

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

J.M., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Bedford Park, IL, Employer**

)
)
)
)
)
)
)
)
)
)
)
)

**Docket No. 12-5
Issued: June 14, 2012**

Appearances:
Capp P. Taylor, for the appellant
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 September 14, 2011 appellant, through her representative, filed a timely appeal from the June 6, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her recurrence claim in File No. xxxxxx816, her occupational disease claim in File No. xxxxxx924 and her occupational disease claim in File No. xxxxxx992. 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.

ISSUES

The issues are: (1) whether appellant established that she sustained a recurrence of disability on February 2, 2002 due to the accepted November 20, 1985 employment injury; (2) whether appellant met her burden of proof to establish that she developed a back injury causally related to factors of her federal employment; and (3) whether appellant met her burden of proof to establish that she developed bilateral carpal tunnel syndrome causally related to factors of her federal employment

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY -- ISSUE 1

On November 20, 1985 appellant, then a 39-year-old mail clerk, sustained a traumatic injury to her right hand in the performance of duty. OWCP created File No. xxxxxx816. The claim was accepted for right villonodular synovitis of the hand.²

On July 10, 2010 appellant filed a Form CA-2a alleging that she sustained a recurrence of disability on February 2, 2002 due to her accepted 1985 injury.³ She noted her recurrence of disability as bilateral carpal tunnel syndrome due to typing daily at work. The employing establishment controverted the claim stating that appellant had retired as of July 1, 2008 with other claims pending before OWCP.⁴

In narrative statements dated May 15 and June 10, 2010, appellant alleged that her back pain and injury was a result of 28 years of lifting, pushing and pulling heavy equipment in her employment. She developed carpal tunnel from keying mail and typing. Appellant further stated that she was claiming a recurrence of carpal tunnel syndrome for her right hand and was filing a new occupational disease for her left hand and back injury.

By letter dated January 12, 2011, OWCP informed appellant that the evidence of record was insufficient to support her claim. It informed her that her original claim was accepted for right hand villonodular synovitis and requested that she provide additional factual and medical evidence within 30 days.

By letter dated February 10 and March 5, 2011, appellant stated that her right wrist and hand never healed from her November 20, 1985 injury. She complained of numbness, tingling, soreness and weakness due to lifting tubs of mail. Appellant noted that she did not realize that she had a left hand injury until an electromyography (EMG) test in 2008. She stated that she was a clerk for about 13 years and would key mail for 8 to 10 hours a day. For approximately 12 hours a day, appellant would twist, bend and lift heavy tubs of mail weighing up to 70 pounds and push and pull heavy equipment. She stated that the repetitive motions of labeling and keying mail caused her hand problems. In 1993 appellant was promoted to a supervisor and her duties

² Appellant received a schedule award for five percent impairment to her upper right extremity.

³ On February 22, 2010 appellant filed an occupational disease claim (Form CA-2) in File No. xxxxxx992 alleging that she developed degenerative disc disease and lumbar disc herniation from pulling, pushing and lifting as a result of her employment duties. On June 10, 2010 she filed a notice of occupational disease claim (Form CA-2) in File No. xxxxxx924 alleging that she developed bilateral carpal tunnel syndrome as a result of her employment duties which included lifting and keying mail and pushing and pulling heavy equipment. On August 13, 2008 appellant filed an emotional condition claim (Form CA-2) in File No. xxxxxx802 alleging emotional distress and stress as a result of her employment duties. OWCP combined File No. xxxxxx816, File No. xxxxxx992, File No. xxxxxx924 and File No. xxxxxx802 into master claim File No. xxxxxx816.

⁴ The Board notes that in claim File No. xxxxxx802, appellant was subjected to disciplinary action for falsifying her time cards and placed in an emergency administrative action status on January 24, 2007 for six months, pending disciplinary action. On September 6, 2007 she received a notice of proposed removal. Effective January 5, 2008, appellant was downgraded to the position of a Grade 5 part-time flexible window clerk at an alternative work location. Appellant was further downgraded to a Grade 3 mail handler effective February 5, 2008.

included typing for two to three hours a day, some lifting and occasionally pushing and pulling heavy equipment.

By decision dated April 19, 2011, OWCP denied appellant's recurrence claim noting that no medical evidence was provided. It further noted that her original November 20, 1985 injury was for villonodular synovitis of the hand and that her claim had never been accepted for carpal tunnel syndrome.

By letter dated May 2, 2011, appellant requested reconsideration of OWCP's decision.

