup>12</sup>

While the Board finds that the reports from Dr. Namkoong are not fully rationalized, they are consistent in explaining that the accepted employment duties caused, precipitated and/or aggravated his left thumb condition and were not contradicted by any substantial medical or factual evidence of record.<sup>13</sup> Further development of appellant's claim is therefore required.<sup>14</sup>

The case shall be remanded for OWCP to refer appellant to a specialist in the appropriate field of medicine, along with the case record and a statement of accepted facts.<sup>15</sup> If the physician opines that the diagnosed conditions are not causally related to the employment incident, he or she must provide a rationalized explanation as to why their opinion differs from those articulated by Dr. Namkoong. After this and other such further development 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> See *A.K.*, Docket No. 20-1426 (issued March 8, 2021); *B.C.*, Docket No. 15-1853 (issued January 19, 2016); *E.J.*, Docket No. 09-1481 (issued February 19, 2010); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>13</sup> See *D.G.*, Docket No. 18-0043 (issued May 7, 2019). *J.M.*, Docket No. 20-1230 (issued February 16, 2021).

<sup>14</sup> See *A.G.*, Docket No. 20-0454 (issued October 29, 2020); see *A.K.*, *supra* note 12; *C.G.*, Docket No. 20-1121 (issued February 11, 2021); *J.D.*, Docket No. 18-0279 (issued January 6, 2020); *K.P.*, Docket No. 18-0041 (issued May 24, 2019); *M.K.*, Docket No. 17-1140 (issued October 18, 2017); *G.C.*, Docket No. 16-0666 (issued March 17, 2017); *John J. Carlone*, *supra* note 12; *Horace Langhorne*, 29 ECAB 280 (1978).

<sup>15</sup> See *A.K.*, *supra* note 12.

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 30, 2023 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: October 25, 2023  
Washington, DC

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

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

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