

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

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G.L., Appellant

and

U.S. POSTAL SERVICE, POST OFFICE,  
Swedesboro, NJ, Employer

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**Docket No. 12-1727  
Issued: March 5, 2013**

*Appearances:*  
Thomas R. Uliase, Esq., for the appellant  
Office of Solicitor, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

PATRICIA HOWARD FITZGERALD, Judge  
ALEC J. KOROMILAS, Alternate Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On August 15, 2012 appellant, through his attorney, filed a timely appeal from a May 18, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP) denying his occupational disease claim. 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.

**ISSUE**

The issue is whether appellant sustained a bilateral wrist condition causally related to factors of his federal employment.

**FACTUAL HISTORY**

On September 19, 2008 appellant, then a 49-year-old mail handler, filed an occupational disease claim alleging that he sustained bilateral carpal tunnel syndrome causally related to

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

factors of his federal employment. The employing establishment stated that he was working in a modified position following hernia surgery.

On September 29, 2008 OWCP requested that appellant submit additional factual and medical information, including a detailed medical report addressing the cause of any diagnosed condition and its relationship to the identified work duties. In a statement dated November 10, 2008, appellant described his employment duties. He related that his condition started two years earlier when he returned to work following a shoulder injury.

In a duty status report dated September 22, 2008, Dr. Michael A. Renzi, an osteopath and Board-certified internist, diagnosed bilateral carpal tunnel syndrome. He checked “yes” that the condition corresponded to the history provided on the form of the injury occurring after lifting letter trays. Dr. Renzi found that appellant could perform his usual employment.

By decision dated December 11, 2008, OWCP denied appellant’s claim on the grounds that he did not establish a medical condition causally related to the accepted employment factors.

On December 16, 2008 appellant, through his attorney, requested an oral hearing before an OWCP hearing representative.

In a report dated December 3, 2008, Dr. Renzi noted that appellant was recovering from hernia surgery. He diagnosed bilateral carpal tunnel syndrome with positive Tinel’s and Phalen’s signs in both wrists. Dr. Renzi referred appellant for diagnostic studies to verify the diagnosis. He released appellant for work, but noted that he “may not be able to tolerate the demands of his current job description and will require limited duty.”

A nerve conduction study and electromyogram performed on January 12, 2009 revealed “electrophysiologic evidence of a bilateral median neuropathy at the wrist, moderate on the left and mild at [right]. There is no evidence of a cervical radiculopathy, plexopathy or other mononeuropathy.” The study indicated that appellant’s “hand pain may be psoriatic arthritis, in addition to the [c]arpal [t]unnel [s]yndrome.”

In a report dated April 3, 2009, Dr. Renzi related that he was treating appellant for bilateral carpal tunnel syndrome that began in June 2008 “when he reported bilateral hand tingling for the previous [three] months.” He found that diagnostic studies showed bilateral neuropathy and stated:

“In my medical opinion, beyond a reasonable medical certainty, [appellant] has sustained bilateral median nerve entrapment as a result of his job as a mail handler at the [employing establishment]. [Appellant] performs multiple hand grasps and individual finger movements multiple times per day over the years of his employment. This job description is a classic predisposing occupational hazard for the development of carpal tunnel syndrome. [Appellant’s] nerve conduction studies from January 2009 clearly demonstrate that his symptoms are relevant to carpal tunnel syndrome. He has no other means of employment that would put him at such risk for this condition.

“[Appellant’s] underlying condition of psoriatic arthritis for which he received injectable Embrel therapy weekly would also be aggravated by his job at the [employing establishment]. Henceforth, this underlying medical condition is not the cause of his carpal tunnel syndrome, but rather predisposes him for risks of injury as a letter handler.”

Dr. Renzi recommended bilateral surgical decompressions.

A hearing was held on May 18, 2009. In a decision dated July 10, 2009, the hearing representative set aside the December 11, 2008 decision. He found that the medical evidence was sufficient to warrant further development and instructed OWCP to refer appellant for a second opinion examination to determine whether he sustained employment-related carpal tunnel syndrome.

On September 8, 2009 appellant asserted that, while he had received treatment for psoriasis beginning in May 1989, he had never been diagnosed with psoriatic arthritis. In a September 2, 2009 report, Dr. Booth H. Durham, a Board-certified dermatologist, related that he had treated appellant since May 1989 for psoriasis. He advised that he had “never had the signs, symptoms, diagnosis for, nor treatment for, psoriatic arthritis.”

On November 26, 2009 OWCP referred appellant to Dr. Richard Meagher, a Board-certified neurosurgeon, for a second opinion examination.

In a report dated December 16, 2009, Dr. Meagher discussed appellant’s complaints of numbness in the fourth and fifth fingers of his left hand and pain in the left forearm, triceps and paracervical region with no paresthesias at night. On examination, he found a positive Spurling’s on the left, “mildly decreased pinprick sensation along the internal aspect of [appellant’s] left fifth finger and palm” a mildly positive Tinel’s sign bilaterally and “mildly decreased pinprick sensation on the dorsal aspect of his left upper arm.” Dr. Meagher reviewed the evidence of record and opined that appellant’s symptoms suggested ulnar nerve entrapment or cervical radiculopathy rather than carpal tunnel syndrome. He noted that the mild median nerve entrapment seen on diagnostic studies might be present even without carpal tunnel syndrome. Dr. Meagher related that it was speculative to attribute appellant’s injury to his employment duties and noted that aging could cause his symptoms. He recommended an magnetic resonance imaging (MRI) scan study of the cervical spine to diagnose appellant’s condition and found that he could perform modified employment.