By decision dated June 6, 2011, OWCP denied appellant's recurrence claim finding that the evidence was insufficient to establish that her postal duties worsened her accepted upper extremity injury.⁵

FACTUAL HISTORY -- ISSUE 2

On February 22, 2010 appellant, then a 54-year-old retired mail clerk, filed an occupational disease claim (Form CA-2) alleging that she developed degenerative disc disease and lumbar disc herniation from pulling, pushing and lifting in her federal employment over the last 29 years. She first became aware of her condition on March 22, 2007 and of its relationship to her employment on August 22, 2007. OWCP opened File No. xxxxxx992. The employing establishment controverted the claim and stated that appellant retired on July 1, 2008.

In a May 18, 2009 narrative statement, appellant reported that she sustained degenerative disc disease, disc herniation, hypertension, depressive disorder, permanent partial impairment of the right upper extremity, right carpal tunnel syndrome and scapio lunatic disassociation due to her federal employment duties which included heavy lifting, pushing and pulling equipment.

In an August 28, 2007 magnetic resonance imaging (MRI) scan of appellant's lumbar spine, Dr. Jennifer R. Menick-Thieman, Board-certified in family medicine, reported that there were changes of spondylosis with multiple degenerated discs, minimal spondylolisthesis of L4 on L5 secondary to degenerative facet joint disease, a central and right lateral disc herniation at the L5-S1 level and minimal central protrusion of the disc at the L4-L5 level.

In January 22 and May 30, 2008 medical reports, Dr. Menick-Thieman reported that appellant had degenerative disc disease at multiple levels and a right disc herniation at L5-S1 commencing approximately in August 2007. She stated that appellant was incapacitated and unable to perform her work duties secondary to unrelenting pain radiating to her right leg. Dr. Menick-Thieman opined that appellant would not recover from her incapacities and recommended physical therapy and continued treatment.

⁵ The Board notes that in its June 6, 2011 decision, OWCP issued one decision regarding appellant's three claims on appeal, File No. xxxxxx816, File No. xxxxxx992 and File No. xxxxxx924. Appellant did not appeal OWCP's April 23, 2010 denial of her emotional condition claim, File No. xxxxxx802 and OWCP did not address this claim in its June 6, 2011 decision.

In an April 22, 2008 medical report, Dr. Michael J. Kochanski, a treating chiropractor, reported that he treated appellant since October 8, 2007 for low back pain with sciatica on the right with foot numbness. He diagnosed lumbar pain due to degenerative disc and joint disease resulting in lateral canal stenosis causing radicular symptoms. Dr. Kochanski opined that prolonged standing, sitting, occasional bending, lifting and work-related stress could cause appellant's condition to regress and recommended she not work full time.

In a November 17, 2008 report, Dr. Kochanski stated that an October 17, 2008 lumbar x-ray revealed sUBLUXATIONS in appellant's lumbar spine. He noted that her lumbar pain was due to sUBLUXATIONS which led to degenerative changes in the spine, the most prominent seen at L4-L5. Dr. Kochanski opined that appellant's condition was due to prolonged and repetitive stress on her lumbar spine and was a result of years of her postal service work duties.

By letter dated April 21, 2010, OWCP informed appellant that the evidence of record was insufficient to support her claim. It requested that she provide additional factual and medical evidence within 30 days.

In a May 15, 2010 narrative statement, appellant reported that her leg and back pain began while working for the postal service. She stated that she had recurring back pain but did not know that she had a herniated disc until her August 28, 2008 MRI scan. Appellant noted that her pain became worse with sitting, standing and walking and that her injury was a result of 28 years of lifting, pushing and pulling at her employment.

By letter dated May 19, 2010, the employing establishment controverted the claim.

In support of her claim, appellant submitted medical reports dated June 30 and July 6, 2010 from Dr. Menick-Thieman who stated that appellant's initial August 28, 2007 MRI scan report of the lumbar spine showed a central and right lateral disc herniation. An April 2, 2009 MRI scan of the cervical spine showed multilevel spinal stenosis with spinal cord compression.

By decision dated September 16, 2010, OWCP denied appellant's claim finding that the medical evidence did not demonstrate that her degenerative disc disease and lumbar disc herniation were causally related to the established employment-related duties.

On October 15, 2010 appellant requested a telephone hearing before an OWCP hearing representative.

In support of her request, appellant submitted progress notes dated October 15 to December 18, 2001 noting treatment for lower back pain. She also submitted physical therapy notes dated September 11, 2007 to June 26, 2008 for her lower back condition.

