

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

E.B., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Atlanta, GA, Employer**

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**Docket No. 15-0924
Issued: October 1, 2015**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 23, 2015 appellant filed a timely appeal from a March 3, 2015 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

ISSUE

The issue is whether appellant has met her burden of proof to establish that she sustained right carpal tunnel syndrome in the performance of duty.

¹ 5 U.S.C. § 8101 *et seq.*

² Appellant timely requested an oral argument setting forth many facts of her case, but no articulated basis for the oral argument. She did not timely respond to the Clerk of the Board's request to provide a reason for the oral argument. By order issued August 14, 2015, the Board denied appellant's request for oral argument, finding that the argument on appeal can be addressed adequately based on a review of the case record. Appellant did not appeal a second decision dated March 3, 2015, denying her claim for wage-loss compensation from August 4 to December 9, 2014.

FACTUAL HISTORY

On July 28, 2014 appellant, then a 29-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that on July 27, 2014 she sustained a right wrist sprain when pulling and releasing the emergency brake on her postal vehicle. After the incident, she received emergency room treatment.³ Appellant did not stop work. She worked full-time modified duty through September 16, 2014, when the employing establishment reduced her schedule from eight hours to four hours a day. Appellant continued working light duty for four hours a day through December 12, 2014 and continuing.

Appellant submitted medical evidence in support of her claim.

Dr. Tarek A. Nessouli, an attending Board-certified orthopedic surgeon, followed appellant beginning on August 12, 2014. He opined that the July 27, 2014 incident caused right de Quervain's tenosynovitis, based on a positive Finkelstein's test and a negative Tinel's sign. Dr. Nessouli prescribed a thumb spica brace and injected the tendon sheath. He released appellant to return to work with no use of the right hand. Dr. Nessouli noted that appellant's presentation as of August 26, 2014 was more characteristic of right carpal tunnel syndrome, as she developed numbness in the fingertips and pain over the thenar eminence, as well as positive Tinel's and Phalen's signs. He extended light duty for 10 days.

In a September 9, 2014 report, Dr. Nessouli noted that appellant attributed her right wrist pain to throwing mail. He restricted appellant to light duty for two weeks "because of the minimal Finkelstein test." On September 23, 2014 Dr. Nessouli diagnosed right carpal tunnel syndrome noting that appellant performed repetitive motion in sorting mail. He recommended a de Quervain's release and median nerve release.

On December 3, 2014 OWCP accepted the claim for de Quervain's tendinitis of the right wrist. It also advised appellant of the additional evidence needed to establish her claim for right carpal tunnel syndrome. This evidence would include a report from her attending physician explaining how and why the July 27, 2014 right wrist injury resulted in carpal tunnel syndrome. Appellant was given 30 days to submit such evidence.

In response, appellant provided reports from Dr. Nessouli dated from November 11, 2014 to January 13, 2015, which diagnosed improving de Quervain's tenosynovitis based on an intermittently positive Finkelstein's test. As of January 13, 2015, appellant had "no evidence of carpal tunnel."

By decision dated March 3, 2015, OWCP denied appellant's claim for carpal tunnel syndrome, finding that fact of injury was not established. It found that the medical evidence was insufficient to establish a diagnosis of right-sided carpal tunnel syndrome.

³ Appellant submitted July 27, 2014 hospital emergency department intake and discharge forms related to a wrist sprain. These forms do not contain a legible signature from a physician. Appellant also submitted an August 4, 2014 form report that does not contain a legible signature. Dr. Benjamin Fernando, an attending internist, released appellant to modified work on August 11, 2014, with lifting limited to three pounds.

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 and/or specific condition for which compensation is claimed are causally related to the employment injury.⁴ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁵

The medical evidence required to establish causal relationship is generally rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician’s rationalized 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 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.⁶

ANALYSIS

OWCP accepted that appellant sustained right de Quervain’s tenosynovitis due to a July 27, 2014 work incident. Dr. Nessouli, an attending Board-certified orthopedic surgeon, opined that appellant also sustained right carpal tunnel syndrome. OWCP denied expansion of the claim to include carpal tunnel syndrome, finding that the medical evidence did not support that appellant sustained the condition.

Dr. Nessouli initially diagnosed de Quervain’s tenosynovitis on August 12, 2014. However, he noted on August 26, 2014 that appellant’s presentation newly indicated carpal tunnel syndrome, as she developed paresthesias in the right hand, as well as positive Tinel’s and Phalen’s signs. Dr. Nessouli elaborated in September 9 and 23, 2014 reports that appellant believed that throwing mail and repetitive motion at work caused right carpal tunnel syndrome. However, he did not observe the condition from November 11, 2014 onward. Dr. Nessouli reported on January 13, 2015 that appellant no longer had any evidence of carpal tunnel syndrome.

The Board finds that Dr. Nessouli’s opinion is insufficient to establish that appellant sustained carpal tunnel syndrome. Although he diagnosed the condition based on objective signs on August 26, 2014, Dr. Nessouli did not observe those indicators on subsequent examinations. He noted on January 13, 2015 that the condition was no longer present. Also, Dr. Nessouli did not explain how and why the July 27, 2014 incident would cause carpal tunnel syndrome.

⁴ *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

⁶ *Solomon Polen*, 51 ECAB 341 (2000).

Dr. Nessouli did not offer an independent opinion or connect carpal tunnel syndrome to the accepted incident.

OWCP advised appellant by letter dated December 3, 2014 of the necessity of providing her physician's well-reasoned opinion explaining how and why work factors would cause right carpal tunnel syndrome. As appellant did not submit such evidence, it properly denied the claim.

On appeal appellant argues that she remained debilitated due to her right wrist condition, could not tolerate pain medication, and required surgery as recommended by Dr. Nessouli. She asserted that Dr. Nessouli's reports were sufficient to establish a diagnosis of carpal tunnel syndrome. As stated above, Dr. Nessouli's opinion lacked the medical reasoning necessary to establish a firm diagnosis of carpal tunnel syndrome. The Board therefore finds that appellant has not met her burden of proof to establish a right carpal tunnel claim. Moreover, appellant's pending claim is a traumatic injury claim. She has not pled an injury which is cumulative in nature.

Appellant also alleged a pattern of harassment, retaliation, and wrongdoing by the employing establishment due to the accepted injury. The Board does not have jurisdiction over such actions of the employing establishment in the pending claim.

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 has not met her burden of proof to establish that she sustained carpal tunnel syndrome in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 3, 2015 is affirmed.

Issued: October 1, 2015
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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