

ISSUES

The issues are: (1) whether appellant met her burden of proof to establish bilateral carpal tunnel syndrome as a result of factors of her federal employment; and (2) whether OWCP properly denied her request for further merit review under 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On June 12, 2012 appellant, then a 49-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that she developed bilateral carpal tunnel syndrome (CTS) as a result of using her computer at work for 40 hours per week over the past 23 years.

By letter dated August 9, 2012, OWCP informed appellant that the evidence of record was insufficient to support her claim. Appellant was advised of the medical and factual evidence needed and was directed to submit it within 30 days.

In a November 17, 2011 diagnostic report, Dr. Mir Yasser, Board-certified in internal medicine, reported that a computerized tomography (CT) scan of the cervical spine was unremarkable. Appellant was treated with fluoro-guided lumbar puncture.

In medical reports dated May 7 and June 11, 2012, Dr. Charles Ruotolo, a Board-certified orthopedic surgeon, reported that appellant complained of right shoulder pain which radiated into the neck and numbness in her right hand. Upon physical examination, he diagnosed right shoulder partial thickness rotator cuff tear and impingement syndrome and right CTS.

In a June 5, 2012 medical report, Dr. Luis Alejo, Board-certified in physical medicine and rehabilitation, reported that appellant had a normal CT cervical spine myelogram. He diagnosed mild radiculopathy and significant bilateral CTS, worse on right.

In a June 19, 2012 medical report, Dr. Elizabeth Morrison, a Board-certified orthopedic surgeon, reported that appellant complained of pain and numbness in the right hand as a result of overuse from work. She noted no diagnosis pending additional examination.

By decision dated November 5, 2012, OWCP denied appellant's claim finding that the evidence failed to establish that the occupational exposure occurred as alleged.

On November 19, 2012 appellant requested reconsideration of OWCP's decision. She stated that the employment-related activities which contributed to her condition included repetitive keyboarding, manual racking, pulling down routes, sweeping mail, writing accountables, and pushing and pulling carts. Appellant further stated that she would repetitively lift, grasp, and hold letters, flats, parcels, and bundles of mail. She reported that she performed these repetitive activities for 8 hours per day, 40 hours per week. Appellant first noticed her condition in May 2012 and it had continued to worsen. She noted that Dr. Morrison was the only physician treating her for CTS and the other medical reports pertaining to a prior 1990 shoulder injury were accidentally included in the file.

A July 10, 2012 electromyogram (EMG) and nerve conduction velocity (NCV) study was received from Dr. Anthony Castellino, a treating chiropractor.

In a November 27, 2012 medical report, Dr. Morrison reported that she reviewed the July 10, 2012 EMG/NCV study and diagnosed bilateral CTS, right worse than left.

By decision dated February 7, 2013, OWCP affirmed the November 5, 2012 decision, as modified, finding that the evidence of record failed to establish that appellant's diagnosed bilateral CTS was causally related to the established work-related events.

On March 18, 2013 appellant requested reconsideration of OWCP's decision. She did not submit any evidence or argument with her appeal.

By decision dated March 22, 2013, OWCP denied appellant's request for reconsideration finding that she neither raised substantive legal questions nor included new and relevant evidence.

On November 19, 2013 appellant again requested reconsideration.³ In support of her request for reconsideration, she resubmitted Dr. Castellino's July 10, 2012 EMG/NCV study. Appellant also submitted a supplemental statement wherein she described her symptoms and medical treatment.

By decision dated February 18, 2014, OWCP denied modification of the prior decision, after merit review.

On March 19, 2014 appellant again requested reconsideration. She did not submit any evidence in support of her request.

By decision dated May 15, 2014, OWCP denied appellant's request for reconsideration finding that she neither raised substantive legal questions nor included new and relevant evidence.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA 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 or specific condition for which compensation is claimed is causally related to the employment injury.⁴ These are the essential elements of every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁵

In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been

³ On November 25, 2013 appellant also requested an appeal before the Board, Docket No. 14-303. On April 8, 2014 the Board issued an order dismissing appeal finding that the appeal was untimely filed.

⁴ *Gary J. Watling*, 52 ECAB 278 (2001); *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

⁵ *Michael E. Smith*, 50 ECAB 313 (1999).

established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.⁶ The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

To establish that an injury was sustained in the performance of duty in a claim for occupational disease, an employee must submit: (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.⁷

To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background, supporting such a causal relationship.⁸ The opinion of the physician 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. This medical opinion must include an accurate history of the employee's employment injury and must explain how the condition is related to the injury. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.⁹

ANALYSIS -- ISSUE 1

OWCP accepted that appellant engaged in repetitive activities in her employment duties as a letter carrier, but denied her claim as the evidence failed to establish a causal relationship between those activities and her bilateral CTS. The Board finds that the medical evidence of record is insufficient to establish that she developed bilateral CTS causally related to factors of her federal employment as a letter carrier.

