

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

A.S., Appellant)

and)

DEPARTMENT OF HOMELAND SECURITY,)
TRANSPORTATION SECURITY)
ADMINISTRATION, West Orange, NJ,)
Employer)

**Docket No. 16-1028
Issued: August 17, 2016**

Appearances:

*Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On April 19, 2016 appellant, through counsel, filed a timely appeal from a March 29, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

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 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has established bilateral carpal tunnel syndrome causally related to the accepted factors of his federal employment.

FACTUAL HISTORY

On September 11, 2014 appellant, then a 47-year-old supervisory air marshal, filed an occupational disease claim (Form CA-2) alleging that he sustained bilateral carpal tunnel syndrome causally related to his federal employment. He indicated that he performed repetitive keyboard activity with respect to administrative duties, and also had participated in agency training sessions since 2002. Appellant's supervisor noted on the reverse of the claim form that appellant's work assignment had changed as he had been performing "administrative duties" since August 15, 2014.

By letter dated September 25, 2014, OWCP requested that appellant submit additional rationalized medical evidence to support his claim for compensation. Appellant was afforded 30 days to submit this evidence.

On October 3, 2014 OWCP received a supplemental statement from appellant dated August 29, 2014. Appellant explained that, in addition to administrative duties, he was required to participate in quarterly fitness assessments, which required weight lifting and activity such as push-ups. He indicated that he also participated in defense measures and arrest training, as well as firearms training. Appellant wrote that he must maintain proficiency in firearms and the employing establishment required participation in firearms training. In an October 3, 2014 letter, he wrote that as a squad supervisor since 2002 he was required to participate "daily, weekly, and/or monthly" in training which included physical activity such as hand-to-hand combat and fitness assessments.

Appellant submitted an August 28, 2014 report from Dr. Brett Gerstman, a Board-certified physiatrist. Dr. Gerstman indicated that he had treated appellant since June 30, 2014 and an electromyogram (EMG) dated August 15, 2014 had confirmed carpal tunnel syndrome. He reported that appellant's job involved significant administrative and manual tasks using hands and wrists, and he used firearms and his upper extremities for hand-to-hand combat. Dr. Gerstman opined, "it is likely the current symptoms were aggravated by employment." In a Form CA-20 attending physician's report, dated September 17, 2014, he diagnosed carpal tunnel syndrome and checked a box marked "no" that the condition was caused or aggravated by employment activity.

By decision dated December 5, 2014, OWCP denied the claim for compensation. It found that the employment factors occurred as alleged, but that the medical evidence was insufficient to establish a diagnosed carpal tunnel syndrome as causally related to accepted factors of employment.

In a letter dated December 15, 2014, received by OWCP on December 18, 2014, appellant, through counsel, requested a hearing before an OWCP hearing representative. A

hearing was held on June 26, 2015. Appellant indicated that he had lumbar surgery on April 16, 2015 and was not currently working.

Appellant submitted a June 30, 2015 report from Dr. Gerstman, who provided results on examination. Dr. Gerstman diagnosed moderate-to-severe bilateral carpal tunnel syndrome. He opined, "Considering [appellant's] job training and continued need to use his firearm, it is likely that this frequent use of his firearm predisposed him to develop carpal tunnel syndrome. I believe there is a causal relationship between his employment and his development of carpal tunnel syndrome."

By decision dated September 9, 2015, an OWCP hearing representative affirmed the December 5, 2014 OWCP decision. He found the medical evidence of record was insufficient to establish causal relationship between carpal tunnel syndrome and his federal employment.

Appellant requested reconsideration on November 2, 2015 and submitted an October 15, 2015 report from Dr. Matthew Zornitzer, a Board-certified orthopedic surgeon. Dr. Zornitzer recommended carpal tunnel release surgery. He opined, "Considering the repetitive activity and grappling and training that he needs to do with his hands for 20+ hours a week as well as the fact that he reported to me he fires 3,000 to 5,000 rounds through a 357 Magnum, I would state within a reasonable degree of medical probability that his carpal tunnel syndrome is work related."

By decision dated March 29, 2016, OWCP reviewed the merits of the claim, but found that the medical evidence submitted remained insufficient to establish the claim for compensation. It indicated that the evidence did not contain a rationalized medical opinion as to how the accepted work factors caused or aggravated appellant's bilateral carpal tunnel syndrome.