At the February 7, 2011 hearing, appellant testified that she began working for the postal service on July 17, 1979. As a clerk, her duties included keying mail, lifting mail up to 70 pounds, casing mail, putting mail on the belt, loading mail in containers and bending and lifting overhead for 8 to 10 hours a day, an average of six days a week. Appellant stated that in 1993 she became a supervisor which required helping limited and light-duty employees perform the same clerk duties she was performing before, including lifting mail into and out of the containers weighing up to 70 pounds for an average of eight hours a day, five days a week. She testified

that she retired on July 1, 2008. Appellant noted that she sought treatment for her back problem in 2001 and learned she had a herniated disc after an MRI scan in 2007, which she attributed to her federal employment duties as a clerk and supervisor. The record was held open for 30 days.

In a September 5, 2010 medical report, Dr. Menick-Thieman stated that appellant sustained a work injury in March 2007.⁶ She diagnosed herniated disc with spinal stenosis at C3-4, C4-5, C5-6, herniated disc with spinal stenosis of the lumbar spine, hyperlipidemia, right hermicolecotomy and partial hysterectomy.

In a September 30, 2010 report, Dr. Kochanski stated that he had been treating appellant since October 8, 2007 for intersegmental lumbar dysfunction, lumbar disc syndrome, lumbar disc degeneration, sciatica and spondylosis without myelopathy. He opined that the repetitive trauma to the low back that occurred while working for the postal service caused damage and degenerative changes to her lumbar discs, joints and surrounding soft tissue. Dr. Kochanski concluded that the repetitive “wear and tear” caused instability in her low back, making it prone to injury.

In a March 3, 2011 medical report, Dr. N.R. Patel, Board-certified in internal medicine, reported that, based upon physical examination and review of appellant’s diagnostic tests, she had herniated disc with spinal stenosis at C3-4, C4-5, C5-6 and herniated disc with spinal stenosis in the lumbar spine. He opined that given the type of work duties and repetitive activities of pushing, pulling, standing, twisting, bending, typing and heavy lifting, that appellant developed her disability from work and that her carpal tunnel was caused by the repetitive movements and typing duties in the employing establishment.

By decision dated March 25, 2011, OWCP affirmed its September 16, 2010 decision finding that the medical evidence did not establish that appellant’s injury was causally related to the accepted factors of her federal employment. It noted that x-rays of her spine were not taken until November 17, 2008, approximately two to three months after her retirement on July 1, 2008.

On April 27, 2011 appellant, through her representative, requested reconsideration of OWCP’s decision. Appellant resubmitted her August 28, 2007 lumbar MRI scan and noted that it was taken prior to her retirement on July 1, 2008.

By decision dated June 6, 2011, OWCP affirmed its March 25, 2011 decision finding that the evidence was insufficient to establish that appellant’s back and spine condition was causally related to the established factors of her federal employment.

FACTUAL HISTORY -- ISSUE 3

On June 10, 2010 appellant, then a 54-year-old retired mail clerk, filed a notice of occupational disease claim (Form CA-2) alleging that she developed bilateral carpal tunnel syndrome as a result of her employment duties which included lifting and keying mail and

⁶ There is no information on any employment-related injury from March 2007 in the record before the Board on appeal.

pushing and pulling heavy equipment. She first became aware of her condition and of its relationship to her employment on January 22, 2007. OWCP assigned File No. xxxxxx924. The employing establishment controverted the claim stating that appellant retired on July 1, 2008.

In a May 15 and June 10, 2010 narrative statement, appellant reported that her hand injuries were a result of keying mail as a clerk for 8 to 10 hours a day. In 1993 she was promoted to a supervisor and keyed mail for two hours a day. Appellant further noted that her carpal tunnel syndrome was a result of her typing duties. She stated that her hand pain dated back to 1986.

By letter dated August 31, 2010, OWCP stated that appellant should pursue her back injury claim under claim File No. xxxxxx992 and pursue her carpal tunnel syndrome under this claim, File No. xxxxxx924. It informed her that the evidence of record was insufficient to support her claim and requested additional factual and medical evidence within 30 days.

In a November 15, 2009 medical report, Dr. Lenny Cohen, a Board-certified neurologist, reported appellant's nerve conduction study revealed abnormal. He further noted that there was electrodiagnostic evidence of a mild right and moderate left distal median neuropathy at the wrist, as seen in carpal tunnel syndrome, superimposed by a chronic radiculopathy at C5-6 level bilaterally.

By letter dated September 23, 2010, the employing establishment controverted the claim.

In a September 29, 2010 narrative statement, appellant reported that she worked as a clerk from 1979 to 1993. Her duties included keying mail, lifting up to 70 pounds and pushing and pulling heavy equipment. In 1993, appellant was promoted to a supervisor and her duties included keying mail and writing reports through the continual movement of her hand and wrist. She stated that she had carpal tunnel syndrome in her wrist since 1985 which never healed.