In a January 27, 2010 report, Dr. Meagher indicated that he had submitted an addendum report dated January 14, 2010.<sup>2</sup> He advised that appellant’s condition was not related to his employment duties. Dr. Meagher noted that the statement of accepted facts indicated that appellant may have experienced carpal tunnel syndrome due to repetitive work duties.

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<sup>2</sup> The addendum does not appear to be in the case record. In a report of telephone call dated January 19, 2010, OWCP noted that the second opinion physician was updating his findings based on a January 4, 2010 MRI scan study; however, there does not appear to be a January 2010 MRI scan study in the case record.

He maintained that a review of the records did not support such a diagnosis and stated:

“[Appellant’s] symptoms were never clearly described in a median nerve distribution. Common associated features with carpal tunnel syndrome, such as nocturnal paresthesias, were lacking. Physical examination findings were not uniform and electrodiagnostic evidence was not compelling. Nevertheless, to the extent that [appellant] suffered from carpal tunnel syndrome in the past, he no longer does so.”

In a work restriction evaluation, Dr. Meagher advised that appellant could resume his usual employment without restrictions.

In a decision dated November 1, 2011, OWCP denied appellant’s claim that he sustained carpal tunnel syndrome causally related to factors of his federal employment. On November 8, 2011 appellant’s attorney requested an oral hearing.

At the hearing, held on February 29, 2012, appellant’s attorney argued that Dr. Meagher’s opinion was speculative as to a definite diagnosis and as he provided a contradictory addendum. Counsel noted that Dr. Meagher did not obtain further diagnostic studies. He argued that at a minimum a conflict existed between Dr. Meagher and Dr. Renzi.

By decision dated May 18, 2012, an OWCP hearing representative affirmed the November 1, 2011 decision.

On appeal, appellant’s attorney argued that Dr. Meagher’s opinion was inconsistent and required further development and that a conflict exists between Dr. Meagher and Dr. Renzi.

### **LEGAL PRECEDENT**

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 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>

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed;<sup>6</sup> (2) a

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<sup>3</sup> *Supra* note 1.

<sup>4</sup> *Tracey P. Spillane*, 54 ECAB 608 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>5</sup> *See Ellen L. Noble*, 55 ECAB 530 (2004).

<sup>6</sup> *Michael R. Shaffer*, 55 ECAB 386 (2004).

factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;<sup>7</sup> and (3) medical evidence establishing the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.<sup>8</sup>

The medical evidence required to establish causal relationship generally is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the claimant<sup>9</sup> and must be one of reasonable medical certainty<sup>10</sup> explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>11</sup>

Section 8123(a) provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.<sup>12</sup> The implementing regulations state that, if a conflict exists between the medical opinion of the employee's physician and the medical opinion of either a second opinion physician or an OWCP medical adviser, OWCP shall appoint a third physician to make an examination. This is called a referee examination and OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.<sup>13</sup>

### ANALYSIS

Appellant filed an occupational disease claim alleging that he sustained bilateral carpal tunnel syndrome due to repetitive work duties. OWCP accepted the occurrence of the identified work factors but found that the medical evidence was insufficient to establish employment-related carpal tunnel syndrome.

On December 3, 2008 Dr. Renzi found positive Tinel's signs and Phalen's tests bilaterally. He diagnosed bilateral carpal tunnel syndrome. In a report dated April 3, 2009, Dr. Renzi opined that diagnostic studies confirmed bilateral neuropathy. He attributed appellant's bilateral median nerve entrapment to his work duties and explained that his repetitive hand grasping and finger movements were a "classic predisposing occupational hazard for the development of carpal tunnel syndrome." Dr. Renzi further found that his work duties aggravated preexisting psoriatic arthritis.

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<sup>7</sup> *Marlon Vera*, 54 ECAB 834 (2003); *Roger Williams*, 52 ECAB 468 (2001).

<sup>8</sup> *Beverly A. Spencer*, 55 ECAB 501 (2004).

<sup>9</sup> *Tomas Martinez*, 54 ECAB 623 (2003); *Gary J. Watling*, 52 ECAB 278 (2001).

<sup>10</sup> *John W. Montoya*, 54 ECAB 306 (2003).

<sup>11</sup> *Judy C. Rogers*, 54 ECAB 693 (2003).

<sup>12</sup> 5 U.S.C. § 8123(a).

<sup>13</sup> 20 C.F.R. § 10.321.

OWCP referred appellant to Dr. Meagher for a second opinion examination. In a report dated December 16, 2009, Dr. Meagher opined that appellant's symptoms were not consistent with carpal tunnel syndrome but instead cervical radiculopathy or peripheral nerve entrapment. He attributed appellant's symptoms to possible aging. In a January 27, 2010 addendum, Dr. Meagher found that appellant did not have any employment-related condition. He asserted that appellant's past symptoms did not support a diagnosis of carpal tunnel syndrome.

The Board finds that a conflict in medical opinion exists between appellant's attending physician, Dr. Renzi, and OWCP referral physician, Dr. Meagher, regarding whether appellant has a diagnosed condition causally related to his repetitive work duties. Section 8123(a) of FECA provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.<sup>14</sup> On remand, OWCP shall refer appellant to an appropriate specialist to resolve the conflict in medical opinion regarding whether he sustained an employment-related condition. Following this and any further development deemed necessary, it should issue a *de novo* decision.

### **CONCLUSION**

The Board finds that the case is not in posture for decision.

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<sup>14</sup> 5 U.S.C. § 8123(a); *see also M.A.*, 59 ECAB 355 (2008).

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 18, 2012 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: March 5, 2013  
Washington, DC

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board