

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

J.H., Appellant

and

**OFFICE OF THE DIRECTOR OF NATIONAL
INTELLIGENCE, Washington, DC, Employer**

**Docket No. 25-0259
Issued: February 21, 2025**

Appearances:

Dr. David Harris, III, for the appellant¹

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge

JANICE B. ASKIN, Judge

VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On June 9, 2024, appellant, through his representative, filed a timely appeal from a December 13, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP).²

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 Appellant submitted a timely request for oral argument before the Board. 20 C.F.R. § 501.5(b). Pursuant to the Board's *Rules of Procedure*, oral argument may be held in the discretion of the Board. 20 C.F.R. § 501.5(a). In support of appellant's oral argument request, appellant asserted that the medical evidence of record established his claim. The Board, in exercising its discretion, denies appellant's request for oral argument because this matter pertains to an evaluation of the weight of the medical evidence presented. As such, the arguments on appeal can adequately be addressed in a decision based on a review of the case record. Oral argument in this appeal would further delay issuance of a Board decision and not serve a useful purpose. The oral argument request is therefore denied and this decision is based on the case record as submitted to the Board.

Pursuant to the Federal Employees' Compensation Act³ (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 medical condition causally related to the accepted May 6, 2022 employment incident.

FACTUAL HISTORY

On September 25, 2023, appellant, then a 46-year-old management and program analyst, filed a traumatic injury claim (Form CA-1) alleging that on May 6, 2022 he sustained permanent nerve damage to his right upper extremity, as well as consequential mental distress and depression, when he lost balance and attempted to recover a heavy box he was carrying while in the performance of duty.

Appellant submitted a note from David Schoenfish, a certified physician assistant, dated May 18, 2022. Appellant's diagnosis was listed as right arm ulnar neuropathy.

In a note dated June 9, 2022, Dr. Natalia Kayloe, a Board-certified neurologist, diagnosed right arm ulnar neuropathy and recommended occupational therapy.

Appellant submitted notes from physical therapists dated from June 15 through October 5, 2022.

In a report dated September 1, 2022, Dr. Zarmina Ahmed-Yusufi, a Board-certified internist, conducted a virtual appointment with appellant for complaints of nerve pain in the right hand and anxiety. Appellant noted chronic right forearm pain and a work-related injury in May 2022. He also stated that he had increased work-related anxiety and stress. Dr. Ahmed-Yusufi diagnosed right ulnar nerve lesion and unspecified anxiety disorder.

In progress notes dated April 11, 2023, Dr. Simon Fishman, a neurologist, followed up with appellant for right hand pain, tingling, and numbness. He noted that appellant had persistent numbness of the right hand beginning in mid-April 2022 after falling asleep while leaning on a seat tray on his return flight from a work-related trip to Las Vegas, Nevada. Appellant initially noted right hand weakness, but reported an improvement of strength by approximately 75 percent after physical therapy and taking medication. Dr. Fishman diagnosed ulnar neuropathy based on an electromyogram (EMG) obtained on June 9, 2022.

OWCP also received a note by Kelly London, a nurse practitioner dated April 11, 2023. This note related a diagnosis of ulnar radiculopathy of the right arm.

In a development letter dated October 10, 2023, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of medical and factual evidence needed, and provided a questionnaire for his completion. OWCP afforded appellant 60 days to respond. No additional evidence was received.

³ 5 U.S.C. § 8101 *et seq.*

In a follow-up letter dated November 9, 2023, OWCP advised appellant that it had conducted an interim review, and the evidence remained insufficient to establish his claim. It noted that he had 60 days from the October 10, 2023 letter to submit the requested supporting evidence. OWCP further advised that if the requested evidence was not received during this time, it would issue a decision based on the evidence contained in the record.

A magnetic resonance imaging (MRI) scan of the lumbar spine obtained on October 20, 2023 demonstrated discogenic degenerative changes with multilevel canal stenosis and neural foraminal narrowing, most notable at the L2-3, L3-4, and L4-5 levels. An MRI scan of the cervical spine obtained on the same date demonstrated multilevel degenerative changes throughout the cervical and upper thoracic spine.

