

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

C.W., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Jacksonville, FL, Employer**

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**Docket No. 13-2059
Issued: March 5, 2014**

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

COLLEEN DUFFY KIKO, Judge

PATRICIA HOWARD FITZGERALD, Judge

JURISDICTION

On September 9, 2013 appellant, through her attorney, filed a timely appeal from a July 24, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 met her burden of proof to establish that she developed carpal tunnel syndrome causally related to factors of her federal employment.

FACTUAL HISTORY

On April 23, 2012 appellant, then a 56-year-old mail processor, filed an occupational disease claim (Form CA-2) alleging that she sustained bilateral carpal tunnel syndrome in the performance of duty. She first became aware of her condition on August 9, 2010 and of its

¹ 5 U.S.C. § 8101 *et seq.*

relationship to her employment on March 8, 2012. Appellant explained that years of repetitive motion with her arms, hands and fingers, including casing mail and repetitively handling large bundles, had contributed to her bilateral carpal tunnel syndrome. The employing establishment noted that she was not currently working due to another unrelated injury.

Appellant noted, in a March 13, 2012 statement, that she had worked at the employing establishment since October 31, 1983. She described duties of her employment requiring repetitive motion, such as grabbing large bundles of mail and rapidly using a keyboard and asserted that she performed these duties for six to seven days per week for ten to twelve hours per day. Appellant stated that she had worked in this capacity until August 19, 2010.

Dr. David A. Doward, a Board-certified physician of physical medicine and rehabilitation, diagnosed appellant on April 5, 2012 with mild right-sided carpal tunnel syndrome. He noted that she also had left-sided carpal tunnel syndrome.

Dr. Garry S. Kitay, a Board-certified orthopedist, diagnosed appellant on April 20, 2012 with left moderate to severe and right mild carpal tunnel syndrome. He noted that she was a distribution clerk and that she had numbness and tingling in all fingers. The diagnosis of left carpal tunnel syndrome was based on an electrodiagnostic study from March 8, 2012.²

Dr. Kitay further recommended in a note of April 25, 2012 that appellant could return to modified duty on April 20, 2012, with work restrictions of lifting no more than 15 pounds and taking a 5-minute break for every 20 minutes of repetitive activity.

The employing establishment challenged appellant's claim. It stated that she had not submitted sufficient medical documentation to support her claim and noted that she had been on the periodic rolls for disability since April 27, 2011 due to another work-related injury.

On May 14, 2012 OWCP requested additional factual and medical evidence from appellant. It noted that she had not submitted factual evidence to support that she was injured in the performance of duty or medical evidence to support a causal relationship between her claimed injury and employment activities. OWCP afforded her 30 days to submit additional evidence and respond to its inquiries. It also requested details of appellant's duties from the employing establishment.

Dr. Doward submitted a May 15, 2012 report diagnosing bilateral carpal tunnel syndrome. On examination, he noted a positive carpal tunnel Tinel's sign, a positive Phalen's sign, a negative carpal compression test and a negative Finkelstein's test. Dr. Doward recommended that appellant be evaluated for fibromyalgia.

The employing establishment noted that, according to payroll records, appellant had worked only 0.76 hours of overtime since January 1, 2008, in contrast to her assertion that she had worked six to seven days per week for 10 to 12 hours per day for the past 28 years. It stated that, as of April 27, 2011, she was on the periodic rolls for a bilateral foot condition and that she had been assigned to numerous locations before that time due to difficulty in finding limited-duty

² This electrodiagnostic study does not appear in the case record.

positions within her physical restrictions. The employing establishment noted that appellant first became aware of her condition on August 9, 2010 and accepted a modified job offer within her physical restrictions for a bilateral foot condition on August 11, 2010. Appellant's diagnosis of carpal tunnel syndrome came nearly a year after her last workday.

By decision dated July 17, 2012, OWCP denied appellant's claim. It found that she had not established that her diagnosed condition was causally related to her federal employment, noting that she had not worked in a federal position since April 27, 2011 and that there was no medical evidence prior to April 5, 2012 supporting that she had carpal tunnel syndrome.

Appellant, through her representative, requested an oral telephonic hearing before an OWCP hearing representative and submitted additional medical evidence.

Dr. Kitay noted that appellant had full range of motion in her wrists and fingers with no evidence of weakness, instability or tenderness. His April 20, 2012 report observed negative Tinel's and median nerve compression tests on examination. Dr. Kitay told appellant that a steroid injection could be instructive for treatment and that if it provided her with relief it could support a diagnosis of carpal tunnel syndrome, as she did not have localizing findings on examination. Appellant was not interested in this course of treatment and continued using her brace. Dr. Kitay did not recommend an operative approach to treatment.

