

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

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L.B., Appellant)	
)	
and)	Docket No. 16-0924
)	Issued: August 1, 2016
)	
U.S. POSTAL SERVICE, INTERNATIONAL SERVICE CENTER, Chicago, IL, Employer)	
_____)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On April 1, 2016 appellant filed a timely appeal from a February 4, 2016 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.

ISSUE

The issue is whether appellant met her burden of proof to establish a bilateral hand condition causally related to factors of her federal employment.

FACTUAL HISTORY

On April 8, 2015 appellant, then a 30-year-old clerk, filed an occupational disease claim (Form CA-2) alleging that on April 7, 2015 she first became aware of her injury and realized that it was caused by repetitive motion at work. In an accompanying "employee statement" dated

¹ 5 U.S.C. § 8101 *et seq.*

April 8, 2015, she claimed that her hand began to tingle and burn while she was keying at work. Appellant informed her supervisor about her condition. She tried to continue to work, but her pain persisted.

In an April 7, 2015 emergency room report and employee discharge summary report, Dr. Christina B. Dorow, a physician Board-certified in emergency medicine, noted April 7, 2015 as the date of injury, diagnosed right carpal tunnel syndrome, and advised that appellant could return to the next work shift with restrictions.

In a discharge summary report dated April 9, 2015, Dr. Halina Kalinowska, a family practitioner, noted April 7, 2015 as the date of injury and appellant's description of injury. Appellant stated that she felt a burning, numbness, and tingling sensation in her right hand with the use of a keyboard. Dr. Kalinowska diagnosed carpal tunnel syndrome and released her to return to modified work with restrictions.

By letter dated May 7, 2015, OWCP advised appellant of the deficiencies of her claim and afforded her 30 days to submit additional evidence and respond to its inquiries.

On May 15, 2015 appellant described her daily work duties, which included lifting boxes and bags of mail (packages) weighing up to 70 pounds, scanning packages, keying in barcodes and zip codes, pulling or pushing bags of mail off belts and onto scales and back onto the belts, pulling and pushing metal cages, sorting piles of flats (letters) into bags and carts, and facing mail which involved pulling and pushing boxes of mail. She performed these duties approximately seven hours a day, five days a week. Appellant related that her right hand pain had worsened since April 7, 2015. She had pain going up her right hand, wrist, arm, and shoulder. Appellant had to use her left hand at work and she claimed to have also developed pain in this hand and wrist. She stated that she had no previous injuries and had not been diagnosed with any of these conditions.

An April 21, 2015 physician's order form with an unknown signature stated that appellant had tenosynovitis and peripheral neuropathy.

In a May 22, 2015 report of an electromyogram and nerve conduction velocity study (EMG/NCV), Dr. Wayne R. Gavino, a Board-certified neurologist, provided an impression of electrodiagnostic evidence of bilateral median entrapment neuropathy at the wrists compatible with bilateral mild-to-moderate carpal tunnel syndrome, slightly worse on the right. Dr. Gavino also provided an impression of electrodiagnostic evidence of a mild degree of bilateral ulnar sensory neuropathy at the wrists and a mild left ulnar motor neuropathy across the elbow.

In a May 27, 2015 attending physician's report (Form CA-20), Dr. Chiragi M. Shah, a Board-certified family practitioner, provided a history of injury that appellant complained about bilateral hand pain to the employing establishment on April 7, 2015. Dr. Shah diagnosed bilateral carpal tunnel syndrome. He advised that the condition may have been aggravated by repeated hand work. In a May 27, 2015 referral form, Dr. Shah referred appellant to a neurologist to evaluate her bilateral carpal tunnel syndrome.

In an April 9, 2015 narrative report, Dr. Kalinowska related the history of appellant's injury and provided a history of her medical treatment. She complained about numbness and

tingling in her right wrist, especially with movement. Appellant denied any previous symptoms, injuries, or other complaints. Dr. Kalinowska reported examination findings, reiterated her diagnosis of right hand carpal tunnel syndrome, and provided work restrictions. In an April 9, 2015 employee status report, she again diagnosed carpal tunnel syndrome. Dr. Kalinowska indicated with a checkmark that the condition was work related. She released appellant to return to work with restrictions as of the date of her report.

