

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

E.M., Appellant

and

**DEPARTMENT OF LABOR, WAGE & HOUR
DIVISION, Dallas, TX, Employer**

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**Docket No. 14-707
Issued: August 15, 2014**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 10, 2014 appellant filed a timely appeal from a November 5, 2013¹ merit decision of the Office of Workers' Compensation Programs (OWCP) denying her occupational disease claim.² Pursuant to the Federal Employees' Compensation Act³ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

¹ Appellant's AB-1 form submitted with her appeal to the Board indicates that she is appealing a May 20, 2013 OWCP decision. The Board notes, however, that the record does not contain a final decision issued by OWCP on that date.

² Appellant timely requested oral argument before the Board. By letter dated March 28, 2014, the Clerk of the Board requested that appellant submit the issues to be argued, as well as the reasons why oral argument was necessary. Appellant was also requested to confirm that she would attend the oral argument in Washington, DC. She did not respond to this request. The Board will decide the case as submitted on the record.

³ 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant established that she sustained a bilateral wrist injury causally related to factors of her federal employment.

On appeal, appellant contends that she was not given a fair chance regarding her work-related claims which were denied regardless of the medical evidence. She further contends that neither she nor her physicians were given an opportunity to address a request in a timely fashion.

FACTUAL HISTORY

On August 27, 2013 appellant, then a 46-year-old human resources compensation specialist, filed an occupational disease claim alleging that she first became aware of her carpal tunnel syndrome on August 7, 2007. She first realized that her condition was caused by her repetitive work duties on September 21, 2012. Appellant stated that she typed tremendously and loaded and unloaded files and boxes every day for the Federal Government for the past 14 years at the Department of Veterans Affairs and the Social Security Administration and 11 years at the Department of Labor (seven years as a “CSR” for OWCP and five years at the Wage and Hour Division).

In a September 18, 2013 medical report, Dr. Stephen J. Becker, a Board-certified physiatrist, found that an electromyogram (EMG) of appellant’s upper extremities revealed evidence of active C6-7 cervical radiculopathy. He further found that nerve conduction velocity (NCV) studies of both upper extremities revealed no evidence of generalized peripheral neuropathy, plexopathy or entrapments.

By letter dated October 1, 2013, OWCP advised appellant that the evidence submitted was insufficient to establish her claim. It gave her 30 days to submit a factual statement describing the employment factors that contributed to her wrist injury and a medical report from a physician explaining how her employment activities caused, contributed to or aggravated her condition. OWCP also requested that the employing establishment submit factual evidence regarding appellant’s claim and medical evidence if she was treated at its medical facility.

In an October 18, 2013 memorandum, Deborah F. Hollis, a regional wage specialist, stated that she was not appellant’s supervisor on August 7, 2007 and had no direct knowledge of the alleged injury. The supervisor was no longer with the Wage and Hour Division. Ms. Hollis stated that appellant reported to work on July 22, 2007 and was terminated on February 15, 2013. She submitted a copy of appellant’s human resources compensation specialist position which required the frequent use of a computer keyboard to enter, retrieve and process data, and to prepare reports and other subsequent processes. The work required no special physical demands.

In an October 21, 2013 progress note, Dr. Pedro J. Loredó, III, a Board-certified surgeon, noted appellant’s complaints of bilateral hand pain, weakness, numbness and tingling, the left hand worse than the right hand, for over five years. Appellant’s symptoms were worse than the past year. She stated that it was very difficult or almost impossible to perform her work activities. Dr. Loredó obtained a history that she worked at the Department of Labor and a history of appellant’s medical, family and social background. He listed findings on examination

of both hands and assessed bilateral carpal tunnel syndrome, thenar atrophy and a nerve injury that involved abnormal two-point sensations of the digits due to median nerve damage from carpal tunnel syndrome.

By decision dated November 5, 2013, OWCP denied appellant's occupational disease claim. It found that the evidence was insufficient to establish that the occupational exposure occurred as alleged. OWCP also found that the medical evidence was not sufficiently rationalized to establish that appellant's wrist condition was causally related to her work activities.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ 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.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, 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) a 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 a causal relationship is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable 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.⁷ Neither the fact that appellant's condition became apparent during a period of employment nor, his or her belief that the condition was caused by his or her employment is sufficient to establish a causal relationship.⁸

⁴ 5 U.S.C. §§ 8101-8193.

⁵ C.S., Docket No. 08-1585 (issued March 3, 2009); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁶ *S.P.*, 59 ECAB 184 (2007); *Victor J. Woodhams*, 41 ECAB 345 (1989); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁷ *I. J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, *supra* note 6 at 351-52.

⁸ *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

ANALYSIS

Appellant alleged that she sustained bilateral carpal tunnel syndrome in the performance of duty due to typing, and loading and unloading files and boxes every day. A description of her human resources compensation specialist position set forth the typing work duty. The Board notes that there is insufficient evidence to establish that the claimed employment factor, typing, did not occur. Consequently, the Board finds that appellant established that she typed at work.

The Board finds, however, that appellant did not submit sufficient medical evidence to establish that her bilateral wrist condition was caused by the accepted employment factor.

The reports from Drs. Becker and Loreda did not provide a detailed description of appellant's employment duties or a reasoned medical opinion attributing her diagnosed C6-7 cervical radiculopathy, bilateral carpal tunnel syndrome, thenar atrophy or a nerve injury that involved abnormal two-point sensations of the digits due to median nerve damage from carpal tunnel syndrome to the established employment factor. Neither physician addressed the cause of the diagnosed conditions.⁹ The Board has held that medical evidence that does not provide any rationalized medical opinion, based on a full or accurate history explaining how the established work-related duty caused or aggravated the claimed medical conditions is of diminished probative value. Appellant did not meet her burden of proof.¹⁰

On appeal, appellant contends that she was not given a fair chance as her claim was denied regardless of the medical evidence. She further contends that neither she nor her physicians were given an opportunity to address a request in a timely fashion. Initially, appellant submitted Dr. Becker's September 18, 2013 NCV and EMG report. OWCP did not deny her occupational disease claim based on this evidence. Rather, in an October 1, 2013 developmental letter, it provided appellant an additional 30 days to submit medical evidence that addressed the issue of causal relationship. The Board finds that appellant was provided ample opportunity to submit the requested evidence. As noted, the reports of Drs. Becker and Loreda did not provide any rationale to establish appellant's occupational disease claim.

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.

CONCLUSION

The Board finds that appellant has failed to establish that she sustained a bilateral wrist injury causally related to factors of her federal employment.

⁹ See *K.W.*, 59 ECAB 271 (2007); *A.D.*, 58 ECAB 149 (2006); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Michael E. Smith*, 50 ECAB 313 (1999).

¹⁰ See *Robert J. Krstyen*, 44 ECAB 227 (1992) (finding that appellant failed to submit sufficient medical evidence to establish that specific work factors caused or aggravated his back condition).

ORDER

IT IS HEREBY ORDERED THAT the November 5, 2013 decision of the Office of Workers' Compensation Programs is affirmed, as modified.

Issued: August 15, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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