

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

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S.B., Appellant )

and )

DEPARTMENT OF VETERANS AFFAIRS, )  
VETERANS HEALTH ADMINISTRATION, )  
G.V. MONTGOMERY VETERANS MEDICAL )  
CENTER, Jackson, MS, Employer )

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**Docket No. 15-1948  
Issued: March 2, 2016**

*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  
ALEC J. KOROMILAS, Alternate Judge

**JURISDICTION**

On September 28, 2015 appellant filed a timely appeal from a September 9, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

**ISSUE**

The issue is whether appellant has met her burden of proof to establish bilateral hand and wrist conditions causally related to factors of her federal employment.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that appellant submitted new evidence on appeal. However, the Board lacks jurisdiction to review new evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c).

## **FACTUAL HISTORY**

On January 5, 2015 appellant, then a 55-year-old nurse, filed an occupational disease claim (Form CA-2) alleging that her bilateral hand and wrist conditions were due to the clerical duties, patient assessments, repetitive note taking, and completion of other reports in the performance of her federal duties. She noted that she first became aware of her condition on January 3, 2013 and that it was caused or aggravated by her employment on January 31, 2013.

By letter dated January 8, 2015, OWCP informed appellant that the evidence of record was insufficient to support her claim as no evidence had been received. Appellant was advised of the medical and factual evidence needed and asked to submit such evidence, including a well-rationalized opinion from her physician regarding the cause of her condition, within 30 days. OWCP also requested that the employing establishment provide information on appellant's duties.

In a January 16, 2015 statement, appellant described her various nursing positions from 1997 to the present which required keyboarding six to eight hours a day for five days a week. A job description for staff registered nurse, nurse III, was provided along with a January 15, 2015 note from the employing establishment which confirmed that appellant's job involved six to eight hours of keyboarding five days per week and that bending, stooping, reaching, pulling and pushing were required periodically throughout the day to retrieve information from cabinets. The employing establishment advised that once the injury was reported, workstation accommodations were provided including a special chair, keyboard and mouse.

On February 3, 2015 OWCP received a March 12, 2013 unsigned medical report wherein paresthesia of bilateral upper extremities was diagnosed. In an unsigned December 16, 2013 report, a follow-up for carpal tunnel was noted with a referral for surgery.

Also submitted were laboratory reports dated February 20, May 27, and August 26, 2014, x-ray reports dated February 27 and November 26, 2014, a February 20, 2014 patient medication list, electromyogram and nerve conduction velocity reports dated March 18, 2013 and November 24, 2014, operative reports dated December 16 and 26, 2014. The operative note prepared by Dr. Adam Lewis, a Board-certified neurosurgeon, on December 16, 2014 related that appellant had undergone right endoscopic carpal tunnel release on that day. In the December 26, 2014 operative report, Dr. Lewis related that appellant had undergone left endoscopic carpal tunnel release. Work excuse notes dated December 16, 2014 and January 9 and 20, 2016 from Dr. Lewis were also received.

Treatment notes from Dr. Ella Webster, a Board-certified internist and rheumatologist, dated February 20, March 31, May 27, August 26, and November 24, 2014 were received. Dr. Webster noted a history of injury, presented examination findings and treatment recommendations for diagnosed bilateral carpal tunnel syndrome, more severe on right. In medical reports dated May 27, August 26, and November 24, 2014, Dr. Webster diagnosed osteoporosis.

In a November 24, 2014 report and an addendum report of January 14, 2015, Dr. Salil C. Tiwari, a Board-certified neurologist, noted that appellant had painful paresthesia in the hands

for the past two years with symptoms progressively worsening. He noted results from diagnostic tests and provided an impression of severe right and moderate/severe left, bilateral mixed sensory-motor median neuropathy across the carpal tunnel.

A January 9, 2015 treatment note from Julia S. Bruce, a certified family nurse practitioner, was also received.

By decision dated March 13, 2015, OWCP denied appellant's claim as the medical evidence failed to include an affirmative, rationalized physician's opinion as to whether and how the diagnosed conditions were caused and/or contributed to by appellant's work activities.

On April 1, 2015 appellant requested that an OWCP hearing representative review the written record. Evidence previously of record was received along with additional evidence. This included evidence regarding the different programs/positions appellant held while employed at the employing establishment and a February 18, 2015 report from a physical therapist signed by Dr. Adam I. Lewis, a Board-certified neurologist, which noted changes to her plan of care.

