

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

J.M., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Philadelphia, PA, Employer**

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**Docket No. 11-642
Issued: November 18, 2011**

Appearances:

Thomas R. Uliase, Esq., for the appellant

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 18, 2011 appellant, through his representative, filed a timely appeal from the October 4, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her claim for a work-related traumatic injury to her arms. Pursuant to the Federal Employees' Compensation Act (FECA)¹ 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 met her burden of proof to establish that she sustained an arm condition in the performance of duty on January 15, 2003.

¹ 20 C.F.R. § 8101 *et seq.*

FACTUAL HISTORY

This case has previously been before the Board. In a June 2, 2008 decision,² the Board found that the case was not in posture for a decision due to a conflict in the medical opinion evidence regarding whether appellant met her burden of proof to establish that she sustained an arm condition in the performance of duty on January 15, 2003.³ The Board found that there was a conflict in the medical evidence between Dr. Arnold S. Lincow, an attending Board-certified family practitioner, and Dr. Kevin F. Hanley, a Board-certified orthopedic surgeon serving as an OWCP referral physician, regarding whether she developed a medical condition involving her arms as a result of the accepted January 15, 2003 work incident when two bundles of magazines fell on her hands and hit both her thumbs. The Board remanded the case to OWCP and directed it to refer appellant to an impartial medical specialist for an examination and opinion on the matter of whether she sustained an arm condition due to the accepted January 15, 2003 work incident.

On remand, OWCP referred appellant, together with a statement of accepted facts and the medical record, to Dr. Mark Rekant, a Board-certified orthopedic surgeon, in order to resolve the conflict in the medical opinion regarding her claimed arm condition. In a February 19, 2009 decision, it denied appellant's claim for a January 15, 2003 work injury based on a June 26, 2008 report produced by Dr. Rekant. In his June 26, 2008 report, Dr. Rekant diagnosed bilateral carpal tunnel syndrome, but opined that there was no indication by history, physical examination or a review of the medical records that appellant's current condition was at all related to the traumatic work incident of January 15, 2003 or to repetitive tasks performed while working. He attributed her present symptoms to "idiopathic carpal tunnel syndrome" and noted that there was no direct correlation between postal workers having an increased incidence of carpal tunnel syndrome as compared to the general population. Dr. Rekant noted that appellant was not complaining of contusion-type injuries that might have occurred from the mail bundles hitting her hands and stated, "While it is reasonable for [appellant] to seek medical treatment or medical and surgical treatment for her stated symptoms, this is not related to her activities as a post[al] worker and certainly not related to her trauma of January 15, 2003.... In summary, there is no causal relation between [her] symptoms and her work activities or supposed work injury."

In a February 22, 2010 decision,⁴ the Board set aside OWCP's February 19, 2009 decision denying appellant's claim that she sustained an arm condition at work on January 15, 2003. The Board found that the June 26, 2008 report produced by Dr. Rekant

² Docket No. 08-274 (issued June 2, 2008). OWCP accepted that on January 15, 2003 appellant, then a 44-year-old casual mail carrier, experienced a work incident when two bundles of magazines fell on her hands and hit both her thumbs. Appellant claimed that she sustained bilateral carpal tunnel syndrome due to the January 15, 2003 work incident, but OWCP denied her claim finding that she did not submit medical evidence establishing that she sustained an arm injury due to this incident.

³ The Board notes that appellant filed an occupational disease claim on March 7, 2005, alleging that she developed bilateral carpal tunnel syndrome as a result of her repetitive employment duties. In a March 20, 2007 decision, the Board affirmed OWCP's March 31, 2006 denial of appellant's claim, finding that she failed to establish that she developed carpal tunnel syndrome due to her federal employment duties. Docket No. 07-218 (issued March 20, 2007). The Board notes that appellant's claim of an occupational injury to her arms, caused by her repetitive duties over time, is not the subject of the present appeal.

⁴ Docket No. 09-1399 (issued February 22, 2010).

required clarification and elaboration because he provided a vague and speculative opinion regarding the cause of appellant's carpal tunnel syndrome. Dr. Rekant also did not adequately address whether the January 15, 2003 work incident, when heavy bundles of mail fell on appellant's hands, caused her to sustain bilateral carpal tunnel syndrome. The Board remanded the case to OWCP to obtain a supplemental report from Dr. Rekant. The facts and circumstances contained in the Board's decisions are incorporated herein by reference.

On remand, OWCP provided an updated statement of accepted facts and requested a supplemental report from Dr. Rekant. In a March 31, 2010 report, Dr. Rekant stated that, with regard to appellant's reported symptoms, there was no evidence of traumatic injury suffered to her wrists as a result of her federal duties on January 15, 2003. He indicated that, with regard to the bundles of mail falling on her hands on January 15, 2003, this would have caused a very superficial trauma to the surrounding region, but there was no evidence that linked contusion or external trauma to the development of carpal tunnel syndrome within a reasonable degree of medical certainty. Dr. Rekant stated:

"Within a reasonable degree of medical certainty, this patient's carpal tunnel syndrome has come about from unknown causes. Specifically, there is no indication or relation with direct causation. There is no evidence of aggravation, temporary aggravation, permanent aggravation, acceleration or precipitation of her condition ... stemming from an injury sustained while performing her federal duties. The preponderance of evidence and likelihood is such that this patient developed her carpal tunnel related symptoms in the course of the normal aging process as afflicted with combination of genetic predisposition and the general aging process as is commonly seen [with] her patient population. With further review of definitions provided, my opinion regarding the causality of her carpal tunnel syndrome is unchanged. Within a reasonable degree of medical certainty her carpal tunnel is not directly and causally related to her work activities."

