



## **FACTUAL HISTORY**

On April 13, 2010 appellant, then a 40-year-old nursing assistant (escort), filed an occupational disease claim alleging that she experienced tingling and numbness in both wrists and forearms as a result of her employment. She related that her primary care doctor diagnosed her with bilateral carpal tunnel syndrome and a pinched nerve. Appellant explained that she assisted with patient care, which required lifting, pulling and repetitive pushing of wheelchairs. She first became aware of her condition on January 1, 2010 and realized that it resulted from her employment on April 10, 2010.<sup>2</sup>

By letter dated April 29, 2010, OWCP advised appellant that the evidence of record was insufficient to establish her claim. It requested detailed information regarding the activities she believed contributed to her condition and a comprehensive medical report with a diagnosis, results of examinations and tests, and a physician's opinion with medical reasons explaining the cause of her condition.

Appellant submitted an unsigned January 30, 2010 electromyography (EMG) and nerve conduction study (NCV) diagnostic examination report printed with the name Dr. Vathiar Tazudeen, a Board-certified psychiatrist and neurologist.

In an April 13, 2010 handwritten treatment note, an unknown provider with an illegible signature related appellant's complaints of numbness and tenderness in her arm that started at her wrists and went up to her shoulder. Examination revealed positive Tinel's and Phalen's tests. Appellant was authorized to return to full duty.

By decision dated June 16, 2010, OWCP denied appellant's occupational disease claim finding insufficient medical evidence to establish that her bilateral carpal tunnel syndrome was causally related to factors of her employment.

On June 29, 2010 appellant requested a telephonic hearing, which was held on October 19, 2010. She was represented by her attorney, Alan J. Shapiro. Tisha Harvey, an employee relations specialist, was present for the employing establishment. Appellant related that she had worked as a certified nursing assistant (CNA) for the employing establishment five days a week for 19 years and also for Provena Medical Center two weekends out of the month for the past 5 years. She described her duties at both jobs as transferring patients, which required lifting and pulling, and pushing wheelchairs and stretchers. Appellant related the medical treatment she received for her wrist and hand pain and noted that an EMG performed by Dr. Tazudeen confirmed that she had bilateral carpal and cubital tunnel. She reported that on October 13, 2010 she had right carpal tunnel release and ulnar nerve release surgery performed by Dr. Mark Greatting, a Board-certified orthopedic surgeon, who informed her that her medical condition was related to her history of work. The hearing representative stated that he was concerned about whether appellant's condition was solely related to her employment at the

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<sup>2</sup> The record reveals that appellant submitted two occupational disease claims that were assigned two different OWCP file numbers: xxxxxx065 and xxxxxx066. These files were combined under master case number xxxxxx065.

employing establishment or if there could be some connection to her employment at the Provena Medical Center.

Prior to her hearing, appellant submitted handwritten illegible progress notes dated August 18, 2008 to June 22, 2010. She also submitted a description of her job position and her resume.

In a June 15, 2010 report, Dr. Bikramjit Malhotra, a Board-certified internist, stated that he had been appellant's physician for the last few years. He listed her current diagnoses as bilateral carpal tunnel syndrome, left cubital neuritis, hyperlipidemia and insulin-dependent diabetes. Dr. Malhotra opined that appellant's carpal tunnel syndrome appeared to be related to her work of repetitive lifting, bending, and data entries using repeated flexion and extension movements of the wrists.

In an unsigned July 19, 2010 EMG and NCV diagnostic report printed with Dr. Tazudeen, appellant was diagnosed with moderately severe bilateral cubital tunnel syndrome and mild to moderate bilateral carpal tunnel syndrome.

In an October 1, 2010 handwritten medical note, Dr. Greatting stated that he examined appellant on August 9, 2010 and noted appellant's complaints of numbness, tingling, and swelling in her right and left hands. He diagnosed carpal tunnel and cubital tunnel syndrome based on EMG findings and opined that her condition was caused by excessive lifting, pulling and CNA work. Dr. Greatting explained that the history of work was related to her diagnosis. He noted that appellant was disabled from work until surgery.

Appellant submitted an October 26, 2010 notice of a claim against Provena Medical Center.

On December 13, 2010 OWCP received a December 2009 position description for a VA nursing assistant escort. The principle duties of the position were described as follows:

“Primarily escorts patients between VAJHCS and other healthcare facilities without direct supervision or the presence of other nursing personnel and escorts patients to appointments and therapies within this facility. Duties may be performed in other areas of the hospital or other facilities. Provides specialized personal nursing care to residents and performs treatments and procures requiring skills and extensive knowledge specific to resident conditions, medical treatment, and an understanding of the effects of treatment.”

