

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

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**K.P., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Bladensburg, OH, Employer**

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**Docket No. 12-1355  
Issued: January 18, 2013**

*Appearances:*

*Alan J. Shapiro, Esq., for the appellant  
Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

RICHARD J. DASCHBACH, Chief Judge  
PATRICIA HOWARD FITZGERALD, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On June 12, 2012 appellant, through her attorney, filed a timely appeal from an April 13, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP) and a May 7, 2012 nonmerit decision denying her request for reconsideration. 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.

**ISSUES**

The issues are: (1) whether appellant met her burden of proof to establish that she sustained a recurrence of her accepted carpal tunnel syndrome as of January 11, 2012; and (2) whether OWCP properly denied her request for further merit review under 5 U.S.C. § 8128(a).

**FACTUAL HISTORY**

On April 27, 2011 appellant, then a 55-year-old postmaster, filed a claim for occupational disease, alleging that she developed carpal tunnel syndrome as a result of her employment

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

factors. OWCP accepted her claim for carpal tunnel syndrome of the right wrist and she returned to regular duty without restriction beginning August 25, 2011.

Appellant filed a claim for recurrence for her carpal tunnel condition on February 10, 2012. She claimed that she was unable to work due to this recurrence of disability as of January 11, 2012.

Along with her claim, appellant submitted a January 31, 2012 report from Dr. Gregory Cush, a Board-certified orthopedic surgeon. The report noted her complaint of shoulder pain and wrist pain, and reviewed diagnostic studies for her right shoulder and both wrists. Dr. Cush diagnosed appellant with rotator cuff syndrome and osteoarthritis of the shoulder. He treated her with a steroid injection and recommended icing of the shoulder and inflammatory medication.

In a February 21, 2012 development letter, OWCP advised appellant of the deficiencies of her claim, and requested additional evidence, including medical evidence addressing how her current condition was causally related to the accepted injury and explaining why appellant was disabled from work.

In response to OWCP's request, appellant submitted a February 20, 2012 attending physician's report from Dr. Cush, who diagnosed her with recurrent right carpal tunnel and checked "yes" to indicate that her condition was caused by her employment activity. In a duty status report dated January 31, 2012, Dr. Cush stated that appellant could not resume work.

In a letter received by OWCP on March 14, 2012, appellant explained that she had returned to work too soon following her May 2011 surgery and that she still had shooting pains in her right wrist. She also submitted several diagnostic reports and medical reports dated from 2007 to 2011 relating to her spine and right shoulder condition.

OWCP received a letter from the employing establishment on April 10, 2012 controverting appellant's recurrence claim alleging that she stopped work in January 2012 due to a nonwork-related emotional condition. On April 10, 2012 it received an April 5, 2012 report from a licensed social worker who summarized her nonwork-related stress factors and diagnosed major depression and anxiety disorder.

By decision dated April 13, 2012, OWCP denied appellant's recurrence claim on the grounds that the medical evidence submitted did not establish that the claimed recurrence was causally related to her accepted injury, and did not establish that she was disabled during the time period alleged.

Appellant disagreed with the decision and submitted a reconsideration request on April 17, 2012.

In an April 12, 2012 report, received by OWCP on April 23, 2012, Dr. Cush stated that he had reviewed appellant's nerve conduction study, which revealed a mild cubital tunnel syndrome and no evidence of recurrent carpal tunnel syndrome.

OWCP also received an April 19, 2012 attending physician's report from Dr. Cush, which noted right hand and wrist pain, and indicated that appellant's pain followed her previous carpal tunnel release in May, 2011. Dr. Cush stated that she was totally disabled for all work

during the period January 31 through July 1, 2012. Also attached to the medical report was a March 22, 2012 EMG study signed by Dr. Martin Taylor, a Board-certified neurologist, who found chronic denervation in the right “APB” consistent with appellant’s history of previous carpal tunnel syndrome, but with no current sensory or motor loss.

In a May 7, 2012 decision, OWCP denied appellant’s request for merit review on the grounds that she did not submit relevant new evidence.

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

A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.<sup>2</sup>

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between her recurrence of disability and the employment injury.<sup>3</sup>

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

Appellant filed a notice of recurrence alleging that her accepted carpal tunnel condition worsened on January 11, 2012, causing disability from work. The Board finds that appellant has not established a recurrence of disability.

