

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

L.W., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
San Diego, Employer**

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**Docket No. 15-1437
Issued: May 9, 2016**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On June 19, 2015 appellant filed a timely appeal from January 2, 27, March 11, and June 8, 2015 merit decisions 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 established additional conditions related to her April 14, 2013 employment injury; (2) whether appellant established a work-related occupational disease; and (3) whether appellant has established a claim for a schedule award.

¹ 5 U.S.C. § 8101 *et seq.*

² Appellant filed a timely request for oral argument, pursuant to 20 C.F.R. § 501.5(b). By order dated October 6, 2015, the Board, after exercising its discretion, denied her request as her arguments could be adequately addressed in a decision based on a review of the case record. *Order Denying Request for Oral Argument*, Docket No. 15-1437 (issued October 6, 2015).

FACTUAL HISTORY

On April 24, 2013 appellant, then a 31-year-old automation clerk, filed a traumatic injury claim (Form CA-1) alleging that on April 14, 2013 she sustained an injury to her neck due to reaching and lifting duties at work on that date. OWCP accepted that she sustained aggravation of preexisting cervical spondylosis. Appellant stopped work and received wage-loss compensation beginning April 22, 2013 until she was placed on the periodic rolls effective December 15, 2013.³

On July 7, 2014 appellant filed a claim alleging a “repetitive motion injury” due to her work. Regarding the nature of the injury, she referenced nerve pain in both wrists and chronic back pain. Although appellant filed this claim on a Form CA-1, OWCP developed her claim as one for an occupational disease.⁴

In support of her occupational disease claim, appellant submitted an April 30, 2013 report in which Dr. Jonathan Nissanoff, an attending Board-certified orthopedic surgeon, referenced that appellant had worked for the employing establishment as an automation clerk for the prior six months. Dr. Nissanoff noted that she was status post cumulative trauma injury to her neck as a result of moving mail from a sorting machine into mail trays. Appellant complained that she started to have increasing pain in her neck with pain radiating into her left collar bone area, and that she had numbness and tingling in both hands. Dr. Nissanoff diagnosed cervical strain, and ruled out herniated cervical disc and noted, “This is a directly work-related injury, and [appellant’s] symptoms are causally related to the industrial injury discussed above.” He posited that appellant should be considered temporarily totally disabled as of the date of his examination on April 30, 2013.

In a March 3, 2014 report, Dr. Sylvia De La Llana, an attending Board-certified physical medicine and rehabilitation physician, diagnosed “cervical radiculopathy [versus] peripheral nerve compression.” In a March 12, 2014 report, Dr. John Qian, an attending Board-certified physical medicine and rehabilitation physician, diagnosed cervical strain, multilevel disc protrusions and degenerative disc disease of the cervical spine, and ruled out carpal tunnel syndrome bilateral upper extremities versus radiculitis. On April 24, 2014 Dr. Nissanoff indicated, “[Appellant] states [that] she injured her back during the course of her employment with lifting at work, repetitive motion....” He posited that appellant was temporarily totally disabled.

In a September 8, 2014 letter, OWCP requested that appellant submit, within 30 days of the letter, additional factual and medical evidence in support of her occupational disease claim. Appellant did not submit any additional medical evidence regarding her occupational disease claim within the allotted period.

³ Appellant received wage-loss compensation on the periodic rolls beginning December 15, 2013.

⁴ A traumatic injury refers to injury caused by a specific event or incident or series of incidents occurring within a single workday or work shift whereas an occupational disease refers to an injury produced by employment over a period longer than a single workday or shift. 20 C.F.R. §§ 10.5(q) (ee); *Brady L. Fowler*, 44 ECAB 343, 351 (1992).

In a January 2, 2015 decision, OWCP denied appellant's claim for a work-related occupational disease as she had failed to submit sufficient medical evidence in support of her claim.

Appellant also filed a claim (Form CA-2) for bilateral arm and wrist conditions related to her April 14, 2013 employment injury and submitted a July 2, 2014 report from Dr. Qian noting that she had undergone carpal tunnel release surgery two days earlier.⁵

In a January 27, 2015 decision, OWCP denied appellant's claim. It found that she had not submitted rationalized medical evidence establishing any condition on April 14, 2013 other than aggravation of preexisting cervical spondylosis, despite being provided an opportunity to do so prior to the denial of her claim.⁶

On January 29, 2015 appellant filed a request for a schedule award (Form CA-7) due to her accepted April 14, 2013 employment injury. In support of her claim, she submitted a November 28, 2014 report in which Dr. Nissanoff determined, based on the findings of a recent functional capacity evaluation that she had 30 percent "combined whole person impairment rating."⁷

In a February 5, 2015 letter, OWCP requested that appellant submit, within 30 days of the letter, additional factual and medical evidence in support of her schedule award claim, including an impairment rating under the standards of the A.M.A., *Guides* (6th ed. 2009). Appellant did not submit any additional medical evidence regarding her schedule award claim within the allotted period.

