

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

A.G., Appellant	)	
	)	
and	)	Docket No. 24-0647
	)	Issued: July 31, 2024
DEPARTMENT OF THE ARMY, DEFENSE	)	
HEALTH AGENCY, FORT SAM HOUSTON	)	
(JOINT BASE SAN ANTONIO), San Antonio, TX,	)	
Employer	)	
	)	

*Appearances:* *Case Submitted on the Record*  
*Alan J. Shapiro, Esq., for the appellant*<sup>1</sup>  
*Office of Solicitor, for the Director*

**DECISION AND ORDER**

Before:  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On May 30, 2024 appellant, through counsel, filed a timely appeal from a March 14, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP). 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.<sup>3</sup>

---

<sup>1</sup> 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.

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

<sup>3</sup> The Board notes that following the March 14, 2024 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.*

## **ISSUE**

The issue is whether appellant has met his burden of proof to establish bilateral upper extremity conditions causally related to the accepted factors of his federal employment.

## **FACTUAL HISTORY**

On September 14, 2023 appellant, then a 60-year-old printing services specialist, filed a traumatic injury claim (Form CA-1) alleging that on September 7, 2023 he injured his upper extremities when lifting pallets of heavy boxes, removing cubicles for storage, and reassembling cubicle walls for a conference suite while in the performance of duty.<sup>4</sup>

In a development letter dated October 12, 2023, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of additional factual and medical information needed and provided a questionnaire for his completion. OWCP afforded appellant 60 days to respond.

In a work capacity evaluation (Form OWCP-5c) and a duty status report (Form CA-17) dated October 23, 2023, Dr. Michael L. Jones, a Board-certified hand surgeon, diagnosed bilateral flexor tendinitis and bilateral carpal tunnel syndrome. He recommended work restrictions of no lifting greater than 10 pounds, intermittent pushing and pulling of no greater than 10 pounds, intermittent reaching above the shoulder, and intermittent operation of machinery.

In a report dated October 23, 2023, Dr. Jones recounted appellant's history of injury and related that he had examined appellant for complaints of pain, soreness, numbness, and weakness of the hands. On physical examination, he observed mild wasting and weakness of the thenar muscles, mild volar swelling, tenderness of the carpo-metacarpal joint, and positive Phalen's and Tinel's tests. Dr. Jones diagnosed bilateral carpal tunnel syndrome and administered injections.

In a follow-up letter dated November 7, 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 date of the October 12, 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.

In an undated statement, appellant clarified that his claim was for an occupational disease, not a traumatic injury. He alleged that he sustained bilateral carpal tunnel syndrome and bilateral rotator cuff injuries causally related to factors of his federal employment such as daily lifting of heavy boxes and daily typing of e-mails and forms. On December 5, 2023 appellant filed a Form CA-2 with the same date of injury, September 7, 2023, as in his September 27, 2023 traumatic injury claim.

---

<sup>4</sup> OWCP assigned the present claim OWCP File No. xxxxxx362. Appellant has several other claims for compensation involving his upper extremities. On January 8, 2015 he filed a Form CA-1 for spinal and right shoulder injury related to a claimed December 29, 2014 employment incident under OWCP File No. xxxxxx442, which OWCP denied. On April 12, 2019 appellant filed an occupational disease claim (Form CA-2) for bilateral shoulder and neck injury related to repeated lifting of heavy items under OWCP File No. xxxxxx560, which OWCP denied. On June 13, 2022 he filed a Form CA-1 for a bilateral shoulder injury related to an April 18, 2022 incident under OWCP File Nos. xxxxxx861 and xxxxxx883, which OWCP denied. OWCP has administratively combined appellant's claims, with OWCP File No. xxxxxx442 serving as the master file.

By decision dated January 5, 2024, OWCP denied appellant's occupational disease claim, finding that the evidence of record was insufficient to establish that his diagnosed condition was causally related to the accepted factors of his federal employment.

On March 12, 2024 appellant, through counsel, requested reconsideration and submitted additional medical evidence.