In medical reports dated September 30, 2009 to September 15, 2010, Dr. Robert Wysocki, a Board-certified orthopedic surgeon, reported that appellant had a history of bilateral hand numbness and tingling which dated back to 1986 when she was diagnosed with carpal tunnel syndrome. Upon physical examination and review of appellant's September 15, 2009 electromyogram (EMG) nerve conduction study, he diagnosed bilateral carpal tunnel syndrome and recommended surgical intervention.

In medical reports dated June 30 and September 23, 2010, Dr. Menick-Thieman diagnosed carpal tunnel syndrome and cleared appellant for carpal tunnel release surgery.

By decision dated December 6, 2010, OWCP denied appellant's claim finding that the medical evidence failed to establish that her carpal tunnel syndrome was causally related to her accepted employment factors.

On May 18, 2011 appellant requested reconsideration of OWCP's decision.

In medical reports dated February 2 and May 9, 2011, Dr. John D. Sonnenberg, a Board-certified orthopedic surgeon, reported that appellant was a retired postal employee who sought

treatment with him in November 2010 for numbness in both hands. He noted that appellant was a postal employee for 29 years and that her work activities included typing, working with a keyboard and pushing and pulling repetitively. Dr. Sonnenberg further noted that she suffered injuries to both hands while she was employed. Upon physical examination and review of appellant's nerve conduction study, he diagnosed bilateral carpal tunnel syndrome. Dr. Sonnenberg opined that appellant's carpal tunnel was a direct result of her repetitive work activities and that the constant use of her hands over many years provided the mechanism of development due to repetitive actions. He also noted that physical examination was consistent with appellant's account of her employment activities and the lack of other vocational activities or injuries which could cause this problem.

In a February 8, 2011 medical report, Dr. Subhash K. Shah, a Board-certified neurologist reported that an EMG study provided evidence of carpal tunnel syndrome and radiculopathy. Dr. Shah noted that the electrical findings were suggestive of bilateral carpal tunnel syndrome, right greater than left and there could be mild distal axonal involvement of the right median nerve.

In a March 3, 2011 medical report, Dr. Patel diagnosed carpal tunnel syndrome and herniated disc. He opined that, given the type of work duties and repetitive activities of pushing, pulling, standing, twisting, bending, typing and heavy lifting, that appellant developed her disability from work and that her carpal tunnel was caused by the repetitive movements and typing duties in the employing establishment.

By decision dated June 6, 2011, OWCP found that the evidence was insufficient to establish that appellant's upper extremity condition was causally related to the accepted factors of her federal employment.

LEGAL PRECEDENT -- ISSUE 1

A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.⁷

OWCP procedures state that a recurrence of disability includes a work stoppage caused by a spontaneous material change, demonstrated by objective findings, in the medical condition that resulted from a previous injury or occupational illness without an intervening injury or new exposure to factors causing the original illness. It does not include a condition that results from a new injury, even if it involves the same part of the body previously injured.⁸

⁷ 20 C.F.R. § 10.5(x); *see S.F.*, 59 ECAB 525 (2008). *See* 20 C.F.R. § 10.5(y) (defines recurrence of a medical condition as a documented need for medical treatment after release from treatment for the accepted condition).

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(b) (May 1997). *Kenneth R. Love*, 50 ECAB 193, 199 (1998).

A person who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which she claims compensation is causally related to the accepted injury. This burden of proof requires that an employee furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.⁹ Where no such rationale is present, medical evidence is of diminished probative value.¹⁰ To establish that a claimed recurrence of the condition was caused by the accepted injury, medical evidence of bridging symptoms between the present condition and the accepted injury must support the physician's conclusion of a causal relationship.¹¹

ANALYSIS -- ISSUE 1

OWCP found that appellant sustained a traumatic injury on November 20, 1985 and accepted her claim for right hand villonodular synovitis. Appellant claimed a recurrence of disability as of February 2, 2002 due to residuals of her accepted hand injury. She did not claim any lost time from work. The medical evidence of record, however, is insufficient to establish that appellant sustained a recurrence of disability as a result of her accepted injury. Therefore, she has failed to meet her burden of proof.

On her Form CA-2a, appellant claimed a recurrence of her right-handed carpal tunnel syndrome. The Board notes, however, that her original November 20, 1985 claim was not accepted for carpal tunnel syndrome. Rather, the claim was accepted for right hand villonodular synovitis. Appellant has not provided any medical evidence noting a spontaneous worsening of her right hand villonodular synovitis.

Further, the record does not contain a rationalized medical opinion supporting that appellant's current right hand carpal tunnel syndrome is causally related to her 1985 injury of right hand villonodular synovitis. Appellant did not submit any medical evidence in this claim, File No. xxxxxx816. She did, however, provide a number of medical reports in claim Nos. xxxxxx992 and xxxxxx924 which provided a diagnosis of bilateral carpal tunnel syndrome.

