

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

S.D., Appellant)	
)	
and)	Docket No. 15-164
)	Issued: March 9, 2015
U.S. POSTAL SERVICE, POST OFFICE,)	
Niagara Falls, NY, Employer)	
)	

Appearances:
Appellant, *pro se*
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 3, 2014 appellant filed a timely appeal from an August 7, 2014 nonmerit decision and a June 12, 2014 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.²

ISSUES

The issues are: (1) whether appellant met her burden of proof to establish carpal tunnel syndrome causally related to factors of her federal employment; and (2) whether the Branch of Hearings and Review properly denied her request for a hearing.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that appellant submitted additional evidence following the June 12, 2014 decision. Because the Board's jurisdiction is limited to evidence that was before OWCP at the time it issued its final merit decision, the Board may not consider this evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c); *Sandra D. Pruitt*, 57 ECAB 126 (2005). Appellant may submit this evidence to OWCP along with a request for reconsideration.

FACTUAL HISTORY

On May 6, 2014 appellant, then a 52-year-old distribution clerk, filed an occupational disease claim (Form CA-2) alleging that she developed carpal tunnel syndrome as a result of throwing letters, flats, and parcels, selling stamps, and handling packages of up to 70 pounds daily in the course of her federal employment. She became aware of her condition and of its relationship to her employment on December 29, 2012. The employing establishment did not note a date of work stoppage and indicated that medical reports did not show that appellant was disabled from work.

On November 12, 2013 Dr. Xiuli Li, a Board-certified neurologist, noted that appellant reported numbness in both hands. Appellant stated that the change in sensation was intermittent. On examination, Dr. Li noted that appellant was asymptomatic. She diagnosed appellant with paresthesia and carpal tunnel syndrome. Dr. Li ordered testing to rule out peripheral neuropathy and multiple sclerosis.

In a diagnostic report dated December 9, 2013, Dr. Luisa F. Rojas, a Board-certified neurologist, interpreted the results of electromyographic testing performed on appellant's upper extremities. She stated an impression of moderate to severe right carpal tunnel syndrome and moderate left carpal tunnel syndrome.

On December 10, 2013 Dr. Li noted that appellant's symptoms remained the same, but that appellant reported some pain involving the right hand. She stated that the symptoms sometimes woke her in the middle of the night. Dr. Li restated her previous diagnoses of carpal tunnel syndrome and paresthesia.

By letter dated May 8, 2014, OWCP advised appellant of the evidence needed to establish her claim. It requested that she submit a comprehensive medical report from an attending physician including dates of examination and treatment, a description of symptoms, results of examinations and tests, diagnoses, the clinical course of treatment provided with the effects of such treatment, a description of specific employment factors given to her by a physician, and a physician's opinion supported by a medical explanation as to whether her work-related exposure resulted in the specific condition that had been diagnosed.

In a report dated February 5, 2014, Dr. Li noted that appellant returned for a follow up relating to her carpal tunnel syndrome. Appellant reported that she still had pain in the wrist at night, which would occasionally wake her up. Dr. Li referred appellant to a hand surgeon for further evaluation.

By decision dated June 12, 2014, OWCP denied appellant's claim for compensation. It found that the medical evidence did not establish that her condition was caused or aggravated by factors of her federal employment. OWCP accepted that appellant was a federal civilian employee who filed a timely claim; that the employment factors occurred as alleged; that a medical condition had been diagnosed; and that she was within the performance of duty.

On July 18, 2014 appellant requested an oral hearing before an OWCP hearing representative. She also submitted an additional medical report from Dr. Li dated May 29, 2014.

In this report, Dr. Li offered an opinion regarding the cause of appellant's diagnosed condition. He indicated that she was still symptomatic and that repeated movement using the hands commonly results in carpal tunnel.

By decision dated August 7, 2014, the Branch of Hearings and Review denied the hearing request as untimely. An OWCP hearing representative also denied a discretionary hearing, noting that appellant could instead file a request for reconsideration along with additional relevant evidence not previously considered.

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

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).

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).

