

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

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**C.L., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Chicago, IL, Employer**

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**Docket No. 12-1479  
Issued: December 17, 2012**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

PATRICIA HOWARD FITZGERALD, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On June 28, 2012 appellant filed a timely appeal of a May 30, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

**ISSUE**

The issue is whether OWCP properly denied authorization for appellant's bilateral elbow ulnar nerve revision.

**FACTUAL HISTORY**

On June 2, 1989 appellant, then a 41-year-old letter carrier, filed a Form CA-2 alleging an occupational disease in the performance of duty. OWCP accepted her claim for dorsal ganglion cyst of the left wrist, bilateral carpal tunnel syndrome and left cubital tunnel syndrome.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

On August 5, 1994 appellant injured her right upper extremity on the job. OWCP accepted her claim for right deltoid strain.<sup>2</sup> Appellant underwent left wrist ganglion cyst excision on June 13, 1989, left ulnar nerve and cubital tunnel release on June 16, 2004, right ulnar nerve and cubital tunnel release on August 26, 2005 and right carpal tunnel release on December 16, 2010. She has remained off duty.<sup>3</sup>

In a September 7, 2011 report, Dr. Obinwanne Fidelis Chinenye Ugwonali, a Board-certified orthopedic surgeon, related that appellant experienced bilateral hand, wrist and shoulder pain. On examination of the right upper extremity, he observed limited range of motion (ROM), diminished strength and greater tuberosity tenderness of the shoulder, ulnar nerve distribution sensation and positive Tinel's sign at the elbow. An electromyogram (EMG) conducted on April 4, 2011 revealed mild to moderate right carpal tunnel syndrome. Dr. Ugwonali diagnosed chronic bilateral upper extremity pain status post bilateral carpal tunnel and cubital tunnel releases, cervicalgia, cervical spondylosis and possible cervical radiculopathy. He recommended right cubital tunnel revision surgery.<sup>4</sup>

OWCP referred appellant to Dr. Harold H. Alexander, a Board-certified orthopedic surgeon, for a second opinion examination. In an August 24, 2011 report, Dr. Alexander noted that appellant retired sometime after 2004 and that her ulnar nerve syndrome worsened because she fell on her elbows when she helped her husband get up on multiple occasions.<sup>5</sup> On examination, he found diminished right shoulder ROM, lack of right opponens muscle function, right elbow extensor weakness, right deltoid pain, decreased left stocking-glove sensation to light touch, left hand numbness during Phalen's maneuver, bilateral grip weakness and limited bilateral abductor digiti minimi function. After reviewing the medical file, Dr. Alexander remarked that appellant's symptoms were inconsistent with the objective findings and likely exaggerated. He advised against further surgery. Following an October 3, 2011 functional capacity examination, Dr. Alexander noted in a November 20, 2011 addendum report that appellant could return to sedentary duty sometime in the next six months and was a candidate for vocational rehabilitation.

In a November 30, 2011 report, Dr. Ugwonali evaluated appellant and observed right thumb tenderness at the first annular pulley and carpometacarpal joint, crepitus and limited ROM. A cervical magnetic resonance imaging scan exhibited mild spondylosis and lordotic straightening. Dr. Ugwonali diagnosed right trigger thumb, right carpometacarpal joint arthritis, cervical spondylosis and chronic bilateral upper extremity pain status post bilateral carpal tunnel and cubital tunnel releases.<sup>6</sup> A December 9, 2011 EMG conducted by Dr. Shevin D. Pollydore, a

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<sup>2</sup> OWCP combined these claims under File No. xxxxxx930.

<sup>3</sup> The foregoing information was incorporated into the February 14, 2012 statement of accepted facts.

<sup>4</sup> Dr. Ugwonali's October 19, 2011 follow-up report presented similar findings.

<sup>5</sup> The case record indicates that appellant's husband, who had been recovering from a stroke, passed away on December 12, 2011.

<sup>6</sup> Dr. Ugwonali's follow-up reports of January 4 to April 18, 2012 presented similar findings.

Board-certified physiatrist, showed evidence of left elbow ulnar nerve injury with axonal involvement.

Dr. Ugwonali submitted an authorization request form on March 22, 2012 for right elbow ulnar nerve revision. In an April 18, 2012 report, he detailed that appellant did not fall on her elbows but instead aggravated her condition when she attempted to lift her husband after he fell. Dr. Ugwonali opined that she was rendered disabled by her industrial injury and recommended left cubital tunnel revision surgery.

OWCP determined that a conflict in medical opinion arose between Dr. Alexander and Dr. Ugwonali as to whether appellant's surgery should be approved. It referred the case to Dr. Thomas R. Cadier, a Board-certified orthopedic surgeon, for a referee examination. In an April 2, 2012 report, Dr. Cadier reviewed the February 14, 2012 statement of accepted facts and medical file. He evaluated appellant and elicited bilateral pain and tenderness to palpation and manipulation of the wrist, elbow and upper arm, left stocking-glove hypesthesia and bilateral grip weakness in the absence of upper extremity muscle atrophy. Dr. Cadier opined that she demonstrated "classic symptom magnification and strong evidence of malingering." He explained:

"The degree of weakness in use of the upper extremities belied the fact that [appellant] was carrying a purse which she managed without apparent difficulty. She was able to open and close the door to the examining room without difficulty although the forces generated by this simple act would be greater than that force she demonstrated as her best effort in direct testing during the examination.... In spite of the complaints of weakness ... [appellant] was able to adjust herself on the examining table with her arms lifting a high percentage of her body weight to get comfortable, again, this force being far in excess of what she demonstrated when asked to resist my hand in testing biceps, triceps, grip strength, etc."