In medical reports dated September 30, 2009 to September 15, 2010, Dr. Wysocki diagnosed bilateral carpal tunnel syndrome, noting that appellant had a history of bilateral hand numbness and tingling dating back to 1986 when she was initially diagnosed with carpal tunnel syndrome. His medical report is insufficient to establish that appellant's carpal tunnel syndrome is causally related to her 1985 hand injury. While Dr. Wysocki noted symptoms of hand numbness and tingling dating back to 1986, he attributes appellant's symptoms to carpal tunnel syndrome and not her accepted right hand villonodular synovitis. He failed to provide an

⁹ *Mary A. Ceglia*, 55 ECAB 626 (2004).

¹⁰ *See Ronald C. Hand*, 49 ECAB 113 (1997); *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

¹¹ *C.W.*, Docket No. 07-1816 (issued January 16, 2009).

opinion that appellant was disabled as a result of her 1985 accepted right hand injury and did not explain how her disabling condition was causally related to the employment injury. Therefore, Dr. Wysocki's reports are of diminished probative value.¹²

In medical reports dated February 2 and May 9, 2011, Dr. Sonnenberg reported that appellant was a retired postal employee who sought treatment with him in November 2010 for numbness in both hands. He noted that she suffered injuries to both hands while she was employed. Dr. Sonnenberg diagnosed bilateral carpal tunnel syndrome and opined that her injury was a direct result of her repetitive work activities and that the constant use of her hands over many years at the postal service. He further reported that physical examination was consistent with appellant's account of her employment activities and the lack of other vocational activities and injuries which could cause this problem.

Dr. Sonnenberg's reports do not establish a causal relationship between appellant's accepted right hand villonodular synovitis in 1985 and her current bilateral carpal tunnel syndrome. Rather, he attributed appellant's bilateral carpal tunnel syndrome to the daily occupational duties of her position as a mail clerk. These constitute new employment exposures rather than spontaneous recurrence of disability.¹³ Dr. Sonnenberg even opined that appellant's bilateral carpal tunnel syndrome was not a result of other injuries. As he failed to explain how appellant's current condition was causally related to the accepted injury, Dr. Sonnenberg's reports are of limited probative value.¹⁴

In a March 3, 2011 medical report, Dr. Patel diagnosed herniated disc with spinal stenosis in lumbar spine and carpal tunnel syndrome. He opined that given the type of work duties and repetitive activities of pushing, pulling, standing, twisting, bending, typing and heavy lifting, that appellant developed her disability from work and that her carpal tunnel was caused by the repetitive movements and typing duties in the postal service. Dr. Patel has attributed her bilateral carpal tunnel syndrome to her daily occupational duties. Thus, he opined that appellant's claimed disability was not a spontaneous occurrence, but was a new injury. Therefore, Dr. Patel's report is of limited probative value.¹⁵

The remaining medical evidence of record is also insufficient to establish a causal relationship between appellant's accepted right hand villonodular synovitis in 1985 and her current bilateral carpal tunnel syndrome. Dr. Cohen's November 15, 2009 report revealed electro diagnostic evidence of a mild right and moderate left distal median neuropathy at the wrist, as seen in carpal tunnel syndrome. In medical reports dated June 30 and September 23, 2010, Dr. Menick-Thieman diagnosed carpal tunnel syndrome and cleared appellant for carpal tunnel release surgery. Dr. Shah's February 8, 2011 report provided a diagnosis of bilateral carpal tunnel syndrome and radiculopathy. While appellant's physicians provided a diagnosis of

¹² See *supra* note 10.

¹³ 20 C.F.R. § 10.5(x); see *Theresa L. Andrews*, 55 ECAB 719 (2004).

¹⁴ *L.G.*, Docket No. 10-608 (issued November 2, 2010).

¹⁵ *L.G.*, Docket No. 11-142 (issued August 12, 2011).

bilateral carpal tunnel syndrome, none of the reports explained how the newly diagnosed injury was causally related to the only accepted condition, namely right hand villonodular synovitis, rather than to an intervening event or new exposure to her work environment. Medical evidence which does not offer an opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹⁶ Therefore, the remaining reports are insufficient to establish appellant's claim.

Appellant did not submit any medical reports from a physician who, on the basis of a complete and accurate factual and medical history, concluded that she was totally disabled as of February 2, 2002 due to residuals of her accepted injury.¹⁷ None of the medical reports submitted establish a causal relationship between appellant's accepted right hand villonodular synovitis in 1985 and her current bilateral carpal tunnel syndrome.¹⁸ As appellant has not submitted any medical evidence showing that she sustained a recurrence of disability due to her accepted employment injury, the Board finds that she has not met her burden of proof.

