

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

---

<b>D.L., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 18-1007</b>
	)	<b>Issued: November 28, 2018</b>
<b>DEPARTMENT OF THE NAVY, FLEET</b>	)	
<b>READINESS CENTER, San Diego, CA,</b>	)	
<b>Employer</b>	)	

---

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge  
ALEC J. KOROMILAS, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On April 16, 2018 appellant filed a timely appeal from a November 30, 2017 merit decision and a January 16, 2018 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

**ISSUES**

The issues are: (1) whether appellant met his burden of proof to establish that his bilateral carpal tunnel syndrome was causally related to the accepted factors of his federal

---

<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that appellant submitted additional evidence on appeal. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

employment; and (2) whether OWCP properly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

### **FACTUAL HISTORY**

On October 13, 2017 appellant, then a 44-year-old composite fabricator leader, filed an occupational disease claim (Form CA-2) alleging that he sustained bilateral carpal tunnel syndrome as a result of continual daily use of his hands, including holding tools, sanding, and squeezing and grasping tools with recurring force in the performance of duty. He indicated that he first became aware of his condition and realized that it resulted from his federal employment on March 23, 2009. On the reverse side of the claim form, the employing establishment noted that appellant was last exposed to the employment conditions alleged to have caused his occupational disease on October 7, 2017.

In an accompanying statement, appellant explained that he had carpal tunnel syndrome for some time and was told by his primary physician that the occupational tools he used may have attributed to the pain and numbness in his hands. He outlined his work history, including the time he served in the military, and related that he was hired by the employing establishment in 2003. Appellant noted that he worked at the composite shop repairing various aircraft. He listed the tools that he used and provided a detailed description of the steps he took to complete repairs. Appellant related that he first noticed numbness, stiffness, and pain in both wrists in 2006, but he was not diagnosed until around 2010.

In an October 16, 2017 development letter, OWCP acknowledged receipt of appellant's claim and informed him that additional evidence was needed in support of his claim. It provided appellant a factual questionnaire to complete and return. OWCP also requested medical evidence with a physician's opinion as to how his employment activities caused, contributed to, or aggravated his hand/wrist condition. It afforded appellant 30 days to submit the requested information.

OWCP subsequently received appellant's professional résumé, a technical manual for general composite repair, an inventory of the tools he used, and job grading standards for composite/plastic fabricating.

On October 30, 2017 OWCP received appellant's response to its development letter. Appellant explained that he had been suffering from the effects of carpal tunnel syndrome for some time. He related that his physician had informed him that his condition was from the tools he used at work and that it would worsen over time. Appellant indicated that the documents he had submitted would show his return visits for medical treatment over the past several years.

OWCP also received several medical reports dated from 2009 through 2015.

In a March 12, 2009 report, Dr. Jenny C. Wang, an osteopath and Board-certified family practitioner, related that appellant had complained of "off and on" right hand pain for several years. Upon physical examination of appellant's right hand, she observed tenderness and decreased sensation at ulnar distribution. Dr. Wang diagnosed hand pain, not arthralgia.

A March 14, 2009 right hand x-ray examination report showed an old healed fracture, but the rest of the hand was otherwise unremarkable.

In a March 23, 2009 report, Dr. Kris K. Hirata, Board-certified in physical medicine and rehabilitation, related appellant's complaints of consistent right hand pain and right hand numbness in the 4<sup>th</sup> and 5<sup>th</sup> fingers for the past two years. Physical examination of appellant's upper extremities showed positive Tinel's test bilaterally. Dr. Hirata diagnosed neuropathy of the ulnar nerve.

A March 23, 2009 electromyography (EMG) and nerve conduction velocity (NCV) study report showed right ulnar nerve neuropathy and bilateral carpal tunnel syndrome, mild-to-moderate on the right and severe on the left.

On June 8, 2009 Dr. James S. Hwang, an osteopath and Board-certified family practitioner, reported that appellant was seen for follow-up of left arm pain. Upon examination of appellant's left arm, he observed tenderness to palpation at the muscles and slight crepitus. Dr. Hwang diagnosed arm strain, repetitive use.

In a June 17, 2010 report, Dr. Raymundo Miranda David, a Board-certified family practitioner, noted appellant's complaints of worsening elbow and wrist pain. He noted that the symptoms started approximately four years prior. Dr. David indicated that an NCV study was positive for right ulnar neuropathy and bilateral carpal tunnel syndrome.

On July 21, 2010 Dr. Marc Harold Fogelson, a Board-certified orthopedic surgeon, reported appellant's complaints of worsening right ulnar neuropathy and bilateral carpal tunnel syndrome. Upon physical examination of appellant's upper extremities, he observed no tenderness to palpation and normal sensation and muscle strength. Dr. Fogelson diagnosed carpal tunnel syndrome.

