United States Department of Labor
Employees' Compensation Appeals Board

M.J., Appellant	)	
and	)	**Docket No. 21-1132**
	)	**Issued: May 16, 2022**
U.S. POSTAL SERVICE, POST OFFICE, Greensboro, NC, Employer	)	

Appearances:
Daniel F. Read, Esq., for the appellant[1]
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 July 20, 2021 appellant, through counsel, filed a timely appeal from a January 26, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (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 met his burden of proof to establish a medical condition causally related to the accepted factors of his federal employment.

FACTUAL HISTORY

On July 23, 2020 appellant, then a 53-year-old city delivery specialist, filed an occupational disease claim (Form CA-2) alleging that the physical demands of his work, over a period of 25 years, aggravated his carpal tunnel, back, knee, ankle, and shoulder conditions. He first became aware of these conditions on December 23, 2019, but did not realize they had been aggravated by factors of his federal employment until July 10, 2020. Appellant did not stop work.

OWCP received a duty status report (Form CA-17) dated August 24, 2020 from Dr. Robert Foster, Board-certified in family practice, noting a diagnosis of spondylosis due to 25 years of work. Dr. Foster indicated that appellant was totally disabled from work.

In a development letter dated September 14, 2020, OWCP informed appellant that no documentation had been received with his claim describing the alleged factors of his federal employment. It advised him regarding the medical and factual evidence required to establish his claim. OWCP afforded appellant 30 days to provide the requested evidence.

On November 4, 2020 OWCP received progress notes from a clinic covering the period October 24, 2018 through September 2, 2020. The relevant medical reports are set forth below.

On May 9, 2019 appellant was seen by Ryan McDonald, a physician assistant, who diagnosed bilateral hand and arm numbness and noted that he had discussed carpal tunnel syndrome with appellant.

In progress notes dated May 14, 2019, Dr. Richard A. Boiter, an osteopath specializing in psychiatry, detailed appellant's current symptoms. He noted that appellant had a history of bilateral carpal tunnel syndrome and that appellant complained of lower back pain.

In a March 2, 2020 neurology consult, Dr. David Cohen, a neurologist, noted that appellant was seen for persistent neck pain, which began in 1992. He reported that appellant had been a boxer and wrestler and had associated sports trauma, as well as service-related trauma. Appellant also reported complaints of chronic low back pain and bilateral hand numbness. His physical examination findings included cervical motion restriction, negative Spurling sign, and positive bilateral wrist Tinel's sign. Diagnoses included carpal tunnel syndrome and cervical and lumbar arthritic changes.

In progress notes dated June 1, 2020, Dr. Cohen diagnosed carpal tunnel syndrome, lumbar stenosis, and C4-5 pinched nerve. In a June 5, 2020 addendum, he reviewed lumbar and cervical magnetic resonance imaging (MRI) scans which revealed some slight progression of lumbar arthritic changes with no significant spinal stenosis, C4-5 pinched nerve on the left, and some contact of a disc lesion touching the ventral spinal cord at a lower level.

A June 5, 2020 cervical MRI scan noted cervical degenerative changes at C2-3, C3-4, C4-5, C5-6, C6-7, and C7-T1. A lumbar MRI scan of even date revealed degenerative changes at T2-L1, L1-2, L2-3, L3-4, L4-5, and L5-S1.

Dr. Cohen, in progress notes signed on June 26, 2020, reported that appellant was seen for complaints of burning bilateral hand pain. He noted that appellant was referred because of an urgent care visit for increased neck and low back pain.

A September 2, 2020 nerve conduction velocity and electromyography (NCV/EMG) test was reviewed by Dr. Leanne Wills, a Board-certified electrodiagnostic medicine physician, who diagnosed moderate bilateral median wrist neuropathies consistent with carpal tunnel syndrome.

In September 2, 2020 progress notes, Dr. Cohen related that appellant was seen for complaints of disabling low back chronic pain. He discussed treatment options.

In progress notes dated September 2, 2020, Dr. Samuel T. Woods, a Board-certified internist, related diagnoses of cervical, lower back, and bilateral knee osteoarthritis. He also reported that appellant complained of bilateral wrist pain and noted that appellant was a mail carrier who had classic findings associated with Phalen's and Tinel's signs. Examination findings were detailed. Dr. Woods opined that appellant's diffuse osteoarthritis was most likely related to military trauma.

In a report dated October 27, 2020, Dr. Cohen noted that appellant was seen for bilateral carpal tunnel syndrome and chronic pain. He noted that he first saw appellant on March 2, 2020 and his most recent visit was on October 22, 2020. Based on his review of the relevant records, knowledge of his history, and treatment, Dr. Cohen opined that appellant's bilateral carpal tunnel syndrome had been caused by his repetitive work duties. He explained that employment-related carpal tunnel occurs when the individual engages in repetitive motion activities over an extended period of time. Dr. Cohen concluded that this was the cause of appellant's diagnosed bilateral carpal tunnel syndrome.

