

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

D.W., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Gaffney, SC, Employer**

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**Docket No. 11-1769
Issued: March 16, 2012**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

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

JURISDICTION

On July 22, 2011 appellant filed a timely appeal from a January 26, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her claim.¹ Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

¹ Under the Board's *Rules of Procedure*, the 180-day time period for determining jurisdiction is computed beginning on the day following the date of OWCP's decision. See 20 C.F.R. § 501.3(f)(2). As OWCP's merit decision was issued on January 26, 2011, the 180-day computation begins January 27, 2011. One hundred and eighty days from January 27, 2011 was July 25, 2011. Since using July 26, 2011, the date the appeal was received by the Clerk of the Board, would result in the loss of appeal rights, the date of the postmark is considered the date of filing. The date of the U.S. Postal Service postmark is July 22, 2011, which renders the appeal timely filed. See 20 C.F.R. § 501.3(f)(1).

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant established that she sustained an injury in the performance of duty.

FACTUAL HISTORY

On June 24, 2010 appellant, then a 53-year-old rural letter carrier, filed an occupational disease claim alleging that on May 5, 2010 she first realized her bilateral carpal tunnel, bilateral tennis elbow and foot and neck conditions were employment related.

By letter dated July 1, 2010, OWCP informed appellant that the evidence of record was insufficient to support her claim. Appellant was advised as to the medical and factual evidence required to support her claim. OWCP gave her 30 days to provide the requested information.

In response, appellant submitted her job description, diagnostic test and progress notes dated June 17 and 29, 2010 from Dr. Andrew W. Harakas, a treating Board-certified orthopedic surgeon, who provided physical findings and diagnosed lateral epicondylitis, bilateral radiocapitellar synovitis, bilateral carpal tunnel syndrome and C7-8 radiculopathy.

By decision dated August 17, 2010, OWCP denied appellant's claim. It found the evidence insufficient to establish a causal relationship between the diagnosed condition and her employment.

On September 8, 2010 appellant requested a written review of the record by an OWCP hearing representative. She submitted an August 3, 2010 progress note from Dr. Harakas who provided physical findings and diagnosed carpal tunnel syndrome with some radiculopathy at C7-8. Appellant related that her work involved repetitive motion which she believed was a cause of her carpal tunnel condition. She asked Dr. Harakas if her repetitive work duties could cause her condition and he noted that "these type of modalities could certainly aggravate or case the problems" seen in her wrist and elbow.

By decision dated January 26, 2011, an OWCP hearing representative affirmed the August 17, 2010 decision.³

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ has the burden of establishing the essential elements of 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

³ The Board notes that, following the January 26, 2011 hearing representative's decision, OWCP received additional evidence. However, the Board may only review evidence that was in the record at the time OWCP issued its final decision. See 20 C.F.R. § 501.2(c)(1); *M.B.*, Docket No. 09-176 (issued September 23, 2009); *J.T.*, 59 ECAB 293 (2008); *G.G.*, 58 ECAB 389 (2007); *Donald R. Gervasi*, 57 ECAB 281 (2005); *Rosemary A. Kayes*, 54 ECAB 373 (2003).

⁴ 5 U.S.C. § 8101 *et seq.*

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.⁵ 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.⁶

To establish that an injury was sustained in the performance of duty in an occupational disease claim, an employee must submit the following: (1) medical evidence establishing the presence or existence of a condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the condition; and (3) medical evidence establishing that the employment factors identified by the employee were the proximate cause of the condition or illness, 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 employee.⁷

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence.⁸ Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between an employee's diagnosed conditions and the implicated employment factors.⁹ 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 conditions and the specific employment factors identified by the employee.

ANALYSIS

Appellant filed an occupational disease claim attributing her bilateral carpal tunnel, bilateral tennis elbow and foot and neck conditions to her employment duties. OWCP accepted the employment factors identified by her, but denied her claim on the grounds that she failed to submit any rationalized medical evidence. Thus, the question to be resolved is whether the medical evidence submitted by appellant is sufficient in explaining how the identified conditions of lateral epicondylitis, bilateral radiocapitellar synovitis, bilateral carpal tunnel syndrome and C7-8 radiculopathy were caused or aggravated by her employment. The Board finds that she did not provide sufficient medical evidence to meet her burden of proof.

In support of her claim, appellant submitted progress notes from Dr. Harakas. In progress notes dated June 17 and 29, 2010, Dr. Harakas provided physical findings and diagnosed lateral epicondylitis, bilateral radiocapitellar synovitis, bilateral carpal tunnel syndrome and C7-8 radiculopathy. However, he provided no opinion as to the causation of these

⁵ C.S., Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

⁶ S.P., 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁷ D.D., 57 ECAB 734 (2006); *Donna L. Mims*, 53 ECAB 730 (2002).

⁸ I.R., Docket No. 09-1229 (issued February 24, 2010); *David Apgar*, 57 ECAB 137 (2005).

⁹ G.G., 58 ECAB 389 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

conditions in either the June 17 or 29, 2010 progress notes. The Board has long held that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹⁰ Thus, the progress notes dated June 17 and 29, 2010 are insufficient to meet appellant's burden of proof.

Appellant also submitted an August 3, 2010 progress note from Dr. Harakas in which he diagnosed carpal tunnel syndrome with some radiculopathy at C7-8 and provided physical findings. In response to a question from appellant as to whether these conditions could be caused by her repetitive work duties, Dr. Harakas responded by stating that the "these type of modalities could certainly aggravate or cause the problems" seen in her wrist and elbow. He did not explain how the diagnosed carpal tunnel syndrome with some radiculopathy at C7-8 were caused or contributed to by her employment duties.¹¹ Dr. Harakas merely noted in response to appellant's question that her repetitive work duties could have aggravated or caused her problems. The Board finds this report is speculative or equivocal as the physician concludes that appellant's condition could have been caused by the employment duties identified by appellant. In order to be of probative value, medical opinions should be expressed in terms of a reasonable degree of medical certainty.¹² Furthermore, the Board has held that medical opinions which are speculative or equivocal are of diminished probative value.¹³ For these reasons, the report is insufficient to meet appellant's burden to establish that diagnosed conditions of carpal tunnel syndrome with some radiculopathy at C7-8 were caused by her employment-related paint exposure. Thus, Dr. Harakas' August 3, 2010 progress note is also insufficient to establish that the diagnosed conditions were caused or aggravated by appellant's employment.

Because appellant has not submitted competent medical opinion evidence containing a reasoned discussion of causal relationship, one that soundly explains how her employment duties caused or aggravated a firmly diagnosed medical condition, the Board finds appellant has not established the essential element of causal relationship.

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.

¹⁰ *A.D.*, 58 ECAB 149 (2006); *Robert Broome*, 55 ECAB 339 (2004).

¹¹ See *Gloria J. McPherson*, 51 ECAB 441 (2000) (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).

¹² See *Roy L. Humphrey*, 57 ECAB 238 (2005) (to be probative, the medical opinion must be of reasonable medical certainty and supported by medical rationale).

¹³ See *S.E.*, Docket No. 08-2214 (issued May 6, 2009) (the Board has generally held that opinions such as the condition is "probably" related, "most likely" related or "could be" related are speculative and diminish the probative value of the medical opinion); *Cecelia M. Corley*, 56 ECAB 662 (2005) (medical opinions which are speculative or equivocal are of diminished probative value).

CONCLUSION

The Board finds that appellant did not establish that she sustained an injury in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 26, 2011 is affirmed.

Issued: March 16, 2012
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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

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