In a March 31, 2014 report, Dr. Hwang indicated that appellant still complained of sharp pain and numbness of the lateral aspect of the bilateral hand. He noted that appellant did "a lot of repetitive work with his hands." Physical examination revealed positive Phalen's and Tinel's signs bilaterally and positive full range of motion of both wrists. Dr. Hwang diagnosed bilateral carpal tunnel syndrome and chronic low back pain.

Dr. Richard Hanna, a Board-certified orthopedic surgeon, related in an April 17, 2014 report, that appellant's complaints of bilateral hand pain and numbness had increased in the past few months, especially at night. Upon physical examination of appellant's upper extremities, he observed normal range of motion of the wrists and digits and intact sensation to light touch. Tinel's and carpal tunnel tests were positive bilaterally. Dr. Hanna diagnosed bilateral carpal tunnel syndrome.

A January 5, 2015 lumbar spine magnetic resonance imaging (MRI) scan report showed mild degenerative disc disease at L3-4, L4-5, and L5-S1.

A May 14, 2015 right shoulder MRI scan showed supraspinatus tendinitis and a small tear at the posterior superior labrum.

By decision dated November 30, 2017, OWCP denied appellant's occupational disease claim. It accepted his duties as a composite fabricator leader and diagnosis of carpal tunnel syndrome, but denied his claim because the medical evidence of record was insufficient to establish that his diagnosed condition was causally related to the accepted employment factors.

On January 9, 2018 appellant filed a request for reconsideration and noted his disagreement with the November 30, 2017 decision. He alleged that he had bilateral carpal tunnel syndrome in both hands and that it was still a major issue to this date. Appellant related that Dr. Hwang would send a letter opining that this health problem was caused by his occupation at the employing establishment.

In an after visit summary report dated December 19, 2017, Dr. Hwang indicated that he treated appellant on that date and noted a diagnosis of bilateral carpal tunnel syndrome.

By decision dated January 16, 2018, OWCP denied reconsideration of the merits of appellant's claim. It found that appellant had not met the requirement of 5 U.S.C. § 8128(a) sufficient to warrant merit review. OWCP found that the additional medical report submitted was irrelevant or immaterial to the underlying issue of his case.

### **LEGAL PRECEDENT -- ISSUE 1**

An employee seeking benefits under FECA<sup>3</sup> has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence<sup>4</sup> including that he or she sustained an injury in the performance of duty and that any specific condition or disability from work for which compensation is claimed is causally related to that employment injury.<sup>5</sup> In an occupational disease claim, appellant's burden requires submission of 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.<sup>6</sup>

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical opinion evidence.<sup>7</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

---

<sup>3</sup> *Supra* note 1.

<sup>4</sup> *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

<sup>5</sup> *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>6</sup> *R.H.*, 59 ECAB 382 (2008); *Ernest St. Pierre*, 51 ECAB 623 (2000).

<sup>7</sup> *I.R.*, Docket No. 09-1229 (issued February 24, 2010); *D.I.*, 59 ECAB 158 (2007).

of the relationship between the diagnosed condition and the specific employment factors identified by the employee.<sup>8</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that appellant has not met his burden of proof to establish bilateral carpal tunnel syndrome causally related to the accepted factors of his federal employment.

In support of his claim, appellant submitted several reports by Dr. Hwang. In a June 8, 2009 report, Dr. Hwang observed tenderness to palpation and slight crepitation of appellant's left arm. He diagnosed arm strain, repetitive use. In a March 31, 2014 report, Dr. Hwang related that appellant still complained of pain and numbness of the lateral aspect of both hands. He indicated that appellant did "a lot of repetitive work with his hands." Dr. Hwang diagnosed bilateral carpal tunnel syndrome. The Board notes that Dr. Hwang provided objective findings on examination and diagnosed bilateral carpal tunnel syndrome. He did not, however, provide any rationalized opinion relative to the cause of appellant's diagnosed condition. While Dr. Hwang alluded to the fact that appellant performed repetitive work with his hands, he did not explicitly opine or explain how such repetitive use or repetitive work caused or contributed to appellant's bilateral carpal tunnel syndrome. Medical evidence that does not offer any rationalized opinion regarding the cause of an employee's diagnosed condition is of no probative value to establish causal relationship.<sup>9</sup> Accordingly, Dr. Hwang's reports are insufficient to establish appellant's claim.

