

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

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V.L., Appellant		)	
		)	
and		)	Docket No. 11-192
		)	Issued: September 9, 2011
U.S. POSTAL SERVICE, YOUNGSTOWN		)	
POST OFFICE, Youngstown, OH, Employer		)	
_____		)	

*Appearances:* Case Submitted on the Record  
 Alan J. Shapiro, Esq., for the appellant  
 Office of Solicitor, for the Director

**DECISION AND ORDER**

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

**JURISDICTION**

On November 2, 2010 appellant, through his attorney, filed a timely appeal of the October 5, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP) denying his occupational disease claim. Pursuant to the Federal Employees' Compensation Act (FECA)<sup>1</sup> 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 sustained an injury in the performance of duty causally related to factors of his federal employment.

On appeal, appellant's attorney contends that the October 5, 2010 OWCP decision is contrary to fact and law.

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

## **FACTUAL HISTORY**

On January 19, 2010 appellant, then a 51-year-old rehabilitation custodian, filed a traumatic injury claim alleging that he sustained bilateral carpal tunnel syndrome (CTS) that day as a result of cutting cardboard at work. He stopped work on the date of injury and returned to work on January 22, 2010.

In an undated medical report, Dr. William R. Bohl, a Board-certified orthopedic surgeon, advised that appellant could return to work with restrictions from January 19 through 21, 2010. In a January 29, 2010 progress note, Dr. Bohl obtained a history of the January 19, 2010 incident which resulted in pain, excessive swelling and numbness in both of appellant's hands for which he sought medical treatment. On physical examination of the right hand, he reported a positive median nerve compression test and Tinel's sign. Appellant dramatically twisted his whole body in pain which radiated up to both shoulders. The pain was less severe on the left side. Dr. Bohl stated that the Phalen's signs were difficult to interpret due to appellant's loud complaints and physical gyrations. Appellant's hands did not appear to be particularly swollen. Median nerve conduction velocity studies of the bilateral wrists were normal. Dr. Bohl had no good explanation for appellant's complaints and behaviors. Since his prior office visits for evaluation of work-related shoulder conditions, appellant exhibited a gradual progression towards more bizarre complaints that may be nonphysiologic. Dr. Bohl stated that appellant could have developed transient symptoms of tenosynovitis in his hands which caused a transient CTS although he currently had no swelling. He recommended pain management and a psychological evaluation. Dr. Bohl concluded that appellant should be off work until his current symptoms resolved. In a January 29, 2010 report, he stated that appellant could return to work on February 5, 2010.

Hospital after care instructions dated January 19, 2010 and signed by a physician whose signature is illegible stated that it appeared that appellant had CTS. A prescription with the same date and illegible signature ordered medication to treat appellant's pain. Disability certificates dated January 22 and February 2, 2010 from Dr. Timothy J. Morley, an osteopath, stated that appellant could not work through March 12, 2010.

In a March 12, 2010 letter, appellant stated that while performing his regular custodian work duties his hands became very swollen. He described the medical treatment he received for his CTS and reflex sympathetic dystrophy/chronic regional pain syndrome (RSD/CRPS). Appellant noted that he had been off work since January 19, 2010.

On March 17, 2010 OWCP administratively accepted appellant's claim as a quick close case because there appeared to be a minor injury with no lost time. It authorized up to \$1,500.00 in medical care and treatment. OWCP requested additional factual and medical information from him.

In progress reports dated March 12 through April 15, 2010, Dr. Morley listed findings on physical examination and diagnosed bilateral CRPS, CTS and RSD. He advised that appellant should remain off work. Dr. Morley listed appellant's work duties as a custodian, which included sweeping, twisting and pushing, pulling and dumping trash cans into a large cart that he pushed and pulled. He also cut cardboard with a box cutter and cased mail. Dr. Morley

concluded that appellant's repetitive use of his arms more probably than not caused the diagnosed conditions.

In an April 23, 2010 decision, OWCP found that the evidence was sufficient to establish that the January 19, 2010 incident occurred as alleged. However, it found that the medical evidence was insufficient to establish that appellant sustained an injury causally related to the accepted employment incident.

On April 29, 2010 appellant, through counsel, requested a telephone hearing.

In a May 24, 2010 progress note, Dr. Bohl stated that he scheduled an electromyogram/nerve conduction study (EMG/NCS) to confirm whether appellant had CTS. He stated that if the condition was confirmed, it could be added to appellant's claim based on his repetitive work duties. In a June 14, 2010 progress note, Dr. Bohl stated that the EMG confirmed the diagnosis of bilateral CTS. He advised that appellant appeared to have a repetitive use injury due to his employment which involved casing mail repetitively while grasping for many years. Dr. Bohl stated that this condition was aggravated when he returned to this type of work. He related that although it did not appear that appellant had RSD, it was possible that this condition developed following his CTS.

In reports dated May 11 through August 5, 2010, Dr. Morley reiterated his diagnosis of RSD and CTS. He opined that appellant continued to be totally disabled for work.

An unsigned report dated March 8, 2010, which contained the typed name of Dr. Jerald M. Garcia, a Board-certified anesthesiologist, stated that appellant likely had bilateral CRPS and CTS.

In a June 28, 2010 report, Dr. Thomas C. Chelimsky, a Board-certified internist, advised that appellant had bilateral CRPS. He wrote a question mark by his diagnosis of bilateral CTS.

