

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

_____)	
H.S., Appellant)	
)	
and)	Docket No. 20-0939
)	Issued: February 12, 2021
U.S. POSTAL SERVICE, DOWNTOWN)	
HONOLULU POST OFFICE, Honolulu, HI,)	
Employer)	
_____)	

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, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On March 23, 2020 appellant filed a timely appeal from a February 21, 2020 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.²

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the February 21, 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 evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether appellant has met his burden of proof to establish right upper extremity conditions causally related to the accepted December 14, 2019 employment incident.

FACTUAL HISTORY

On December 18, 2019 appellant, then a 53-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on December 14, 2019 he strained his right elbow, forearm, and wrist when pushing five trays of letters under a desk while in the performance of duty. On the reverse side of the claim form, the employing establishment indicated that on December 14, 2019 he was injured in the performance of duty and had stopped work on that date. It also stated that appellant's medical records indicated that he was disabled for work.

OWCP received an undated position description for a city carrier.

Appellant submitted a number of reports dated December 16, 2019 from Dr. Adolph Diaz-Ordaz, Board-certified in internal medicine. In a narrative report dated December 16, 2019, Dr. Diaz-Ordaz indicated that appellant presented with right elbow, forearm, and wrist pain. Appellant stated that he was injured on December 14, 2019 at work when he pushed a stationary bin with his right arm. He indicated that his wrist was flexed and his hand was in a supinated position, and he related that he heard a crack and felt pain and numbness in the palm of his hand and later a tingling sensation in his fingertips. Appellant stated that his pain had worsened and that exacerbating factors included direct pressure and lifting and alleviating factors included rest. Dr. Diaz-Ordaz related that appellant's medical history was noncontributory. Appellant's physical examination revealed right elbow tenderness in the medial and lateral epicondyle, pain and resistance upon right wrist extension and flexion and decreased flexion, a positive Tinel's sign at the ulnar nerve, and right elbow tenderness. Dr. Diaz-Ordaz indicated that x-rays of appellant's right wrist and elbow revealed normal results and he diagnosed a right elbow strain, a right wrist strain, and a right forearm strain. He concluded that appellant's causalgia following his December 14, 2019 injury was work related and indicated that appellant could return to modified duty with the restriction of no usage of his upper right extremity.

A December 16, 2019 work status report by Dr. Diaz-Ordaz diagnosed a strain of the muscle/fascia/tendon of the right shoulder/upper arm, a strain of the muscle/fascia/tendon of the right forearm, and a strain of the muscle/fascia/tendon of the right wrist/hand. He advised that appellant could return to work, but could not use the right upper extremity to perform work activities.

In a December 16, 2019 report, Dr. Diaz-Ordaz indicated that appellant related that on December 14, 2019 appellant pushed tubs of mail under a desk with his right arm. He diagnosed a strain of the muscle/fascia/tendon of appellant's right shoulder/upper arm, a strain of the muscle/fascia/tendon of the right forearm, and a strain of the muscle/fascia/tendon of the right wrist/hand. Dr. Diaz-Ordaz checked a box marked "Yes" indicating that appellant's condition was solely caused by the December 14, 2019 employment incident. In separate December 16, 2019 report, he reviewed appellant's history of injury and diagnosed an injury of the ulnar nerve at the right forearm, a strain of a muscle/fascia/tendon of the right forearm, and a strain of a

muscle/fascia/tendon of the right shoulder/upper arm. Dr. Diaz-Ordaz checked a box marked “No” indicating that appellant’s condition was not solely caused by the claimed December 14, 2019 employment incident.

A December 16, 2019 report by Fielding Mercer, a certified physician assistant, indicated that on December 14, 2019 appellant was injured when pushing tubs of mail under a desk with his right arm. He diagnosed a right arm injury of the ulnar nerve, a right elbow strain, a right forearm strain, and a right wrist strain and checked a box marked “No” indicating that appellant’s condition was not solely caused by his claimed December 14, 2019 employment incident. In another December 16, 2019 report, Mr. Mercer checked a box marked “Yes” indicating that appellant’s condition was solely caused by the December 14, 2019 employment incident.

OWCP received physical therapy notes from December 2019 through January 2020 signed by a physical therapist.

