

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

_____)
E.R., Appellant)

and)

U.S. POSTAL SERVICE, JACKSONVILLE)
POST OFFICE, Jacksonville, FL, Employer)

_____)

Docket No. 24-0641
Issued: August 21, 2024

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On May 28, 2024 appellant filed a timely appeal from a March 14, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ 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.

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.

¹ Appellant submitted a timely request for oral argument before the Board. 20 C.F.R. § 501.5(b). Pursuant to the Board's *Rules of Procedure*, oral argument may be held in the discretion of the Board. 20 C.F.R. § 501.5(a). In support of appellant's oral argument request, appellant asserted that he had submitted sufficient evidence to establish his claim. The Board, in exercising its discretion, denies appellant's request for oral argument because the arguments on appeal can adequately be addressed in a decision based on a review of the case record. Oral argument in this appeal would further delay issuance of a Board decision and not serve a useful purpose. As such, the oral argument request is denied, and this decision is based on the case record as submitted to the Board.

² 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On August 28, 2023 appellant, then a 51-year-old clerk typist, filed an occupational disease claim (Form CA-2) alleging that he sustained right cubital tunnel syndrome, cervical radiculopathy, a triangular fibrocartilage complex (TFCC) injury, and a closed nondisplaced fracture of the styloid process of the right ulna causally related to factors of his federal employment. He noted that he first became aware of his condition and its relationship to his employment on August 9, 2023. Appellant stopped work on August 16, 2023 and returned to work on August 20, 2023.

In a report dated August 9, 2023, Dr. Nicholas Frank James, an orthopedic surgeon, diagnosed closed nondisplaced fracture of the styloid process of the right ulna, right triangular fibrocartilage (TRCC), lateral epicondylitis of the right elbow, cubital tunnel syndrome on the right, synovitis, tenosynovitis, and cervical radiculopathy and provided light-duty work restrictions.

Appellant submitted a report from an occupational therapist dated August 10, 2023.

In a development letter dated September 1, 2023, OWCP informed appellant of the deficiencies of the claim. It provided a questionnaire for his completion, advised him of the type of factual and medical evidence necessary to establish his claim, and afforded him 60 days to submit the requested evidence.

In an attending physician's report (Form CA-20) dated September 12, 2023, Dr. Marc Kaye, a Board-certified orthopedic surgeon, diagnosed a right ulnar styloid fracture, a right TFCC injury, tenosynovitis of the right dorsal hand, right cubital tunnel syndrome, right trigger finger, and cervical radiculopathy. He checked a box "Yes" indicating that he believed the diagnosed conditions were caused or aggravated by employment activity, explaining that they were "maybe related to lifting heavy loads." Dr. Kaye recommended work restrictions of no lifting, pushing, pulling, or carrying more than 20 pounds with the right hand from August 9 through November 9, 2023.

In a follow-up letter dated September 28, 2023, OWCP advised appellant that it had conducted an interim review, and the evidence remained insufficient to establish his claim. It noted that he had 60 days from the September 1, 2023 development letter to submit the requested supporting evidence. OWCP further advised that if the evidence was not received during this time, it would issue a decision based on the evidence contained in the record.

On October 10, 2023 appellant responded to OWCP's questionnaire. He described the duties of his employment alleged to have caused or aggravated the diagnosed conditions, including typing, setting up machines and bundle sorters, pulling and pushing large objects and heavy containers of mail, and building large boxes, for five days per week at eight hours per day.

A magnetic resonance imaging (MRI) scan of the right wrist obtained on October 17, 2023 demonstrated a healing, minimally displaced ulnar styloid fracture; mild thickening of the dorsal radial ligament and ulnar attachment of the articular disc, which could represent a previous partial tear or sprain; no tear in the ulnar attachment of the articular disc to the minimally displaced ulnar styloid fracture fragment; no full-thickness TFCC tear; and fourth extensor compartment tenosynovitis.

By decision dated March 14, 2024, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish causal relationship between medical diagnoses and the accepted employment factors.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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 timely filed within the applicable time limitation of FECA, 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.