Appellant submitted a narrative from Mr. Schoenfish, dated November 1, 2023, and a note from him dated December 4, 2023, wherein he noted diagnoses of right-hand weakness, ulnar neuropathy of the right arm, and paresthesia of the skin.

In an attending physician's report (Form CA-20) dated November 2, 2023, Dr. Kayloe diagnosed ulnar neuropathy. She noted that appellant's injury occurred in April 2022 on a flight returning from a work-related trip. Dr. Kayloe opined that appellant's condition was caused by falling asleep on the return flight from a work-related trip. She noted that due to the associated weakness of the right hand, appellant experienced impaired dexterity resulting in difficulty with typing.

By decision dated December 13, 2023, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish causal relationship between his diagnosed conditions and the accepted employment incident of May 6, 2022.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ 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,⁵ 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.⁶ 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.⁷

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 that the

⁴ *Id.*

⁵ *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).

⁶ *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).

⁷ *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).

employee must submit sufficient evidence to establish 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 an injury and can be established only by medical evidence.⁸

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.⁹ 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 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 May 6, 2022 employment incident.

In support of his May 6, 2022 traumatic injury claim, appellant submitted reports from several medical providers. On June 9, 2022, Dr. Kayloe diagnosed right arm ulnar neuropathy. On September 1, 2022, Dr. Ahmed-Yusufi diagnosed right ulnar nerve lesion and unspecified anxiety disorder. On April 11, 2023, Dr. Fishman diagnosed ulnar neuropathy. These reports did not contain opinions as to causal relationship between the accepted May 6, 2022 employment incident and the diagnoses. 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 as to causal relationship.¹¹ As such, this evidence is insufficient to establish appellant's claim.

Appellant also submitted a Form CA-20 dated November 2, 2023 from Dr. Kayloe. Dr. Kayloe diagnosed ulnar neuropathy and opined that appellant's condition was caused by falling asleep on an April 2022 return flight from a work-related trip. However, she did not offer a rationalized medical opinion explaining how the accepted May 6, 2022 employment incident resulted in his diagnosed ulnar neuropathy. The Board has held that a medical opinion should offer a medically-sound explanation of how the specific employment incident physiologically caused the diagnosed condition.¹² The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how a given medical

⁸ *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).

⁹ *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).

¹⁰ *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).

¹¹ *G.K.*, Docket No. 23-1060 (issued January 9, 2024); *J.H.*, Docket No. 20-1414 (issued April 5, 2022); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹² *C.G.*, Docket No. 22-1270 (issued December 20, 2023); *T.W.*, Docket No. 20-0767 (issued January 13, 2021); *H.A.*, Docket No. 18-1466 (issued August 23, 2019).

condition was related to the employment incident.¹³ This evidence is therefore insufficient to establish appellant's claim.

The Board notes that appellant submitted the results of diagnostic testing, including MRI scans of his spine. However, the Board has held that diagnostic studies, standing alone, lack probative value on the issue of causal relationship as they do not provide an opinion as to whether the accepted employment factors caused a diagnosed condition.¹⁴

OWCP received evidence signed solely by physical therapists, a certified physician assistant, and a nurse practitioner. However, certain healthcare providers such as nurses, physical therapists, and physician assistants are not considered physicians as defined under FECA.¹⁵ Thus, this evidence is of no probative value and is insufficient to establish appellant's claim.

As appellant has not submitted rationalized medical evidence establishing a medical condition causally related to the accepted May 6, 2022 employment incident, the Board finds that he has not met his burden of proof.

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 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 May 6, 2022 employment incident.

¹³ *R.V.* Docket No. 21-0976 (issued July 18, 2023); *S.O.*, Docket No. 21-0332 (issued September 24, 2021); *G.L.*, Docket No. 18-1057 (issued April 14, 2020).

¹⁴ *See M.S.*, Docket No. 25-0058 (issued December 6, 2024); *M.P.*, Docket No. 23-1131 (issued June 18, 2024); *V.A.*, Docket No. 21-1023 (issued March 6, 2023).

¹⁵ Section 8101(2) of FECA provides that medical opinions can only be given by a qualified physician. This section defines a physician as 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) (May 2023); *M.S., id.* (finding that a physician assistant and nurse practitioner 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).

ORDER

IT IS HEREBY ORDERED THAT the December 13, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 21, 2025
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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