

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

M.B., Appellant

and

**DEPARTMENT OF HOMELAND SECURITY,
IMMIGRATION & CUSTOMS
ENFORCEMENT, Seattle, WA, Employer**

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) **Docket No. 25-0298**
) **Issued: February 27, 2025**
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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
JANICE B. ASKIN, Judge

JURISDICTION

On February 7, 2025 appellant filed a timely appeal from a January 14, 2025 merit 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.

ISSUE

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

FACTUAL HISTORY

On October 17, 2024 appellant, then a 49-year-old intelligence worker, filed an occupational disease claim (Form CA-2) alleging that he sustained paresthesia of the bilateral

¹ 5 U.S.C. § 8101 *et seq.*

hands causally related to factors of his federal employment including typing on a computer, holding printouts, manipulating a computer mouse, writing on a notepad, and drawing analysis charts. He noted that he first became aware of his condition and realized its relation to factors of his federal employment on September 16, 2024. Appellant did not stop work.

An electromyography and nerve conduction velocity (EMG/NCV) study obtained on October 4, 2024 demonstrated abnormal readings of the bilateral upper extremities, moderate-to-severe right carpal tunnel syndrome, and moderate left carpal tunnel syndrome.

In a development letter dated October 21, 2024, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed to establish his claim and afforded him 60 days to submit the necessary evidence. In a separate development letter of even date, OWCP requested that the employing establishment provide additional information, including comments from a knowledgeable supervisor, regarding the accuracy of her statement. It afforded the employing establishment 30 days to respond.

In an October 22, 2024 response, appellant explained that he could not pinpoint the exact time that his condition began, but he noticed numbness in his fingers for less than a year before he first visited a chiropractor on August 23, 2022.

In reports dated August 23 through September 8, 2022, Dr. John Colvill, a chiropractor, recounted appellant's report of radiating tingling, numbness, and weakness in the bilateral hands, as well as tightness in the neck and midback. He diagnosed dislocation of cervical and thoracic vertebrae, cervical radiculopathy, pain of the thoracic spine, segmental and somatic dysfunction of the upper extremities, and myalgia.

Appellant also submitted a September 12, 2022 report, wherein Deanne Kristy Asbell, a physician assistant, noted a diagnosis of bilateral carpal tunnel syndrome.

In a follow-up development letter dated November 18, 2024, 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 21, 2024 letter to submit the necessary evidence. OWCP further advised that if additional evidence was not received during this time, it would issue a decision based on the evidence contained in the record.

In a September 16, 2024 report, Dr. Steffan Tolles, a Board-certified family practitioner, observed increased numbness on palpation of the median nerve and positive Phalen's and Tinel's testing. He diagnosed bilateral carpal tunnel syndrome.

In an October 16, 2024 report, Dr. Tolles diagnosed moderate-to-severe right carpal tunnel syndrome and moderate left carpal tunnel syndrome. He recommended continued use of wrist braces at night and as needed during the day. Dr. Tolles advised surgical intervention.

By decision dated January 14, 2025, 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.

LEGAL PRECEDENT

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,³ that the claim was timely filed within the applicable time limitation of FECA, 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, 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 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.⁶

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁷ A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.⁸ 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 factor(s).⁹

² *Id.*

³ *E.K.*, Docket No. 22-1130 (issued December 30, 2022); *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).

⁴ *K.M.*, Docket No. 24-0752 (issued October 16, 2024); *S.H.*, Docket No. 22-0391 (issued June 29, 2022); *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).

⁵ *E.H.*, Docket No. 22-0401 (issued June 29, 2022); *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).

⁶ *E.K.*, Docket No. 25-0077 (issued January 21, 2025); *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).

⁷ *S.M.*, Docket No. 22-0075 (issued May 6, 2022); *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).

⁸ *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

⁹ *J.D.*, Docket No. 22-0935 (issued December 16, 2022); *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodhams*, *supra* note 6.

ANALYSIS

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 support of his claim, appellant submitted reports dated September 16 and October 16, 2024 from Dr. Tolles. The reports contained results of physical examination including observations of increased numbness on palpation of the median nerve and positive Phalen's and Tinel's testing, as well as diagnoses of moderate-to-severe right carpal tunnel syndrome and moderate left carpal tunnel syndrome. However, the reports did not contain an opinion on the cause of these diagnosed conditions. 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.¹⁰ As such, this evidence is insufficient to establish appellant's claim.

Appellant submitted reports dated August 23 through September 8, 2022 from Dr. Colvill, a chiropractor who diagnosed dislocation of cervical and thoracic vertebrae, cervical radiculopathy, pain of the thoracic spine, segmental and somatic dysfunction of the upper extremities, and myalgia. Section 8101(2) of FECA provides that chiropractors are considered physicians "only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulation by the Secretary."¹¹ Thus, where a diagnosis of subluxation based on x-rays has not been made, a chiropractor is not considered a "physician" under FECA, and his or her reports cannot be considered as competent medical evidence under FECA.¹² Dr. Colvill did not render a diagnosis of subluxation as demonstrated by x-ray. Thus, the reports from Dr. Colvill do not constitute competent medical evidence and are of no probative value.¹³

Appellant submitted a September 12, 2022 report from a physician assistant. The Board has long held that certain healthcare providers such as physician assistants are not considered physicians as defined under FECA.¹⁴ Consequently, their medical findings and/or opinions will

¹⁰ *G.M.*, Docket No. 24-0388 (issued May 28, 2024); *C.R.*, Docket No. 23-0330 (issued July 28, 2023); *S.J.*, Docket No. 19-0696 (issued August 23, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹¹ 5 U.S.C. § 8101(2); 20 C.F.R. § 10.311; *see also P.G.*, Docket No. 23-0195 (issued August 15, 2023); *Mary A. Ceglia*, 55 ECAB 626 (2004); *Sean O Connell*, 56 ECAB 195 (2004).

¹² *See S.C.*, Docket No. 25-0155 (issued January 16, 2025); *Susan M. Herman*, 35 ECAB 669 (1984).

¹³ *See I.D.*, Docket No. 25-0021 (issued November 20, 2024).

¹⁴ Section 8101(2) of FECA provides as follows: 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 (May 2023); *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); *see also L.W.*, Docket No. 24-0947 (issued January 31, 2025) (physician assistants are not considered physicians under FECA).

not suffice for purposes of establishing entitlement to FECA benefits.¹⁵ Therefore, this evidence is insufficient to establish appellant's claim.

OWCP also received an October 4, 2024 EMG/NCV study. However, diagnostic studies, standing alone, lack probative value on causal relationship as they do not address whether employment factors caused the diagnosed condition.¹⁶

As the medical evidence of record is insufficient to establish a medical condition causally related to the accepted factors of appellant's federal employment, 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(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 medical condition causally related to the accepted factors of his federal employment.

¹⁵ *Id.*

¹⁶ See *A.B.*, Docket No. 25-0057 (issued November 26, 2024); *B.S.*, Docket No. 22-0918 (issued August 29, 2022); *S.D.*, Docket No. 21-0292 (issued June 29, 2021); *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

ORDER

IT IS HEREBY ORDERED THAT the January 14, 2025 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 27, 2025
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board