

FACTUAL HISTORY

On August 2, 2013 appellant, then a 57-year-old rural carrier, filed an occupational disease claim (Form CA-2) alleging that she over time sustained an injury due to the performance of her work duties over time. She indicated that she first became aware of her claimed injury and its relationship to her work on August 2, 2013. In an accompanying statement dated August 1, 2013, appellant asserted that she sustained injury to her neck, arms, back, and hips due to her repetitive job duties which included opening and closing the doors on her postal vehicle, casing mail, delivering mail, and pulling the parking brake of her postal vehicle. Appellant stopped work on July 20, 2013.²

In an August 8, 2013 report, Dr. James Brown, an attending osteopath, stated that, over the prior six months, appellant had experienced progressive pain in her neck, shoulders, and wrists, numbness and tingling in both thumbs, numbness and tingling in her second and third fingers, pain shooting down from her shoulders, and numbness and tingling from her shoulders down to the hands (left more than right). He noted that upon examination appellant had a positive Tinel's sign in her left wrist and he diagnosed "suspect progressive degenerative changes in the shoulders and hips bilaterally, and in the neck, probably with underlying disc disease, progressive in the neck." Dr. Brown indicated that appellant might have bilateral carpal tunnel syndrome, left greater than right, and stated, "It is certainly possible that these symptoms are caused by significant issues with work."

In a November 21, 2013 decision, OWCP denied appellant's claim for a work-related occupational disease on the grounds that she had not submitted sufficient medical evidence in support of her claim.

Appellant submitted the findings of November 19, 2013 electromyogram (EMG) and nerve conduction velocity (NCV) testing which showed mild to moderate median nerve compromise in both of her wrists. Magnetic resonance imaging (MRI) scan testing of appellant's low back, obtained on March 29, 2013, showed degenerative disc desiccation narrowing at L4-5 and L5-S1. At both levels, there was a hyperintense signal annulus compatible with fissure. MRI scan testing of appellant's low back from January 16, 2007 showed mild disc protrusion at L4-5 and L5-S1 but did not denote possible fissure of the discs. MRI scan testing of appellant's neck, obtained on September 20, 2013 showed mild degenerative changes between C3-4 and C6-7.

In an October 29, 2013 report, Dr. Brown diagnosed bilateral carpal tunnel syndrome and indicated that appellant's repetitive work duties caused this condition. He stated:

"I do believe that her work conditions have contributed to the unnatural progression to her shoulder, hips, neck, arms, and hands. The repetitive motions of getting in and out of the vehicle numerous times as she described, as well as casing the mail, twisting, turning, repeatedly having to open and close the [postal

² OWCP had previously accepted that, on October 9, 2007, appellant sustained a sacroiliac strain and degeneration of lumbar intervertebral disc due to stepping out of her postal vehicle and turning to pick up mail. Appellant received disability compensation from late 2007 to early 2009 due to these injuries.

vehicle], parking brake maneuvers, grasping, holding, carrying, [and] packaging have contributed to the progression of the disc disease and also causing the carpal tunnel issues with her hands and degenerative changes of her neck, as well as progression beyond what would normally be expected of her lumbar spine disc disease. These activities that she engaged in have both precipitated the injuries as well as aggravated the preexisting one and caused acceleration of the normal aging process of her back and neck.”³

In January 7, 2014 decisions, OWCP modified its November 21, 2013 decision to accept that appellant sustained work-related bilateral carpal tunnel syndrome. It also found that appellant had not established any other work-related occupational disease, such as to the neck or back, because she had failed to submit rationalized medical evidence establishing such conditions. OWCP noted that Dr. Brown did not explain how the diagnostic testing of record showed that appellant’s mild degenerative disease of the neck and back had been further aggravated by work factors.

On February 28, 2014 appellant filed a claim for compensation (Form CA-7) alleging that she sustained disability from August 2, 2013 to February 22, 2014 due to her accepted bilateral carpal tunnel syndrome condition.⁴

In a report dated March 17, 2014, Dr. Brown stated that appellant had ongoing long-term issues dating back to 2007 with pain of the lumbar spine from injuries that she had sustained at work.⁵ He indicated that, since that time, she had chronic ongoing back pain which radiated down her left leg and noted that the pain was exacerbated by her work, which included having to lift and carry heavy crates of mail, twisting in awkward positions, and driving in awkward positions to distribute her mail on her rural route. Appellant had a subsequent MRI scan test in 2012 showing several annular fissures of her discs which constituted new findings from her prior MRI scan tests. Dr. Brown stated:

“[Appellant] continues to have ongoing low back pain and generalized discomfort, prohibiting her from doing the heavy lifting, twisting, bending which are required duties for her employment and has kept her from being employed with the postal service now. Also, to assist you with the filing of her claim and documentation, is a new change and would correlate with her repetitive use and duties that she has to do with her work. As I am sure you are well aware, repetitive use injuries, chronic strains and tend[i]nitis, cannot be documented with actual x-rays but do correlate with her symptoms, in addition to what she has documented on the MRI [scan] and have been reproducible on her physical exam[inations] with the pain chronically in the low back, hip area.”