A hospital report dated April 9, 2015 with an unknown signature provided a history of injury that appellant was keying and scanning when she felt pain in her right hand and wrist. The report provided examination findings and a diagnosis of carpal tunnel syndrome. In an April 7, 2015 unsigned emergency room employee status report, appellant was diagnosed with work-related right carpal tunnel syndrome. The report stated that she could return to the next work shift with restrictions.

By decision dated July 23, 2015, OWCP denied appellant's occupational disease claim. It found that the medical evidence submitted did not contain a rationalized medical opinion to establish a causal relationship between her diagnosed right wrist condition and the established factors of employment.

On August 22, 2015 appellant requested an oral hearing before an OWCP hearing representative, which was held on December 21, 2015.

In reports dated November 4 and December 18, 2015, Dr. Eugene P. Lopez, a Board-certified orthopedic surgeon, indicated that appellant was under his care for a new injury that occurred on April 7, 2015. Dr. Lopez noted that she was working as a mail processor on that date and had numbness and tingling in her right hand while lifting up to 75 pounds and scanning items. Appellant had continued sharp pain that went into her right hand and elbow. About a month later, she had the same symptoms in her left hand and elbow due to overcompensating for her right hand. Appellant's symptoms had since worsened. She had moderate right side pain which she rated as 5 out of 10. Appellant rated her mild left side pain as 2 out of 10. She had flare-ups that included numbness, tingling, sharp pain, achiness, and weakness. Appellant had difficulties performing her job duties, housework, and daily tasks due to numbness. Dr. Lopez provided a history of her medical treatment and personal and social background. He reported findings on examination and reviewed diagnostic test results, including the May 22, 2015 EMG/NCV results, which he found showed bilateral carpal tunnel syndrome and bilateral cubital tunnel syndrome. Dr. Lopez diagnosed work-related bilateral cubital tunnel syndrome and bilateral carpal tunnel syndrome. He believed that appellant's injury was directly caused by an aggravation that may be permanent while working as a mail processing clerk for the employing establishment. Dr. Lopez noted that her job consisted of repetitive motion that involved heavy lifting, pushing, pulling, grasping, twisting, turning, and constant use of her hands. He maintained that the bilateral carpal tunnel syndrome and bilateral cubital tunnel syndrome were due to appellant's repetitive tasks. Dr. Lopez related that to his knowledge appellant never had an injury to these areas. He concluded that she could return to work with no restrictions.

In a February 4, 2016 decision, an OWCP hearing representative affirmed the July 23, 2015 decision. The hearing representative found that the medical evidence submitted was

insufficiently rationalized to establish causal relationship between the accepted employment factors and appellant's upper extremity conditions.²

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.³ 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.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 medical evidence required to establish a causal relationship is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable certainty, and must be supported by medial rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.⁵

ANALYSIS

OWCP accepted as factual that appellant performed the work duties of a clerk, which involved keying, lifting, scanning, pushing, pulling, sorting, facing, grasping, twisting, and turning. The Board finds, however, that the medical evidence of record is insufficient to establish that she sustained a bilateral hand condition caused or aggravated by the accepted work factors.

Dr. Lopez's reports found that appellant had bilateral cubital tunnel syndrome and bilateral carpal tunnel syndrome aggravated by her mail processing clerk work duties. He reported that her work duties involved heavy lifting, pushing, pulling, grasping, twisting, turning,

² The Board notes that after issuance of the OWCP hearing representative's February 4, 2016 decision, appellant submitted new medical evidence. The Board however is precluded from reviewing evidence which was not before OWCP at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c)(1).

