

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

A.S., Appellant)	
)	
and)	Docket No. 16-0944
)	Issued: November 2, 2016
U.S. POSTAL SERVICE, POST OFFICE, Nampa, ID, Employer)	
)	

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
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On April 4, 2016 appellant filed a timely appeal from a December 7, 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 left carpal tunnel syndrome in the performance of duty.

¹ 5 U.S.C. § 8101 *et seq.*

² Appellant submitted new evidence accompanying her appeal request. However, the Board may not consider evidence for the first time on appeal that was not before OWCP at the time it issued the final decision. 20 C.F.R. § 501.2(c).

FACTUAL HISTORY

On October 19, 2015 appellant, then a 52-year-old rural carrier, filed an occupational disease claim (Form CA-2) alleging that she sustained left carpal tunnel syndrome in the performance of duty on or before February 5, 2015. She described pain and numbness in her left hand when she closed it in the morning, drove, or performed repetitive motion. Appellant did not stop work at the time she filed her claim.

The employing establishment controverted the claim, contending that appellant submitted insufficient medical and factual evidence to meet her burden of proof.

By October 22, 2015 letter, OWCP advised appellant of the evidence needed to establish her claim, including her response to an attached questionnaire regarding the onset and duration of her symptoms, any history of injuries or conditions affecting the left upper extremity, a detailed description of the work duties she believed caused or contributed to her condition, and a description of her nonoccupational activities. It afforded appellant 30 days to submit such evidence.

In response, appellant provided an October 9, 2015 report from Dr. Elaine M. Davidson, an attending Board-certified family practitioner, relating appellant's account of a 12- to 18-month history of pain and paresthesias in the left hand, including when holding mail at work. Dr. Davidson diagnosed left carpal tunnel syndrome.

October 30, 2015 electromyography (EMG) and nerve conduction velocity (NCV) studies of the left upper extremity showed a significantly elevated distal motor latency and distal sensory latency.

Dr. Jeffrey S. Boyer, an attending orthopedic surgeon, noted on November 16, 2015 that appellant attributed pain and paresthesias in the left hand to repetitive heavy lifting at the employing establishment. On examination he found a positive Tinel's sign at the left wrist. He diagnosed moderate left carpal tunnel syndrome.³

By decision dated December 7, 2015, OWCP denied appellant's claim, finding that she failed to establish fact of injury. It found that the evidence submitted was insufficient to establish that she performed the duties as described in her claim form. OWCP noted that appellant failed to submit a factual statement as requested on October 22, 2015.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of 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

³ Appellant also submitted a medical records release.

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 determination of whether an employee actually sustained an injury in the performance of duty begins with an analysis of whether fact of injury has been established.⁶ To establish fact of injury in an occupational disease claim, an employee must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.⁷

An employee's statement that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.⁸ Moreover, an injury does not have to be confirmed by eyewitnesses. The employee's statement, however, must be consistent with the surrounding facts and circumstances and her subsequent course of action. An employee has not met his or her burden in establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim. Circumstances such as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury, and failure to obtain medical treatment may, if otherwise unexplained, cast doubt on an employee's statement in determining whether a *prima facie* case has been established.⁹

ANALYSIS

Appellant claimed that she sustained left carpal tunnel syndrome due to performing repetitive motions at work. OWCP explained to appellant, in an October 22, 2015, letter of the necessity of providing additional information about the work factors claimed to have caused or contributed to the claimed condition. It asked her to describe the type and duration of her work duties, her nonoccupational activities, her history of left upper extremity symptoms, and any prior injuries or conditions affecting the left arm. Appellant submitted medical reports from Dr. Davidson and Dr. Boyer; however, he did not respond to the factual questionnaire within the 30 days afforded and OWCP denied the claim finding that appellant had not established any claimed work events occurred.

As appellant did not respond, the Board finds that appellant's statements contained in her CA-2 are alone insufficient to establish fact of injury. Appellant variously attributed her condition to repetitive motion, holding mail, and heavy lifting. Additionally, she did not provide

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 *See S.P.*, 59 ECAB 184, 188 (2007).

⁷ *See R.R.*, Docket No. 08-2010 (issued April 3, 2009); *Roy L. Humphrey*, 57 ECAB 238, 241 (2005).

⁸ *R.T.*, Docket No. 08-408 (issued December 16, 2008); *Gregory J. Reser*, 57 ECAB 277 (2005).

⁹ *L.D.*, Docket No. 16-0199 (issued March 8, 2016); *Betty J. Smith*, 54 ECAB 174 (2002).

the factual statement requested by OWCP, or evidence corroborating her work duties. Therefore, OWCP's December 7, 2015 decision finding that appellant failed to establish the incident component of fact of injury was appropriate.

On appeal appellant explains that a medical situation in her family prevented her from completing and returning OWCP's October 22, 2015 questionnaire within 30 days. As noted above, it is appellant's burden of proof to provide sufficient evidence to establish that she experience the identified work factors as alleged.

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 left carpal tunnel syndrome in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 7, 2015 is affirmed.

Issued: November 2, 2016
Washington, DC

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

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

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