Dr. Kitay reiterated his finding on May 24, 2012 and noted that appellant thought her pain was related to working at the employing establishment since 1983. Appellant noted that she performed repetitive activities such as casing mail and using a machine to make packages and that she had been out of work for a year. Dr. Kitay noted that appellant stated that her pain began about a year ago. He told her that he could not say with certainty what the source of her symptoms was for several reasons: he was not certain of the source of her pain, her condition did not improve when she stopped performing repetitive activities and it was not clear that carpal tunnel syndrome was the source of her symptoms or caused by prior use. On examination, Dr. Kitay observed that both Tinel's and median nerve compression tests were negative.

Appellant testified at the telephonic hearing on November 12, 2012 that she used to perform mail sorting on an old letter sorting machine (LSM), on which she would key in thousands of ZIP codes on any given day. After these machines were retired, she used a flat sorter to key in 5,000 pieces of mail per day. Appellant noticed that, when she was casing mail, her hands and fingers would cramp up and that sometimes her fingers would tingle at night. She noted that Dr. Kitay was reluctant to give a statement of causal relationship and that she had requested such a statement several times. The hearing representative held the record open for 30 days for submission of additional evidence.

By letter of November 18, 2012, appellant submitted a description of her duties at the employing establishment since October 31, 1983. As an LSM clerk, she would use a piano-like keyboard for an hour at a time, then load the machine for 15 minutes and begin using the keyboard again, for 8 to 10 hours per day. As a manual letter clerk, appellant would grab mail with one hand and put mail in a holdout with another, processing over 1,000 pieces of mail per day. As a manual flat clerk, she would do the same duties as a manual letter clerk, but with magazines and large envelopes. As a flat sorting machine clerk, appellant would use a keyboard

for 45 minutes to an hour at a time and, along with five other clerks, she would enter 45,000 to 50,000 pieces of mail per day. As a small parcels and bundles system clerk, she would work at a conveyor belt, positioning packages with her left hand and entering information with her right hand and lift packages of up to 70 pounds.

The hearing representative denied appellant's claim, by decision dated February 1, 2013, finding that she had failed to establish that her claimed carpal tunnel syndrome was caused by factors of her federal employment. The hearing representative noted that OWCP had not received a reasoned medical opinion from a qualified physician supporting a causal relationship between her work duties and her claimed condition.

Appellant, through her representative, requested reconsideration on May 16, 2013.

In a report dated April 23, 2013, Dr. William C. Daniels, a Board-certified orthopedist, reviewed appellant's medical records and provided an opinion on the cause of her condition. He noted that while there were no definitive physical findings consistent with bilateral carpal tunnel syndrome, the objective electrophysiologic study supported the diagnosis. Dr. Daniels stated that appellant had an appropriate symptomatic history of carpal tunnel syndrome, that not all cases involving this condition resulted in symptoms identifiable by clinical examination and that her condition was of this type. He noted that she had worked for the employing establishment for 29 years, keying in codes and handling 1,000 pieces of mail per day. Dr. Daniels opined that "in the absence of other causative factors, it is, to a reasonable degree of medical certainty, most probably, that the etiology of [appellant's] bilateral carpal tunnel syndrome is consistent with her on job, postal/clerical duties of 29+ years."

By decision dated July 24, 2013, OWCP affirmed its prior decision denying appellant's claim. It stated that, while Dr. Daniels had provided an affirmative statement on the issue of causal relationship, it was of little probative value, because it had merely been based on a presumption that other possible causes could not be identified.

LEGAL PRECEDENT

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.³ These are the essential elements of every compensation claim regardless of whether the claim is predicated on a traumatic injury or occupational disease.⁴

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; (2) a factual

³ *Gary J. Watling*, 52 ECAB 278, 279 (2001); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁴ *Michael E. Smith*, 50 ECAB 313, 315 (1999).

statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that 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.

The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of employment.⁵ An award of compensation may not be based on appellant's belief of causal relationship. Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.⁶

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.⁷ Rationalized medical opinion evidence is medical evidence which includes a physician's reasoned opinion on whether there is a causal relationship between the claimant's diagnosed condition and the compensable 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.⁸ 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

Appellant alleged that she sustained carpal tunnel syndrome as a result of duties of her employment as a mail processor. OWCP denied her claim, finding that the medical evidence was insufficient to support that her condition was caused or aggravated by factors of employment. The Board finds that appellant failed to meet her burden of proof to establish an injury as a result of factors of her federal employment.

