

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

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**J.C., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
West Sacramento, CA, Employer**

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**Docket No. 11-1820  
Issued: March 2, 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 2, 2011 appellant filed a timely appeal from a May 6, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her claim for an employment-related injury and a July 13, 2011 nonmerit decision denying 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 this case.<sup>2</sup>

**ISSUES**

The issues are: (1) whether appellant has met her burden of proof to establish that she developed bilateral carpal tunnel syndrome in the performance of duty causally related to factors of her federal employment; and (2) whether OWCP properly denied her request for a review of the written record as untimely.

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

<sup>2</sup> The Board notes that, following the issuance of the July 13, 2011, OWCP's decision and on appeal, appellant submitted new evidence. The Board is precluded from reviewing evidence which was not before OWCP at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c)(1).

## **FACTUAL HISTORY**

On March 8, 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 due to factors of her federal employment, such as repetitive pushing, pulling, lifting and throwing stacks of mail. She first became aware of her condition on December 27, 2010 and attributed it to her employment on February 14, 2011.

Appellant submitted a December 27, 2010 report by Dr. Vinay M. Reddy, a Board-certified physical medicine and rehabilitation physician, who obtained lower extremity electrodiagnostic and nerve conduction studies. A needle electromyogram (EMG) of the bilateral lower extremities and lumbar paraspinals demonstrated evidence of increased polyphasic motor unit activity in muscles sharing the bilateral L5 and S1 nerve root innervation. Dr. Reddy opined that there was evidence of chronic irritation of the bilateral L5 and S1 nerve roots. He stated that appellant had already been diagnosed with cervical radiculopathy and bilateral carpal tunnel syndrome.

By letter dated March 23, 2011, OWCP notified appellant regarding the deficiencies of her claim and requested additional factual and medical evidence. It allotted 30 days for her to respond to its inquiries. Appellant did not respond.

By decision dated May 6, 2011, OWCP denied the claim on the basis that the medical evidence submitted was insufficient to establish causal relationship between the diagnosed condition and factors of appellant's federal employment.

By appeal request form postmarked June 17, 2011 and received by OWCP on June 21, 2011, appellant requested a review of the written record by an OWCP hearing representative. In a June 6, 2011 report, Dr. Reddy diagnosed moderate bilateral carpal tunnel syndrome. He reported that appellant had been working for the employing establishment for six years, the last three of which involved work that was very repetitious, including a lot of sorting, pushing, pulling and repetitive use of the upper extremities. Dr. Reddy stated that prior to this job she did not have any pain or numbness in the hands or wrist and now had symptoms and EMG findings consistent with carpal tunnel syndrome. He opined that it was reasonable to believe that this could potentially be due to her federal employment.

By decision dated July 13, 2011, OWCP denied appellant's request for a review of the written record. It found that her request was untimely because it was not made within 30 days of its May 6, 2011 decision. OWCP exercised its discretion and further denied appellant's request for the reason that the relevant issue of the case could be addressed by requesting reconsideration and submitting evidence not previously considered by OWCP.

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

An employee seeking benefits under FECA<sup>3</sup> 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

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<sup>3</sup> 5 U.S.C. §§ 8101-8193.

States” within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA and that an injury<sup>4</sup> was sustained in the performance of duty. These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>5</sup>

To establish that an injury was sustained in the performance of duty in a claim for an occupational disease claim, an employee must submit the following: (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.<sup>6</sup>

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical evidence. Rationalized medical opinion evidence is medical evidence which includes a physician’s rationalized opinion on whether there is a causal relationship between the employee’s diagnosed condition and the implicated employment factors.<sup>7</sup> The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.<sup>8</sup>

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

The Board finds that appellant has failed to meet her burden of proof in establishing that she developed an occupational disease in the performance of duty. The record reflects that she was diagnosed with bilateral carpal tunnel syndrome and that her federal employment requires sorting, pushing, pulling and repetitive use of the upper extremities. However, appellant has not established that her condition is causally related to any of these factors of her federal employment.

