

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

L.P., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Macon, GA, Employer**

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**Docket No. 14-481
Issued: August 14, 2014**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

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

JURISDICTION

On December 31, 2013 appellant filed a timely appeal from an October 22, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP) denying 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 established that she sustained right carpal tunnel syndrome causally related to the accepted cervical spine and right upper extremity conditions.

On appeal, appellant asserts that new medical evidence submitted on appeal establishes that she sustained bilateral carpal tunnel syndrome due to accepted cervical spine and right shoulder injuries.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

OWCP accepted that on January 2, 2008 appellant, then a 57-year-old accountable paper supervisor, sustained a right shoulder sprain, right rotator cuff sprain, right rotator cuff tear and other “affections of shoulder region, not otherwise classified” when she pulled her right shoulder while lifting a box.² On March 3, 2008 Dr. Lyle A. Norwood, an attending Board-certified orthopedic surgeon, performed an arthroscopic repair of the right rotator cuff, approved by OWCP. Following a course of physical therapy, he released appellant to light duty as of July 21, 2008. Appellant returned to work on September 29, 2008 in a limited-duty position.³

A December 15, 2008 impairment rating by Dr. John W. Ellis, a physician Board-certified in occupational medicine and family practice, consulting to appellant’s attorney, noted negative Finkelstein’s, Tinel’s and Phalen’s signs at the right wrist and no impairment of the right median nerve at the wrist.

August 27, 2009 electromyography (EMG) and nerve conduction velocity (NCV) studies showed very mild median nerve neuropathy at the wrists, bilaterally without evidence of cervical radiculopathy.

In an August 10, 2009 letter, Dr. George Stefanis, an attending Board-certified neurosurgeon, opined that appellant sustained C5-6 and C6-7 disc herniations in the January 2, 2008 incident, causing radiculopathy into the right upper extremity. On January 7, 2010 OWCP expanded the claim to include C6-7 cervical disc displacement and cervical spondylosis. Dr. Stefanis performed an anterior discectomy, fusion and fixation at C5-6 and C6-7 on March 18, 2011, authorized by OWCP.⁴ Appellant returned to work in a modified-duty position on July 2, 2012.⁵

On July 19, 2012 Dr. Stefanis prescribed bilateral cock-up wrist splints. In September 10 and November 13, 2012 reports, he diagnosed carpal tunnel syndrome with complaints of paresthesias in both hands.

² By decision dated April 13, 2009 and revised June 9, 2009, OWCP granted appellant a schedule award for a 16 percent impairment of the right upper extremity due to impairment of the right shoulder.

³ By decision dated May 27, 2009, OWCP found that appellant’s actual earnings as a modified supervisor properly represented her wage-earning capacity. As appellant’s actual earnings equaled those of her date-of-injury position, she was found to have no loss of wage-earning capacity.

⁴ On August 24, 2011 OWCP obtained a second opinion from Dr. Jonathan Liss, a Board-certified neurologist, who found appellant able to perform full-time light-duty work. It then found a conflict between Dr. Liss and appellant’s attending physicians regarding her work capacity. Dr. Kenneth Lazarus, a Board-certified neurologist and impartial medical specialist, opined on March 6, 2012 that the cervical disc herniations did not require further medical treatment. On June 6, 2012 OWCP issued a notice of proposed termination of medical benefits for the cervical disc herniation. It does not appear from the record that OWCP finalized the June 6, 2012 notice.

⁵ By decision dated September 28, 2012, OWCP found that appellant’s actual earnings as a modified supervisor properly represented her wage-earning capacity. It found that appellant had no loss of wage-earning capacity as appellant’s salary equaled that of her date-of-injury position. Following a review of the written record, an OWCP hearing representative affirmed the September 28, 2012 decision on April 18, 2013.

In a January 29, 2013 report, Dr. Stefanis found that appellant had reached maximum medical improvement. He opined that appellant could continue her modified-duty job.

On February 9, 2013 appellant requested that OWCP expand the claim to include carpal tunnel syndrome, based on the August 27, 2009 electrodiagnostic testing. She submitted a February 15, 2013 report from Dr. Norman Donati, Jr., an attending Board-certified orthopedic surgeon, diagnosed degenerative lumbar disc disease and bilateral carpal tunnel syndrome, left greater than right.

In a March 4, 2013 letter, OWCP advised appellant of the evidence needed to establish her claim. It requested a report from her attending physician explaining how and why the accepted conditions would cause carpal tunnel syndrome. Appellant was afforded 30 days to submit additional evidence.

By decision dated April 11, 2013, OWCP denied appellant's claim for carpal tunnel syndrome on the grounds that causal relationship was not established. It found that Dr. Donati and Dr. Stefanis did not adequately explain how or why the accepted conditions or their sequelae would cause or aggravate carpal tunnel syndrome.

