

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

J.W., Appellant

and

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

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**Docket No. 13-282
Issued: May 17, 2013**

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, Alternate Judge

MICHAEL E. GROOM, Alternate Judge

JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 20, 2012 appellant, through her counsel, filed a timely appeal from an August 1, 2012 merit 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 met her burden of proof to establish that she developed bilateral carpal tunnel syndrome (CTS), right cubital tunnel syndrome or left trigger thumb causally related to factors of her federal employment.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On March 26, 2011 appellant, then a 49-year-old mail processor, filed an occupational disease claim (Form CA-2) alleging that she developed bilateral CTS and right cubital tunnel syndrome as a result of 15 years of repetitive postal service work. She first became aware of her condition on April 22, 2010 and of its relationship to her employment on May 15, 2010. Appellant notified her supervisor on March 26, 2011 and continued to work full duty without restrictions.

In March 28, 2011 narrative statement, appellant reported that she was employed by the United States Postal Service (USPS) for over 15 years. She stated that her employment duties consisted of repetitive work from processing mail, transporting equipment, pushing, pulling and lifting equipment and loading heavy bags of mail which weighed up to 70 pounds. Appellant stated that she was required to load a conveyer belt at a fast pace to keep up with the bins and that her performance duties caused her pain, numbness and tingling in the hands and fingertips.

By letter dated May 12, 2011, OWCP informed appellant that the evidence of record was insufficient to support her claim. Appellant was advised to submit additional medical and factual evidence within 30 days. She did not respond.

By decision dated July 18, 2011, OWCP denied appellant's claim finding that the evidence was insufficient to establish that she sustained an injury. It found that the work-related activities were established; but the medical evidence failed to provide a firm medical diagnosis which could be attributed to the accepted employment factors.

By letter dated May 3, 2012, appellant, through counsel, requested reconsideration and submitted medical evidence in support of her claim.

Appellant underwent an electromyography (EMG) study on April 29, 2010 by Dr. Aurora P. Dela Rosa, an EMG consultant, who noted that appellant complained of sore neck muscles, burning like pain in the left hand and tingling in the right fingers. She denied any history of recent trauma and stated that her hand and finger condition began approximately two to three months prior. Dr. Dela Rosa stated that appellant's neurophysiologic findings revealed bilateral CTS, more involved in the right with evidence of moderately severe median sensory loss in the right and mild in the left median sensory nerve conduction slowing across the wrists. She also noted right cubital tunnel syndrome with evidence of mild ulnar motor and sensory nerve partial conduction block across the elbow.

In an April 29, 2010 medical report, Dr. Mark J. Reiner, an osteopath, stated that appellant was treated the previous week for complaints to her hands. He noted that an EMG was performed, which showed bilateral CTS, right greater than left and cubital tunnel syndrome. Dr. Reiner noted a positive Phalen's and Tinel's sign to the median nerve at the wrists bilaterally.

In a June 2, 2010 diagnostic report, Dr. Thomas Yu, a Board-certified diagnostic radiologist, reported that a magnetic resonance imaging (MRI) scan of the right wrist revealed tenosynovitis along the exterior digitorum tendon sheath and extensor hallucis longus tendon

region. A scapholunate ligament tear was suspected although there was no significant separation of the scapholunate space.

In a June 11, 2010 report, Dr. Daniel DePrince, an osteopath, noted that appellant was evaluated regarding injuries sustained in a work-related incident on May 15, 2010. He stated that she worked for the postal service for many years. On May 15, 2010 appellant reported experiencing severe pain, burning and tingling in her right and left wrists. On examination, Dr. DePrince noted severe bilateral wrist pain and swelling. Appellant underwent an MRI scan on June 2, 2010 which revealed a suspected scapholunate ligament tear and was positive for tenosynovitis along the extensor digitorum tendon sheath and extensor hallucis longus tendon region. Dr. DePrince diagnosed post-traumatic scapholunate ligament tear of the right wrist and post-traumatic bilateral CTS. Upon reviewing appellant's job description, he opined with a reasonable degree of medical certainty that her bilateral condition was a result of repetitive employment duties and directly caused by her job at the employing establishment.

In medical reports dated June 28 and July 21, 2010, Dr. Stuart G. Dubowitch, an osteopath, listed a history that, prior to May 15, 2010, Dr. Reiner diagnosed appellant with bilateral CTS and right cubital tunnel syndrome. Appellant complained of numbness and tingling in the hands as well as triggering and locking about the left thumb which occurred on May 15, 2010 after utilizing a machine at work. Dr. Dubowitch diagnosed left trigger thumb, right wrist tendinitis, bilateral CTS and right cubital tunnel.

