

FACTUAL HISTORY

On June 24, 2013 appellant, then a 50-year-old human resources specialist, filed an occupational disease claim alleging bilateral carpal tunnel syndrome as a result of repetitive use of her hand for computer work, filing and writing. In an accompanying note, she stated that the tingling and numbness is constant in both her hands and that she was presently not working.

In an April 25, 2013 report, Dr. John L. Graves, a Board-certified orthopedic surgeon, noted that appellant complained of bilateral hand numbness. He assessed her with bilateral hand and arm numbness, most likely related to cervical radiculopathy.

By letter dated July 1, 2013, OWCP informed appellant that further information, including medical evidence, was needed to support her claim.

In a May 24, 2013 report, Dr. Graves assessed appellant with bilateral upper extremity paresthesias/pain. He noted that she probably had bilateral carpal tunnel syndrome and potentially bilateral ulnar nerve neuritis at the elbows. Dr. Graves referred appellant for diagnostic studies.

In a June 3, 2013 report, Dr. Hao Wang, a Board-certified physiatrist, evaluated appellant at the request of Dr. Graves. He diagnosed carpal tunnel syndrome and cubital tunnel syndrome.

In a June 6, 2013 report, Dr. Eliot J. Lewit, a Board-certified neurologist, noted that Dr. Graves referred appellant for an electrodiagnostic evaluation. Appellant complained of numbness and discomfort involving her hands since the summer of 2012, which gradually worsened. Dr. Lewit requested diagnostic studies. He noted that there was evidence of moderate-to-severe bilateral median neuropathy with involvement at the wrist with the left somewhat more involved than the right. The findings were consistent with a clinical diagnosis of bilateral carpal tunnel syndrome. Dr. Lewit noted that the reduction in the bilateral median sensory nerve action potential amplitudes could be secondary to either effects of conduction block or axonal involvement of the median sensory nerves. In a June 12, 2013 report, he interpreted appellant's nerve conduction and electromyogram studies of June 6, 2013. The studies evinced severe bilateral median neuropathy at the carpal tunnel, left more involved than the right and concluded that this was consistent with bilateral carpal tunnel syndrome. Dr. Lewit found no electrodiagnostic evidence of ulnar neuropathy in either upper extremity. He stated that appellant was unable to drive and used her hands repetitively on her job. Dr. Lewit assessed bilateral moderate-to-severe carpal tunnel syndrome documented on electrodiagnostic studies. He also assessed puzzling right upper extremity pain radiating from the hand all the way to the shoulder.

In a June 11, 2013 note, Dr. Graves indicated that appellant was to be out of work from June 3 to 18, 2013 and then may return to work with no repetitive use of the bilateral hands.

By decision dated August 6, 2013, OWCP denied appellant's claim as she had not established that she sustained an injury or medical condition that was causally related to the accepted work events.

On September 6, 2013 appellant requested reconsideration. She stated that she worked multiple positions over the past 27 years, described the jobs and noted that each job she held required repetitive use of her hands. Appellant could no longer use her hands, not only in her job but activities such as driving or buttoning shirts or pants. She submitted job descriptions for multiple positions at the employing establishment, copies of pages from WEBMd and a June 18, 2013 letter where the employing establishment informed her that it did not have work within the medical restrictions noted by her physician. Appellant resubmitted the June 11, 2013 note of Dr. Graves.

By decision dated September 27, 2013, OWCP denied appellant's request for reconsideration without conducting a merit review.

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 timely filed within the applicable time limitation period, that an injury was sustained in the performance of duty as alleged and that any disabilities and/or specific conditions for which compensation is claimed are causally related to the employment injury.² These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³

Whether an employee actually sustained an injury in the performance of duty begins with an analysis of whether fact of injury has been established.⁴ To establish fact of injury in an occupational disease claim, 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.⁵

Causal relationship is a medical issue and the evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is evidence which includes a physician's 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, 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.⁶

² *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁴ *See S.P.*, 59 ECAB 184, 188 (2007).

⁵ *See also P.W.*, Docket No. 10-2402 (issued August 5, 2011); *see Roy L. Humphrey*, 57 ECAB 238, 241 (2005).

