

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

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S.G., Appellant)	
)	
and)	Docket No. 16-0817
)	Issued: August 3, 2016
DEPARTMENT OF VETERANS AFFAIRS,)	
VETERANS HEALTH ADMINISTRATION,)	
MEDICAL CENTER, Murfreesboro, TN,)	
Employer)	
)	

Appearances:
Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On March 15, 2016 appellant, through counsel, filed a timely appeal from a January 29, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met her burden of proof to establish a bilateral upper extremity condition in the performance of duty.

FACTUAL HISTORY

This case has previously been before the Board.

On April 29, 2014 appellant, then a 58-year-old practical nurse, filed an occupational disease claim (Form CA-2) alleging that she sustained bilateral carpal tunnel syndrome in the performance of duty on or before April 3, 2014. The employing establishment noted that she had work limitations related to left shoulder injuries accepted under prior claims: File No. xxxxxx860, for a left rotator cuff sprain sustained on August 27, 2010; File No. xxxxxx982 for a left arm sprain with complete rotator cuff rupture and glenoid labrum tear sustained on September 23, 2011; File No. xxxxxx799 for a left shoulder and rotator cuff sprain sustained on February 10, 2013.

In a May 6, 2014 letter, OWCP advised appellant of the additional evidence needed to establish her claim, including a report from her attending physician explaining how and why the identified work factors would cause the claimed condition.

An April 29, 2014 employing establishment incident report notes that appellant reported sustaining a cumulative trauma condition to both upper extremities on or before April 3, 2014. Appellant described “repetitive motion with hands causing numbness, tingling, loss of sensation, and discoloration of fingertips in both hands following shoulder surgery for work-related incident.

Appellant provided a June 2, 2014 letter, from Tameron Dudley an employment establishment FWCP specialist, attributing the claimed conditions to repetitive upper extremity motion pushing a medication cart, preparing medication packets, dispensing medication, computer data entry, blood draws, catheter insertions, ear irrigations, preparing injections, and lifting and positioning patients. She noted no nonoccupational activities requiring repetitive upper extremity motions. A supervisor provided an undated letter confirming appellant’s account of her work duties.

The employing establishment submitted a June 2, 2014 letter controverting the claim, contending that appellant’s left hand symptoms were either due to left shoulder surgery under File No. xxxxxx799 or preexisting Reynaud’s syndrome, and that the medical evidence in the other claim files did not establish causal relationship between work factors and any right hand symptoms. It also contended that she was studying for a degree in nursing, and able to perform extended computer data entry as required by her community college courses.

Appellant submitted medical evidence, received by OWCP on June 9, 2014.³ Dr. Charles R. Kaelin, an attending Board-certified orthopedic surgeon, provided reports from March 20 to May 15, 2014, relating her complaints of paresthesias into the left hand. He noted that appellant worked as a practical nurse. April 7, 2014 electromyography and nerve conduction velocity studies showed moderate bilateral carpal tunnel syndrome, and bilateral ulnar neuropathy near the elbows. Dr. Kaelin diagnosed a left labral tear, bilateral ulnar neuropathy, bilateral carpal tunnel syndrome, and vascular issues in the left index finger. He released appellant to regular duty as of May 15, 2014. Dr. Kaelin commented on May 15, 2014 that, based on her description of her job duties, the diagnosed conditions “are related to her work.”⁴

By decision dated June 9, 2014, OWCP denied appellant’s claim, finding that causal relationship was not established. It found that she did not submit any evidence in response to its May 6, 2014 request. OWCP did not address the medical records it had received earlier that day.

Appellant then appealed to the Board. By order issued March 2, 2015,⁵ the Board remanded the case to OWCP for consideration of evidence received on June 9, 2014. The Board found that it was necessary that OWCP review all evidence submitted by a claimant and received by OWCP prior to issuance of its final decision, even when evidence is received by OWCP the same day a final decision is issued.⁶ The facts and law of the case as set forth in the Board’s decision and order are incorporated herein by reference.

By decision dated April 9, 2015, OWCP denied the claim, finding that the medical evidence received on June 9, 2015 was insufficient to establish causal relationship. It found that Dr. Kaelin did not explain how and why work factors would cause bilateral carpal tunnel syndrome.