In a September 17, 2010 surgical report, Dr. Barry Gleimer, an osteopath, advised that appellant underwent release of the left trigger thumb. In reports dated September 28 to November 30, 2010, he stated that her left trigger thumb was resolved postsurgical release. On November 30, 2010 Dr. Gleimer released appellant to full duty, stating that she had reached maximum medical improvement.

In an April 11, 2012 report, Dr. DePrince reported that appellant was evaluated beginning April 2010 for conditions involving her work-related duties. Appellant was previously evaluated on May 15, 2010 for a work-related injury. Dr. DePrince stated that she worked as a mail processor for over 15 years. Appellant initially experienced painful symptoms in the wrists and hands bilaterally. She was evaluated by Dr. Reiner who diagnosed bilateral CTS and cubital tunnel syndrome. Appellant was treated at the emergency room on May 15, 2010 following symptoms experienced at work when she felt a "pop" in her left wrist and a flare up of pain to the bilateral wrists and hands. She underwent left trigger thumb release on September 17, 2010 and Dr. Gleimer released her to full duty, finding that she had reached maximum improvement on November 30, 2010. Upon physical examination and review of diagnostic tests, Dr. DePrince diagnosed bilateral CTS, left trigger thumb and cubital tunnel syndrome of the right elbow.

Dr. DePrince stated that working on the automation machines for years caused appellant's symptoms of pain and spasms in the hands and wrists. He noted that her duties included processing mail and transporting equipment to machines such as knockers, cages, trays and sleeves. Transporting equipment involved pushing, pulling, lifting and loading heavy mail onto a ledge weighing up to 70 pounds. Dr. DePrince stated that the repetitive motion in appellant's work and the weight of the mail caused her to drop mail as her hands were weak and she was required to keep up with the loading of the machines. Due to appellant's bilateral wrist

pain and spasm, left trigger finger, mechanism of injury, damage to surrounding soft tissue and the severity and persistence of her symptoms, Dr. DePrince opined within a reasonable degree of medical probability that her injuries sustained to her hands bilaterally, left trigger finger and upper extremities were a direct result of the repetitive motion and work-related incidents beginning in April 2010 and an incident on May 15, 2010.

Progress notes dated May 19 to December 17, 2010 were also submitted from South Jersey Health and Wellness Center, which documented appellant's treatment.²

By decision dated August 1, 2012, the Branch of Hearings and Review affirmed OWCP's July 18, 2011 decision finding that the evidence failed to establish that she sustained an injury as a result of her accepted federal employment duties. The hearing representative noted that the medical evidence submitted referenced a May 15, 2010 injury and not factors relating to an occupational disease from April 22, 2010.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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 or specific condition for which compensation is claimed is causally related to the employment injury.³ These are the essential elements of every compensation claim regardless of whether the claim is predicated on a traumatic injury or occupational disease.⁴

In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.⁵ The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

To establish that an injury was sustained in the performance of duty in a claim for occupational disease, an employee must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition

² The Board notes that many of the signatures on the progress notes were illegible or signed by physician's assistants and physical therapists.

³ *Gary J. Watling*, 52 ECAB 278 (2001); *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

⁴ *Michael E. Smith*, 50 ECAB 313 (1999).

⁵ *Elaine Pendleton*, *supra* note 3.

for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.⁶

To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background, supporting such a causal relationship.⁷ The opinion of the physician 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. This medical opinion must include an accurate history of the employee's employment injury and must explain how the condition is related to the injury. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.⁸

ANALYSIS

OWCP accepted that appellant engaged in repetitive activities as a mail processor. The issue, therefore, is whether she submitted sufficient medical evidence to establish that the employment exposure caused her bilateral CTS, left trigger thumb and cubital tunnel syndrome of the right elbow. The Board finds that appellant did not submit sufficient medical evidence to support that she developed bilateral CTS, left trigger thumb and cubital tunnel syndrome causally related to factors of her federal employment as a mail processor.

In an April 29, 2010 EMG report, Dr. Dela Rosa stated that appellant complained of pain and tingling in the hands and fingers beginning approximately two to three months prior. The EMG revealed bilateral CTS and right cubital tunnel syndrome. In another April 29, 2010 report, Dr. Reiner reported that appellant was being treated for bilateral CTS and right cubital tunnel syndrome. In medical reports dated June 28 and July 21, 2010, Dr. Dubowitch reported that she was diagnosed with bilateral CTS and right cubital tunnel syndrome prior to May 15, 2010. He also diagnosed left trigger thumb. In medical reports dated June 11, 2010 and April 11, 2012, Dr. DePrince stated that appellant was treated for bilateral CTS and right cubital tunnel syndrome in April 2010. After an employment incident on May 15, 2010, appellant was diagnosed with left trigger thumb. Dr. DePrince discussed her repetitive employment duties and opined that they were a direct result of her conditions.