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 compensation is claimed; and (3) rationalized medical evidence establishing that the diagnosed condition is causally related to the identified employment factors.⁵

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁶ The opinion of the physician must be based on a complete factual and medical background, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors.⁷

ANALYSIS

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

In support of his claim, appellant submitted an August 9, 2023 report from Dr. James. He noted appellant's diagnoses of closed nondisplaced fracture of the styloid process of the right ulna, right TRCC, lateral epicondylitis of the right elbow, cubital tunnel syndrome on the right, synovitis, tenosynovitis, and cervical radiculopathy, and provided work restrictions. However, Dr. James did not provide an opinion regarding the cause of appellant's diagnosed conditions. The Board has held that an opinion which does not address the cause of an employee's condition is of no probative

³ *Supra* note 2.

⁴ *C.K.*, Docket No. 19-1549 (issued June 30, 2020); *R.G.*, Docket No. 19-0233 (issued July 16, 2019); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ *L.D.*, Docket No. 19-1301 (issued January 29, 2020); *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁶ *I.J.*, Docket No. 19-1343 (issued February 26, 2020); *T.H.*, 59 ECAB 388 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

⁷ *D.J.*, Docket No. 19-1301 (issued January 29, 2020).

value on the issue of causal relationship.⁸ Thus, this report is insufficient to establish appellant's claim.

In a Form CA-20 dated September 12, 2023, Dr. Kaye diagnosed a right ulnar styloid fracture, a right TFCC injury, tenosynovitis of the right dorsal hand, right cubital tunnel syndrome, right trigger finger, and cervical radiculopathy. He checked a box marked "Yes" indicating that he believed the diagnosed conditions were caused or aggravated by employment activity, explaining that they were "maybe related to lifting heavy loads." The Board has held that a report that indicates causal relationship by checkmark, without medical rationale explaining how the employment factors caused or aggravated the diagnosed condition, is of diminished probative value and insufficient to establish causal relationship.⁹ The Board has also held that medical opinions that suggest that a condition was likely or possibly caused by work activities are speculative or equivocal and have limited probative value.¹⁰ Thus, this report is insufficient to meet appellant's burden of proof.

Appellant submitted a report from an occupational therapist dated August 10, 2023. The Board has held that medical reports signed solely by physical therapists lack probative value, as they are not considered physicians as defined under FECA and, therefore, are not competent to provide a medical opinion.¹¹

OWCP received an MRI scan report dated October 17, 2023. The Board has held that diagnostic tests, standing alone, lack probative value on the issue of causal relationship as they do not address the relationship between the accepted employment factors and a diagnosed condition.¹² As such, the MRI scan report is insufficient to meet appellant's burden of proof.

As the medical evidence of record is insufficient to establish causal relationship between appellant's claimed conditions and the accepted factors of his federal employment, the Board finds that he has not met his burden of proof.

⁸ *T.D.*, Docket No. 19-1779 (issued March 9, 2021); *L.B.* Docket No. 18-0533 (issued August 27, 2018); *D.K.* Docket No. 17-1549 (issued July 6, 2018).

⁹ *E.T.*, Docket No. 24-0128 (issued March 20, 2024); *O.M.*, Docket No. 18-1055 (issued April 15, 2020); *Gary J. Watling*, 52 ECAB 278 (2001); *Lillian M. Jones*, 34 ECAB 379, 381 (1982).

¹⁰ *J.W.*, Docket No. 18-0678 (issued March 3, 2020).

¹¹ 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 2.805.3a (May 2023); *C.C.*, Docket No. 23-1006 (issued December 28, 2023) (physical/occupational therapists are not considered physicians as defined under FECA and, therefore, are not competent to provide a medical opinion under FECA); *T.H.*, Docket No. 18-1736 (issued March 13, 2019) (neither a nurse practitioner nor a physical therapist is considered a physician as defined under FECA); *see also 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).

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

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 medical condition causally related to the accepted factors of his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the March 14, 2024 decision of the Office of Worker's Compensation Programs is affirmed.

Issued: August 21, 2024
Washington, DC

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

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

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board