On November 4, 2020 OWCP received appellant's undated statement describing the employment duties he believed aggravated his condition including repetitive casing and delivering mail.

By decision dated November 13, 2020, OWCP denied appellant's claim finding the medical evidence failed to establish that the diagnosed conditions were causally related to factors of his federal employment.

On December 1, 2020 appellant, through counsel requested reconsideration and submitted evidence in support of his request.

In progress notes covering the period December 23, 2019 through September 24, 2020, Dr. Foster detailed the history of injury, reviewed diagnostic tests, and provided examination findings. He diagnosed lumbar, lumbosacral, cervical, and thoracic pain, arthropathy, chronic bilateral knee and ankle pain, neurogenic pain, and bilateral carpal tunnel syndrome. Dr. Foster, in the progress note dated December 23, 2019, noted appellant's chronic lumbar back pain occurred without any known injury and that it occurred during recreational activities.

A December 23, 2019 lumbar x-ray report noted spondylolysis. A thoracic x-ray of even date noted moderate thoracic spondylosis. An x-ray of appellant's bilateral knees, dated December 26, 2019, noted tricompartmental osteoarthritic changes with bilateral medial joint space. A right ankle x-ray, also dated December 26, 2019, noted osteoarthritic changes of the tibiotalar, talonavicular, and naviculocuneiform joints, no acute osseous injury, atherosclerosis, and noninflammatory calcaneal spurs. A left ankle x-ray report dated December 26, 2019, noted osteoarthritic changes of the tibiotalar and talonavicular joints, atherosclerosis, and noninflammatory calcaneal spurs. An x-ray report of the cervical spine, dated December 26, 2019, noted C5-6 and C6-7 degenerative disc disease and spondylosis and bilateral C7-T1 mild bony compromise of the neuroforamina.

In a report dated December 1, 2020, Dr. Cohen noted that appellant was seen for bilateral wrist carpal tunnel syndrome and chronic low back pain. Based on his review of appellant's history and pertinent medical records, he opined that appellant's repetitive work with the employing establishment contributed to the diagnosed bilateral carpal tunnel syndrome. Dr. Cohen explained that this condition can be caused by repetitive hand motion activities when the forearm muscle become inflamed as the result of fatigue and may swell. According to him, the chronic swollen muscles may place pressure on the carpal tunnel nerves resulting in nerve function loss and may result in numbness, pain, loss of hand use, and swelling. Dr. Cohen concluded that the repetitive motion appellant performed in his work as a mail carrier over the year caused the diagnosed bilateral carpal tunnel syndrome.

By decision dated January 26, 2021, OWCP denied modification.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] 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, that the claim was filed with the applicable time limitation, that an injury was sustained while in the performance of duty, as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.[4] These are the essential elements of 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 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

[3] *Supra* note 2.

[4] *J.H.*, Docket No. 21-0876 (issued October 22, 2021); *E.S.*, Docket No. 18-1580 (issued January 23, 2020); *M.E.*, Docket No. 18-1135 (issued January 4, 2019); *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

[5] *J.H.*, *id.*; *E.S.*, *id.*; *S.P.*, 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

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

ANALYSIS

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

OWCP received a May 14, 2019 report from Dr. Boiter, who noted lower back pain complaints and a history of bilateral carpal tunnel syndrome. Appellant also provided reports from Dr. Foster covering the period December 23, 2019 through September 24, 2020. Dr. Foster diagnosed lumbar, lumbosacral, cervical, and thoracic pain, arthropathy, chronic bilateral knee and ankle pain, neurogenic pain, and bilateral carpal tunnel syndrome. On December 23, 2019 he noted appellant's chronic lumbar back pain occurred without any known injury and that it occurred during recreational activities. While both Dr. Foster and Dr. Boiter provided medical diagnoses, most of their reports did not offer an opinion on causal relationship. 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] In an August 24, 2020 report, Dr. Foster related a diagnosis of spondylosis due to 25 years of work. In this report, he offered a mere conclusion. The Board has held that a medical opinion is of limited probative value if it is conclusory in nature.[11] As such, the reports from Dr. Foster and Dr. Boiter are insufficient to establish appellant's claim.

OWCP also received multiple reports from Dr. Cohen. In a March 2, 2020 report, Dr. Cohen noted that appellant was seen for persistent neck pain, which began in 1992. He diagnosed carpal tunnel syndrome and cervical and lumbar arthritic changes. In progress notes dated June 1, 2020 and signed on June 5, 2020, Dr. Cohen related diagnoses of carpal tunnel

[6] *J.H., id.*; *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] *J.H., id.*; *W.M.*, Docket No. 14-1853 (issued May 13, 2020); *T.H.*, 59 ECAB 388, 393 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

[8] *A.B.*, Docket No. 20-1017 (issued June 11, 2021); *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

[9] *Id.*; *Victor J. Woodhams*, *supra* note 6.

