

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

B.B., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
North Reading, MA, Employer**

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**Docket No. 11-583
Issued: September 16, 2011**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 7, 2011 appellant filed a timely appeal from an August 31, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her occupational disease claim and an October 29, 2010 decision denying reconsideration. 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 the case.²

ISSUES

The issues are: (1) whether appellant met her burden of proof to establish that she developed carpal tunnel syndrome in the performance of duty causally related to factors of her

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the issuance of the October 29, 2010 OWCP decision, appellant submitted new evidence. The Board is precluded from reviewing evidence which was not before OWCP at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c)(1). Appellant may resubmit this evidence, together with a written request for reconsideration to OWCP, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606.

federal employment; and (2) whether OWCP properly refused to reopen appellant's claim for merit review under 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On June 28, 2010 appellant, then a 40-year-old clerk, filed an occupational disease claim alleging that she sustained an injury on July 1, 2008 as a result of her federal employment. She explained that she developed bilateral carpal tunnel syndrome due to the repetitive motions with her hands and wrists over 26 years, initially while keying as a letter sorting machine operator, and then while typing as a consumer affairs representative. Appellant did not stop work.

Appellant submitted a June 22, 2010 treatment note from Dr. Jonathan Uroskie, a Board-certified hand surgeon, who diagnosed bilateral carpal tunnel syndrome, right greater than left. Dr. Uroskie noted that he last treated appellant one year prior, and that she had an injection in her right carpal tunnel to alleviate her symptoms. He explained that she had positive carpal tunnel signs on the right and milder signs on the left wrist; but an electromyography (EMG) study was essentially normal. Appellant inquired about surgery and he discussed the carpal tunnel release procedure. In an addendum, Dr. Uroskie noted, "[Appellant] states that despite continu[ing] to work she relates 100 percent of the symptoms to work. She is unable to do so because of the pain in her especially the right hand. [Appellant] has recurrence of symptoms because of working. This is almost without doubt related to her job."

On July 12, 2010 OWCP requested additional evidence including a medical report containing a diagnosis of appellant's condition and medical rationale explaining how the condition was causally related to her employment activities. No further evidence was received by OWCP.

By decision dated August 31, 2010, OWCP accepted appellant's work activities as alleged, but denied her claim on the grounds that the medical evidence was not sufficient to establish that she sustained bilateral carpal tunnel due to her work.

Appellant requested reconsideration on September 20, 2010. She explained that she had sent documentation in support of her claim to Boston, MA in error. No further evidence was received by OWCP after the reconsideration request.

By decision dated October 29, 2010, OWCP denied further merit review.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA³ has the burden of proof to establish the essential elements of her claim by the weight of the evidence,⁴ including that she sustained an injury in the performance of duty and that any specific condition or disability for work for which she claims compensation is causally related to that employment injury.⁵ As part of her burden,

³ 5 U.S.C. §§ 8101-8193.

⁴ *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

⁵ *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

the employee must submit rationalized medical opinion evidence based on a complete factual and medical background showing causal relationship.⁶ The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of the analysis manifested and the medical rationale expressed in support of the physician's opinion.⁷

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 employee'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 employee, 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 employee.⁸ In addition, the Board has long held that medical conclusions unsupported by rationale are of diminished probative value and insufficient to establish causal relationship.⁹

ANALYSIS -- ISSUE 1

The Board finds that appellant submitted insufficient medical evidence to establish that she sustained carpal tunnel syndrome causally related to her federal employment.

In support of this claim, the record only contains a treatment note dated June 22, 2010 from Dr. Uroskie who diagnosed bilateral carpal tunnel syndrome, right greater than left. The Board notes that, while Dr. Uroskie diagnosed carpal tunnel syndrome based upon physical examination findings, he did not report the nature of any findings from examination, or report that Tinel's and Phalen's testing had been performed. Dr. Uroskie merely noted that EMG findings were normal. As such, his report is deficient as to findings on clinical examination and the history of appellant's medical condition. Dr. Uroskie noted only that appellant was seen in follow up to an examination the prior year. He discussed surgery with appellant. Dr. Uroskie did not address her work duties. The addendum of the medical report noted that appellant attributed her symptoms to work. Dr. Uroskie stated that she "has recurrence of symptoms because of working. This is almost without doubt related to her work." Dr. Uroskie's brief statement on causal relation is not supported by any history of injury, or any description of appellant's employment duties. To be of probative value in establishing causal relationship, a medical report must relate a description of the employment factors alleged and an explanation, supported by medical rationale, explaining how the alleged factors caused the diagnosed condition. As stated, without a rationalized medical opinion on the cause of the injury, this report has limited probative value in establishing the causation element in her claim.

⁶ *G.T.*, *supra* note 5; *Nancy G. O'Meara*, 12 ECAB 67, 71 (1960).

⁷ *Jennifer Atkerson*, 55 ECAB 317, 319 (2004); *Naomi A. Lilly*, 10 ECAB 560, 573 (1959).

⁸ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁹ *See Albert C. Brown*, 52 ECAB 152 (2000).

OWCP advised appellant that it was her responsibility to provide a comprehensive medical report which includes the history of her condition, a detailed account of the employment factors believed to have caused or contributed to her condition, as reported by appellant herself, dates of examination and treatment, description of symptoms, results of examinations and tests, diagnosis, clinical course of treatment provided, and the effect of such treatment, and the description of the specific employment duties or activities given by appellant to the physician, and the physician's opinion supported by a medical explanation as to how work activities in appellant's federal employment caused, contributed to, or aggravated her medical condition. However, appellant failed to submit any medical documentation in response to OWCP's request.

LEGAL PRECEDENT -- ISSUE 2

Under 20 C.F.R. § 10.606(b), a claimant may obtain review of the merits of his or her claim by showing that:

- (i) OWCP erroneously applied or interpreted a specific point of law,
- (ii) by advancing a relevant legal argument not previously considered by OWCP,
or
- (iii) by constituting relevant and pertinent new evidence not previously considered by OWCP.

Section 10.608(b) provides that when an application for review of the merits of a claim does not meet at least one of these three requirements OWCP will deny the application for review without reviewing the merits of the claim.

ANALYSIS -- ISSUE 2

In this case, appellant failed to submit any new medical evidence or advance any legal argument in support of her reconsideration request. The only document appellant submitted was an undated statement, which OWCP received on September 20, 2010. Appellant stated that further evidence would be submitted, but none was received prior to October 29, 2010. Therefore, appellant did not meet the requirements of 20 C.F.R. § 10.606(b). OWCP did not abuse its discretion by denying to reopen her case for further reconsideration of the merits.

CONCLUSION

The Board finds that appellant failed to meet her burden of proof to establish that she sustained the bilateral carpal tunnel condition in the performance of duty causally related to factors of her federal employment. The refusal of OWCP to reopen appellant's case for a further review on its merits pursuant to 5 U.S.C. § 8128(a) did not constitute an abuse of discretion.

ORDER

IT IS HEREBY ORDERED THAT the October 29 and August 31, 2010 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: September 16, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

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

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