In support of her claim, appellant submitted reports by Dr. Reddy, who diagnosed moderate bilateral carpal tunnel syndrome after conducting diagnostic tests. Dr. Reddy did not, however, address the issue of causal relationship between the carpal tunnel syndrome and her employment factors. Lacking thorough medical rationale on the issue of causal relationship, the

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<sup>4</sup> OWCP’s regulations define an occupational disease or illness 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).

<sup>5</sup> See *J.C.*, Docket No. 09-1630 (issued April 14, 2010). See also *Ellen L. Noble*, 55 ECAB 530 (2004).

<sup>6</sup> *Id.* See also *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

<sup>7</sup> See *D.N.*, Docket No. 10-1762 (issued May 10, 2011).

<sup>8</sup> See *D.E.*, Docket No. 07-27 (issued April 6, 2007). See also *Victor J. Woodhams*, 41 ECAB 345 (1989).

medical report of him is insufficient to establish that appellant sustained an employment-related injury.<sup>9</sup>

As appellant has not submitted any rationalized medical evidence to support her allegation that she sustained an injury causally related to the indicated employment factors, she failed to meet her burden of proof to establish a 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.

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

Section 8124(b)(1) of the FECA provides: “Before review under section 8128(a) of this title [relating to reconsideration], a claimant for compensation not satisfied with a decision of the Secretary under subsection (a) of this section is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on [her] claim before a representative of the Secretary.”<sup>10</sup>

Section 10.615 of Title 20 of the Code of Federal Regulations provides, “A hearing is a review of an adverse decision by a hearing representative. Initially, the claimant can choose between two formats: An oral hearing or a review of the written record.”<sup>11</sup> The hearing request must be sent within 30 days (as determined by postmark or other carrier’s date marking) of the date of the decision for which a hearing is sought.<sup>12</sup> OWCP has discretion, however, to grant or deny a request that is made after this 30-day period.<sup>13</sup> In such a case, it will determine whether to grant a discretionary hearing and, if not, will so advise the claimant with reasons.<sup>14</sup>

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

Appellant had 30-calendar days from OWCP’s May 6, 2011 decision or until June 6, 2011, to request a review of the written record. Because her request was postmarked June 17, 2011, her request was untimely. Appellant was not entitled to a review of the written record as a matter of right under section 8124(b)(1) of FECA. Exercising its discretion to grant a review of the written record, OWCP denied her request on the grounds that she could equally well address

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<sup>9</sup> Although appellant submitted the June 6, 2011 report by Dr. Reddy with his request for review of the written record by an OWCP hearing representative, OWCP did not review this report when it issued the July 13, 2011 nonmerit decision denying appellant’s request. As such, the Board may not review it for the first time on appeal. See 20 C.F.R. § 501.2(c)(1).

<sup>10</sup> 5 U.S.C. § 8124(b)(1).

<sup>11</sup> 20 C.F.R. § 10.615.

<sup>12</sup> *Id.* at § 10.616(a).

<sup>13</sup> See *G.W.*, Docket No. 10-782 (issued April 23, 2010). See also *Herbert C. Holley*, 33 ECAB 140 (1981).

<sup>14</sup> *Id.* See also *Rudolph Bermann*, 26 ECAB 354 (1975).

any issues in her case by requesting reconsideration. Because reconsideration exists as an alternative appeal right to address the issues raised by the May 6, 2011 decision, the Board finds that OWCP did not abuse its discretion in denying appellant's untimely request for a review of the written record.<sup>15</sup>

**CONCLUSION**

The Board finds that appellant failed to meet her burden of proof to establish that she developed bilateral carpal tunnel syndrome in the performance of duty causally related to factors of her federal employment. The Board further finds that OWCP properly denied appellant's request for a review of the written record as untimely filed.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated July 13 and May 6, 2011 are affirmed.

Issued: March 2, 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

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<sup>15</sup> See *Gerard F. Workinger*, 56 ECAB 259 (2005).