

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

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**J.H., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Sallisaw, OK, Employer**

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**Docket No. 11-1936  
Issued: April 5, 2012**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

RICHARD J. DASCHBACH, Chief Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On August 26, 2011 appellant filed a timely appeal of the April 15, 2011 decision of the Office of Workers' Compensation Programs (OWCP), which denied her claim for an occupational disease. She also appealed an August 8, 2011 decision, which denied her request for a review of the written record. 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.

**ISSUES**

The issues are: (1) whether appellant has met her burden of proof to establish that she developed an occupational disease in the performance of duty; and (2) whether OWCP properly denied appellant's request for review of the written record pursuant to 5 U.S.C. § 8124(b)(1).

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

## **FACTUAL HISTORY**

On December 22, 2010 appellant, then a 50-year-old rural carrier, filed an occupational disease claim, alleging that she developed carpal tunnel syndrome as a result of performing her work duties. She became aware of her condition and realized that it was causally related to her work duties on December 22, 2010. Appellant did not stop work.

On February 25, 2011 OWCP advised appellant of the evidence needed to establish her claim. It requested that she submit a physician's reasoned opinion addressing the causal relationship of her claimed condition to specific work factors.

Appellant submitted laboratory results dated January 6, 2011. A January 6, 2011 x-ray of the cervical spine revealed moderate degenerative change of the mid to lower cervical spine. A nuclear medicine report dated January 7, 2011 revealed no abnormalities. Appellant was treated by Dr. Gary Edwards, an osteopath, from January 5 and 26, 2011, for indigestion, heart burn, tingling of the left hand and paresthesia. Dr. Edwards noted an electromyogram (EMG) and nerve conduction tests revealed left median neuropathy and carpal tunnel syndrome. A January 12, 2011 EMG revealed very mild abnormal nerve conduction, very mild left median mononeuropathy consistent with carpal tunnel syndrome and borderline right median mononeuropathy to suggest borderline carpal tunnel syndrome on the right. Appellant also submitted undated assessment forms prepared by an unknown healthcare provider who diagnosed carpal tunnel syndrome, ulnar nerve entrapment, neuropathy and paresthesia.

In a decision dated April 15, 2011, OWCP denied appellant's claim on the grounds that medical evidence was insufficient to establish that her claimed conditions were caused by her employment.

On June 27, 2011 appellant requested a review of the written record. In a May 16, 2011 report, Dr. James E. Kelly, III, a Board-certified orthopedic surgeon, treated her for numbness and tenderness in the right hand and diagnosed carpal tunnel syndrome by EMG. He opined that appellant's work was "certainly compatible" in causing this condition.

In a decision dated August 8, 2011, OWCP denied appellant's request for a review of the written record. It found that the request was not timely filed. Appellant was informed that her case had been considered in relation to the issues involved and that the request was further denied for the reason that the issues in this case could be addressed by requesting reconsideration and submitting evidence not previously considered.

## **LEGAL PRECEDENT -- ISSUE 1**

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his claim. When an employee claims that she sustained an injury in the performance of duty, she must submit sufficient evidence to establish that she experienced a

specific event, incident or exposure occurring at the time, place and in the manner alleged. Appellant must also establish that such event, incident or exposure caused an injury.<sup>2</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) 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 claimant. The medical evidence required to establish causal relationship is generally 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>3</sup>

### **ANALYSIS -- ISSUE 1**

It is not disputed that appellant's duties as a letter carrier included performing repetitive duties including manual casing and delivering mail. The Board finds that she has not submitted sufficient medical evidence to establish that her carpal tunnel syndrome is causally related to the employment duties of her job. On February 25, 2011 OWCP advised appellant of the medical evidence needed to establish her claim. Appellant did not submit a rationalized medical report from a physician addressing how specific employment factors caused or aggravated her claimed condition.

On January 5 and 26, 2011 Dr. Edwards treated her for indigestion, heart burn, tingling of the left hand and paresthesia. He noted that an EMG and nerve conduction tests revealed left median neuropathy and carpal tunnel syndrome. However, Dr. Edwards' report is insufficient to establish the claim as the physician did not obtain a history of injury or address how appellant's employment activities caused or aggravated the diagnosed medical condition.<sup>4</sup>

Also submitted were undated assessment forms prepared by a health care provider, whose signature is illegible. However, these records cannot be considered probative medical evidence

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<sup>2</sup> See *Walter D. Morehead*, 31 ECAB 188, 194 (1979) (occupational disease or illness); *Max Haber*, 19 ECAB 243, 247 (1967) (traumatic injury). See generally *John J. Carlone*, 41 ECAB 354 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>3</sup> *Solomon Polen*, 51 ECAB 341 (2000).