In an October 4, 2010 decision, OWCP denied appellant's claim that she sustained an arm condition in the performance of duty on January 15, 2003. It found that Dr. Rekant's opinion represented the weight of the medical evidence with respect to this matter.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁵ has the burden of establishing 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 period of FECA, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally

⁵ 5 U.S.C. §§ 8101-8193.

related to the employment injury.⁶ These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁷

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the fact of injury has been established. There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.⁸ Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.⁹

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the compensable employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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 identified by the claimant.¹⁰

Section 8123(a) of FECA provides in pertinent part: "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."¹¹ When there are opposing reports of virtually equal weight and rationale, the case must be referred to an impartial medical specialist, pursuant to section 8123(a) of FECA, to resolve the conflict in the medical evidence.¹² In situations where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.¹³

⁶ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁷ *Delores C. Ellyett*, 41 ECAB 992, 998-99 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-27 (1990). A traumatic injury refers to injury caused by a specific event or incident or series of incidents occurring within a single workday or work shift whereas an occupational disease refers to an injury produced by employment factors which occur or are present over a period longer than a single workday or work shift. 20 C.F.R. §§ 10.5 (q), (ee); *Brady L. Fowler*, 44 ECAB 343, 351 (1992).

⁸ *Julie B. Hawkins*, 38 ECAB 393, 396 (1987); see Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2a (June 1995).

⁹ *John J. Carlone*, 41 ECAB 354, 356-57 (1989); see Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2a (June 1995).

¹⁰ See *Donna Faye Cardwell*, 41 ECAB 730, 741-42 (1990).

¹¹ 5 U.S.C. § 8123(a).

¹² *William C. Bush*, 40 ECAB 1064, 1975 (1989).

¹³ *Jack R. Smith*, 41 ECAB 691, 701 (1990); *James P. Roberts*, 31 ECAB 1010, 1021 (1980).

In a situation where OWCP secures an opinion from an impartial medical examiner for the purpose of resolving a conflict in the medical evidence and the opinion from such examiner requires clarification or elaboration, OWCP has the responsibility to secure a supplemental report from the examiner for the purpose of correcting the defect in the original opinion.¹⁴

ANALYSIS

Appellant claimed that she sustained bilateral carpal tunnel syndrome on January 15, 2003 when two bundles of magazines fell on her hands and hit both her thumbs. OWCP accepted the occurrence of the January 15, 2003 work incident, but found that appellant had not shown that she sustained an arm condition due to this work incident. Appellant had been referred to Dr. Rekant, a Board-certified orthopedic surgeon, for an impartial medical examination and an opinion. In a February 22, 2010 decision, the Board directed OWCP to obtain a supplemental report from Dr. Rekant in order to clarify his opinion on the matter of whether appellant sustained an arm condition in the performance of duty on January 15, 2003.

The Board finds that Dr. Rekant's supplemental opinion of March 31, 2010 is entitled to the weight of the medical evidence with respect to the relevant issue of this case and shows that appellant did not sustain an arm condition in the performance of duty on January 15, 2003 as alleged.¹⁵

In his report, Dr. Rekant displayed that he had an accurate picture of appellant's factual and medical history and reached conclusions that were in accordance with this history. He indicated that he had reviewed the medical evidence of record and posited that the accepted January 15, 2003 work incident, when two bundles of magazines fell on appellant's hands and hit both her thumbs, was not the type of trauma which would have caused appellant to develop carpal tunnel syndrome. On appeal, counsel argued that Dr. Rekant did not adequately explain his opinion, but the Board notes that Dr. Rekant explained that the January 15, 2003 incident would have caused a very superficial trauma to the surrounding region, but there was no evidence that linked this type of contusion or external trauma to the development of carpal tunnel syndrome within a reasonable degree of medical certainty. Moreover, Dr. Rekant explained that appellant's diagnosed condition of bilateral carpal tunnel syndrome had a nonwork-related source in that it was likely that she developed her carpal tunnel condition due to her genetic predisposition and the general aging process.¹⁶

For these reasons, appellant has not shown that she sustained an arm condition in the performance of duty on January 15, 2003 when bundles of magazines fell on her hands and thumbs and OWCP properly denied her claim for such an injury.

¹⁴ *Nancy Lackner (Jack D. Lackner)*, 40 ECAB 232, 238 (1988).

¹⁵ *See supra* notes 12 through 15.

¹⁶ On appeal, counsel argued that Dr. Rekant did not clearly indicate whether appellant's repetitive work duties caused her bilateral carpal tunnel syndrome. However, the question of whether appellant sustained an arm condition due to her repetitive work duties is not currently before the Board. Rather, the present case concerns appellant's claim that she sustained an arm condition due to the accepted January 15, 2003 work incident. Moreover, Dr. Rekant did provide an opinion that appellant's arm condition was not in any way related to work factors.

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 did not meet her burden of proof to establish that she sustained an arm condition in the performance of duty on January 15, 2003.

ORDER

IT IS HEREBY ORDERED THAT the October 4, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 18, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board