

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

_____)
A.L., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Milwaukee, WI, Employer)
_____)

Docket No. 21-1375
Issued: December 16, 2022

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 September 14, 2021 appellant filed a timely appeal from an August 27, 2021 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 diagnosed medical condition in connection with the accepted factors of his federal employment.

FACTUAL HISTORY

On June 7, 2021 appellant, then a 51-year-old mail carrier, filed an occupational disease claim (Form CA-2) alleging that he experienced tennis elbow bursitis due to the factors of his federal employment, including the motions of repetitively pushing and pulling. He noted that he

¹ 5 U.S.C. § 8101 *et seq.*

first became aware of his condition on May 7, 2021 and realized its relation to his federal employment on May 12, 2021. Appellant did not stop work.

In a medical report dated June 3, 2021, Jenny Martin, an advanced practice nurse prescriber, performed an x-ray on appellant's right elbow, which revealed cellulitis. She ordered a follow-up appointment with his primary care physician.

In a June 4, 2021 statement, appellant recalled that he first noticed right elbow and forearm swelling on May 7, 2021. He indicated that his symptoms continued after a week and that on May 21, 2021 he was diagnosed with tennis elbow bursitis. Appellant further noted that on June 3, 2021 he received an x-ray, which revealed cellulitis. He was prescribed anti-inflammatory medication and a compression sleeve to alleviate symptoms.

In a development letter dated June 16, 2021, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence necessary to establish his claim and provided a questionnaire for his completion. In a separate development letter of even date, OWCP requested that the employing establishment provide comments from a knowledgeable supervisor regarding the accuracy of appellant's allegations. It afforded both parties 30 days to respond. No response was received.

By decision dated August 27, 2021, OWCP denied appellant's occupational disease claim, finding that the medical evidence of record was insufficient to establish a diagnosed medical condition in connection with the accepted factors of his federal employment.

LEGAL PRECEDENT

A claimant seeking benefits under FECA² 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,³ 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, a claimant must submit: (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

² *Supra* note 1.

³ *F.H.*, Docket No.18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued December 13, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁴ *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 *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).

compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the identified employment factors.⁶

The medical evidence required to establish causal relationship is rationalized medical opinion evidence.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

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a diagnosed medical condition in connection with the accepted factors of his federal employment.

Appellant submitted a June 3, 2021 medical report from Ms. Martin, an advanced practice nurse prescriber, who performed an x-ray on his right elbow, which revealed cellulitis. The Board, however, has held that medical reports signed solely by a nurse practitioner are of no probative value as such providers are not considered physicians as defined under FECA.¹⁰ This report, therefore, is insufficient to establish appellant's burden of proof.

As the medical evidence of record is insufficient to establish a diagnosed 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.

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

⁸ *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁹ *John J. Carlone*, 41 ECAB 354 (1989).

¹⁰ Section 8101(2) of FECA provides that a 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(1) (January 2013). *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 M.C.*, Docket No. 19-1074 (issued June 12, 2020); *S.L.*, Docket No. 19-0607 (issued January 28, 2020) (nurse practitioners are not considered physicians under FECA).

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a diagnosed medical condition causally related to the accepted factors of his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the August 27, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 16, 2022
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