In its July 18, 2011 and August 1, 2012 decisions, OWCP found insufficient evidence to establish a firm medical diagnosis of appellant's injury. It noted that the medical evidence of record pertained to a May 15, 2010 employment incident rather than an occupational disease beginning in April 2010. The medical evidence of record establishes a diagnosis of bilateral CTS, left trigger thumb and right cubital tunnel syndrome. The medical reports discussed above all provide a firm medical diagnosis of these conditions. Appellant sought treatment and was

⁶ See *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

⁷ See 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

⁸ *James Mack*, 43 ECAB 321 (1991).

diagnosed with bilateral CTS and right cubital tunnel syndrome in April 2010, prior to the May 15, 2010 injury, as evidenced by the reports of Dr. Dela Rosa and Dr. Reiner. Dr. Dubowitch and Dr. DePrince confirm that appellant was diagnosed with bilateral CTS and right cubital tunnel syndrome in April 2010. Appellant received continued treatment for her conditions and was diagnosed with left trigger thumb after a May 15, 2010 injury. While associating left trigger thumb to her occupational duties may be more difficult because the condition was diagnosed after the May 15, 2010 injury, she has clearly established a diagnosis of bilateral CTS and right cubital tunnel syndrome beginning in April 2010. The question is whether appellant's employment duties caused or aggravated her bilateral CTS, left trigger thumb and right cubital tunnel syndrome. She must submit rationalized medical evidence to establish that her diagnosed medical conditions were causally related to the accepted factors of employment.

In medical reports dated June 11, 2010 and April 11, 2012, Dr. DePrince stated that appellant was evaluated beginning in April 2010 for conditions involving her work-related duties and was diagnosed with bilateral CTS and cubital tunnel syndrome. On May 15, 2010 appellant sought emergency treatment when she felt a "pop" in her left wrist and a flare up of pain to the bilateral wrists and hands following symptoms experienced at work. On September 17, 2010 she underwent left trigger thumb release. Dr. DePrince diagnosed bilateral CTS, left trigger thumb and cubital tunnel syndrome of the right elbow. He provided a history of working for the employing establishment for 15 years. This involved using automation machines which procured appellant's symptoms of pain and spasms in the hands and wrists. Dr. DePrince noted that her duties included processing mail and transporting equipment to machines such as knockers, cages, trays and sleeves. Transporting equipment involved pushing, pulling, lifting and loading heavy mail onto a ledge weighing up to 70 pounds. Dr. DePrince stated that the repetitive motion in appellant's work and the weight of the mail was causing her to drop mail as her hands were weak. Due to appellant's bilateral wrist pain and spasm, left trigger finger, mechanism of injury, damage to surrounding soft tissue and the severity and persistence of her symptoms, he opined within medical certainty that her injuries sustained to her hands bilaterally, left trigger finger and upper extremities were a direct result of the repetitive motion and work-related incidents beginning in April 2010 and an incident on May 15, 2010.

The Board finds that the opinion of Dr. DePrince is not well rationalized. Dr. DePrince diagnosed bilateral CTS, left trigger thumb and cubital tunnel syndrome of the right elbow. He opined that with a reasonable degree of medical probability that appellant's conditions were a direct result of the repetitive motion and work-related incidents beginning in April 2010 and an incident on May 15, 2010. Dr. DePrince's opinion on causal relationship is equivocal as provided two different opinions regarding the cause of appellant's conditions. While he attributed her conditions to a May 15, 2010 traumatic injury from a single occurrence within a single workday, he also attributed her condition to an occupational injury produced by her work environment over a period longer than a single workday or shift, as alleged by her in this claim.⁹ It is unclear which conditions were caused by the occupational injury and which, if any, were caused or aggravated by the May 15, 2010 injury.

⁹ A traumatic injury means a condition of the body caused by a specific event or incident or series of events or incidents, within a single workday or shift. 20 C.F.R. § 10.5(ee). An occupational disease is defined as a condition produced by the work environment over a period longer than a single workday or shift. 20 C.F.R. § 10.5(q).