A December 27, 2019 medical report by Mr. Mercer indicated that appellant presented with improving symptoms. He reviewed appellant’s medical history and conducted a physical examination which revealed right elbow tenderness, 4/5 right biceps strength, negative Tinel’s sign at the ulnar nerve, and right forearm tenderness. Mr. Mercer diagnosed neurapraxia of the right ulnar nerve, a right elbow strain, a right forearm strain, and a right wrist strain. Appellant continued to follow up with Mr. Mercer regarding his right upper extremity conditions.

In a development letter dated January 20, 2020, OWCP advised appellant that when his claim was first received it appeared to be a minor injury that resulted in minimal or no lost time from work, and it was therefore administratively approved to allow payment of a limited amount of medical expenses. It informed him that a formal adjudication required additional evidence was needed in support of his claim. OWCP advised appellant of the medical evidence necessary to establish the claim and attached a questionnaire for his completion. It afforded him 30 days to submit the requested evidence.

OWCP subsequently received a December 16, 2019 report wherein Dr. Darwin Chan, a family medicine specialist, indicated that on December 14, 2019 appellant was injured while pushing tubs of mail under a desk with his right hand. Dr. Chan checked a box marked “Yes” indicating that appellant’s condition was solely caused by appellant’s claimed December 14, 2019 employment incident and diagnosed an injury of the ulnar nerve at the right forearm, a strain of a muscle/fascia/tendon of the right forearm, a strain of a muscle/fascia/tendon of the right wrist, and a strain of a muscle/fascia/tension of the right shoulder/upper arm.

A December 19, 2019 medical report by Dr. Diaz-Ordaz indicated that appellant presented with pain and tingling sensations in his right upper extremity. Appellant’s pain had improved, but the tingling sensation was worse in the right hand on the palmer aspect of appellant’s thumb and on digits 4 and 5. Dr. Diaz-Ordaz reviewed appellant’s history of injury and medical history and conducted a physical examination. He continued to diagnose a right forearm strain, a right elbow strain, and a right wrist strain. Dr. Diaz-Ordaz repeated that the causalgia of appellant’s claimed December 14, 2019 employment incident was work related and indicated that he could return to work with the restriction of no upper extremity usage.

A January 10, 2020 medical report by Dr. Diaz-Ordaz indicated that appellant presented with tingling in his right hand. He reviewed appellant's history of injury and medical history and conducted a physical examination. Dr. Diaz-Ordaz diagnosed neurapraxia of the right ulnar nerve, a right elbow strain, and a right forearm strain. He indicated that appellant could return to work with restrictions including lifting, pushing, and pulling up to 20 pounds.

On January 16, 2020 appellant accepted the employing establishment's offer of a modified city carrier position.

A February 7, 2020 medical report by Dr. Chan indicated that appellant presented with right wrist, elbow, and arm pain and tingling. He stated that appellant was injured on December 14, 2019. Dr. Chan reviewed appellant's medical history and conducted a physical examination. He diagnosed neurapraxia of the right ulnar nerve, a right elbow strain, a right forearm strain, and a right wrist strain. Dr. Chan stated that appellant could return to work with the restrictions of lifting, pushing, and pulling up to 30 pounds

By decision dated February 21, 2020, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish causal relationship between his diagnosed right upper extremity conditions and the accepted December 14, 2019 employment incident.

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 filed within the applicable time limitation of FECA,⁴ 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.⁵ 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.⁶

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. Generally, fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment

³ *Supra* note 1.

⁴ *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).

⁵ *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *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).

incident that allegedly occurred. The second component is whether the employment incident caused a personal injury.⁷

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁸ 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 rationale, explaining the nature of the relationship between the diagnosed condition and the specific employment incident.⁹

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish right upper extremity conditions causally related to the accepted December 14, 2019 employment incident.

