

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

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| P.M., Appellant |) | |
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| and |) | Docket No. 12-1201 |
| |) | Issued: October 17, 2012 |
| U.S. POSTAL SERVICE, POST OFFICE, Berkeley Heights, NJ, Employer |) | |
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Appearances: *Case Submitted on the Record*
James D. Muirhead, Esq., for the appellant
Office of Solicitor, for the Director

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge

JURISDICTION

On May 10, 2012 appellant, through her attorney, timely appealed the April 9, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP) which affirmed the denial of her occupational disease 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 sustained an injury in the performance of duty on or about November 1, 2010.

FACTUAL HISTORY

On March 18, 2011 appellant, then a 53-year-old letter carrier, filed an occupational disease claim (Form CA-2) for bilateral carpal tunnel syndrome.² She first became aware of this

¹ 5 U.S.C. §§ 8101-8193.

² Appellant has an accepted traumatic injury claim for fractured right index finger which she sustained on November 21, 2009.

condition on November 1, 2010, but did not realize it was caused or aggravated by her employment until March 17, 2011. Appellant explained that as a letter carrier she performed repetitive duties which included casing mail, bending her wrists, reaching, lifting heavy trays of mail, loading her truck and carrying a mailbag.

Appellant submitted a January 2011 prescription note from Dr. Michael J. Kricko, an internist, on which he diagnosed left carpal tunnel syndrome and prescribed a wrist brace.

Appellant also submitted an unsigned report dated March 17, 2011 from Dr. Dean T. Filion, a Board-certified physiatrist, who diagnosed bilateral carpal tunnel syndrome (CTS), bilateral wrist tenosynovitis and history of right index finger fracture status post three surgeries. Dr. Filion noted that appellant worked as a letter carrier and complained of bilateral hand numbness and tingling, left greater than right.³ He also noted a prior history of CTS dating back to 2008.⁴ Appellant had previously been referred to a hand specialist but she decided against surgical intervention. Dr. Filion also referenced appellant's 2009 right index finger fracture and subsequent surgeries. He indicated that, when appellant returned to work in November 2010, she experienced some dysesthesias in her bilateral hands. Over the past four months, appellant reportedly had progressive numbness and tingling, left greater than right, affecting the first three digits of both hands. Dr. Filion noted that appellant was concerned about aggravating her CTS.

A March 21, 2011 note from Summit Medical Group indicated that appellant had been a patient since 2009. A handwritten notation indicated that appellant had right thumb tenosynovitis secondary to work use. The note further indicated that appellant's prior index finger injury also contributed to her current condition. The healthcare provider's signature is illegible.

Appellant later submitted a February 14, 2011 impairment rating from Dr. David Weiss, a specialist in pain management. The upper extremity rating pertained to appellant's November 21, 2009 right index finger injury. Dr. Weiss also provided a lower extremity rating with respect to a December 12, 2006 right toe injury. The February 14, 2011 report did not include a diagnosis of CTS or otherwise address any bilateral hand/wrist complaints.

Appellant also submitted a signed April 29, 2011 report from Dr. Filion who indicated, *inter alia*, that appellant's CTS and symptoms were causally related to her work as a letter carrier which was a "repetitive[-]type job."

By decision dated June 28, 2011, OWCP denied appellant's claim for bilateral CTS because she failed to establish that the diagnosed condition was employment related.

Appellant's counsel requested an oral hearing. He also submitted an August 2, 2011 report from Dr. Filion. Counsel continued to attribute appellant's current bilateral hand/wrist condition to her "repetitive[-]type work" as a letter carrier. Dr. Filion noted that appellant's letter carrier position required repetitive use of her hands and wrists, including casing mail with

³ Other than noting that appellant was a letter carrier, Dr. Filion did not comment on any specific employment duties that either caused or contributed to the diagnosed bilateral hand/wrist condition.

⁴ Dr. Filion's current diagnosis was based in part on an October 2008 electrodiagnostic, electromyogram/nerve conduction velocity (EMG/NCV) study. He recommended that appellant undergo a repeat study.

repetitive bending, twisting and reaching with her hands. He also noted that appellant's duties involved repetitive wrist flexion and extension.

In a decision dated September 30, 2011, the hearing representative remanded the case for further medical development. She found that, while Dr. Filion's reports were not sufficient to satisfy appellant's burden of proof, the evidence submitted was sufficient to warrant further development by OWCP.