Dr. Cadier concluded that appellant reached maximum medical improvement approximately five years earlier based on the medical file and would not benefit from further medical treatment or vocational rehabilitation.<sup>7</sup>

By decision dated May 30, 2012, OWCP denied authorization of appellant's bilateral elbow ulnar nerve revision, finding that the weight of the medical evidence did not establish that such treatment was medically necessary.

### **LEGAL PRECEDENT**

Section 8103 of FECA provides that the United States "shall furnish to an employee who is injured while in the performance of duty, the services, appliances and supplies prescribed or recommended by a qualified physician, which the Secretary of Labor considers likely to cure, give relief, reduce the degree or the period of disability or aid in lessening the amount of monthly compensation."<sup>8</sup> OWCP has the general objective of ensuring that an employee recovers from

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<sup>7</sup> Dr. Cadier's March 1, 2012 work capacity evaluation form reiterated his opinion.

<sup>8</sup> 5 U.S.C. § 8103(a).

his or her injury to the fullest extent possible in the shortest amount of time. It therefore has broad administrative discretion in choosing the means to achieve this goal. The only limitation on OWCP's authority is that of reasonableness.<sup>9</sup> Abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment or actions taken which are contrary to both logic and probable deductions from established facts. It is not enough to merely show that the evidence could be construed so as to produce a contrary factual conclusion.<sup>10</sup>

While OWCP is obligated to pay for treatment of an employment-related injury, the employee has the burden of proof to establish that the expenditure is incurred for treatment of the effects of such injury. In order for a surgical procedure to be authorized, he or she must submit evidence to show that the procedure is for an employment-related condition and that the surgery is medically warranted. Both of these criteria must be met in order for OWCP to authorize payment.<sup>11</sup>

If there is a conflict in medical opinion between the employee's physician and the physician making the examination for the United States, OWCP shall appoint a third physician, known as a referee physician or impartial medical specialist, to make what is called a referee examination.<sup>12</sup> Where OWCP has referred appellant to a referee physician to resolve a conflict, the referee's opinion, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.<sup>13</sup>

### ANALYSIS

OWCP accepted that appellant sustained dorsal ganglion cyst of the left wrist, bilateral carpal tunnel syndrome, left cubital tunnel syndrome and right deltoid strain while in the performance of duty. Appellant subsequently underwent left ulnar nerve and cubital tunnel release on June 16, 2004 and right ulnar nerve and cubital tunnel release on August 26, 2005. In a March 22, 2012 request form, Dr. Ugwonali, appellant's attending physician, recommended right elbow ulnar nerve revision. On April 18, 2012 he noted that she also needed left elbow ulnar nerve revision. In contrast, Dr. Alexander, the second opinion examiner, determined that surgery was not medically necessary in view of the objective findings and her exaggerated symptoms. After finding that, a conflict in medical opinion existed concerning whether the proposed surgery should be approved, OWCP referred the case to Dr. Cadier for a referee examination.

The Board finds that Dr. Cadier's April 2, 2012 report is entitled to special weight because his opinion was well rationalized and based on a proper factual and medical history. He reviewed the February 14, 2012 statement of accepted facts and medical file and conducted a

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<sup>9</sup> *R.L.*, Docket No. 08-855 (issued October 6, 2008); *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

<sup>10</sup> *R.C.*, 58 ECAB 238, 241 (2006).

<sup>11</sup> *R.L.*, *supra* note 9.

<sup>12</sup> See 5 U.S.C. § 8123(a); 20 C.F.R. § 10.321.

<sup>13</sup> *L.W.*, 59 ECAB 471 (2007); *James P. Roberts*, 31 ECAB 1010 (1980).

thorough physical examination. Dr. Cadier noted that the symptoms shown by appellant during testing, including pain, weakness and tenderness, could not be reconciled with her apparent functional capacity. In particular, he pointed out that she opened and closed the door to the examination room and adjusting her body weight on the examination table without any difficulty, each of which required a greater amount of force than what was exerted during the examination. Dr. Cadier therefore concluded that appellant showed symptom magnification and did not exhibit symptoms warranting surgery or further medical treatment. Consequently, the Board finds that OWCP properly denied authorization of appellant's bilateral elbow ulnar nerve revision.

Appellant contends on appeal that OWCP did not meet its burden of proof because Dr. Alexander and Dr. Cadier's reports were erroneous. As noted, it is the claimant who has the burden of proof to establish that surgery is medically warranted for an employment-related condition. The Board has already addressed the case record and determined that the weight of the medical evidence does not support appellant's claim. Appellant also submits new evidence on appeal. The Board, however, lacks jurisdiction to review evidence for the first time on appeal.<sup>14</sup>

Appellant may submit new evidence or argument as part of a formal 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 OWCP did not abuse its discretion when it denied authorization for appellant's bilateral elbow ulnar nerve revision.

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<sup>14</sup> 20 C.F.R. § 501.2(c).

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 30, 2012 merit decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 17, 2012  
Washington, DC

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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

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