³ *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *S.P.*, 59 ECAB 184 (2007); *Victor J. Woodhams*, 41 ECAB 345 (1989); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams, id.*

and constant use of her hands. Dr. Lopez noted that appellant experienced numbness and tingling in her right hand while performing her work duties and that she subsequently experienced the same symptoms in her left hand and elbow due to overcompensating for her right hand. The Board finds, however, that Dr. Lopez failed to explain the mechanism of injury by detailing how the particular work factors would cause the diagnosed conditions. The Board has consistently held that a medical opinion not fortified by rationale is of limited probative value.⁶

Dr. Kalinowska's April 9, 2015 employee status form report diagnosed appellant with carpal tunnel syndrome. By checkmark she indicated that the condition was work related. The Board has held that an opinion on causal relationship which consists only of a physician checking "yes" to a medical form report question on whether the claimant's condition was related to the history given is of little probative value. Without any explanation or rationale for the conclusion reached, such report is insufficient to establish causal relationship.⁷ Dr. Kalinowska failed to provide any medical rationale supporting her opinion that appellant's carpal tunnel syndrome was due to the accepted work factors. Her remaining reports failed to provide an opinion addressing whether appellant's right carpal tunnel syndrome was caused by the established employment factors. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value.⁸ For the reasons stated, the Board finds that Dr. Kalinowska's reports are of diminished probative value and are insufficient to establish appellant's claim.

Dr. Shah's May 27, 2015 Form CA-20 report diagnosed bilateral carpal tunnel syndrome. He opined that the condition "may" have been aggravated by repeated hand work. Dr. Shah's opinion was not expressed to a reasonable degree of medical certainty, but rather, is equivocal and speculative in nature. His use of the term "may" renders his opinion speculative in nature.⁹ Further, Dr. Shah did not explain how the accepted employment factors aggravated appellant's condition.¹⁰ In a May 27, 2015 referral form, he referred appellant to a specialist for further evaluation of her bilateral carpal tunnel syndrome. However, this evidence is of diminished probative value as Dr. Shah did not provide an opinion addressing whether the diagnosed condition was caused or aggravated by the accepted employment factors.¹¹

Likewise, the April 7 and May 22, 2015 reports of Drs. Dorow and Gavino, respectively, are of diminished probative value. The physicians diagnosed appellant with right carpal tunnel

⁶ *M.H.*, Docket No. 12-733 (issued September 5, 2012).

⁷ *D.D.*, 57 ECAB 734 (2006); *Sedi L. Graham*, 57 ECAB 494 (2006).

⁸ See *K.W.*, 59 ECAB 271 (2007); *A.D.*, 58 ECAB 149 (2006); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Michael E. Smith*, 50 ECAB 313 (1999).

⁹ *L.R. (E.R.)*, 58 ECAB 369 (2007); *D.D.*, 57 ECAB 734 (2006); *M.W.*, 57 ECAB 710 (2006); *Cecilia M. Corley*, 56 ECAB 662 (2005).

¹⁰ *Supra* note 6.

¹¹ *Supra* note 8.

syndrome and bilateral cubital tunnel syndrome, but failed to offer an opinion as to whether these conditions were caused or aggravated by the accepted work factors.¹²

The April 7, 2015 emergency room employee status report, April 9, 2015 hospital report, and April 21, 2015 physicians order form, which were not adequately signed, have no probative medical value, as it cannot be established that the author is a physician.¹³

Appellant's belief that factors of employment caused or aggravated her condition is insufficient, by itself, to establish causal relationship.¹⁴ The issue of causal relationship is a medical one and must be resolved by probative medical opinion from a physician. The Board finds that there is insufficient medical evidence of record to establish that appellant's bilateral hand condition was caused or aggravated by the established employment factors. Appellant did not meet her burden of proof.

On appeal, appellant contends that her bilateral hand condition was caused by her work duties. For reasons stated above, the Board finds that the weight of the medical evidence does not establish that appellant sustained a bilateral hand condition causally related to the accepted employment duties.

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 failed to meet her burden of proof to establish her bilateral hand condition was causally related to factors of her federal employment.

¹² *Id.*

¹³ See *D.D.*, *supra* note 7; *Merton J. Sills*, 39 ECAB 572, 575 (1988).

¹⁴ 20 C.F.R. § 10.115(e); *Phillip L. Barnes*, 55 ECAB 426, 440 (2004).

ORDER

IT IS HEREBY ORDERED THAT the February 4, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 1, 2016
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board