[10] *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[11] *C.M.*, Docket No. 19-0360 (issued February 25, 2020).

syndrome, lumbar stenosis, and C4-5 pinched nerve. In a June 5, 2020 addendum, he diagnosed lumbar arthritic changes with no significant spinal stenosis, C4-5 pinched nerve on the left, and some contact of a disc lesion touching the ventral spinal cord at a lower level. In progress notes signed on June 26, 2020, Dr. Cohen reported that appellant was seen for complaints of burning bilateral hand pain. While he provided medical diagnoses in these reports, he also did not offer an opinion on causal relationship. As previously noted, 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.[12] As such, these reports from Dr. Cohen are insufficient to establish appellant's claim.

In October 27 and December 1, 2020 reports, Dr. Cohen detailed examination findings, reviewed diagnostic tests, and diagnosed bilateral carpal tunnel syndrome. He attributed the diagnosed bilateral carpal tunnel syndrome to appellant's repetitive duties. In his December 1, 2020 report, Dr. Cohen explained that this condition can be caused by repetitive hand motion activities when the forearm muscle become inflamed as the result of fatigue and may swell. According to him, the chronic swollen muscles may place pressure on the carpal tunnel nerves resulting in nerve function. While Dr. Cohen offered opinions that were generally supportive of causal relationship, his opinions were insufficient to establish the claimed bilateral carpal tunnel syndrome was causally related to appellant's employment duties. He failed to identify the specific employment factors alleged by appellant and his opinion was speculative in nature.[13] The Board has held that neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.[14] The Board has also held that a medical opinion should reflect a correct history and offer a medically-sound and rationalized explanation by the physician of how the specific employment factors physiologically caused or aggravated the diagnosed conditions.[15] The Board finds that Dr. Cohen's October 27 and December 1, 2020 reports are insufficient to meet appellant's burden of proof as he did not identify the specific employment factors alleged by appellant, and explain with supporting medical rationale how appellant's employment factors physiologically caused the diagnosed conditions.

The record also contains progress notes dated September 2, 2020 from Dr. Woods. Dr. Woods noted diagnoses of cervical, lower back, and bilateral knee osteoarthritis and bilateral wrist pain. He opined that appellant's diffuse osteoarthritis was most likely related to military trauma. Dr. Woods' opinion did not attribute appellant's condition to his employment duties and

[12] *See L.A.*, Docket No. 20-0518 (issued July 27, 2021); *C.G.*, Docket No. 20-0957 (issued January 27, 2021); *L.G.*, Docket No. 20-0433 (issued August 6, 2020); *S.D.*, Docket No. 20-0413 (issued July 28, 2020); *S.K.*, Docket No. 20-0102 (issued June 12, 2020); *L.B.*, *supra* note 10; *D.K.*, *supra* note 10.

[13] *K.B.*, Docket No. 19-1243 (issued February 21, 2020); *T.H.*, *supra* note 7; *Robert G. Morris*, 48 ECAB 238 (1996).

[14] *See K.B.*, *id.*; *J.L.*, Docket No. 18-1804 (issued April 12, 2019).

[15] *T.G.*, Docket No. 21-0175 (issued June 23, 2021); *J.D.*, Docket No. 19-1953 (issued January 11, 2021); *see K.W.*, Docket No. 19-1906 (issued April 1, 2020).

was speculative in nature.[16] The Board finds that this report is insufficient to establish appellant's claim.

OWCP received a May 9, 2020 report from Mr. McDonald, a physician assistant, who diagnosed bilateral knee osteoarthritis. Certain healthcare providers, such as physician assistants, are not considered "physician[s]" as defined under FECA.[17] Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.[18]

The record also contains diagnostic testing. The Board has held that diagnostic studies, standing alone, lack probative value on the issue of causal relationship, as they do not address whether the employment incident caused any of the diagnosed conditions.[19] Thus, these reports are insufficient to establish appellant's claim.

As appellant has not submitted rationalized medical evidence explaining causal relationship between the diagnosed medical conditions and the accepted factors of his 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 that a medical condition causally related to the accepted employment factors.

[16] *See B.S.*, Docket No. 20-0927 (issued January 29, 2021); *R.C.*, Docket No. 18-1695 (issued March 12, 2019); *Ricky S. Storms*, 52 ECAB 349 (2001) (while the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty).

[17] 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* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3(a)(1) (January 2013); *L.A.*, *supra* note 12; *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 E.T.*, Docket No. 21-0014 (issued May 20, 2021); *K.W.*, 59 ECAB 271 (2007).

[18] *Id*.

[19] *K.S.*, Docket No. 19-1623 (issued March 19, 2020); *M.J.*, Docket No. 19-1287 (issued January 13, 2020).

ORDER

IT IS HEREBY ORDERED THAT the January 26, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 16, 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