



## **FACTUAL HISTORY**

On November 29, 2011 appellant, then a 55-year-old management assistant, filed an occupational disease claim alleging that her carpal tunnel condition was due to her employment duties. Specifically, she attributed it to using her right hand for scrolling, typing, numbers and the mouse and being on the keyboard for at least seven hours per day.

Appellant noted that she first became aware of the condition on October 3, 2011, but did not realize it was employment related until October 30, 2011.

By letter dated December 6, 2011, OWCP informed appellant regarding the medical and factual evidence to submit to support her claim. It noted that she had not submitted any evidence with her claim and advised her as to the elements required to support an occupational disease claim. Appellant was given 30 days to provide the requested evidence.

In response to OWCP's letter, appellant submitted medical and factual evidence. The factual evidence consisted of statements from appellant and Diane Papke, her supervisor, and a position description. The medical evidence consisted of reports from Dr. Heath Henbest, a treating osteopath, specializing in family medicine.

In a November 4, 2011 duty status report (Form CA-20), appellant was released to resume work that day with restrictions by Dr. Henbest.

In a November 10, 2011 letter, Dr. Henbest reported seeing appellant on November 4, 2011 for right wrist pain complaints. He opined that appellant's complaints were due to the repetitive right wrist and hand use required by her employment duty of typing.

By decision dated February 28, 2012, OWCP denied appellant's claim as the record contained no medical evidence containing a diagnosis.

## **LEGAL PRECEDENT**

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

OWCP regulations define the term occupational disease or illness as a condition produced by the work environment over a period longer than a single workday or shift.<sup>6</sup> To

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<sup>3</sup> 5 U.S.C. § 8101 *et seq.*

<sup>4</sup> *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

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

<sup>6</sup> 20 C.F.R. § 10.5(ee). *See S.M.*, Docket No. 09-2290 (issued July 12, 2010); *Donald W. Wenzel*, 56 ECAB 390 (2005).

establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit: (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 diagnosed condition is causally related to the employment factors identified by the claimant.<sup>7</sup>

If a claimant does establish an employment factor, he or she must submit medical evidence showing that a medical condition was caused by such a factor.<sup>8</sup> The medical evidence required to establish causal relationship is generally rationalized medical opinion evidence from a physician. 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>9</sup>

### ANALYSIS

OWCP accepted that the occupational exposure occurred as alleged from keyboard use and using her right hand for scrolling, typing, numbers and the mouse. It found that the evidence of record was devoid of any medical evidence diagnosing a condition. The issue is whether appellant has established that she sustained a carpal tunnel condition causally related to the accepted employment factors. The Board finds that appellant has failed to meet her burden of proof.

The medical evidence submitted by appellant fails to provide a physician's opinion with a firm diagnosis or an opinion explaining how her carpal tunnel condition was caused or aggravated by the accepted employment factors. In the November 4, 2011 duty status report, Dr. Henbest noted work restrictions but provided no diagnosis. Similarly, in his November 10, 2011 report, Dr. Henbest provided no diagnosis or mentioned any medical condition. As the medical evidence of record does not contain any firm diagnosis, rationale or explanation of the mechanism of injury arising from her accepted employment duties, appellant failed to meet her burden.<sup>10</sup>

An award of compensation may not be based on surmise, conjecture or speculation.<sup>11</sup> Neither the fact that appellant's claimed condition became apparent during a period of employment nor her belief that her condition was aggravated by her employment is sufficient to establish causal relationship.<sup>12</sup> The fact that a condition manifests itself or worsens during a

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<sup>7</sup> *D.U.*, Docket No. 10-144 (issued July 27, 2010); *Roy L. Humphrey*, 57 ECAB 238 (2005); *Frankie A. Farinacci*, 56 ECAB 723 (2005).

<sup>8</sup> *C.D.*, Docket No. 09-1881 (issued April 20, 2010); *Effie Morris*, 44 ECAB 470 (1993).

<sup>9</sup> *D.S.*, Docket No. 09-860 (issued November 2, 2009); *I.J.*, 59 ECAB 408 (2008); *B.B.*, 59 ECAB 234 (2007); *Solomon Polen*, 51 ECAB 341 (2000); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>10</sup> *Gary M. DeLeo*, 56 ECAB 656 (2005); *Victor J. Woodhams*, *supra* note 9.

<sup>11</sup> *E.J.*, Docket No. 09-1481 (issued February 19, 2010); *D.D.*, 57 ECAB 734 (2006); *Paul E. Thams*, 56 ECAB 503 (2005).

<sup>12</sup> *W.D.*, Docket No. 09-658 (issued October 22, 2009); *Sandra D. Pruitt*, 57 ECAB 126 (2005).

period of employment<sup>13</sup> or that work activities produce symptoms revelatory of an underlying condition<sup>14</sup> does not raise an inference of causal relationship between a claimed condition and an employment incident.

Because appellant has not submitted competent medical opinion evidence containing a firmly diagnosed medical condition or one that soundly explains how the accepted employment incident caused or aggravated a firmly diagnosed medical condition, the Board finds that appellant has not established the essential element of a diagnosed medical condition.

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.

### **CONCLUSION**

The Board finds that appellant did not meet her burden of proof to establish that she sustained right carpal tunnel syndrome in the performance of duty, as alleged.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated February 28, 2012 is affirmed.

Issued: November 20, 2012  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>13</sup> *E.A.*, 58 ECAB 677 (2007); *Albert C. Haygard*, 11 ECAB 393 (1960).

<sup>14</sup> *D.E.*, 58 ECAB 448 (2007); *Fabian Nelson*, 12 ECAB 155 (1960).