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 -- ISSUE 1

OWCP accepted that appellant was a federal civilian employee who filed a timely claim; that the employment factors occurred as alleged; that a medical condition had been diagnosed; and that she was within the performance of duty. It denied her claim as she had not submitted sufficient medical evidence to establish that her carpal tunnel syndrome was caused or aggravated by factors of her federal employment. The Board finds that appellant has not met her burden of proof to establish that her condition is causally related to duties of her federal employment.

In reports from November 12, 2013 through February 5, 2014, Dr. Li examined appellant and diagnosed her with carpal tunnel syndrome and paresthesia. A diagnostic report from Dr. Rojas indicated that her carpal tunnel syndrome was moderate to severe on the right and moderate on the left. Dr. Li noted that appellant's symptoms were intermittent and that she was experiencing pain in her right hand to the extent that it sometimes woke her up at night.

There is no medical evidence that was before OWCP at the time of its June 12, 2014 decision containing a rationalized opinion as to the cause of appellant's carpal tunnel syndrome.¹⁰ Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹¹ Hence, these reports are not sufficient to meet appellant's burden to establish a causal relationship between work-related factors and her claimed injury.

As such, the Board finds that the medical evidence does not establish that appellant sustained carpal tunnel syndrome causally related to her employment. An award of compensation may not be based on surmise, conjecture, or speculation. Neither the fact that appellant's condition 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

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).

¹⁰ Appellant submitted medical evidence subsequent to OWCP's June 12, 2014 decision, but the Board lacks jurisdiction to consider this evidence for the first time on appeal. *Supra* note 2.

¹¹ *Michael E. Smith*, 50 ECAB 313, 316 n.8 (1999).

causal relationship.¹² Causal relationships must be established by rationalized medical opinion evidence. As noted, the medical evidence is insufficient to establish appellant's claim. Consequently, OWCP properly found that appellant did not meet her burden of proof to establish her claim.

LEGAL PRECEDENT -- ISSUE 2

A claimant, injured on or after July 4, 1966, who has received a final adverse decision by OWCP may obtain a hearing by writing to the address specified in the decision.¹³ The hearing request must be sent within 30 days (as determined by postmark or other carrier's date marking) of the date of the decision for which a hearing is sought.¹⁴ The claimant must not have previously submitted a reconsideration request (whether or not it was granted) on the same decision.¹⁵ If the request is not made within 30 days, a claimant is not entitled to a hearing as a matter of right. However, the Branch of Hearings and Review may exercise its discretion to either grant or deny a hearing.¹⁶

ANALYSIS -- ISSUE 2

OWCP issued its latest merit decision on June 12, 2014. Appellant had 30 days to request a hearing, but the hearing request was postmarked July 18, 2014. The regulations provide that "[t]he hearing request must be sent within 30 days ... of the date of the decision for which a hearing is sought."¹⁷ Because appellant's July 18, 2014 request was untimely, she was not entitled to a hearing as a matter of right. The Branch of Hearings and Review also denied appellant's hearing request because it found that her claim for compensation for occupational disease could be equally well addressed by requesting reconsideration before OWCP. The Board finds that the hearing representative properly exercised her discretionary authority in denying appellant's request for a hearing.¹⁸

¹² See *Dennis M. Mascarenas*, *supra* note 6.

¹³ 20 C.F.R. § 10.616(a).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ 5 U.S.C. §§ 8124(b)(1) and 8128(a); *Hubert Jones, Jr.*, 57 ECAB 467, 472-73 (2006); *Herbert C. Holley*, 33 ECAB 140 (1981).

¹⁷ 20 C.F.R. § 10.616(a).

¹⁸ *Mary B. Moss*, 40 ECAB 640, 647 (1989). Abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from known facts. See *André Thyratron*, 54 ECAB 257, 261 (2002).

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that her carpal tunnel syndrome was causally related to her federal employment. The Board further finds that the Branch of Hearings and Review properly denied appellant's hearing request.

ORDER

IT IS HEREBY ORDERED THAT the August 7 and June 12, 2014 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: March 9, 2015
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