LEGAL PRECEDENT

A claimant seeking benefits under FECA has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence, including that an injury was sustained in the performance of duty as alleged and that any specific condition or disability claimed is causally related to the employment injury.³

To establish that an injury was sustained in the performance of duty, a claimant must submit: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.⁴

³ 20 C.F.R. § 10.115(e), (f) (2005); see *Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

⁴ *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence.⁵ A physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors must be based on a complete factual and medical background of the claimant.⁶ Additionally, in order to be considered rationalized, the 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.⁷

ANALYSIS

In the present case, appellant has alleged bilateral carpal tunnel syndrome as a result of his federal employment. He discussed repetitive activity in keyboard entry and other administrative duties. In addition, appellant indicated that he was required to attend training at times, which included use of the hands in arrest training and use of firearms. OWCP has accepted that the factors occurred as alleged. The Board finds that appellant has not established that he sustained carpal tunnel syndrome causally related to the accepted work factors.

Dr. Gerstman diagnosed bilateral carpal tunnel syndrome based on an August 15, 2014 EMG. The issue is whether there is sufficient medical evidence to establish causal relationship between the diagnosed condition and the identified employment factors. Dr. Gerstman provided a brief history in his August 28, 2014 report that appellant's job included administrative tasks, and training with firearms and hand-to-hand combat. He did not provide additional details demonstrating how long appellant worked at the employing establishment and how often he engaged in specific activities. The opinion that employment "likely" aggravated symptoms is of little probative value without additional explanation.⁸ The Board also notes that in the September 17, 2014 CA-20 report Dr. Gerstman checked "no" with regard to causal relationship. In the June 30, 2015 report, Dr. Gerstman referred only to the use of firearms, without providing a rationalized medical opinion. The Board finds that Dr. Gerstman did not provide a rationalized medical opinion based upon a complete medical and factual background explaining causal relationship between the accepted factors of appellant's employment and his bilateral carpal tunnel syndrome.⁹

Dr. Zornitzer provided an October 15, 2015 report opining that appellant's carpal tunnel syndrome was work related. He does not provide a complete history or discuss the nature and duration of appellant's identified employment activity. Dr. Zornitzer briefly refers to repetitive

⁵ See *Robert G. Morris*, 48 ECAB 238 (1996).

⁶ *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁷ *Id.*

⁸ Medical opinions such as a condition is "probably" related, "most likely" related or "could be" related are speculative and diminish the probative value of the medical opinion evidence. *Kathy A. Kelley*, 55 ECAB 206, 211 (2004).

⁹ *Supra* note 6.

activity, “grappling” and firing large quantities of ammunition. It is not clear from the record how often appellant was required to undergo firearms training. Moreover, no explanation is provided as to how a specific work activity contributed to carpal tunnel syndrome. If the physician is opining that work activity caused carpal tunnel syndrome, there must be a clear explanation as to the mechanism of injury and how the work activity caused carpal tunnel syndrome.¹⁰ If there was an aggravation, the nature and extent of the aggravation must be discussed. An opinion with respect to aggravation must differentiate between the effects of the work-related injury or disease and the preexisting condition.¹¹ The Board has held that the physician must clearly explain the nature and extent of any aggravation, including whether temporary or permanent.¹²

It is appellant’s burden of proof to establish the claim for compensation. The Board finds that appellant did not meet his burden of proof in this case.

On appeal counsel argues that the physicians did substantiate causation, that OWCP’s decision did not properly consider the evidence and engaged in argument not analysis, and that OWCP creates an impossible evidentiary standard. The March 29, 2016 OWCP decision finds that the medical evidence does not provide a rationalized medical opinion on causal relationship between the diagnosed condition and factors of federal employment. It is well established that a claimant must provide rationalized medical opinion evidence on causal relationship, based on a complete background, to establish the claim for compensation.¹³

For the reasons discussed above, the Board finds that appellant did not meet his burden of proof in this case.

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 established bilateral carpal tunnel syndrome causally related to the accepted factors of his federal employment.

¹⁰ See *L.W.*, Docket No. 14-0036 (issued March 6, 2014).

¹¹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3(e) (January 2013).

¹² See *R.H.*, Docket No. 15-1785 (issued January 29, 2016).

¹³ *Supra* note 7.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 29, 2016 is affirmed.

Issued: August 17, 2016
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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