In a May 9, 2013 letter, appellant requested a hearing, later changed to a request for a review of the written record.

In an April 26, 2013 report, Dr. Stefanis opined that according to Proposed Table 1: Spinal Nerve Impairment of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, appellant had a zero percent impairment as she had no sensory or motor deficit in the C5 spinal nerve distribution. On a June 11, 2013 report, he again opined that appellant had a zero percent permanent impairment and could continue working in her modified-duty job.

In a September 9, 2013 report, Dr. Norwood, diagnosed possible carpal tunnel based on appellant's complaints of weakness and clumsiness of the right hand. He recommended electrodiagnostic testing. A September 24, 2013 electrodiagnostic study of the right upper extremity demonstrated C6-7 nerve root compression and a "very mild" right median nerve entrapment at the wrist.

By decision dated October 22, 2013, an OWCP hearing representative affirmed the April 11, 2013 decision. The hearing representative found that appellant's physicians did not explain how or why the January 2, 2008 injuries caused carpal tunnel syndrome. The hearing representative noted that Dr. Donati did not provide a definite diagnosis of carpal tunnel syndrome.

LEGAL PRECEDENT

When an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.⁶ To establish a causal relationship between the

⁶ *Jaja K. Asaramo*, 55 ECAB 200 (2004).

condition claimed, as well as any attendant disability and the employment event or incident, an employee must submit rationalized medical evidence based on a complete medical and factual background supporting such a causal relationship.⁷ Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.⁸ Rationalized medical evidence is evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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 claimant.⁹

ANALYSIS

OWCP accepted that appellant sustained a right shoulder sprain, right rotator cuff sprain, right rotator cuff tear, unspecified shoulder condition, C6-7 disc displacement and cervical spondylosis. On February 9, 2013 appellant requested that OWCP accepted carpal tunnel syndrome as work related. OWCP denied the claim by decisions dated April 11 and October 22, 2013 on the grounds that the medical evidence did not establish a causal relationship between the accepted injuries and carpal tunnel syndrome.

Dr. Ellis, a physician Board-certified in family practice and occupational medicine consulting to appellant's attorney, opined on December 11, 2008 that appellant had no sign of right carpal tunnel syndrome or median nerve impairment.

Dr. Stefanis, an attending Board-certified neurosurgeon, submitted September 10 and November 13, 2012 reports diagnosing bilateral carpal tunnel syndrome based on an August 27, 2009 electrodiagnostic study showing minimal median nerve neuropathy at both wrists. He clarified on April 26, 2013 that appellant's right arm symptoms were not due to C5 involvement. However, Dr. Stefanis did not attribute the carpal tunnel syndrome to the accepted injuries. Dr. Donati, an attending Board-certified orthopedic surgeon, diagnosed bilateral carpal tunnel syndrome on February 15, 2013, but did not address its cause. As Dr. Stefanis and Dr. Donati did not provide an explanation of the medical reasons that the accepted injuries would cause or aggravate carpal tunnel syndrome, their opinions are insufficient to meet appellant's burden of proof.¹⁰

Dr. Norwood, an attending Board-certified orthopedic surgeon, diagnosed "possible carpal tunnel" syndrome on September 9, 2013 and recommended additional testing. The equivocal nature of this opinion diminishes its probative quality.¹¹ Although a September 24,

⁷ *Jennifer Atkerson*, 55 ECAB 317 (2004).

⁸ *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

⁹ *Leslie C. Moore*, 52 ECAB 132 (2000).

¹⁰ *Deborah L. Beatty*, 54 ECAB 340 (2003).

¹¹ *Ricky S. Storms*, 52 ECAB 349 (2001).

2013 study demonstrated very mild entrapment of the right median nerve at the wrist, there is no report of record from Dr. Norwood explaining a medical connection between the entrapment and the accepted injuries.

OWCP advised appellant by March 4, 2013 letter of the evidence necessary to establish her claim, including a report from her attending physician explaining how and why the accepted conditions would result in the development of carpal tunnel syndrome. However, appellant did not submit such evidence. Therefore, OWCP's October 22, 2013 decision was proper under the law and circumstances of this case.

On appeal, appellant asserts that new medical evidence submitted for the first time on appeal is sufficient to establish her claim for carpal tunnel syndrome. However, the Board may not consider new evidence for the first time on appeal that was not before OWCP at the time it issued the finale decision in the case.¹²

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 establish that she sustained carpal tunnel syndrome in the performance of duty.

¹² 20 C.F.R. § 501.2(c).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 22, 2013 is affirmed.

Issued: August 14, 2014
Washington, DC

Patricia Howard Fitzgerald, Acting Chief Judge
Employees' Compensation Appeals Board

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

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