In a November 7, 2023 report, Dr. Geoffrey M. Millican, a Board-certified orthopedic surgeon, related that appellant had experienced intermittent bilateral shoulder pain for years related to chronic repetition and lifting/reaching at work. On examination of appellant's shoulders, he observed limited and painful range of motion, positive impingement and biceps tension signs, and pain at the end of the shoulders' range of motion. Diagnostic imaging obtained on the date of service indicated bilateral moderate-to-severe acromioclavicular degenerative joint disease with joint space narrowing and spurring with chondrocalcinosis. Dr. Millican also observed signs of chronic impingement on the greater tuberosities and calcific deposits in the subscapularis and supraspinatus tendons. He diagnosed bilateral calcific tendinitis, bilateral shoulder osteoarthritis, bilateral impingement syndrome, and bilateral bicipital tendinitis.

In a March 8, 2024 note, Dr. Millican reviewed appellant's medical record and opined that it was more likely than not that appellant's diagnosed bilateral primary osteoarthritis, bilateral calcific tendinitis, bilateral impingement syndrome, and bilateral biceps tendinitis were direct results of repetitive work activity including lifting. Dr. Millican explained that tendinopathy and osteoarthritis may arise from genetic predisposition as well as environmental conditions, age, and prior trauma. He opined that it was more likely than not that, whatever genetic predisposition appellant had towards osteoarthritis, that his condition was increased by his work activities.

By decision dated March 14, 2024, OWCP denied modification.

### **LEGAL PRECEDENT**

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

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

---

<sup>5</sup> *Supra* note 2.

<sup>6</sup> *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).

compensation is claimed; and (3) rationalized medical evidence establishing that the diagnosed condition is causally related to the identified employment factors.<sup>7</sup>

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.<sup>8</sup> 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.<sup>9</sup>

In any case where a preexisting condition involving the same part of the body is present and the issue of causal relationship, therefore, involves aggravation, acceleration, or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.<sup>10</sup>

### ANALYSIS

The Board finds that appellant has not met his burden of proof to establish bilateral upper extremity conditions causally related to the accepted factors of his federal employment.

In a March 8, 2024 letter, Dr. Millican reviewed appellant's medical record and opined that it was more likely than not that appellant's diagnosed bilateral primary osteoarthritis, bilateral calcific tendinitis, bilateral impingement syndrome, and bilateral biceps tendinitis were direct results of repetitive work activity including lifting. He explained that tendinopathy and osteoarthritis may arise from genetic predisposition as well as environmental conditions, age, and prior trauma. Dr. Millican opined that it was more likely than not that whatever genetic predisposition appellant had towards osteoarthritis was increased at work. While he provided an opinion as to the cause of appellant's diagnosed bilateral upper extremity conditions, he did not support his opinion with medical rationale explaining how appellant's work duties caused his claimed conditions. Without explaining how, physiologically, the specific movements involved in appellant's job caused, contributed to, or aggravated the specific diagnosed conditions, the opinion in this letter is of limited probative value and insufficient to establish the claim.<sup>11</sup>

In an October 23, 2023 Form OWCP-5c and Form CA-17 of the same date, Dr. Jones diagnosed bilateral flexor tendinitis and bilateral carpal tunnel syndrome and recommended work restrictions. In a report dated October 23, 2023, he examined appellant and diagnosed bilateral carpal tunnel syndrome. On November 7, 2023 Dr. Millican examined appellant and diagnosed bilateral calcific tendinitis, bilateral shoulder osteoarthritis, bilateral impingement syndrome, and bilateral bicipital tendinitis. These reports, however, did not include a medical opinion regarding

---

<sup>7</sup> *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).

<sup>8</sup> *I.J.*, Docket No. 19-1343 (issued February 26, 2020); *T.H.*, 59 ECAB 388 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>9</sup> *D.J.*, Docket No. 19-1301 (issued January 29, 2020).

<sup>10</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (May 2023). See *R.D.*, Docket No. 18-1551 (issued March 1, 2019).

<sup>11</sup> See *T.F.*, Docket No. 20-0260 (issued June 12, 2020); *D.J.*, Docket No. 18-0694 (issued March 16, 2020); *K.G.*, Docket No. 18-1598 (issued January 7, 2020); *K.O.*, Docket No. 18-1422 (issued March 19, 2019).

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.<sup>12</sup> As such, these reports are insufficient to establish appellant's claim.

As the medical evidence of record is insufficient to establish causal relationship between appellant's bilateral upper extremity conditions and the accepted factors of federal employment, the Board finds that appellant 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 bilateral upper extremity conditions 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 Workers' Compensation Programs is affirmed.

Issued: July 31, 2024  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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

---

<sup>12</sup> *D.C.*, Docket No. 19-1093 (issued June 25, 2020); *see L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).