In a March 11, 2015 decision, OWCP denied appellant's claim for a schedule award because she had not submitted sufficient medical evidence in support of permanent impairment. It noted that a schedule award could not be granted for an impairment of the whole person.

Appellant continued to argue that she had sustained an occupational disease of her upper extremities due to the repetitive motions required by her job as an automation clerk. She requested a review of the written record by an OWCP hearing representative with respect to OWCP's January 2, 2015 decision denying her claim for a work-related occupational disease.

⁵ The record does not contain a surgical report for any wrist surgery performed on appellant. In a report dated April 30, 2013, Dr. Nissanoff indicated that appellant reported bilateral upper extremity numbness and recommended that electromyogram (EMG) and nerve conduction velocity (NCV) testing be obtained. EMG and NCV testing was performed on March 3, 2014 which showed no electrical evidence of cervical radiculopathy or any peripheral nerve compression. In a July 8, 2014 report, Dr. Nissanoff diagnosed right carpal tunnel syndrome and status post left carpal tunnel release.

⁶ Prior to issuing this decision, OWCP requested that appellant submit additional factual and medical evidence in support of her claim for additional conditions related to her April 14, 2013 employment injury.

⁷ Dr. Nissanoff mentioned the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (5th ed. 2001), but he did not clearly indicate which edition he used to arrive at his impairment rating.

By decision dated June 8, 2015, the hearing representative affirmed OWCP's January 2, 2015 decision denying appellant's occupational disease claim. He found that she had not submitted rationalized medical evidence in support of her claim.

LEGAL PRECEDENT -- ISSUE 1

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 timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged, and that any specific condition and/or period of disability for which compensation is claimed are causally related to the employment injury.⁸ The medical evidence required to establish a causal relationship between a specific condition and an employment injury is rationalized medical opinion evidence. 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 a medical discussion explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁹

ANALYSIS -- ISSUE 1

OWCP accepted that on April 14, 2013 appellant sustained aggravation of preexisting cervical spondylosis. Appellant also claimed that she sustained bilateral arm and wrist conditions related to her April 14, 2013 employment injury. In the January 27, 2015 decision, OWCP denied appellant's claim for additional conditions related to her April 14, 2013 employment injury.

The Board finds that appellant did not meet her burden of proof to establish additional conditions related to her April 14, 2013 employment injury. In support of her claim, appellant submitted an April 30, 2013 report in which Dr. Nissanoff, an attending Board-certified orthopedic surgeon, indicated that she reported bilateral upper extremity numbness and recommended that EMG and NCV testing be obtained. This report cannot establish her claim for additional conditions because it failed to provide any opinion on the cause of the upper extremity conditions. The Board has held that medical evidence which does not offer a clear opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹⁰

EMG and NCV testing was performed on March 3, 2014, but it showed no electrical evidence of cervical radiculopathy or any peripheral nerve compression. In a July 2, 2014 report, Dr. Qian, an attending Board-certified physical medicine and rehabilitation physician, indicated that appellant had undergone carpal tunnel release surgery two days earlier. In a July 8, 2014

⁸ *J.F.*, Docket No. 09-1061 (issued November 17, 2009).

⁹ *See E.J.*, Docket No. 09-1481 (issued February 19, 2010).

¹⁰ *See Charles H. Tomaszewski*, 39 ECAB 461 (1988).

report, Dr. Nissanoff diagnosed right carpal tunnel syndrome and status post left carpal tunnel release. Neither Dr. Qian nor Dr. Nissanoff provided an opinion as to whether appellant's carpal tunnel syndrome or need for carpal tunnel surgery was related to the accepted April 14, 2013 employment injury. Thus the Board finds that appellant has failed to establish additional conditions due to the original April 14, 2013 employment injury.

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.

LEGAL PRECEDENT -- ISSUE 2

As noted above, 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 timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged, and that any specific condition and/or period of disability for which compensation is claimed are causally related to the employment injury.¹¹ These are the essential elements of each and every compensation claim, regardless of whether the asserted claim involves traumatic injury or occupational disease, an employee must satisfy this burden of proof.¹²

OWCP regulations define the term occupational disease or illness as a condition produced by the work environment over a period longer than a single workday or shift.¹³ 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 diagnosed condition is causally related to the employment factors identified by the claimant. The medical opinion 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.¹⁴

ANALYSIS -- ISSUE 2

On July 7, 2014 appellant filed a claim alleging that she sustained a "repetitive motion injury" due to her work. Regarding the nature of the injury, she referenced nerve pain in both wrists and chronic back pain. Although appellant filed this claim on a Form CA-1, OWCP

¹¹ See *supra* note 7.