Appellant submitted reports from Drs. Kitay and Doward dated from April 5 through May 24, 2012. The Board has held that medical evidence that does not opine as to the causal relationship between an appellant's injury and specified work-related factors is of diminished

⁵ *Roma A. Mortenson-Kindschi*, 57 ECAB 418, 428 n.37 (2006); *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

⁶ *P.K.*, Docket No. 08-2551 (issued June 2, 2009); *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

⁷ *Elizabeth H. Kramm (Leonard O. Kramm)*, 57 ECAB 117, 123 (2005).

⁸ *Leslie C. Moore*, 52 ECAB 132, 134 (2000).

⁹ *Jennifer Atkerson*, 55 ECAB 317, 319 (2004); *Naomi A. Lilly*, 10 ECAB 560, 573 (1959).

probative value on the issue of causal relationship.¹⁰ The reports from Drs. Kitay and Doward contain diagnoses of bilateral carpal tunnel syndrome, but lack opinions supporting a causal relationship between these diagnoses and specific work-related factors. The report of Dr. Kitay dated May 24, 2012 discusses causation, but clearly states that he could not render an opinion with any degree of certainty regarding the cause of appellant's condition. Therefore, these reports were not sufficient to establish a causal connection between her duties as a mail processor and her carpal tunnel syndrome.

In support of her request for reconsideration, appellant submitted a report regarding causation from Dr. Daniels dated April 23, 2013. Dr. Daniels stated that appellant had an appropriate symptomatic history of carpal tunnel syndrome and that not all cases involving this condition resulted in symptoms identifiable by clinical examination. He asserted that appellant's case was of this variety. Dr. Daniels noted that she had worked for the employing establishment for 29 years, keying in codes and handling 1,000 pieces of mail per day. Regarding appellant's history of injury, he noted that her symptoms began in 2011 approximately one year before she sought treatment with other medical providers.

The Board notes that appellant has explained that she worked in her capacity as a mail processor until August 19, 2010 and then worked light duty until she was placed on the periodic rolls for another injury on April 27, 2011. Dr. Daniels offered no explanation as to why her carpal tunnel condition would only have required diagnosis and medical treatment in 2012, if in fact she last performed her repetitive mail processor duties in 2010. He opined that "in the absence of other causative factors, it is, to a reasonable degree of medical certainty, most probably, that the etiology of [appellant's] bilateral carpal tunnel syndrome is consistent with her on job, postal/clerical duties of 29+ years."

As noted, appellant must submit medical evidence with a rationalized opinion on the causal relationship between a diagnosed condition and the identified employment factors. To be rationalized, the opinion of a 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.¹¹ The Board finds that Dr. Daniels did not explain with a complete factual and medical background the nature of the relationship between appellant's carpal tunnel syndrome and specific employment factors. Dr. Daniels' April 23, 2013 report noted duties of her federal employment, reviewed her complete medical records regarding the claimed condition and stated that despite a lack of findings supportive of a diagnosis of carpal tunnel syndrome on examination, the objective electrophysiologic study established the existence of her condition. However, he did not explain in detail how appellant's noted duties caused or aggravated her condition. The Board has held that the fact that a condition manifests itself or worsens during a period of employment¹² or that work activities produce symptoms revelatory of an underlying condition does not raise an

¹⁰ *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

¹¹ *Leslie C. Moore*, *supra* note 8.

¹² *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

inference of causal relationship between a claimed condition and employment factors.¹³ Therefore, Dr. Daniels' April 23, 2013 report does not establish appellant's claim for work-related carpal tunnel syndrome.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's conditions became apparent during a period of employment nor the belief that her condition was caused, precipitated or aggravated by her employment is sufficient to establish causal relationship.¹⁴ As she did not submit medical evidence in support of her claim containing a physician's rationalized opinion that she developed carpal tunnel syndrome as a result of identified employment factors, she has not met her burden of proof to establish a causal relationship between her condition and work-related duties.

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 causally related to factors of her federal employment.

¹³ *B.B.*, Docket No. 13-256 (issued August 13, 2013); *Richard B. Cissel*, 32 ECAB 1910, 1917 (1981).

¹⁴ *See D.U.*, Docket No. 10-144 (issued July 27, 2010); *D.I.*, 59 ECAB 158, 162 (2007); *Robert Broome*, 55 ECAB 339, 341 (2004).

ORDER

IT IS HEREBY ORDERED THAT the July 24, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 5, 2014
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board