In a March 30, 2015 report, Dr. Tiwari reported that appellant typed intermittently all day, six to eight hours a day, five days per week at the employing establishment. He noted that she had undergone bilateral carpal tunnel release surgery with good recovery. Dr. Tiwari diagnosed resolved symptoms of carpal tunnel syndrome after surgery. He opined that the bilateral carpal syndrome was most likely directly caused by appellant's work which had consisted of intermittent typing all day, five days per week since 1984.

By decision dated September 9, 2015, an OWCP hearing representative affirmed OWCP's March 13, 2015 decision.

### **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.<sup>3</sup> 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.<sup>4</sup>

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

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<sup>3</sup> C.S., Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

<sup>4</sup> S.P., 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

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 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.<sup>5</sup>

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.<sup>6</sup> Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors.<sup>7</sup> The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.<sup>8</sup>

### ANALYSIS

In the instant case, appellant has alleged and it is not disputed that her work duties involved six to eight hours of keyboarding per day for five days per week. OWCP denied her claim, finding that there was insufficient medical evidence to establish that her diagnosed bilateral carpal tunnel condition was caused or aggravated by her work duties of keyboarding six to eight hours a day for five days per week.

In treatment notes dated February 20 to November 24, 2014, Dr. Webster provided a history of injury, diagnoses and treatment recommendations. However, he offered no opinion on the causal relation of appellant's condition to her federal employment. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.<sup>9</sup>

In his November 24, 2014 report, Dr. Tiwari offered no opinion regarding the cause of appellant's bilateral hand condition. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal

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<sup>5</sup> *Solomon Polen*, 51 ECAB 341 (2000).

<sup>6</sup> *A.D.*, 58 ECAB 149 (2006); *Michael S. Mina*, 57 ECAB 379 (2006); *Y.J.*, Docket No. 08-1167 (issued October 7, 2008).

<sup>7</sup> *Sedi L. Graham*, 57 ECAB 494 (2006); *J.J.*, Docket No. 09-27 (issued February 10, 2009).

<sup>8</sup> *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>9</sup> *See C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

relationship.<sup>10</sup> In his March 30, 2015 report, Dr. Tiwari reported the history of injury and opined that the bilateral carpal syndrome was most likely directly caused by appellant's work which had consisted of intermittent typing all day, five days per week since 1984. The Board has held that medical opinions which are speculative or equivocal are of diminished probative value.<sup>11</sup> Furthermore, a mere conclusion without the necessary rationale explaining how and why the physician believes that appellant's work activities could result in the diagnosed condition is not sufficient to meet appellant's burden of proof.<sup>12</sup> Thus, Dr. Tiwari's reports are insufficient to discharge appellant's burden of proof as they do not present a rationalized medical opinion regarding causal relationship.

The remaining evidence submitted by appellant is insufficient to establish causal relationship. The diagnostic tests results and laboratory tests of record fail to provide an opinion addressing the causal relationship of appellant's condition.<sup>13</sup> Similarly, the December 16 and 26, 2014, reports as well as the February 18, 2015 report from Dr. Lewis regarding changes to appellant's plan of care offer no opinion regarding causal relationship.

The unsigned reports are also of no probative value as there is no indication of who prepared those reports. The Board has held that incomplete medical reports not containing a signature do not constitute probative medical evidence.<sup>14</sup> Likewise, the January 9, 2015 report from the nurse practitioner is of no probative value, as the Board has held that nurses are not considered physicians under FECA.<sup>15</sup> Thus, the treatment records from the nurse practitioner are of no probative medical value in establishing appellant's claim.

On appeal, appellant asserts that the medical evidence submitted supports her claim. As noted, the evidence of record is insufficient to establish causal relationship. She has the burden to establish causal relationship through the submission of rationalized medical opinion evidence.<sup>16</sup>

Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.606 and 10.607.

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<sup>10</sup> *Id.*

<sup>11</sup> See *S.E.*, Docket No. 08-2214 (issued May 6, 2009) (finding that opinions such as the condition is probably related, most likely related, or could be related are speculative and diminish the probative value of the medical opinion); *Cecilia M. Corley*, 56 ECAB 662, 669 (2005) (finding that medical opinions which are speculative or equivocal are of diminished probative value).

<sup>12</sup> See *Beverly A. Spencer*, 55 ECAB 501 (2004).

<sup>13</sup> See *supra* note 10.

<sup>14</sup> See *R.M.*, 59 ECAB 690, 693 (2008); *Merton J. Sills*, 39 ECAB 571, 575 (1988).

<sup>15</sup> *Id.*

<sup>16</sup> *John J. Montoya*, 54 ECAB 306 (2003).

**CONCLUSION**

The Board finds that appellant did not meet her burden of proof to establish that her bilateral hand and wrist conditions were causally related to factors of her federal employment.

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 9, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 2, 2016  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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