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

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| **T.C., Appellant** | ) | |
| **and** | ) | **Docket No. 16-1052** |
| | ) | **Issued: November 8, 2016** |
| **U.S. POSTAL SERVICE, POST OFFICE, Richmond, VA, Employer** | ) | |

*Appearances:*
*Barry A. Ormond*, for the appellant[1]
*Office of Solicitor*, for the Director

*Case Submitted on the Record*

## DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

## ***JURISDICTION***

On April 22, 2016 appellant, through her representative, filed a timely appeal from an October 27, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[3]

[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.*

[3] Appellant requested an oral argument. By decision dated August 22, 2016, the Board denied appellant's request for an oral argument, finding that appellant's arguments on appeal could adequately be addressed in a decision based on a review of the case record. *Order Denying Request for Oral Argument*, Docket No. 16-1052 (issued August 22, 2016). Accordingly, the Board, in its discretion, has decided the appeal on the record.

## ***ISSUE***

The issue is whether appellant met her burden of proof to establish that her bilateral carpal tunnel syndrome was causally related to factors of her federal employment.

## ***FACTUAL HISTORY***

On November 17, 2014 appellant, then a 34-year-old rural mail carrier, filed an occupational disease claim (Form CA-2) alleging that she developed carpal tunnel syndrome as a result of her federal employment duties. She explained that on October 14, 2014 she noticed that her hands and wrists hurt while she worked. On October 27, 2014 appellant saw a doctor who diagnosed her with carpal tunnel. On the reverse side of the claim form, the employing establishment indicated that appellant resigned from employment on October 28, 2014 without mentioning the alleged medical condition.

In an attached statement, appellant related that she noticed that her wrists and hands hurt while she performed her job duties and continued to hurt after leaving work. She noted that she informed her manager and supervisor that her hands and wrists hurt and that her fingers were numb, but she continued to work because they told her that there was no one else to do her job. Appellant believed that lifting trays of mail and packages were the reason that her hands and wrists hurt. She explained that she worked 6 days a week for 8 to 11 hours per day.

Appellant received medical treatment from Dr. Ivia Somerville, a Board-certified family practitioner. In treatment notes dated October 27 and November 12, 2014, Dr. Somerville indicated that since September 27, 2014 appellant had been doing repetitive motion with both upper extremities and noted pain and paresthesias at night. Upon examination, she observed normal strength in both upper extremities and positive Tinel's sign on the right. Dr. Somerville diagnosed carpal tunnel syndrome. She explained that carpal tunnel syndrome could be caused or aggravated by repetitive movements of the upper extremities. Dr. Somerville noted that appellant's current duties entailed at least eight hours of repetitive movements. She opined that there was "a causal relationship with her current work duties."

By letter dated December 2, 2014, OWCP informed appellant that the evidence submitted was insufficient to establish her claim. It requested that she provide a narrative medical report which established that she sustained a diagnosed condition causally related to her federal employment. Appellant was afforded 30 days to submit this evidence. Nothing was received by OWCP.

OWCP denied appellant's claim in a decision dated January 5, 2015. It accepted that appellant performed repetitive employment duties, but denied her claim as the medical evidence of record failed to establish that she sustained a diagnosed condition causally related to factors of her federal employment. OWCP specifically noted that the medical report appellant submitted was of no probative value as it was from a physician assistant.

On February 10, 2015 OWCP received appellant's request for an oral hearing before an OWCP hearing representative, which was postmarked on February 4, 2015. The hearing representative asserted that OWCP erred in finding that the medical documentation she

submitted was of no probative value because the report was signed by her physician. Appellant submitted a print-out which demonstrated that Dr. Somerville was a Board-certified family practitioner.

A telephone hearing was held on September 3, 2015. Appellant related that she began to work for the employing establishment on June 23, 2014 as a city carrier. She described that her duties involved casing and delivering mail, which required a repetitive lifting motion. Appellant stated that she was also assigned to do collections, which required lifting between 50 to 100 packages with collections. She explained that she was forced to resign on October 28, 2014 because she was in too much pain from her injury to perform her regular duties. Appellant noted that she currently works in the private sector as a sales associate. She discussed the medical treatment she received from Dr. Somerville and noted that she was referred to a hand specialist for further treatment. Appellant reported that she underwent an electromyogram (EMG) and nerve conduction velocity (NCV) study in May 2015 and underwent surgery for right carpal tunnel syndrome. She stated that her right hand felt better following the surgery but her left hand was still numb and she was in a lot of pain. The hearing representative advised appellant that OWCP needed additional medical documentation, including the diagnostic reports, operative report, and treatment notes, pertaining to her condition.

