

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

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L.C., Appellant )

and )

DEPARTMENT OF HOMELAND SECURITY, )  
U.S. COAST GUARD, Baltimore, MD, Employer )  
\_\_\_\_\_ )

**Docket No. 21-0161  
Issued: January 12, 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

JANICE B. ASKIN, Judge

VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On November 9, 2020 appellant filed a timely appeal from an October 13, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP).<sup>1</sup> Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (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 right wrist condition causally related to the accepted June 19, 2020 employment incident.

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<sup>1</sup> The Board notes that, following the October 13, 2020 decision, OWCP received additional evidence. 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.*

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On June 24, 2020 appellant, then a 57-year-old miscellaneous general maintenance and operations worker, filed a traumatic injury claim (Form CA-1) alleging that on June 19, 2020 he sustained a right wrist strain when dumping cooling waste while in the performance of duty. He did not stop work.

In a June 30, 2020 medical report, Dr. Paul Apostolo, a Board-certified orthopedic surgeon, noted that appellant was working with a chisel to degrease a machine performing a lot of pounding with his right hand. Towards the end of his job, appellant noted markedly increased pain in his right wrist. In diagnostic reports of even date, Dr. Syed Ali, a Board-certified radiologist, performed x-ray scans of appellant's right wrist, hand, and forearm, finding no acute fractures. On examination and review of the radiographs Dr. Apostolo diagnosed right wrist radiocarpal post-traumatic synovitis and right wrist post-traumatic carpal tunnel syndrome. He ordered electrodiagnostic studies and advised that appellant wear a splint on his wrist.

In a July 15, 2020 medical report, Dr. Apostolo reevaluated appellant's right wrist and diagnosed right post-traumatic carpal tunnel syndrome (CTS) and right wrist post-traumatic radiocarpal synovitis. He recommended that appellant undergo an endoscopic carpal tunnel release procedure to treat his conditions and provided that once he had healed from the procedure they could reassess whether he required additional treatment.

In a September 9, 2020 development letter, OWCP advised appellant of the deficiencies of his claim and attached a questionnaire seeking additional information concerning the alleged June 19, 2020 employment incident. It requested additional factual and medical evidence from him, including a narrative medical report from his attending physician. OWCP afforded appellant 30 days to respond.

In a June 30, 2020 medical note, Kathleen Scott, a physician assistant, noted that appellant was temporarily totally disabled from work pending his reevaluation on July 15, 2020.

In a July 1, 2020 diagnostic report, Michael Mankowski, a physical therapist, conducted an electromyography and nerve conduction (EMG/NCV) study of appellant's right upper extremity. He found that his results were compatible with Grade 3 CTS and noted an indication of myelin, "and possibly axon cylinder, involvement of the radial nerve sensory fibers in the forearm-hand segment." Mr. Mankowski explained that this finding was not definite and required clinical correlation.

In a September 16, 2020 statement, J.B., appellant's coworker, reported that on June 19, 2020 appellant informed him that he injured his right wrist.

In a September 17, 2020 response to OWCP's questionnaire, appellant explained that his task was to remove grease from a saw machine. He spent about five hours removing grease from the machine with a chisel. Appellant alleged that he was told to remove dirty water from the bottom of the machine with a shop vacuum using latex gloves. While moving the container to be emptied, he lifted the shop vacuum, noting that it was difficult due to the grease on his latex gloves. Appellant noticed that his left hand was hindering him from completely emptying the vacuum and when he removed it his right hand no longer had a full grip and the vacuum then swung inwardly, injuring his right hand and wrist. He then called a coworker in order to inform him that he injured

his right hand. Appellant claimed that the shop vacuum held about 10 gallons. He described the immediate effects of his injury as pain, swelling numbness and tingling in his right wrist.

In an October 2, 2020 medical note, Dr. Apostolo opined that, according to the information available for his review, appellant's hand and wrist pain, as well as his need for operative intervention, was directly causally related to his work-related injury.

By decision dated October 13, 2020, OWCP denied appellant's traumatic injury claim, finding that the medical evidence of record was insufficient to establish causal relationship between his diagnosed right wrist conditions and the accepted June 19, 2020 employment incident.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</sup> 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,<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup>

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. First, the 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 a personal injury.<sup>7</sup>

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.<sup>8</sup> A physician's opinion on whether there is causal relationship between the diagnosed condition and the accepted employment incident must be based on a complete factual and medical background. Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical

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<sup>3</sup> *Id.*

<sup>4</sup> *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).

<sup>5</sup> *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).

<sup>6</sup> *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).

<sup>7</sup> *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).

<sup>8</sup> *L.S.*, Docket No. 19-1769 (issued July 10, 2020); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

rationale, explaining the nature of the relationship between the diagnosed condition and the specific employment incident.<sup>9</sup>

### ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a right wrist condition causally related to the accepted June 19, 2020 employment incident.

In medical reports dated June 30 and July 15, 2020, Dr. Apostolo noted that appellant injured his right wrist after working with a chisel at work to degrease a machine and performing a lot of pounding with his right hand. On examination and review of radiographs he diagnosed right wrist radiocarpal post-traumatic synovitis and right wrist post-traumatic carpal tunnel syndrome and recommended endoscopic carpal tunnel release. In his October 2, 2020 medical note, Dr. Apostolo opined that, according to the information available for his review, appellant's hand and wrist pain, as well as his need for operative intervention, was directly causally related to his work-related injury. Although he generally supported causal relationship in his reports, he did not provide sufficient medical rationale explaining how the accepted June 19, 2020 employment incident caused or contributed to appellant's diagnosed medical condition. The Board has held that a mere conclusion without the necessary rationale explaining how the accepted work factors could result in the diagnosed condition or period of disability is insufficient to meet a claimant's burden of proof.<sup>10</sup> The Board finds that Dr. Apostolo's medical reports are of limited probative value as he did not provide adequate medical rationale based on a complete factual background in support of an opinion on causal relationship.<sup>11</sup>

Appellant also submitted multiple diagnostic reports, consisting of x-ray scans of his right hand, wrist, and forearm. The Board has long held, however, that diagnostic tests, standing alone, lack probative value on the issue of causal relationship as they do not address the relationship between accepted employment factors and a diagnosed condition.<sup>12</sup> For this reason, these diagnostic reports are insufficient to meet appellant's burden of proof.

The remaining medical evidence consists of a June 30, 2020 medical note signed by a physician assistant and a July 1, 2020 diagnostic report signed by a physical therapist. Certain healthcare providers such as physical therapists, nurses, physician assistants, and social workers are not considered physicians as defined under FECA.<sup>13</sup> Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.

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<sup>9</sup> *B.C.*, Docket No. 20-0221 (issued July 10, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

<sup>10</sup> *See A.P.*, Docket No. 19-0224 (issued July 11, 2019).

<sup>11</sup> *Supra* notes 8 and 9.

<sup>12</sup> *W.M.*, Docket No. 19-1853 (issued May 13, 2020); *L.F.*, Docket No. 19-1905 (issued April 10, 2020).

<sup>13</sup> Section 8101(2) of FECA provides that 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 also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *M.F.*, Docket No. 17-1973 (issued December 31, 2018); *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006). A report from a physician assistant or certified nurse practitioner will be considered medical evidence if countersigned by a qualified physician.

As appellant has not submitted rationalized medical evidence establishing a right wrist condition causally related to the accepted June 19, 2020 employment incident, the Board finds that he has not met his burden of proof to establish his 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.

**CONCLUSION**

The Board finds that appellant has not met his burden of proof to establish a right wrist condition causally related to the accepted June 19, 2020 employment incident.

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 13, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 12, 2022  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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