The physical requirements of the position were described as follows:

“Nursing assistant duties require regular and long periods of standing, walking, and moving about the work unit. Working with residents requires regular and recurring bending, stooping, stretching, pushing, balancing, reaching and similar activities. Employee is alert to methods to deescalate residents and minimize risk of injury to residents and/or staff.”

The safe handling and movement of patients were described as follows:

“Uses proper techniques, appropriate mechanical lifting devices, and other approved equipment/aids during patient handling.”

In a January 13, 2011 decision, an OWCP hearing representative affirmed the June 16, 2010 decision denying appellant’s occupational disease claim on the grounds of insufficient medical evidence to establish that her bilateral carpal tunnel syndrome was related to her employment. The hearing representative found that while appellant had maintained that her duties at the VA included repetitive lifting and pulling of patients, as well as pushing of wheelchairs, the position description indicated that appellant used mechanical devices to lift appellant and the position description did not indicate that the position’s physical demands required any regular lifting that could have caused the diagnosed medical conditions.

On September 27, 2011 appellant submitted a request for reconsideration.

In August 9 and October 1, 2010 reports, Dr. Greatting examined appellant for bilateral hand numbness, tingling and swelling. He reviewed her medical history and noted that various diagnostic tests revealed severe bilateral cubital tunnel syndrome and mild to moderate bilateral carpal tunnel syndrome. Dr. Greatting reported that appellant worked 8 to 12 hours per day as a CNA at the employing establishment for many years. Appellant’s work duties involved lifting, positioning, and pushing patients, doing multiple bed and clothing changes, and helping to bathe and feed patients. She related that her symptoms increased while doing her work activities. The examination revealed good radial pulse bilaterally and intact sensation to light touch. Tinel’s test was positive over both cubital tunnels with symptoms radiating in the ulnar nerve distribution. Phalen’s and compression tests over both carpal tunnels were also positive. Dr. Greatting diagnosed carpal tunnel and cubital tunnel syndrome and recommended surgery. He opined that based on appellant’s work history, her work activities caused, contributed or aggravated her bilateral cubital and carpal tunnel syndrome.

In an August 26, 2010 report, Dr. Greatting indicated that appellant was scheduled for ulnar nerve release surgeries of the right and left elbows.

In an October 13, 2010 operative report, Dr. Greatting noted appellant’s diagnoses of right cubital and carpal tunnel syndrome and her complaints of chronic numbness and tingling in her right arm. He described the right carpal tunnel and ulnar nerve release of the right elbow procedure.

In an October 27, 2010 report, Dr. Greatting stated that appellant was seen for a follow-up examination after undergoing surgery for her bilateral carpal and cubital tunnel syndrome. He opined that appellant was healing well from the surgery. Dr. Greatting reported that appellant could perform light activities but could not lift or carry more than five pounds with her right arm. He authorized her to return to work on December 6, 2010.

In a November 3, 2010 physical therapy report, a physical therapist noted that appellant underwent occupational therapy from November 3 to December 22, 2010. She restricted appellant to no lifting, carrying and pulling.

In a December 1, 2010 discharge report, a physician with an illegible signature noted that appellant finished her occupational therapy and was able to return to work.

In December 2, 2010 and January 7, 2011 reports, Dr. Greatting noted that appellant underwent surgery on October 13, 2010 for her bilateral carpal tunnel syndrome. He related that appellant's numbness on the right side had resolved and that her strength felt good. Dr. Greatting authorized her to return to work without restrictions. He reported that appellant worked full time at the employing establishment and part time at Provena Medical Center performing the same work activities, which included lifting, positioning and pushing patients. Dr. Greatting related that appellant changed multiple beds, helped change clothes multiple times for days and did bathing activities of the patients. He stated that, because appellant's symptoms increased while performing her work duties, he believed that her work activities caused, contributed to, or aggravated her cubital and carpal tunnel syndrome bilaterally. Dr. Greatting reported that both jobs had contributed to her condition.

By decision dated December 15, 2011, OWCP denied modification of the June 16, 2010 decision. It determined that appellant submitted new medical evidence sufficient to warrant merit review but denied modification finding that the medical evidence failed to establish that her bilateral carpal tunnel syndrome resulted from her employment.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of her claim by the weight of the reliable, probative, and substantial evidence<sup>3</sup> including that she sustained an injury in the performance of duty and that any specific condition or disability for work for which she claims compensation is causally related to that employment injury.<sup>4</sup> In an occupational disease claim, appellant's burden requires submission of 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>5</sup>

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.<sup>6</sup> 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

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<sup>3</sup> *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

<sup>4</sup> *M.M.*, Docket No. 08-1510 (issued November 25, 2010); *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>5</sup> *D.U.*, Docket No. 10-144 (issued July 27, 2010); *R.H.*, 59 ECAB 382 (2008); *Ernest St. Pierre*, 51 ECAB 623 (2000).