LEGAL PRECEDENT -- ISSUES 2 & 3

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.¹⁹ These are the essential elements of every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.²⁰

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.²¹ 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

¹⁶ *A.D.*, 58 ECAB 149 (2006); *Michael E. Smith*, 50 ECAB 313 (1999).

¹⁷ *Id.*

¹⁸ *M.J.*, Docket No. 11-1092 (issued December 14, 2011).

¹⁹ *Gary J. Watling*, 52 ECAB 278 (2001); *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

²⁰ *Michael E. Smith*, 50 ECAB 313 (1999).

²¹ *Elaine Pendleton*, 40 ECAB 1143 (1989).

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.²²

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.²³ 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. 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.²⁴

ANALYSIS -- ISSUE 2

OWCP accepted that appellant engaged in repetitive lifting, pushing and pulling in her employment activities as a mail clerk. It denied her claim, however, on the grounds that the evidence failed to establish a causal relationship between those activities and her back injuries. The Board finds that the medical evidence of record is insufficient to establish that appellant sustained a back injury causally related to factors of her employment as a mail clerk.

In medical reports dated August 28, 2007 to September 5, 2010, Dr. Menick-Thieman noted that appellant sustained a work injury in March 2007. He stated that appellant's initial August 28, 2007 MRI scan report of the lumbar spine showed a central and right lateral disc herniation and reported that appellant had degenerative disc disease at multiple levels commencing approximately in August 2007. An April 2, 2009 MRI scan of the cervical spine showed multilevel spinal stenosis with spinal cord compression. Dr. Menick-Thieman further stated that appellant was incapacitated and unable to perform her work duties secondary to unrelenting pain radiating to her right leg.

Dr. Menick-Thieman did not determine that appellant's condition was work related and did not offer a rationalized opinion on causal relationship between appellant's diagnosed conditions and the factors of employment implicated in the claim.²⁵ Though the physician provided a diagnosis, none of her reports mentioned an opinion on the cause of appellant's back condition. Further, her medical reports noted that appellant sustained a work injury in

²² See *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

²³ See 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

²⁴ *James Mack*, 43 ECAB 321 (1991).

²⁵ *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value); *Jimmie H. Duckett*, 52 ECAB 332 (2001).

March 2007 but provided no details regarding this incident or injury.²⁶ This makes it unclear if appellant's back condition is a result of a traumatic injury from March 2007 rather than an injury produced by appellant's work environment over a period longer than a single workday or shift, as alleged by appellant in this claim.²⁷ Medical reports not containing adequate rationale on causal relationship are of diminished probative value on that issue and are insufficient to meet an employee's burden of proof.²⁸ Therefore, Dr. Menick-Thieman's medical reports are insufficient to meet appellant's burden of proof.

In medical reports dated April 22, 2008 to September 30, 2010, Dr. Kochanski, a chiropractor, reported that he had been treating appellant since October 8, 2007 for low back pain with sciatica on the right with foot numbness. He diagnosed lumbar pain due to degenerative disc and joint disease resulting in lateral canal stenosis causing radicular symptoms and opined that prolonged standing, sitting, occasional bending, lifting and work-related stress could cause her condition to regress. In a November 17, 2008 report, Dr. Kochanski stated that an October 17, 2008 lumbar x-ray revealed subluxations in appellant's lumbar spine. He noted that her lumbar pain was due to subluxations which led to degenerative changes in the spine, the most prominent seen at L4-L5. Dr. Kochanski opined that appellant's condition was due to prolonged and repetitive stress on her lumbar spine and was a result of years of working for the postal service. He further opined that the repetitive trauma to the low back that occurred while working for the postal service caused damage and degenerative changes to her lumbar discs, joints and surrounding soft tissue. He concluded that the repetitive "wear and tear" caused instability in her low back, making it prone to injury.

In assessing the probative value of chiropractic evidence, the initial question is whether the chiropractor is considered a physician under 5 U.S.C. § 8101(2). A chiropractor is not considered a physician under FECA unless it is established that there is a spinal subluxation as demonstrated by x-ray to exist.²⁹ As Dr. Kochanski diagnosed subluxation of the lumbar spine from an October 17, 2008 x-ray, he is considered to be a "physician" under FECA.³⁰

The Board finds, however, that Dr. Kochanski's reports are insufficient to establish that appellant sustained an injury as a result of her employment duties. While Dr. Kochanski stated an opinion on causal relationship, he failed to provide an explanation of how appellant's work duties would cause her spinal subluxation. He also failed to adequately describe appellant's work duties, did not specify how long she worked as clerk and the periods and the frequency of

²⁶ There is no information on any employment-related injury from March 2007 in the record before the Board on appeal.