<sup>4</sup> *A.D.*, Docket No. 06-1183 (issued November 14, 2006) (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).

in the absence of any indication that the person who signed the documents is a physician.<sup>5</sup> Thus, these documents are insufficient to establish the claim.

Appellant submitted laboratory results dated January 6, 2011, a January 6, 2011 chest x-ray, a nuclear medicine report dated January 7, 2011 and a January 12, 2011 EMG. However, these reports are insufficient to establish the claim as they do not specifically address whether particular employment factors caused or contributed to a diagnosed carpal tunnel syndrome. Consequently, the medical evidence is insufficient to establish a causal relationship between specific factors or conditions of employment and the diagnosed medical conditions.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that her condition was caused, precipitated or aggravated by her employment is sufficient to establish causal relationship.<sup>6</sup> Causal relationship must be established by rationalized medical opinion evidence. On appeal, appellant submitted new evidence from Dr. Kelly and contends that this evidence is sufficient to establish her claim. However, the Board cannot consider new evidence on appeal as its jurisdiction is limited to the evidence that was before OWCP at the time it issued its final decision.<sup>7</sup>

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.

### **LEGAL PRECEDENT -- ISSUE 2**

Section 8124(b)(1) of FECA provides that "a claimant for compensation not satisfied with a decision of the Secretary ... is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his claim before a representative of the Secretary."<sup>8</sup> Section 10.617 and 10.618 of the federal regulations implementing this section of FECA provides that a claimant shall be afforded a choice of an oral hearing or a review of the written record by a representative of the Secretary.<sup>9</sup> A claimant is entitled to a hearing or review of the written record as a matter of right only if the request is filed within the requisite 30 days as determined by postmark or other carrier's date marking and before the claimant has requested

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<sup>5</sup> See *C.B.*, Docket No. 09-2027 (issued May 12, 2010) (a medical report may not be considered as probative medical evidence if there is no indication that the person completing the report qualifies as a physician as defined in 5 U.S.C. § 8101(2) and reports lacking proper identification do not constitute probative medical evidence). See 5 U.S.C. § 8101(2). This subsection defines the term "physician." See also *Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (where the Board held that medical opinion, in general, can only be given by a qualified physician).

<sup>6</sup> See *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

<sup>7</sup> See 5 U.S.C. § 501.2(c). Similarly, the Board may not consider Dr. Kelly's May 16, 2011 report, submitted to OWCP after issuance of its April 15, 2011 decision, as OWCP has not considered this report in reaching a decision.

<sup>8</sup> 5 U.S.C. § 8124(b)(1).

<sup>9</sup> 20 C.F.R. §§ 10.616, 10.617.

reconsideration.<sup>10</sup> Although there is no right to a review of the written record or an oral hearing if not requested within the 30-day time period, OWCP may within its discretionary powers grant or deny appellant's request and must exercise its discretion.<sup>11</sup> OWCP procedures require that it exercise its discretion to grant or deny a hearing when the request is untimely or made after reconsideration under section 8128(a).<sup>12</sup>

### **ANALYSIS -- ISSUE 2**

Appellant requested a review of the written record in an appeal form dated June 27, 2011. As the hearing request was made more than 30 days after issuance of the April 15, 2011 OWCP decision, her request for a review of the written record was untimely filed and she is not entitled to a review of the written record as a matter of right.

OWCP also notified appellant that it had considered the matter in relation to the issue involved and indicated that additional argument and evidence could be submitted with a request for reconsideration. It has broad administrative discretion in choosing means to achieve its general objective of ensuring that an employee recovers from his or her injury to the fullest extent possible in the shortest amount of time. An abuse of discretion is generally shown through proof of manifest error, a clearly unreasonable exercise of judgment or actions taken which are contrary to both logic and probable deductions from established facts.<sup>13</sup> There is no indication that OWCP abused its discretion in this case in finding that appellant could further pursue the matter through the reconsideration process.

Consequently, OWCP properly denied appellant's request for a review of the written record.

### **CONCLUSION**

The Board finds that appellant did not meet her burden of proof to establish that her claimed conditions were causally related to her employment. The Board further finds that OWCP properly denied her request for a review of the written record pursuant to 5 U.S.C. § 8124(b)(1).

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<sup>10</sup> *Id.* at § 10.616(a).

<sup>11</sup> *Eddie Franklin*, 51 ECAB 223 (1999); *Delmont L. Thompson*, 51 ECAB 155 (1999).

<sup>12</sup> *See R.T.*, Docket No. 08-408 (issued December 16, 2008); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.4(b)(3) (October 1992).

<sup>13</sup> *Samuel R. Johnson*, 51 ECAB 612 (2000).

**ORDER**

**IT IS HEREBY ORDERED THAT** August 8 and April 15, 2011 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: April 5, 2012  
Washington, DC

Richard J. Daschbach, Chief Judge  
Employees' Compensation Appeals Board

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

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