¹² *Roy L. Humphrey*, 57 ECAB 238 (2005).

¹³ 20 C.F.R. § 10.5(ee).

¹⁴ *Supra* note 12.

properly developed her claim as one for an occupational disease. OWCP denied her claim for a work-related occupational disease in decisions dated January 2 and June 8, 2015.

The Board finds that appellant failed to establish a work-related occupational disease. In an April 30, 2013 report, Dr. Nissanoff indicated that she had worked for the employing establishment as an automation clerk for the prior six months. He noted that appellant reported being status post cumulative trauma injury to her neck as a result of moving mail from a sorting machine into mail trays. Dr. Nissanoff diagnosed cervical strain, and ruled out herniated cervical disc, and noted, “This is a directly work-related injury, and [appellant’s] symptoms are causally related to the industrial injury discussed above.” He posited that appellant should be considered temporarily totally disabled as of the date of his examination on April 30, 2013. The submission of this report does not establish her claim for a work-related occupational disease because Dr. Nissanoff did not provide any medical rationale in support of his conclusion that she sustained medical conditions due to her repetitive work duties. He did not describe appellant’s work duties in any detail or explain the medical process through which they could have caused such conditions. The Board has held that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale.¹⁵

In a March 3, 2014 report, Dr. De La Llana, an attending Board-certified physical medicine and rehabilitation physician, diagnosed “cervical radiculopathy [versus] peripheral nerve compression.” In a March 12, 2014 report, Dr. Qian diagnosed cervical strain, multilevel disc protrusions, and degenerative disc disease of the cervical spine, and ruled out carpal tunnel syndrome bilateral upper extremities versus radiculitis. However, neither Dr. De La Llana nor Dr. Qian provided an opinion that the observed medical conditions constituted work-related occupational diseases.

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.

LEGAL PRECEDENT -- ISSUE 3

The schedule award provision of FECA¹⁶ and its implementing regulations¹⁷ set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members or functions of the body. However, FECA does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to

¹⁵ C.M., Docket No. 14-88 (issued April 18, 2014). On April 24, 2014 Dr. Nissanoff indicated, “[Appellant] states [that] she injured her back during the course of her employment with lifting at work, repetitive motion....” He posited that appellant was temporarily totally disabled. However, Dr. Nissanoff merely repeated appellant’s belief regarding the cause of her back condition and he did not provide his own opinion on causal relationship.

¹⁶ 5 U.S.C. § 8107.

¹⁷ 20 C.F.R. § 10.404.

all claimants. The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.¹⁸ The effective date of the sixth edition of the A.M.A., *Guides* is May 1, 2009.¹⁹

ANALYSIS -- ISSUE 3

On January 29, 2015 appellant filed a claim for a schedule award (Form CA-7) due to her accepted April 14, 2013 employment injury. OWCP denied her claim for a schedule award in a decision dated March 11, 2015.

The Board finds that appellant has not established a claim for a schedule award. In support of her claim, appellant submitted a November 28, 2014 report in which Dr. Nissanoff determined that she had 30 percent “combined whole person impairment rating” based on the findings of a recent functional capacity evaluation. However, this report has no probative value with respect to her schedule award claim because the Board has held that a schedule award is not payable under section 8107 of FECA for an impairment of the whole person.²⁰

An opinion on permanent impairment is of limited probative value if it is not derived in accordance with the standards adopted by OWCP and approved by the Board as appropriate for evaluating schedule losses.²¹ Appellant did not submit an impairment rating report that was conducted in accordance with the relevant standards of the sixth edition of the A.M.A., *Guides*.

Appellant may request a schedule award at any time based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased impairment.

CONCLUSION

The Board finds that appellant did not establish additional conditions related to her April 14, 2013 employment injury. The Board further finds that she did not establish a work-related occupational disease and further finds that she has not established her claim for a schedule award.

¹⁸ *Id.* See also Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6 (January 2010); see also Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 (January 2010).

¹⁹ *Id.* at Chapter 2.808.5a (February 2013).

²⁰ See *Gordon G. McNeill*, 42 ECAB 140, 145 (1990). Dr. Nissanoff mentioned the fifth edition of the A.M.A., *Guides*, but he did not clearly indicate which edition he used to arrive at his impairment rating. As noted, the sixth edition of the A.M.A., *Guides* provides the relevant standards for calculating the impairment rating in this case. See *supra* note 19.

²¹ See *James Kennedy, Jr.*, 40 ECAB 620, 626 (1989).

ORDER

IT IS HEREBY ORDERED THAT the June 8, March 11, January 27 and 2, 2015 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: May 9, 2016
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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