OWCP received narrative and form reports from Dr. Diaz-Ordaz. In a December 16, 2019 narrative report, Dr. Diaz-Ordaz indicated that appellant presented with right elbow, forearm and wrist pain. He recounted appellant's history of injury where appellant pushed a stationary bin with his right arm, while his wrist was flexed and his hand was in a supinated position, that he heard a crack and felt pain and numbness in the palm of his hand, and later felt a tingling sensation in his fingertips. Dr. Diaz-Ordaz diagnosed right elbow, right wrist, and right forearm strains, and concluded that appellant's causalgia following his December 14, 2019 injury was work related. In a December 19, 2019 report, he repeated his conclusion that the causalgia was work related. While Dr. Diaz-Ordaz provided an opinion on causal relationship, he did not offer any rationale to explain how the accepted employment incident would have caused appellant's diagnosed conditions. The Board has held that a medical opinion should offer a medically-sound explanation of how the specific employment incident physiologically caused the injury.¹⁰ These reports were therefore insufficient to establish causal relationship.¹¹

In his December 16, 2019 report, Dr. Diaz-Ordaz checked a box marked "No" indicating that appellant's condition was not caused by his December 14, 2019 employment incident; however, in another December 16, 2019 report he checked a box marked "yes" indicating that appellant's condition was solely caused by appellant's December 14, 2019 employment incident. The Board has found that inconsistent and contradictory reports from the same physician lack

⁷ *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).

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

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

¹⁰ *T.W.*, Docket No. 20-0767 (issued January 13, 2021); *see H.A.*, Docket No. 18-1466 (issued August 23, 2019); *L.R.*, Docket No. 16-0736 (issued September 2, 2016).

¹¹ *C.D.*, Docket No. 20-0762 (issued January 13, 2021).

probative value and cannot constitute competent medical evidence.¹² As such, these reports do not establish appellant's claim.

OWCP also received work status reports from Dr. Diaz-Ordaz dated December 16, 2019 and January 10, 2020. In his January 10, 2020 report, Dr. Diaz-Ordaz added the diagnosis of neurapraxia of the right ulnar nerve to his previous diagnoses of right elbow and forearm strain. In both reports he indicated that appellant could return to work with restrictions. Dr. Diaz-Ordaz however did not offer any opinion regarding the cause of appellant's diagnosed conditions. 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.¹³ As such, these reports are insufficient to establish appellant's claim.

OWCP also received reports from Dr. Chan. In his December 16, 2019 report, Dr. Chan reviewed appellant's history of injury and his medical history, conducted a physical examination and diagnosed neurapraxia of the right ulnar nerve, a right elbow strain, a right forearm strain, and a right wrist strain. He checked a box marked "Yes" indicating that appellant's condition was solely caused by the accepted employment. However, Dr. Chan did not explain how the accepted December 14, 2019 employment incident caused appellant's diagnosed conditions. The Board has held that an opinion on causal relationship with an affirmative check mark, without more by way of medical rationale, is insufficient to establish the claim.¹⁴ As such, this report is insufficient to establish appellant's claim.

In a February 7, 2020 report, Dr. Chan concluded that appellant's diagnosed conditions of neurapraxia of the right ulnar nerve, right wrist, elbow, and forearm strains were sustained on December 14, 2019. However, he did not provide a further opinion regarding causal relationship. The Board has held that a medical opinion is of limited probative value if it is conclusory in nature.¹⁵ This report is therefore insufficient to establish causal relationship.¹⁶

Appellant also submitted reports from Mr. Mercer, a certified physician's assistant, and notes from a physical therapist. However, certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered

¹² *J.O.*, Docket No. 19-0850 (issued October 22, 2020).

¹³ *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).

¹⁴ *See C.S.*, Docket No. 18-1633 (issued December 30, 2019); *D.S.*, Docket No. 17-1566 (issued December 31, 2018).

¹⁵ *C.M.*, Docket No. 19-0360 (issued February 25, 2020).

¹⁶ *Supra* note 11.

“physician[s]” as defined under FECA.¹⁷ Consequently, these reports do not constitute competent medical evidence.¹⁸

As the record lacks rationalized medical evidence establishing causal relationship between appellant’s diagnosed upper extremity conditions and the accepted December 14, 2019 employment incident, 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 right upper extremity conditions causally related to the accepted December 14, 2019 employment incident.

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 also* 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); *R.L.*, Docket No. 19-0440 (issued July 8, 2019) (physical therapists are not considered physicians under FECA).

¹⁸ *See C.S.*, *supra* note 14; *D.S.*, Docket No. 17-1566 (issued December 31, 2018).

ORDER

IT IS HEREBY ORDERED THAT the February 21, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 12, 2021
Washington, DC

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

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

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