³ In an October 7, 2013 report, Dr. Brown diagnosed degenerative joint disease and cervical disc disease of the neck and suspected bilateral carpal tunnel syndrome.

⁴ Appellant later filed CA-7 forms claiming that she had work-related disability through August 29, 2014.

⁵ In another report dated March 17, 2014, Dr. Brown diagnosed positive bilateral carpal tunnel syndrome and documented disc disease, including degenerative changes of the lumbar spine. In a January 16, 2014 report, he diagnosed significant degenerative changes of the lumbar spine with repetitive use injuries and “carpal tunnel.”

In a July 3, 2014 decision, OWCP affirmed its January 7, 2014 decisions noting that appellant had not submitted sufficient medical evidence to establish that she sustained an additional work-related occupational disease with respect to her neck or back.

Thereafter, appellant submitted a May 16, 2014 form report from Dr. George T. Hayes, Jr., an attending Board-certified orthopedic surgeon, who stated that appellant was complaining of increasing symptoms in her neck, shoulders, and hands “while driving at work.” Dr. Hayes placed a question mark in the box labeled “remain off work” and recommended that she be referred to a neurosurgeon. In a June 24, 2014 report, he again placed a question mark in the box labeled “remain off work” and diagnosed bilateral carpal tunnel syndrome.⁶

In a September 3, 2014 decision, OWCP determined that appellant had not met her burden of proof to establish disability on or after August 2, 2013 due to her accepted bilateral carpal tunnel syndrome. It indicated that appellant had not submitted a rationalized medical opinion showing that she had disability on or after August 2, 2013 due to this work-related upper extremity condition. OWCP also found that appellant had not established a work-related occupational disease other than bilateral carpal tunnel syndrome because she had not submitted rationalized medical evidence establishing such a condition.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA has the burden of establishing the essential elements of 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, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.⁷ The medical evidence required to establish a causal relationship between a claimed period of disability and an employment injury is rationalized medical opinion evidence. 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

Whether a particular employment injury causes disability for employment and the duration of that disability are medical issues, which must be proved by a preponderance of reliable, probative and substantial medical evidence.⁹

⁶ The record contains July 22 and August 27, 2014 duty status reports from a physician with an illegible signature. The reports contain work restrictions such as continuously lifting up to 5 pounds and intermittently lifting up to 10 pounds, but the reports do not contain a clear opinion regarding which medical condition would necessitate such work restrictions.

⁷ *J.F.*, Docket No. 09-1061 (issued November 17, 2009).

⁸ *See E.J.*, Docket No. 09-1481 (issued February 19, 2010).

⁹ *W.D.*, Docket No. 09-658 (issued October 22, 2009).

ANALYSIS -- ISSUE 1

OWCP accepted that appellant sustained bilateral carpal tunnel syndrome due to her repetitive work duties which included opening and closing the doors on her postal vehicle, casing mail, delivering mail, and pulling the parking brake of her postal vehicle. Appellant stopped work on July 20, 2013 and filed claims alleging disability between August 2, 2013 and August 29, 2014 due to her accepted bilateral carpal tunnel syndrome condition.

The Board finds that appellant failed to meet her burden of proof to establish disability on or after August 2, 2013 due to her accepted bilateral carpal tunnel syndrome. Appellant submitted a number of reports dated between August 2013 and March 2014 of Dr. Brown, an attending osteopath. Although the reports of Dr. Brown served as the basis for the acceptance of appellant's bilateral carpal tunnel syndrome, Dr. Brown did not provide a clear opinion in any of his reports that she sustained disability due to the accepted bilateral carpal tunnel syndrome for any specific period on or after August 2, 2013.

In a May 16, 2014 form report, Dr. Hayes, an attending Board-certified orthopedic surgeon, placed a question mark in the box labeled "remain off work until" and noted that she was complaining of increasing symptoms in her neck, shoulders, and hands.¹⁰ In a June 24, 2014 report, he again placed a question mark in the box labeled "remain off work until" and diagnosed bilateral carpal tunnel syndrome. However, the submission of these reports would not establish that appellant had disability on or after August 2, 2013 due to her accepted bilateral carpal tunnel syndrome. Although Dr. Hayes indicated that appellant was disabled for an unspecified period, he did not provide a clear opinion regarding what medical condition caused such disability.¹¹

Appellant did not submit any rationalized medical evidence showing that she had disability on or after August 2, 2013 due to her accepted bilateral carpal tunnel syndrome. She 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.