⁶ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish that she sustained an injury in the performance of duty. Appellant failed to submit sufficient medical evidence to establish that her carpal tunnel syndrome or any other medical condition was causally related to the accepted factors of her federal employment. Dr. Graves diagnosed bilateral upper extremity paresthesias/pain and noted that she probably had bilateral carpal tunnel syndrome and potentially bilateral ulnar nerve neuritis at her elbows. He noted that appellant was to be out of work from June 3 to 18, 2013 and could return to work with no repetitive use of her hands. However, Dr. Graves did not adequately address how her condition was caused or aggravated by her federal employment. Dr. Wang diagnosed appellant with carpal tunnel syndrome and cubital tunnel syndrome, but did not provide any discussion with regard to her employment being a causal factor. Dr. Lewit opined that her diagnostic findings were consistent with carpal tunnel syndrome. He noted that appellant was concerned that her condition was employment related, but he did not provide an independent opinion on causal relation. Accordingly, appellant has failed to submit a well-rationalized medical opinion in support of the causal relationship between her federal duties and her injury. OWCP properly denied her claim.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's claimed condition became apparent during a period of employment nor her belief that the condition was caused by her employment is sufficient to establish causal relationship.⁷ As she did not establish that her medical condition was causally related to the accepted factor of her employment, OWCP properly denied her claim.

LEGAL PRECEDENT -- ISSUE 2

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,⁸ OWCP's 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.⁹ To be entitled to a merit review of an OWCP decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.¹⁰ When a claimant fails to meet one of the above standards, OWCP will deny the application for reconsideration without reopening the case for review on the merits.¹¹

⁷ *D.I.*, 59 ECAB 158 (2007); *Ruth R. Price*, 16 ECAB 688, 691 (1965).

⁸ 5 U.S.C. §§ 8101-8193. Under section 8128 of FECA, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on [her] own motion or on application." 5 U.S.C. § 8128(a).

⁹ 20 C.F.R. § 10.606(b)(2).

¹⁰ *Id.* at § 10.607(a).

¹¹ *Id.* at § 10.608(b).

ANALYSIS -- ISSUE 2

OWCP denied appellant's claim as she failed to establish a medical condition causally related to the accepted conditions of her federal employment. Appellant timely requested reconsideration and OWCP denied reconsideration without conducting a merit review.

The Board finds that OWCP properly denied appellant's request for reconsideration. Appellant has not submitted any new medical evidence in support of her reconsideration request. The only item of medical evidence submitted on reconsideration is the June 11, 2013 note by Dr. Graves which is duplicative of the report she previously submitted. The Board has held that evidence which is duplicative or repetitive of evidence existing in the record is not sufficient to warrant further merit review.¹² As this report is duplicative of a report previously submitted, it is insufficient to require OWCP to reopen appellant's case for further review of the merits. Appellant submitted items from the Internet in support of her claim. This evidence, while new, is not relevant to the underlying medical issue. The Board has held that such articles lack evidentiary value as they are of general application and not determinative regarding whether specific conditions are causally related to her particular employment factors in a claim.¹³ The job descriptions are not medical evidence establishing causal relationship. Furthermore, the fact that the employing establishment told appellant that they did not have work within her restrictions does not establish that those restrictions were caused by an injury sustained during her federal employment.

The Board finds that appellant has not shown that OWCP erroneously applied or interpreted a specific point of law, has not advanced a relevant legal argument not previously considered by OWCP and has not submitted relevant and pertinent new evidence not previously considered by OWCP. Accordingly, the Board finds that she did not meet any of the necessary requirements and is not entitled to further merit review.¹⁴

Appellant alleged that she submitted a September 3, 2013 letter from Dr. Graves in support of her claim and that OWCP did not address this letter. She submitted a copy of this letter on appeal. The Board has reviewed the case record and there is no evidence that this letter was submitted for review before OWCP prior to its decision on reconsideration. The Board lacks jurisdiction to review evidence for the first time on appeal.¹⁵ 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.

¹² *L.T.*, Docket No. 09-1798 (issued August 5, 2010); *L.H.*, 59 ECAB 253 (2007); *Jennifer A. Guillary*, 57 ECAB 485 (2005).

¹³ *L.I.*, Docket No. 12-356 (issued July 10, 2012).

¹⁴ See *L.H.*, *supra* note 12.

¹⁵ 20 C.F.R. § 501.2(c)(1).

CONCLUSION

The Board finds that appellant has not established that she suffered from bilateral carpal tunnel syndrome and/or other conditions in her right wrist and right elbow causally related to her federal employment. The Board further finds that OWCP properly refused to reopen her case for further review on the merits pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated September 27 and August 6, 2013 are affirmed.

Issued: May 16, 2014
Washington, DC

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

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

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