During an August 3, 2010 telephone hearing, appellant's attorney stated that appellant wished to have his claim adjudicated as an occupational disease rather than limit it to the accepted January 19, 2010 employment incident. Appellant testified that when he worked as a letter carrier from 1985 to 2000, he repetitively used his hands to case and deliver mail. From 2000 to 2006, he worked as a distribution clerk, which involved casing mail and flats and lifting and carrying tubs of mail. Appellant sustained a work-related right shoulder injury in 2006.<sup>2</sup> He returned to light-duty work in 2008. Appellant was assigned to sit in a room and had no work duties. In December 2009, he was assigned custodial duties which involved mopping and sweeping floors, cleaning bathrooms and emptying trash cans. Appellant also broke down cardboard boxes with a box cutter. He disposed of 15 to 20 boxes daily. Appellant contended that this activity caused his hand pain and swelling on January 19, 2010.

In an October 5, 2010 decision, OWCP's hearing representative affirmed the April 23, 2010 decision. The hearing representative accepted appellant's daily work activities performed over a period of time and not solely on January 19, 2010. He found that the medical evidence,

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<sup>2</sup> Appellant's claim for the right shoulder employment-related injury was filed under OWCP File No. xxxxxx144.

however, was insufficient to establish that appellant sustained an injury causally related to his accepted work duties.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</sup> has the burden of establishing the essential elements of his 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.<sup>4</sup> 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.<sup>5</sup>

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. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. 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.<sup>6</sup> Neither the fact that appellant's condition became apparent during a period of employment nor his belief that the condition was caused by his employment is sufficient to establish a causal relationship.<sup>7</sup>

### **ANALYSIS**

OWCP accepted that appellant performed the work duties of a rehabilitation custodian, letter carrier and distribution clerk as alleged. The Board finds, however, that the medical evidence submitted is insufficient to establish that his diagnosed bilateral upper extremity conditions were caused or aggravated by his work-related duties.

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<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> *Elaine Pendleton*, 40 ECAB 1143 (1989); *C.S.*, Docket No. 08-1585 (issued March 3, 2009).

<sup>5</sup> *S.P.*, 59 ECAB 184 (2007); *Victor J. Woodhams*, 41 ECAB 345 (1989); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>6</sup> *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

<sup>7</sup> *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

Dr. Bohl's progress reports found that appellant had bilateral CTS based on EMG/NCS findings. He stated that although it did not "appear" that he had RSD, it was "possible" that this condition developed after his CTS condition. Dr. Bohl advised that appellant could work with restrictions from January 19 through 21, 2010. He subsequently found that he was totally disabled for work from January 29 through February 5, 2010. Dr. Bohl opined that appellant's bilateral CTS condition "appeared" to be caused by his repetitive work duties which involved casing mail. The Board finds that Dr. Bohl's reports are speculative regarding the causal relationship between the diagnosed bilateral CTS condition and the established work duties and are insufficient to establish appellant's claim.<sup>8</sup> Dr. Bohl did not provide adequate medical rationale explaining the nature of the relationship between appellant's bilateral CTS and resultant disability and the established work-related duties.

Similarly, the Board finds that Dr. Morley's April 15, 2010 report is speculative on the issue of causal relationship and insufficient to establish appellant's claim.<sup>9</sup> Dr. Morley stated that appellant's bilateral CRPS, CTS and RSD were more "probably" than not due to his repetitive work duties as a custodian. He did not provide any medical rationale explaining how the diagnosed conditions were caused or aggravated by the established work-related duties. Dr. Morley's other reports also found that appellant had CRPS, CTS and RSD and that he was totally disabled for work on intermittent dates from January 22 through August 5, 2010, but did not provide any additional medical opinion addressing whether the diagnosed conditions and resultant disability were caused or aggravated by the established work-related duties. The Board has long held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.<sup>10</sup> The Board finds, therefore, that Dr. Morley's reports are insufficient to establish appellant's claim.

Dr. Chelimsky's June 28, 2010 report is insufficient to establish the claim. He advised that appellant had bilateral CRPS, but failed to provide a medical opinion addressing whether the diagnosed condition was caused or aggravated by the established work duties.<sup>11</sup> Further, Dr. Chelimsky failed to provide a definitive diagnosis of bilateral CTS as he placed a question mark by this diagnosis.

The hospital after care instructions and prescription which contained an illegible signature and the unsigned report which contained the typed name of Dr. Garcia have no probative medical value as the author(s) cannot be identified as a physician.<sup>12</sup> As this evidence lacks proper identification, the Board finds that the reports do not establish appellant's claim.<sup>13</sup>

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<sup>8</sup> Medical opinions that are speculative or equivocal in character are of little probative value. *See Kathy A. Kelley*, 55 ECAB 206 (2004). Moreover, a medical opinion not fortified with medical rationale is of diminished probative value. *See Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006).

<sup>9</sup> *Id.*

<sup>10</sup> *Willie M. Miller*, 53 ECAB 697 (2002).

<sup>11</sup> *Id.*

<sup>12</sup> *See Ricky S. Storms*, 52 ECAB 349 (2001); *Morris Scanlon*, 11 ECAB 384, 385 (1960).

<sup>13</sup> *See Merton J. Sills*, 39 ECAB 572 (1988).

The Board finds that the medical evidence of record does not provide a fully rationalized medical opinion, based on a full or accurate history explaining the reasons why the established work-related duties caused or aggravated the claimed medical conditions. Appellant did not meet his burden of proof.

On appeal, appellant's attorney contended, without explanation, that OWCP's decision was contrary to fact and law. For the reasons stated above, the Board finds that appellant did not submit sufficient evidence establishing his entitlement to compensation.

**CONCLUSION**

The Board finds that appellant has failed to establish that he sustained an injury in the performance of duty causally related to factors of his federal employment.

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 5, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 9, 2011  
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