

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

C.C., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Eatontown, NJ, Employer**

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**Docket No. 13-518
Issued: May 16, 2013**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 3, 2013 appellant filed a timely appeal of an October 4, 2012 decision of the Office of Workers' Compensation Programs (OWCP) denying her occupational disease claim. 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.

ISSUE

The issue is whether appellant has met her burden of proof in establishing that she sustained a left hand and wrist condition in the performance of duty.

On appeal, appellant submitted new medical evidence.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On June 22, 2012 appellant, then a 50-year-old mail processing clerk, filed an occupational disease claim (Form CA-2) alleging that on or before June 9, 2012 she sustained tenosynovitis of her left wrist and index finger due to repetitive grasping, pitching and reaching for mail. She described pain and swelling throughout the left hand and wrist after sorting flats of mail on June 9 and 12, 2012. Appellant did not stop work.

In a July 20, 2012 letter, OWCP advised appellant of the type of additional evidence needed to establish her claim, including a narrative report from her attending physician explaining how and why factors of her federal employment would cause the claimed tenosynovitis. It requested that she address her previous claim under File No. xxxxxx991² for tenosynovitis of the fourth dorsal extensor compartment with inflammation of the tenosynovium, requiring a left wrist extensor synovectomy on October 23, 2009. Appellant was also advised to clarify if she was claiming two traumatic injuries or an occupational condition. She was afforded 30 days to submit such evidence. Appellant responded on August 21, 2012 that her left hand and wrist condition was due to pulling, grasping and reaching for mail while pitching from tubs “at an accelerated pace due to the mail arriving to [her] work area ... all at one time.” She reiterated that she was claiming an occupational disease and not a traumatic injury as she experienced sharp pains in her left hand on June 9 and 12, 2012.

In a May 19, 2011 report, Dr. Jidong Sun, an attending Board-certified physiatrist, diagnosed brachial neuritis of the left upper extremity, left C6 radiculopathy and right carpal tunnel syndrome.³ On December 1, 2011 she noted treating appellant for left wrist pain since September 1, 2009, with a ganglion cyst removal. Appellant was discharged from treatment on November 6, 2010. She presented on January 24, 2011 with neck and right wrist pain. Dr. Sun diagnosed cervical and lumbar radiculopathy, right carpal tunnel syndrome, status post ganglion cyst removal and shoulder pain. She opined that it was “reasonable to conclude that these injuries [were] the direct result of the repetitive overuse in [appellant’s] job.”

In a June 15, 2012 report, Dr. James Hancock, an attending Board-certified internist, noted appellant’s employment and related a history of one year of neck pain and surgery for tenosynovitis of the left hand. Appellant also planned to undergo cervical spine surgery. Dr. Hancock diagnosed left cervical radiculopathy and tenosynovitis of the left wrist. On June 20, 2012 he diagnosed right carpal tunnel syndrome, tenosynovitis of the “finger/wrist” of the left hand caused by repetitive and compensatory motion due to right carpal tunnel syndrome.⁴ On August 1, 2012 Dr. Hancock restricted appellant to lifting, pulling or pushing no more than 10 pounds.

² File No. xxxxxx991 is not before the Board on the present appeal.

³ A May 10, 2011 electromyogram and nerve conduction velocity studies demonstrated left C6 radiculopathy and mild right carpal tunnel syndrome with demyelinating changes.

⁴ Appellant participated in physical therapy from June 15 to August 3, 2012.

In an August 21, 2012 report, Dr. Kaixuan Liu, an attending Board-certified spine surgeon and anesthesiologist, noted treating appellant beginning on May 25, 2011 for neck pain, right arm paresthesias and low back pain “after a work[-]related injury.” He opined that her “neck injuries were causally related to the accident that occurred on May 19, 2011.” Dr. Liu found that appellant’s condition was permanent.

By decision dated October 4, 2012, OWCP denied the claim on the grounds that causal relationship was not established. It accepted that the June 9 and 12, 2012 work incidents occurred as alleged. However, OWCP found that appellant submitted insufficient medical evidence linking the claimed left hand and wrist condition to those work factors.

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 filed within the applicable time limitation, that an injury was sustained while in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.⁶ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁷

An occupational disease is defined as a condition produced by the work environment over a period longer than a single workday or shift.⁸ To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish causal relationship is generally rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician’s rationalized opinion on the issue of whether there is a causal relationship between the claimant’s diagnosed condition and the implicated 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.⁹

⁵ 5 U.S.C. §§ 8101-8193.

⁶ *Joe D. Cameron*, 41 ECAB 153 (1989).

⁷ *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

⁸ 20 C.F.R. § 10.5(q).

⁹ *Solomon Polen*, 51 ECAB 341 (2000).

An award of compensation may not be based on appellant's belief of causal relationship.¹⁰ 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.¹¹

ANALYSIS

Appellant claimed that she sustained tenosynovitis of the left wrist and hand due to repetitive upper extremity motion while sorting flats of mail on June 9 and 12, 2012.

In support of her claim, appellant submitted May 19 and December 1, 2011 reports from Dr. Sun, an attending Board-certified physiatrist, noting a history of a ganglion cyst of the left wrist, attributable to repetitive motion at work. However, Dr. Sun did not address appellant's condition on and after June 9, 2012, the period relevant to the present claim. Similarly, Dr. Liu, an attending Board-certified spine surgeon and anesthesiologist, diagnosed a neck injury attributable to a May 19, 2011 accident, but did not address any claimed wrist condition or work factors on and after June 9, 2012. In fact in his report, he commented that appellant's upper extremities demonstrated normal sensation bilaterally. As neither physician discussed appellant's condition during the period in question, their opinions are irrelevant to the claim.¹²

Dr. Hancock, an attending Board-certified internist, provided reports from June 15 to August 1, 2012 diagnosing tenosynovitis of the left wrist attributable to repetitive and compensatory motion due to right carpal tunnel syndrome. However, he did not mention the accepted June 9 and 12, 2012 work incidents or explain how those events or other specific work activities would cause or contribute to the claimed condition. This lack of medical rationale greatly diminishes the probative value of his reports.¹³

OWCP advised appellant by a July 20, 2012 letter of the evidence needed to establish her claim, including her physician's explanation of how and why the identified work incidents would cause the claimed condition. As appellant did not submit such evidence, it properly denied her claim.¹⁴

On appeal, appellant submitted new medical evidence. The Board may not consider evidence for the first time on appeal that was not before OWCP at the time it issued the final decision in the case.¹⁵

¹⁰ *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

¹¹ *Id.*

¹² A.A., Docket No. 12-1828 (issued March 25, 2013).

¹³ *Deborah L. Beatty*, 54 ECAB 340 (2003).

¹⁴ See *Frank D. Haislah*, 52 ECAB 457 (2001); *Jimmie H. Duckett*, 52 ECAB 332 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

¹⁵ 20 C.F.R. § 501.2(c).

Appellant may submit such evidence and any other 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 her burden of proof in establishing that she sustained a left hand and wrist condition in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 4, 2012 is affirmed.

Issued: May 16, 2013
Washington, DC

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

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

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