<sup>6</sup> *I.R.*, Docket No. 09-1229 (issued February 24, 2010); *W.D.*, Docket No. 09-658 (issued October 22, 2009); *D.I.*, 59 ECAB 158 (2007).

specified employment factors or incident.<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> The mere fact that work activities may produce symptoms revelatory of an underlying condition does not raise an inference of an employment relation. Such a relationship must be shown by rationalized medical evidence of a causal relation based upon a specific and accurate history of employment conditions which are alleged to have caused or exacerbated a disabling condition.<sup>9</sup>

### ANALYSIS

The Board finds that appellant has failed to provide sufficient medical evidence to establish that she sustained bilateral carpal tunnel syndrome as a result of her employment duties.

Appellant submitted various reports by Dr. Greatting. He reviewed her medical history and noted that various diagnostic tests revealed severe bilateral cubital tunnel syndrome and mild-to-moderate bilateral carpal tunnel syndrome. He related that appellant worked 8 to 12 hours per day as a CNA at the employing establishment for many years and described her work duties as requiring lifting, positioning, and pushing patients, doing multiple bed and clothing changes, and helping to bathe and feed patients. In an October 1, 2010 handwritten note, Dr. Greatting opined that her condition was caused by excessive lifting, pulling and CNA work. He believed that her work activities at the employing establishment and Provena Medical Center, contributed to, or aggravated her cubital and carpal tunnel syndrome bilaterally. Dr. Greatting's opinion, however, did not address the fact that appellant used mechanical devices to assist in lifting patients and other equipment aides and had never reviewed the particular job description or duties of appellant at her federal employment. The Board has held that medical opinions based on an incomplete or inaccurate history are of diminished probative value.<sup>10</sup> Furthermore, while Dr. Greatting provided a conclusion regarding causal relationship he did not provide medical rationale to support his conclusion.<sup>11</sup> The need for such rationale is important in this case because appellant indicated that she worked two jobs and performed similar duties at both jobs. In the absence of rationalized medical opinion evidence, the Board finds that these reports are insufficient to establish appellant's claim.

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<sup>7</sup> *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>8</sup> *D.S.*, Docket No. 09-860 (issued November 2, 2009); *B.B.*, 59 ECAB 234 (2007); *Solomon Polen*, 51 ECAB 341 (2000).

<sup>9</sup> *Patricia J. Bolleter*, 40 ECAB 373 (1988).

<sup>10</sup> See *John W. Montoya*, 54 ECAB 306 (2003); *James A. Wyrick*, 31 ECAB 1805 (1980).

<sup>11</sup> *S.E.*, Docket No. 08-2214 (issued May 6, 2009); *T.M.*, Docket No. 08-975 (issued February 6, 2009) (medical reports that contain a conclusion regarding causal relationship which is unsupported by medical rationale are of limited probative value).

Appellant also submitted a June 15, 2010 report by Dr. Malhotra, which stated that appellant's carpal tunnel syndrome appeared to be related to her work of repetitive lifting, bending and data entries. The Board finds that his opinion lacks probative value because it is vague and equivocal, and failed to explain the causal relationship between appellant's bilateral carpal tunnel syndrome and her employment duties.<sup>12</sup>

Lastly, appellant also submitted various treatment notes by unknown providers with ineligible signatures and unsigned January 30, 2010 EMG and NCV reports. The Board has previously held, however, that reports that are unsigned or that bear illegible signatures cannot be considered as probative medical evidence because they lack proper identification.<sup>13</sup> Similarly, the November 3, 2010 physical therapy report is also of no probative value as physical therapists are not considered "physicians" under FECA.<sup>14</sup>

The Board finds that appellant has not provided reasoned medical opinion evidence to establish that her bilateral carpal tunnel syndrome was causally related to her employment duties. Because she has not provided such rationalized medical opinion evidence in this case, she has failed to meet her burden of proof.

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 has not met her burden of proof to establish that her bilateral carpal tunnel syndrome was causally related to factors of her employment.

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<sup>12</sup> *Roy L. Humphrey*, 57 ECAB 238, 242 (2005); *Michael E. Smith*, 50 ECAB 313 (1999).

<sup>13</sup> *Thomas L. Agee*, 56 ECAB 465 (2005); *Richard F. Williams*, 55 ECAB 343 (2004).

<sup>14</sup> Section 8102(2) provides that the term "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. 5 U.S.C. § 8102(2).

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 15, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 15, 2013  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board