The relevant medical evidence appellant submitted in support of her claim consisted of attending physician’s reports from Dr. Cush, dated January 31 and February 20, 2012.

In his January 31, 2012 report, Dr. Cush noted appellant’s history of carpal tunnel syndrome, but following examination he diagnosed rotator cuff syndrome and osteoarthritis of the right shoulder. As he did not address current findings of carpal tunnel syndrome, this report did not support a finding of a spontaneous recurrence of her accepted right carpal tunnel syndrome. Dr. Cush also completed a duty status report on January 31, 2012 in which he related that appellant could not resume work. He offered no explanation, however, as to why appellant was disabled and whether the stated disability was due to recurrence of appellant’s accepted carpal tunnel syndrome.

Dr. Cush’s February 20, 2012 attending physician’s report diagnosed appellant with recurrent right carpal tunnel. He also indicated with check marks that the condition was work related and that it was a preexisting condition. However, Dr. Cush provided no medical rationale for his findings. He recommended that appellant undergo nerve conduction studies, and well as an electromyogram, he did not explain the basis for his finding of recurrent right carpal tunnel syndrome, absent these, or any other test results. Furthermore, while Dr. Cush again indicated by check mark that appellant’s condition was causally related to the accepted injury, the Board has held that, when a physician’s opinion on causal relationship consists only of checking yes to

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<sup>2</sup> 20 C.F.R. § 10.5(x); *see also S.F.*, 59 ECAB 525 (2008).

<sup>3</sup> *Dominic M. DeScala*, 37 ECAB 369, 372 (1986); *Bobby Melton*, 33 ECAB 1305, 1308-09 (1982).

a form question, that opinion has little probative value and is insufficient to establish causal relationship.<sup>4</sup> Regarding the issue of disability, he also did not explain why she was unable to work due to the alleged recurrence of the carpal tunnel syndrome, since in his January report he had related that her current diagnoses related to her shoulder and not her right wrist. Appellant did not furnish an affirmative opinion from a physician whose conclusion is supported by sound medical reasoning.

The Board finds that the medical evidence was insufficient to establish that appellant sustained a spontaneous recurrence of carpal tunnel syndrome, which caused disability as of January 11, 2012.

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

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation.<sup>5</sup> OWCP's regulations provide that it may review an award for or against compensation at any time on its own motion or upon application. The employee shall exercise her right through a request to the district OWCP.<sup>6</sup>

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument that: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.<sup>7</sup>

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

By decision dated April 13, 2012, OWCP denied appellant's recurrence claim. On April 17, 2012 appellant submitted a request for reconsideration. In a decision dated May 7, 2012, OWCP denied her request for reconsideration. The Board finds that OWCP properly denied appellant's request for reconsideration.

In support of her request for reconsideration, appellant submitted April 12 and 19, 2012 reports from Dr. Cush. These reports did not provide new and relevant evidence in support of her claim, while they were repetitive of earlier reports noting her ongoing complaints, Dr. Cush in fact reported that she did not have recurrent carpal tunnel syndrome. Also the March 22, 2012 EMG study, merely documented appellant's denervation from her previously accepted condition, but noted no current sensory loss or weakness of the wrist. This EMG study therefore offered no new evidence supporting a diagnosis of recurrent carpal tunnel syndrome. Appellant, therefore,

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<sup>4</sup> See *B.B.*, Docket No. 12-327 (issued June 15, 2012).

<sup>5</sup> 5 U.S.C. § 8128(a); see also *D.L.*, Docket No. 09-1549 (issued February 23, 2010); *W.C.*, 59 ECAB 372 (2008).

<sup>6</sup> 20 C.F.R. § 10.605; see also *R.B.*, Docket No. 09-1241 (issued January 4, 2010); *A.L.*, Docket No. 08-1730 (issued March 16, 2009).

<sup>7</sup> *Id.* at § 10.606(b); see also *L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

did not submit any new and relevant evidence, which was support of her claim and not previously considered.<sup>8</sup>

The Board accordingly finds that appellant did not meet a requirements of 20 C.F.R. § 10.606(b). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

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**

Appellant has not established a recurrence of her accepted right carpal tunnel syndrome. OWCP did not abuse its discretion in denying merit review of the claim.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated May 7 and April 13, 2012 are affirmed.

Issued: January 18, 2013  
Washington, DC

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

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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

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<sup>8</sup> *Billy B. Scoles*, 57 ECAB 258 (2005).