In a June 19, 2012 medical report, Dr. Morrison reported that appellant complained of pain and numbness in the right hand as a result of overuse from work. She noted no diagnosis pending additional examination. In a November 27, 2012 medical report, Dr. Morrison reported that she reviewed a July 10, 2012 EMG/NCV study and diagnosed bilateral CTS, right worse than left.

The Board finds that the opinion of Dr. Morrison is not well rationalized. Dr. Morrison failed to provide an opinion on the cause of appellant's bilateral CTS or explain how her

⁶ *Elaine Pendleton*, *supra* note 4.

⁷ See *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

⁸ See 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

⁹ *James Mack*, 43 ECAB 321 (1991).

condition was caused or aggravated by her federal employment duties. Moreover, she failed to provide an adequately detailed medical history or description of appellant's federal employment duties as a letter carrier which may have caused her injury. Medical reports without any rationale on causal relationship are of diminished probative value and do not meet an employee's burden of proof.¹⁰ The opinion of a physician supporting causal relationship must rest on a complete factual and medical background supported by affirmative evidence, address the specific factual and medical evidence of record, and provide medical rationale explaining the relationship between the diagnosed condition and the established incident or factor of employment.¹¹ Dr. Morrison's reports do not meet that standard and are insufficient to meet appellant's burden of proof.

The remaining medical evidence is also insufficient to establish appellant's occupational disease claim. Dr. Yasser's November 17, 2011 diagnostic report failed to establish a firm medical diagnosis as the physician noted an unremarkable cervical CT scan. While the reports of Dr. Alejo and Dr. Ruotolo provided a sufficient diagnosis of CTS, the physicians failed to state any opinion on causal relationship. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value.¹² There is no indication that Dr. Castellino, appellant's chiropractor, diagnosed subluxation based on the results of an x-ray.¹³ As Dr. Castellino does not meet the statutory definition of a physician, his July 10, 2012 EMG/NCV study lacks probative value and is insufficient to establish appellant's claim.¹⁴

On appeal, appellant argues that the medical reports submitted are sufficient to establish her claim. Proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter. While OWCP shares responsibility in the development of the evidence to see that justice is done, it is appellant's burden of proof to submit the evidence necessary to establish her claim.¹⁵ The Board has reviewed the medical evidence and no physician has provided a rationalized opinion that appellant's bilateral CTS was caused or aggravated by her accepted federal employment duties.¹⁶

¹⁰ *Id.*

¹¹ *See Lee R. Haywood*, 48 ECAB 145 (1996).

¹² *S.E.*, Docket No. 08-2214 (issued May 6, 2009); *C.B.*, Docket No. 09-2027 (issued May 12, 2010).

¹³ 5 U.S.C. § 8101(2) of FECA provides as follows: (2) physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law. The term physician includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulation by the secretary. *See Merton J. Sills*, 39 ECAB 572, 575 (1988).

¹⁴ *T.G.*, Docket No. 13-76 (issued March 22, 2013).

¹⁵ *Phillip L. Barnes*, 55 ECAB 426 (2004).

¹⁶ *G.S.*, Docket No. 10-2231 (issued July 1, 2011).

LEGAL PRECEDENT -- ISSUE 2

To require OWCP to reopen a case for merit review under FECA section 8128(a), OWCP regulations provide that the evidence or argument submitted by a claimant must: (1) show that OWCP erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by OWCP; or (3) constitute relevant and pertinent new evidence not previously considered by OWCP.¹⁷ Section 10.608(b) of OWCP regulations provide that, when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), OWCP will deny the application for reconsideration without reopening the case for a review on the merits.¹⁸

ANALYSIS -- ISSUE 2

The Board finds that the refusal of OWCP to reopen appellant's case for further consideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a), did not constitute an abuse of discretion.

The issue presented on appeal is whether appellant met any of the requirements of 20 C.F.R. § 10.606(b)(2), requiring OWCP to reopen the case for review of the merits of the claim. In her March 19, 2014 application for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law. She also did not advance a new and relevant legal argument. The underlying issue in this case is causal relationship between appellant's diagnosed carpal tunnel condition and factors of her federal employment. That is a medical issue which must be addressed by relevant medical evidence.¹⁹ Appellant failed to submit any new and relevant medical evidence in support of her request for reconsideration.²⁰

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(2). Appellant did not show that OWCP erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by OWCP, or constitute relevant and pertinent evidence not previously considered. Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish bilateral CTS causally related to factors of her federal employment as a letter carrier. OWCP properly denied her request for reconsideration without a merit review.

¹⁷ *D.K.*, 59 ECAB 141 (2007).

¹⁸ *K.H.*, 59 ECAB 495 (2008).

¹⁹ *See Bobbie F. Cowart*, 55 ECAB 746 (2004).

²⁰ *M.H.*, Docket No. 13-2051 (issued February 21, 2014).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decisions dated May 15 and February 18, 2014 are affirmed.

Issued: December 12, 2014
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board