²⁷ 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).

²⁸ *Ceferino L. Gonzales*, 32 ECAB 1591 (1981).

²⁹ *See Kathryn Haggerty*, 45 ECAB 383 (1994).

³⁰ A chiropractor may interpret his x-rays to the same extent as any other physician. 20 C.F.R. § 10.311(c). *See Mary A. Ceglia*, 55 ECAB 626 (2004).

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.³¹

While Dr. Kochanski made other diagnoses, including degenerative changes of the spine and joint disease, as a chiropractor, he is limited to the diagnosis and treatment of a spinal subluxation. He is not considered a physician for diagnosis and treatment of the other diagnosed conditions.³² Dr. Kochanski's opinion regarding the cause of these conditions is still of no probative value.

In a March 3, 2011 medical report, Dr. Patel diagnosed appellant with herniated disc with spinal stenosis at C3-4, C4-5, C5-6 and herniated disc with spinal stenosis in the lumbar spine. He opined that given the type of work duties and repetitive activities of pushing, pulling, standing, twisting, bending, typing and heavy lifting, that appellant developed her disability from work.

The Board finds that the opinion of Dr. Patel is not well rationalized. Dr. Patel failed to provide an adequate history of appellant's back condition. While he concluded that appellant's work activities caused her herniated disc and spinal stenosis, he failed to explain how these activities would cause her injury. Further, Dr. Patel did not specify how long she worked as clerk, the number of hours she worked a day and the periods and frequency of the physical movements and tasks. 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.³³ Without medical reasoning explaining how appellant's work duties caused or contributed to her back condition, Dr. Patel's report is insufficient to meet appellant's burden of proof.³⁴

The remaining medical evidence is also insufficient to establish a causal relationship between appellant's back injuries and factors of her federal employment. Appellant submitted unsigned progress notes dated October 15 to December 18, 2001 noting treatment for lower back pain. While this supports her allegation that her back condition began while she was employed for the post service, medical reports lacking proper identification, such as unsigned treatment notes, do not constitute probative medical evidence.³⁵ Appellant also submitted physical therapy notes dated September 11, 2007 to February 13, 2008 for her lower back condition. Physical

³¹ *Supra* note 29.

³² *K.L.*, Docket No. 11-955 (issued October 18, 2011).

³³ *See Lee R. Haywood*, 48 ECAB 145 (1996).

³⁴ *C.B.*, Docket No. 08-1583 (issued December 9, 2008).

³⁵ *See R.M.*, 59 ECAB 690 (2008); *see also* 5 U.S.C. § 8101(2).

therapists are not physicians under FECA; therefore, their reports do not constitute competent medical evidence in support of a claim.³⁶

In the instant case, the record lacks rationalized medical evidence establishing a causal relationship between appellant's back injuries and her employment duties as a mail clerk. Thus, appellant has failed to meet her burden of proof.

ANALYSIS -- ISSUE 3

OWCP accepted that appellant engaged in repetitive typing and keying mail in her employment activities as a mail clerk. It denied her claim, however, on the grounds that the evidence failed to establish a causal relationship between those activities and her bilateral carpal tunnel syndrome. The Board finds that the medical evidence of record is insufficient to establish that appellant sustained bilateral carpal tunnel syndrome causally related to factors of her employment as a mail clerk.

In medical reports dated February 2 and May 9, 2011, Dr. Sonnenberg reported that appellant was a retired postal employee who sought treatment with him in November 2010 for numbness in both hands. He further noted that she suffered injuries to both hands while she was employed. Dr. Sonnenberg reported that appellant worked for the postal service for 29 years and that her work activities involved constant repetitive activities with her hands which included typing, working with a keyboard, pushing and pulling and lifting heavy tubs and trays. Upon physical examination and review of appellant's nerve conduction study, Dr. Sonnenberg diagnosed bilateral carpal tunnel syndrome. He opined that appellant's carpal tunnel was a direct result of her repetitive work activities and the constant use of her hands over many years provided the mechanism of development for carpal tunnel syndrome due to repetitive actions. Dr. Sonnenberg also noted that physical examination was consistent with appellant's account of her employment activities and lack of other vocational activities and injuries which could cause this problem.