In an April 28, 2015 letter, counsel requested a telephonic hearing, held November 17, 2015. At the hearing, appellant affirmed that her duties of dispensing medication and writing chart notes involved repetitive fine motor tasks. Following the hearing, counsel submitted copies of documents previously of record.

The employing establishment responded to the hearing transcript on December 23, 2015 contending that appellant had a “questionable fact of injury” due to nonoccupational activities, “such as her own business” and going to college full time since approximately 2011.

Appellant provided her December 30, 2015 letter, describing repetitive upper extremity motions involved in preparing and dispensing pills and injections, pushing syringe plungers,

³ In the electronic version of the case record available to the Board on the present appeal, the received date was modified to June 17, 2014. However, records from the prior appeal confirm that OWCP initially imaged this evidence into the case record on June 9, 2014.

⁴ Appellant also provided an unsigned chart note, and a 1998 preemployment physical noting no upper extremity issues.

⁵ Docket No. 15-0018 (issued March 2, 2015).

⁶ See *Linda Johnson*, 45 ECAB 439 (1994).

pushing a medication cart weighing more than 400 pounds, keyboarding, and assisting morbidly obese patients. She also submitted additional medical evidence.

In an October 21, 2014 report, Dr. Kaelin diagnosed worsening bilateral carpal tunnel and cubital tunnel syndrome, and a triangular fibrocartilage complex tear of the right wrist.

In a December 30, 2015 report, Dr. Jonathan Head, an attending Board-certified family practitioner, asserted that appellant used “her hands all day at work, and based on her job description, it [was] very reasonable to state that her carpal tunnel syndrome is work related.”⁷

By decision dated January 29, 2016, an OWCP hearing representative affirmed OWCP’s April 9, 2015 decision, finding that the medical evidence was insufficient to establish that work factors caused or contributed to the claimed upper extremity conditions. The hearing representative noted that while Dr. Head and Dr. Kaelin opined that it was “reasonable” that repetitive upper extremity motions at work caused carpal tunnel or cubital tunnel syndrome, neither physician explained the medical reasons that would support causal relationship.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish 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.⁸ 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.⁹

An occupational disease is defined as a condition produced by the work environment over a period longer than a single workday or shift.¹⁰ 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) 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.

⁷ Appellant also provided a November 3, 2014 left wrist magnetic resonance imaging scan report showing a full-thickness tear of the central triangular fibrocartilage, and ulnar impaction syndrome.

⁸ *Joe D. Cameron*, 41 ECAB 153 (1989).

⁹ *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

¹⁰ 20 C.F.R. § 10.5(q).

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.¹¹

ANALYSIS

Appellant claimed that she sustained bilateral upper extremity conditions in the performance of duty on or before April 3, 2014. In support of her claim, she submitted reports from Dr. Kaelin, an attending Board-certified orthopedic surgeon, who diagnosed bilateral carpal tunnel and ulnar tunnel syndromes, confirmed by April 7, 2014 electrodiagnostic studies. Dr. Kaelin opined on May 15, 2014 that, based on appellant's description, the diagnosed carpal tunnel and ulnar neuropathy syndromes were "related to her work." Dr. Head, an attending Board-certified family practitioner, provided a December 30, 2015 report opining that it was "very reasonable" that her carpal tunnel syndrome was work related. However, he did not set forth any medical reasoning for his opinion supporting causal relationship, or discuss why specific job duties would cause or aggravate the claimed conditions. Because Dr. Kaelin and Dr. Head did not explain how and why dispensing medication, pushing a medication cart, performing data entry, and moving patients would cause bilateral carpal tunnel syndrome and ulnar neuropathy, their opinions are insufficient to meet appellant's burden of proof.¹²

OWCP advised appellant by May 6, 2014 letter of the necessity of providing her physician's well-reasoned opinion explaining how and why work factors would cause a bilateral upper extremity condition. As appellant did not submit such evidence, OWCP properly denied the 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 a bilateral upper extremity condition in the performance of duty.

¹¹ *Solomon Polen*, 51 ECAB 341 (2000).

¹² *Deborah L. Beatty*, 54 ECAB 340 (2003).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 29, 2016 is affirmed.

Issued: August 3, 2016
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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