

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

D.D., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Tampa, FL, Employer)

**Docket No. 12-241
Issued: June 1, 2012**

Appearances:
Appellant, pro se
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 November 14, 2011 appellant filed a timely appeal from an October 18, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her occupational exposure 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 as a result of factors of her federal employment.

FACTUAL HISTORY

On September 7, 2011 appellant, then a 49-year-old mail handler, filed an occupational disease claim (Form CA-2) alleging that she developed bilateral carpal tunnel syndrome as a

¹ 5 U.S.C. § 8101 *et seq.*

result of unwrapping plastic magazine bundles. She first realized her condition was caused by her federal employment on September 4, 2011 and notified her supervisor on September 7, 2011.

In a September 7, 2011 narrative statement, appellant reported that on September 4, 2011 she began to have problems with both hands while at work. She informed her coworkers and supervisors but stated that she did not want to go to the emergency room.

In a September 7, 2011 narrative statement, Joseph Hamorski Jr., appellant's supervisor, reported that on September 4, 2011 appellant was holding her left hand and claimed her fingers were moving on their own. Appellant informed him that she was having intermittent pain in her hand which sometimes started in her left forearm. She refused medical treatment and was taken to Willie Bradley's office. In a narrative statement, Mr. Bradley reported that on September 4, 2011, appellant was complaining that her hands were acting strange but noted that she was not reporting an accident.

In support of her claim, appellant submitted an official USPS position description for a mail handler which specified her duties and the number of hours a day these tasks were performed.

By letter dated September 16, 2011, OWCP informed appellant that the evidence of record was insufficient to support her claim. Appellant was advised of the medical and factual evidence needed and was directed to submit it within 30 days. In another letter of the same date, OWCP requested additional factual information from the employing establishment. The record before the Board contains no response from either appellant or the employing establishment.

By decision dated October 18, 2011, OWCP denied appellant's claim on the grounds that the evidence was insufficient to establish that she sustained an injury. It found that the occupational exposure occurred as alleged; however, that the evidence failed to provide a firm medical diagnosis which could be reasonably attributed to the accepted employment factor.

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.² These are the essential elements of every compensation claim regardless of whether the claim is predicated on a traumatic injury or occupational disease.³

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

² Gary J. Watling, 52 ECAB 278 (2001); Elaine Pendleton, 40 ECAB 1143, 1154 (1989).

³ Michael E. Smith, 50 ECAB 313 (1999).

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.⁴ 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 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.⁵

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.⁶ 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.⁷

ANALYSIS

OWCP accepted that the occupational exposure occurred as alleged from unwrapping magazines. The issue is whether appellant submitted sufficient medical evidence to establish that the employment exposure caused bilateral carpal tunnel syndrome. The Board finds that she did not submit medical evidence to support that she developed bilateral carpal tunnel syndrome causally related to factors of her employment as a mail handler.⁸ The evidence is deficient on two grounds: (1) it fails to provide a firm diagnosis; and (2) there is no narrative opinion on causal relationship between a diagnosed condition and factors of her employment as a mail handler.

Appellant must establish all of the elements of her claim for her injury to be compensable. She must prove her employment, time, place and manner of injury, a resulting personal injury and that her injury arose in the performance of duty. On her Form CA-2,

⁴ *Elaine Pendleton*, *supra* note 2.

⁵ *See Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

⁶ *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

⁷ *James Mack*, 43 ECAB 321 (1991).

⁸ *See Robert Broome*, 55 ECAB 339 (2004).

appellant described her duties as a mail handler which included unwrapping plastic magazine bundles and attached a USPS mail handler position description. She alleged that these duties caused her carpal tunnel syndrome and provided witness statements from Mr. Hamorski and Mr. Bradley, who confirmed that she was complaining of hand pain on September 4, 2011. By letter dated September 16, 2011, OWCP informed appellant of detailed medical and factual evidence needed to support her claim; however, the record before the Board contains no additional evidence.

Appellant did not submit medical evidence with her occupational exposure claim. Because no medical evidence containing a physician's opinion was received prior to OWCP's October 18, 2011 decision, she failed to establish a firm medical diagnosis of her injury.⁹

An award of compensation may not be based on surmise, conjecture or speculation.¹⁰ To establish a firm medical diagnosis and causal relationship, appellant must submit a physician's report in which the physician reviews those factors of employment alleged to have caused her condition and, taking these factors into consideration, as well, as findings upon examination and her medical history, explain how these employment factors caused or aggravated any diagnosed condition and present medical rationale in support of his opinion.¹¹ Her recitation of the facts does not support her allegation that her employment factors as a mail handler caused her injury¹² nor do the statements by her coworkers confirming allegations of hand pain. Where appellant fails to submit any medical evidence, he or she has not established that the injury occurred as alleged.¹³

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 she sustained bilateral carpal tunnel syndrome in the performance of duty, as alleged.

⁹ *Victor J. Woodhams*, 41 ECAB 345 (1989).

¹⁰ *D.D.*, 57 ECAB 734 (2006).

¹¹ *Supra* note 6.

¹² *Paul Foster*, 56 ECAB 1943 (2004); *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

¹³ *Tracey P. Spillane*, 54 ECAB 608 (2003); 5 U.S.C. § 8101(5).

ORDER

IT IS HEREBY ORDERED THAT the October 18, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 1, 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