LEGAL PRECEDENT -- ISSUE 2

An employee who claims benefits under FECA has the burden of establishing the essential elements of his or her claim.¹² The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that a given occupational disease condition for which compensation is sought is causally related to specific conditions of the employment. As part of this burden, the claimant must present rationalized medical opinion evidence, based

¹⁰ Dr. Hayes indicated that appellant reported increased complaints while driving at work, but it is unclear whether he was aware that appellant had not worked for the employing establishment since July 2013.

¹¹ The record contains July 22 and August 27, 2014 duty status reports from a physician with an illegible signature. The reports contain work restrictions such as continuously lifting up to five pounds and intermittently lifting up to 10 pounds, but the reports do not contain a clear opinion regarding which medical condition would necessitate such work restrictions.

¹² *Ruthie Evans*, 41 ECAB 416, 423-24 (1990); *Donald R. Vanlehn*, 40 ECAB 1237, 1238 (1989).

upon a complete and accurate factual and medical background, establishing causal relationship.¹³ However, it is well established that proceedings under FECA are not adversarial in nature, and while the claimant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.¹⁴

ANALYSIS -- ISSUE 2

The Board notes that while none of the reports of Dr. Brown are completely rationalized, they are consistent in indicating that appellant sustained an occupational disease other than bilateral carpal tunnel syndrome, and are not contradicted by any substantial medical or factual evidence of record. Therefore, while the reports are not sufficient to meet appellant's burden of proof to establish her claim, they are sufficient to require OWCP to further develop the medical evidence and the case record.¹⁵

In the October 29, 2013 report, Dr. Brown noted that appellant's repetitive motions of getting in and out of her vehicle numerous times, as well as casing the mail, twisting, turning, repeatedly having to open and the close the postal vehicle, engaging in parking brake maneuvers, grasping, holding, carrying, and packaging had contributed to the progression of the disc disease in her neck and low back. He stated, "These activities that she engaged in have both precipitated the injuries as well as aggravated the preexisting one and caused acceleration of the normal aging process of her back and neck."

In a report dated March 17, 2014, Dr. Brown stated that appellant had chronic ongoing back pain which radiated down her left leg and posited that the pain was exacerbated by her work, which included having to lift and carry heavy crates of mail, twisting in awkward positions, and driving in awkward positions to distribute her mail on her rural route. He stated that appellant had a subsequent MRI scan test in 2012 showing several annular fissures of her discs which constituted new findings from her prior MRI scan tests.¹⁶ Dr. Brown noted that these changes in the diagnostic testing correlated with the repetitive duties of appellant's work and stated, "As I am sure you are well aware, repetitive use injuries, chronic strains and tend[i]nitis, cannot be documented with actual x-rays but do correlate with her symptoms, in addition to what she has documented on the MRI [scan] and have been reproducible on her physical exam[inations] with the pain chronically in the low back, hip area."

These reports of Dr. Brown reflect his examination and understanding of appellant's work duties and provide specific duties that support additional work-related occupational

¹³ *Brian E. Flescher*, 40 ECAB 532, 536 (1989); *Ronald K. White*, 37 ECAB 176, 178 (1985).

¹⁴ *Dorothy L. Sidwell*, 36 ECAB 699, 707 (1985); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983).

¹⁵ *See Robert A. Redmond*, 40 ECAB 796, 801 (1989).

¹⁶ MRI scan testing of appellant's low back, obtained on March 29, 2013, showed degenerative disc desiccation narrowing at L4-5 and L5-S1. At both levels, there was a hyperintense signal annulus compatible with fissure. MRI scan testing of appellant's low back from January 16, 2007 showed mild disc protrusion at L4-5 and L5-S1 but did not denote possible fissure of the discs. MRI scan testing of appellant's neck, obtained on September 20, 2013 showed mild degenerative changes between C3-4 and C6-7.

conditions other than bilateral carpal tunnel syndrome, particularly with regard to her neck and low back. While not fully rationalized, they are sufficient to require remanding the case to OWCP for further development of this matter. After carrying out this development, OWCP shall issue an appropriate decision regarding the question of whether appellant sustained a work-related occupational disease other than bilateral carpal tunnel syndrome.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she had disability on or after August 2, 2013 due to her accepted bilateral carpal tunnel syndrome. The Board further finds that the case is not in posture for decision regarding whether appellant met her burden of proof to establish that she sustained an occupational disease other than bilateral carpal tunnel syndrome.

ORDER

IT IS HEREBY ORDERED THAT the September 3, 2014 decision of the Office of Workers' Compensation Programs is affirmed with respect to the finding that appellant did not meet her burden of proof to establish that she had disability on or after August 2, 2013 due to her accepted bilateral carpal tunnel syndrome. The July 3 and September 3, 2014 decisions of OWCP are set aside with respect to the finding that appellant did not meet her burden of proof to establish that she sustained an occupational disease other than bilateral carpal tunnel syndrome and the case is remanded to OWCP for further proceedings consistent with this decision of the Board.

Issued: January 9, 2015
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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