On remand, OWCP referred appellant to Dr. Jeffrey F. Lakin, a Board-certified orthopedic surgeon, who examined her on October 27, 2011. Dr. Lakin's orthopedic examination was unremarkable and he indicated there was no diagnosis related to a November 1, 2010 date of injury. He noted that appellant was not currently suffering from any medical condition as a result of her employment duties. Appellant had no evidence of any carpal tunnel syndrome, no peripheral nerve entrapment, no tendinopathy and no instability of the wrist or hand as related to the November 1, 2010 date of injury. Dr. Lakin further indicated that appellant could perform her full-time, regularly assigned duties as a letter carrier without restriction. He also advised that no further medical treatment or surgery was necessary.

In a decision dated November 16, 2011, OWCP denied appellant's claim because the evidence established that she did not have a medical condition.

On January 6, 2012 appellant's counsel requested reconsideration. He purportedly submitted a copy of an October 27, 2008 EMG, but no such evidence was received by OWCP.

By decision dated April 9, 2012, OWCP denied modification of its November 16, 2011 decision.

LEGAL PRECEDENT

A claimant seeking benefits under FECA has the burden of establishing the essential elements of her claim by the weight of the reliable, probative and substantial evidence, including that an injury was sustained in the performance of duty as alleged and that any specific condition or disability claimed is causally related to the employment injury.⁵

To establish that an injury was sustained in the performance of duty, 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;

⁵ 20 C.F.R. § 10.115(e), (f) (2011); see *Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996). Causal relationship is a medical question, which generally requires rationalized medical opinion evidence to resolve the issue. See *Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factors must be based on a complete factual and medical background. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors. *Id.*

and (3) medical evidence establishing that the diagnosed condition is causally related to the identified employment factors.⁶

ANALYSIS

The Board finds that the weight of the medical evidence as represented by Dr. Lakin's October 27, 2011 second opinion, does not establish the existence of bilateral carpal tunnel syndrome. Appellant initially submitted a January 2011 prescription pad note from Dr. Kricko who diagnosed left carpal tunnel syndrome. However, Dr. Kricko did not provide a basis for his diagnosis and did not attribute this condition to appellant's employment as a letter carrier. The March 21, 2011 note from Summit Medical Group is similarly deficient because the author of the note is unclear and the diagnosis of right thumb tenosynovitis secondary to work use is unsupported.

On appeal, appellant's counsel argued that an October 27, 2008 EMG supported a diagnosis of bilateral CTS. He also argued that Dr. Weiss' February 14, 2011 report supported a finding of bilateral CTS. Contrary to counsel's argument, the record does not include an October 27, 2008 EMG. He also incorrectly characterized Dr. Weiss' report as including a diagnosis of carpal tunnel syndrome. That report pertained to other unrelated injuries involving appellant's right index finger and her right middle toe and it did not include a specific diagnosis of bilateral CTS.

Dr. Filion provided several reports in which he diagnosed bilateral carpal tunnel syndrome. His March 17, 2011 diagnosis was based in part on an October 2008 EMG/NCV study which is not part of the current record. Also, Dr. Filion was aware that appellant worked as a letter carrier, but at the time he did not specifically relate the diagnosis to appellant's employment. In subsequent reports, Dr. Filion attributed appellant's bilateral CTS to her letter carrier duties which he characterized as involving "repetitive type work." His latest report dated August 2, 2011 included a general description of appellant's letter carrier duties as including casing mail with repetitive bending, twisting and reaching with her hands and repetitive wrist flexion and extension. The Board concurs with the hearing representative's assessment that Dr. Filion's opinion while insufficient to carry appellant's burden, was sufficient to warrant further development by OWCP.

In accordance with the hearing representative's September 30, 2011 directive, OWCP referred appellant to Dr. Lakin for a second opinion evaluation. Based on his October 27, 2011 examination and a review of appellant's medical records, Dr. Lakin found no evidence of carpal tunnel syndrome.⁷ He noted that appellant's current physical examination was unremarkable and she was not suffering from any medical condition as a result of her employment duties. The Board finds that OWCP properly relied on Dr. Lakin's rationalized opinion as a basis for finding that appellant had not established that she sustained bilateral CTS as a result of her letter carrier duties.

⁶ *Victor J. Woodhams, supra* note 5.

⁷ Dr. Lakin reviewed Dr. Filion's above-noted reports as well as Dr. Weiss' February 14, 2011 report.

CONCLUSION

Appellant failed to establish that she sustained an injury in the performance of duty on or about November 1, 2010.

ORDER

IT IS HEREBY ORDERED THAT the April 9, 2012 decision of the Office of Workers' Compensation Programs is affirmed.⁸

Issued: October 17, 2012
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

⁸ Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision. *See* 5 U.S.C. § 8128 (a); 20 C.F.R. §§ 10.605, 10.607.