



## **FACTUAL HISTORY**

On February 9, 2012 appellant, then a 50-year-old mail processing clerk/machine operator, filed an occupational disease claim alleging that, as a result of her federal duties, she felt sharp pains in both her wrists, tingling and numbness in her fingers and swelling wrists. She noted that she did manual casing and that these duties involved repetitive movements of grasping, pulling, pushing, overhead reaching, sorting and filing.<sup>2</sup>

By letter dated February 29, 2012, OWCP asked appellant to submit further evidence, including medical evidence, in support of her claim.

In an April 17, 2012 response, appellant explained that, due to repetitive movement of grasping, gripping, pulling, pushing, lifting and overhead reaching which is involved in her work duties, she began to feel pain in her hands, wrists, elbows, shoulders and back. She stated that she has been off work since April 2009 and had surgery on her right elbow in October 2009.

Appellant also submitted a July 15, 2009 electrodiagnostic study by Dr. Michael Butler, a neurologist,<sup>3</sup> who found minimal residual focal right median neuropathy at the carpal tunnel resulting in mild demyelinative change with no evidence of axon loss or neuropathic change in distal musculature. Dr. Butler noted that this is a common finding even after successful median nerve decompression of the carpal tunnel and it does not necessarily represent residual or recurrent compression. He also noted no evidence of ulnar nerve compression of the right elbow or elsewhere. Appellant also submitted a June 14, 2011 electrodiagnostic study of Dr. Butler's, which showed mild bilateral median nerve compression at the carpal tunnels affecting only the sensory component and without evidence of axon loss of neuropathic change in distal thenar musculature. Dr. Butler noted that comparing this study with the July 15, 2009 study, the findings, while mild, represented a significant bilateral worsening since the previous study. He also noted no electrodiagnostic evidence of ulnar nerve compression.

In an April 27, 2012 report, Dr. Vatche Cabayan, appellant's treating Board-certified orthopedic surgeon, listed his impressions as carpal tunnel syndrome bilaterally worsening in 2011 especially with regard to the right upper extremity *vis-à-vis* nerve studies obtained in July 2009; carpometacarpal joint inflammation of the thumb bilaterally; and wrist joint sprain bilaterally including scapholunate interval of the right and palma ulnocarpal joint on the left. He opined that causation was due to cumulative trauma on the job until the last day of work on April 21, 2009. Dr. Cabayan further opined that appellant's "hand should be covered."

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<sup>2</sup> The Board notes that, in a decision dated February 5, 2010, it reviewed prior claims brought by appellant, which included OWCP File No. xxxxxx692, accepted by OWCP for left shoulder strain and left shoulder impingement syndrome, OWCP File No. xxxxxx462, which OWCP accepted for bilateral carpal tunnel syndrome and OWCP File No. xxxxxx632, which OWCP accepted for a low back strain. These claims were consolidated into OWCP File No. xxxxxx462. The Board noted that OWCP had previously terminated appellant's compensation benefits regarding her bilateral carpal tunnel condition on November 2, 2006. The Board found, *inter alia*, that appellant had not established continuing disability or residuals due to her bilateral carpal tunnel syndrome. Docket No. 09-486 (issued February 5, 2010).

<sup>3</sup> The Board cannot confirm that Dr. Butler is Board-certified.

By decision dated May 15, 2012, OWCP denied appellant's claim as it determined that the medical evidence did not demonstrate that the claimed medical condition was related to the established work-related events.

On June 13, 2012 appellant requested an oral hearing. At the hearing held on September 27, 2012, counsel noted that she had prior injuries and that physical capacity tests she had to do in vocational rehabilitation with regard to those claims aggravated her carpal tunnel syndrome. Appellant also testified with regard to her physical therapy and prior claims.

By letter dated October 27, 2012, appellant's counsel described difficulties appellant had during testing and noted that the diagnostic test of June 15, 2011 was worse than the one in 2009.

In an October 5, 2012 report, Dr. Cabayan contended that, subsequent to her surgery on September 13, 2004, appellant had residual carpal tunnel findings, that these residuals were noted in the July 15, 2009 study and that the most recent study of June 15, 2011 again showed mild carpal tunnel syndrome bilaterally with some worsening. He opined that her carpal tunnel syndrome flared up during vocational rehabilitation and that she never recovered from her work injury.

By decision dated December 20, 2012, the hearing representative affirmed OWCP's decision of May 15, 2012.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>4</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 timely filed within the applicable time limitation period of FECA and that an injury<sup>5</sup> was sustained in the performance of duty. These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>6</sup>

To establish that an injury was sustained in the performance of duty in a claim for an occupational disease claim, an employee must submit 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>7</sup>

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<sup>4</sup> 5 U.S.C. §§ 8101-8193.

<sup>5</sup> OWCP regulations define an occupational disease or illness as a condition produced by the work environment over a period longer than a single workday or shift. 20 C.F.R. § 10.5(q).

<sup>6</sup> See *O.W.*, Docket No. 09-2110 (issued April 22, 2010); *Ellen L. Noble*, 55 ECAB 530 (2004).

<sup>7</sup> See *D.R.*, Docket No. 09-1723 (issued May 20, 2010). See also *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical evidence. 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>

### ANALYSIS

As noted above, appellant filed prior claims and these claims were accepted for left shoulder strain, left shoulder impingement syndrome, bilateral carpal tunnel syndrome and low back strain. OWCP terminated her compensation benefits with regard to her bilateral carpal tunnel condition on November 2, 2006 and on February 5, 2010, the Board found that she had not established continuing disability or residuals related to her bilateral carpal tunnel syndrome.<sup>9</sup> Appellant filed a new claim for compensation on February 9, 2012, but all of the arguments by her representative only address her prior claims. Dr. Cabayan finds that her injuries are related to her prior injury. The Board has previously affirmed the denial of appellant's previous claim in 2010. However, the sole issue is whether she established a new injury to her wrists, fingers and hands or aggravation of a preexisting condition.

The Board finds that appellant did not meet her burden of proof to establish that she sustained a new injury to her wrists, fingers or hands. Appellant argues that the diagnostic studies of Dr. Butler show an increase in evidence of her carpal tunnel syndrome between the July 15, 2009 and June 15, 2011 electrodiagnostic studies. Dr. Butler, however, does not explain the causation of this apparent increase in symptoms. Dr. Cabayan indicates that it may have been due to vocational rehabilitation activities with regard to a prior claim; but he never notes a new employment-related injury. The Board notes that appellant did not return to work after her surgery in October 2009 and there is no indication that any new employment activities caused her injuries. Accordingly, as there is no evidence that appellant sustained a new condition or an aggravation of her old carpal tunnel syndrome causally related to her employment activities, she has not met her burden of proof.

Appellant may submit new evidence or argument as part of a formal 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 established injuries to her wrist, fingers and hands causally related to factors of her employment.

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<sup>8</sup> See *T.W.*, Docket No. 13-1125 (issued August 27, 2013).

<sup>9</sup> See *supra* note 2. That matter, in the absence of further review by OWCP, is *res judicata* and is not subject to further consideration by the Board. See *L.W.*, Docket No. 13-736 (September 9, 2013); *Clinton E. Anthony, Jr.*, 49 ECAB 476 (1998).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated December 20, 2012 is affirmed.

Issued: January 15, 2014  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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