Appellant also submitted various reports from several physicians dated from 2009 to 2014. In a March 12, 2009 report, Dr. Wang observed tenderness and decreased sensation at the right ulnar nerve and observed hand pain, not arthralgia. In a March 23, 2009 report, Dr. Hirata examined appellant for complaints of right hand pain and reported that Tinel's test was positive bilaterally. He diagnosed neuropathy of the ulnar nerve. Neither physician, however, offered any opinion or explanation on the cause of appellant's diagnosed right hand condition. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.<sup>10</sup>

Similarly, Dr. David's June 17, 2010 report, Dr. Fogelson's July 21, 2010 report, and Dr. Hanna's April 17, 2014 report, provide a diagnosis of bilateral carpal tunnel syndrome, but do not offer any opinion on the cause of appellant's diagnosed condition. These reports, therefore, are also of no probative value and are thus insufficient to establish appellant's claim.<sup>11</sup>

The remaining diagnostic reports, including the March 14, 2009 right hand x-ray report, March 23, 2009 EMG/NCV study report, January 5, 2015 lumbar spine MRI scan report, and May 14, 2015 right shoulder MRI scan report, are of limited probative value as diagnostic

---

<sup>8</sup> *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>9</sup> *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

<sup>10</sup> *See supra* note 9.

<sup>11</sup> *Id.*

reports fail to provide an opinion on the causal relationship between appellant's employment and his diagnosed condition. For this reason, this evidence is insufficient to meet his burden of proof.<sup>12</sup>

The mere fact that work activities may produce symptoms revelatory of an underlying condition does not raise an inference of an employment relation. Such a relationship must be shown by rationalized medical evidence of causal relationship based upon a specific and accurate history of employment conditions which are alleged to have caused or exacerbated a disabling condition.<sup>13</sup> Because appellant has failed to provide sufficient medical evidence to establish that his bilateral carpal tunnel syndrome was causally related to the accepted factors of his federal employment, he has not met his burden of proof to establish his occupational disease claim.

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.

### **LEGAL PRECEDENT -- ISSUE 2**

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation. The Secretary of Labor may review an award for or against compensation at any time on his own motion or on application.<sup>14</sup>

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument which: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.<sup>15</sup>

A request for reconsideration must also be received by OWCP within one year of the date of its decision for which review is sought.<sup>16</sup> If OWCP chooses to grant reconsideration, it reopens and reviews the case on its merits.<sup>17</sup> If the request is timely, but fails to meet at least one of the requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.<sup>18</sup>

---

<sup>12</sup> See *A.B.*, Docket No. 17-0301 (issued May 19, 2017).

<sup>13</sup> *Patricia J. Bolleter*, 40 ECAB 373 (1988).

<sup>14</sup> 5 U.S.C. § 8128(a); see also *D.L.*, Docket No. 09-1549 (issued February 23, 2010); *W.C.*, 59 ECAB 372 (2008).

<sup>15</sup> 20 C.F.R. § 10.606(b)(3); see also *L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

<sup>16</sup> 20 C.F.R. § 10.607(a). Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (February 2016)

<sup>17</sup> *Id.* at § 10.608(a); see also *M.S.*, 59 ECAB 231 (2007).

<sup>18</sup> *Id.* at § 10.608(b); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

## **ANALYSIS -- ISSUE 2**

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of his claim, under 5 U.S.C. § 8128(a).

Appellant did not show that OWCP erroneously applied or interpreted a specific point of law, did not advance a relevant legal argument not previously considered by OWCP, and did not constitute relevant and pertinent new evidence not previously considered by OWCP. As such, he was not entitled to a review of the merits of his claim.<sup>19</sup>

The underlying merit issue on reconsideration is medical in nature, whether appellant's bilateral carpal tunnel syndrome was causally related to his employment duties. He submitted a December 19, 2017 after visit summary report by Dr. Hwang. This after visit summary report, however, did not discuss or offer any opinion regarding whether appellant's bilateral carpal tunnel syndrome was causally related to his employment. The Board notes that the submission of evidence that does not address the particular issue involved does not constitute a basis for reopening a case.<sup>20</sup>

Accordingly, the Board finds that appellant did not provide OWCP with any evidence which has met the requirements of 20 C.F.R. § 10.606(b)(3) sufficient to require further merit review of his claim.

The Board finds, therefore, that appellant has not met any of the regulatory requirements and OWCP properly denied his request for reconsideration of the merits of his claim under 5 U.S.C. § 8128(a).<sup>21</sup>

## **CONCLUSION**

The Board finds that appellant did not meet his burden of proof to establish that his bilateral carpal tunnel syndrome was causally related to the accepted factors of his federal employment. The Board further finds that OWCP properly denied his request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

---

<sup>19</sup> See *J.F.*, Docket No. 16-1233 (issued November 23, 2016).

<sup>20</sup> *Alan G. Williams*, 52 ECAB 180 (2000); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

<sup>21</sup> *A.K.*, Docket No. 09-2032 (issued August 3, 2010); *M.E.*, 58 ECAB 694 (2007); *Susan A. Filkins*, 57 ECAB 630 (2006).

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 16, 2018 and November 30, 2017 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: November 28, 2018  
Washington, DC

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

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

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