The Board finds that the opinion of Dr. Sonnenberg is not well rationalized. Dr. Sonnenberg diagnosed bilateral carpal tunnel syndrome and attributed appellant's injury to repetitive activities with her hands such as typing, working with a keyboard, pushing, pulling and lifting heavy tubs and trays over her 29 years as a postal employee. He did not provide any account of appellant's medical history other than stating she suffered injuries to both of her hands while she was employed. It is unclear if Dr. Sonnenberg is referring to her current condition of carpal tunnel syndrome or a different employment-related hand injury. He did not make any mention of appellant's November 20, 1985 right hand injury of villonodular synovitis in claim File No. xxxxxx816, whether it had resolved and how it could be related to appellant's current condition. Without identifying appellant's previous hand injuries, it appears that Dr. Sonnenberg did not have a proper factual background to make the determination that appellant's bilateral carpal tunnel syndrome was not a result of a preexisting condition. While

³⁶ 5 U.S.C. § 8102(2) of FECA provides as follows: (2) '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 Jennifer L. Sharp*, 48 ECAB 209 (1996); *Thomas R. Horsfall*, 48 ECAB 180 (1996); *Barbara J. Williams*, 40 ECAB 649 (1988).

Dr. Sonnenberg stated an opinion on causal relationship, he failed to provide an explanation of how appellant's work factors would cause her bilateral carpal tunnel syndrome other than stating repetitive activities. Further, he failed to adequately describe appellant's work duties, did not specify the number of hours she worked in a day and the days per week, how many hours she typed, pushed, pulled and lifted tubs in a day and the periods 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.³⁷ 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.³⁸ Dr. Sonnenberg's reports do not meet that standard and are insufficient to meet appellant's burden of proof.

In a March 3, 2011 medical report, Dr. Patel diagnosed herniated disc with spinal stenosis in lumbar spine and carpal tunnel syndrome. He opined that given the type of work duties and repetitive activities of pushing, pulling, standing, twisting, bending, typing and heavy lifting, that appellant developed her disability from work and that her carpal tunnel was caused by the repetitive movements and typing duties in the postal service.

Dr. Patel's report failed to address appellant's prior medical history regarding her carpal tunnel syndrome as well as any other prior hand injuries. He did not set out adequate detail pertaining to appellant's work duties. While Dr. Patel opined that her bilateral carpal tunnel syndrome was a result of her repetitive movements and typing duties at the post office, he failed to provide an opinion on how this would contribute to or aggravate her injury. Medical reports not containing adequate rationale on causal relationship are of diminished probative value and are insufficient to meet an employee's burden of proof.³⁹ Thus, Dr. Patel's report is insufficient to meet appellant's burden of proof in establishing causal relationship between her bilateral carpal tunnel syndrome and her factors of employment as a mail clerk.

The remaining medical evidence of record is also insufficient to establish a causal relationship between appellant's bilateral carpal tunnel syndrome and her employment duties. Dr. Wysocki's reports dated September 30, 2009 to September 15, 2010 diagnosed bilateral carpal tunnel syndrome, noting that appellant had a history of carpal tunnel syndrome dating back to 1986. Dr. Cohen's November 15, 2009 report revealed electrodiagnostic evidence of a mild right and moderate left distal median neuropathy at the wrist, as seen in carpal tunnel syndrome. In medical reports dated June 30 and September 23, 2010, Dr. Menick-Thieman diagnosed carpal tunnel syndrome and cleared appellant for carpal tunnel release surgery. Dr. Shah's February 8, 2011 report provided a diagnosis of bilateral carpal tunnel syndrome and radiculopathy.

³⁷ *Supra* note 29.

³⁸ *Supra* note 34.

³⁹ *Supra* note 29.

While the above medical records addressed appellant's treatment and injury, the physicians failed to state any causal relationship between appellant's bilateral carpal tunnel syndrome and her factors of employment as a mail clerk. The Board has 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.⁴⁰ Without medical reasoning explaining how appellant's employment caused her bilateral carpal tunnel syndrome, these reports are not sufficient to meet appellant's burden of proof.⁴¹

Appellant has failed to submit any rationalized medical evidence to establish that her bilateral carpal tunnel syndrome is causally related to factors of her federal employment. In this claim, appellant is alleging an occupational injury from her overall duties as a mail clerk. In the instant case, the record lacks rationalized medical evidence establishing a causal relationship between the accepted factors of employment and appellant's bilateral carpal 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 failed to establish that she sustained a recurrence disability commencing February 2, 2002 due to her accepted November 20, 1985 employment injury.

The Board also finds that appellant did not meet her burden of proof to establish that her back injuries are causally related to factors of her employment as a mail clerk.

The Board further finds that appellant did not meet her burden of proof to establish that her bilateral carpal tunnel syndrome is causally related to factors of her employment as a mail clerk.

⁴⁰ *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

⁴¹ *Supra* note 35.

ORDER

IT IS HEREBY ORDERED THAT the June 6, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 14, 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