Moreover, while Dr. DePrince stated an opinion on causal relationship, he failed to provide an explanation of how pushing, pulling, lifting and transporting heavy mail and equipment would cause or aggravate appellant's bilateral CTS, left trigger thumb and cubital tunnel syndrome of the right elbow. Although the bilateral CTS and right cubital tunnel syndrome conditions were established prior to the May 15, 2010 injury, his opinion lacks support as he failed to adequately describe her work duties, how many hours she worked a day, used the conveyer belt, transported equipment and the frequency of other physical movements and tasks. Medical reports without adequate rationale on causal relationship are of diminished probative value and do not meet an employee's burden of proof.¹⁰ The opinion of a physician supporting causal relationship must rest on a complete factual and medical background supported by affirmative evidence, address the specific factual and medical evidence of record and provide medical rationale explaining the relationship between the diagnosed condition and the established incident or factor of employment.¹¹ Dr. DePrince's reports do not meet that standard and are insufficient to meet appellant's burden of proof.

The remaining medical evidence of record is also insufficient to establish causal relationship between appellant's injuries and her federal employment duties as a mail processor. The reports of Dr. Dela Rosa and Dr. Reiner diagnosed bilateral CTS and right cubital tunnel syndrome but failed to state any opinion on causal relationship. Dr. Yu's June 2, 2010 report only provided diagnostic findings pertaining to appellant's right wrist. Dr. Gleimer's reports dated September 17 to November 30, 2010 reported left trigger thumb release, which was resolved postsurgery, stating that she could return to full duty having reached MMI on November 30, 2010. Dr. Dubowitch noted that appellant complained of numbness and tingling in the hands as well as triggering and locking about the left thumb, which occurred on May 15, 2010 after utilizing a machine at work. He diagnosed left trigger thumb, right wrist tendinitis, bilateral CTS and right cubital tunnel but failed to state any opinion on causal relationship. While all of appellant's physician's provided a firm medical diagnosis, they failed to state any opinion on causal relationship.¹² Thus, the additional medical reports are of limited probative value.

South Jersey Health and Wellness Center progress notes dated May 19 to December 17, 2010 merely noted appellant's complaints and treatment but failed to provide any opinion on causal relationship. Many of the notes were signed by physician's assistants and physical therapists. However, a nurse, physician's assistant or physical and occupational therapist is not a physician as defined by FECA. Their opinions regarding diagnosis and causal relationship are not probative medical evidence.¹³ The remaining progress notes contained illegible signatures

¹⁰ *Ceferino L. Gonzales*, 32 ECAB 1591 (1981).

¹¹ *See Lee R. Haywood*, 48 ECAB 145 (1996).

¹² *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

¹³ *See Roy L. Humphrey*, 57 ECAB 238 (2005).

and thus, it is unclear if they were signed by a physician.¹⁴ These notes lack probative medical value as the author(s) cannot be identified as a physician.¹⁵

On appeal, appellant's counsel argues that the medical reports submitted are sufficient to establish her claim. While OWCP shares responsibility in the development of the evidence to see that justice is done, it is appellant's burden of proof to submit the evidence necessary to establish her claim.¹⁶ The Board has reviewed the medical evidence and no physician has provided a completely rationalized opinion that her federal employment duties as a mail processor caused or aggravated her medical conditions. As previously noted, Dr. DePrince's opinion failed to provide a fully rationalized opinion that appellant's conditions were caused by an occupational injury rather than an incident on May 15, 2010. The single, equivocal statement by him that causal connection exists is not sufficient to meet appellant's burden of proof.¹⁷ As appellant is alleging that her injury was produced by her work environment over a period longer than a single workday or shift, she must submit rationalized medical evidence from a physician which describes her employment duties and provides an explanation on how these duties caused her injury.¹⁸

In the instant case, the record lacks rationalized medical evidence establishing a causal relationship between appellant's federal employment duties as a mail processor and her bilateral CTS, left trigger thumb and right cubital tunnel syndrome. Thus, appellant has failed to meet her burden of proof.

Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.606 and 10.607.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that her bilateral CTS, left trigger thumb and right cubital tunnel syndrome are causally related to factors of her employment as a mail processor.

¹⁴ Nurses, physician's assistants, physical and occupational therapists are not "physicians" as defined by FECA, their opinions regarding diagnosis and causal relationship are of no probative medical value. 5 U.S.C. § 8101(2) of FECA provides that the term "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law. *See also Roy L. Humphrey*, 57 ECAB 238 (2005).

¹⁵ *See Ricky S. Storms*, 52 ECAB 349 (2001); *Morris Scanlon*, 11 ECAB 384, 385 (1960).

¹⁶ *Phillip L. Barnes*, 55 ECAB 426 (2004).

¹⁷ The Board notes that, if appellant is alleging that her injury was caused or aggravated by a specific event or incident or series of events or incidents, within a single workday or shift, she should pursue her claim by filing a Form CA-1 and submitting rationalized medical evidence which establishes that the May 15, 2010 incident caused her injury. *Supra* note 9.

¹⁸ *Supra* note 11.

ORDER

IT IS HEREBY ORDERED THAT the August 1, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 17, 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