Following the hearing, appellant submitted various medical reports from Dr. Jonathan Isaacs, a Board-certified orthopedic hand surgeon. In treatment notes dated February 19 to June 9, 2015, Dr. Isaacs related appellant's complaints of bilateral hand numbness and tingling, right wrist pain, and occasional right-sided neck pain. He related that appellant informed him that she first noticed the hand numbness when she was asleep, but that at work she noticed that her hands would cramp up with activities such as lifting things. Upon initial examination, Dr. Isaacs observed good range of motion of both wrists without pain and tenderness, swelling, or erythema. Tinel's sign and cubital and carpal tunnel compression tests were positive on both sides. Dr. Isaacs reported trigger points in the bilateral forearms that caused tingling in fingers. He diagnosed probable greater than left carpal tunnel syndrome, possible right cubital tunnel syndrome, and possible fibromyalgia.

In an April 14, 2015 electrodiagnostic evaluation report, Dr. Karen Ann Steidle, Board-certified in physical medicine and rehabilitation, noted that appellant worked as a postal carrier. She related that around October 2014 appellant started waking up at night with severe neck and back pain and numbness in her hands. Appellant related that the problem was worsened by repetitive movements and relieved by wearing a brace. Dr. Steidle reviewed appellant's history and conducted an examination. She observed palpable pulses at the brachial and radial locations bilaterally and no edema of the wrists, hands, or digits bilaterally. Tinel's sign at the elbow and wrists was positive bilaterally. Dr. Steidle related that electrodiagnostic evaluation revealed evidence of bilateral sensorimotor median neuropathy at the wrists without definite associated denervation and evidence of very mild left ulnar demyelinating slowing across the elbow without signs of significant axonal loss. She advised that appellant should follow-up with Dr. Isaacs in regards to her carpal tunnel syndrome and ulnar neuropathy. Dr. Steidle reported that the paresthesias in appellant's hand appeared to be coming from the carpal tunnel syndrome, but the neck and back pain would not be coming from the carpal tunnel condition.

An operative report dated May 1, 2015 indicated that appellant underwent right carpal tunnel release surgery by Dr. Isaacs.

In a May 13, 2015 treatment note, Charlene Wheeler, a nurse practitioner, noted that appellant was postoperative for right carpal tunnel release surgery. She related that appellant complained of some mild soreness but observed overall improvement in her fingers. Upon examination, Ms. Wheeler reported very minimal swelling with no evidence of infection or swelling. She recommended that appellant avoid any heavy lifting, pushing, or pulling for one week and then return to work.

Dr. Somerville provided a handwritten addendum report dated September 11, 2015. She indicated that she referred appellant to Dr. Isaacs who suspected that appellant had right greater than left carpal tunnel syndrome, possible right cubital tunnel syndrome, and possible fibromyalgia. Dr. Somerville noted that appellant underwent EMG testing on April 14, 2015, which revealed that appellant had sensorineural median neuropathy at the wrists bilaterally, slightly worse on the right. She related that appellant underwent a right carpal tunnel release surgery and was recuperating as expected. Dr. Somerville reported: "It was felt the carpal tunnel was aggravated and exacerbated by her repetitive movements in her postal position."

By decision dated October 27, 2015, an OWCP hearing representative affirmed the January 5, 2015 denial decision with modification. She determined that the medical evidence of record was sufficient to establish that appellant was diagnosed with carpal tunnel syndrome, but it failed to demonstrate that appellant's medical condition was causally related to her employment duties. The hearing representative noted that appellant's physician failed to attribute appellant's carpal tunnel syndrome to her specific duties at the employing establishment or to explain how appellant's condition was related to her federal employment and not to her current employment as a sales associate.

## ***LEGAL PRECEDENT***

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence[4] including that he or she sustained an injury in the performance of duty and that any specific condition or disability for work for which he or she claims compensation is causally related to that employment injury.[5] In an occupational disease claim, appellant's burden requires submission of the following: (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.[6]

[4] *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan,* 20 ECAB 55, 58 (1968).

[5] *M.M.*, Docket No. 08-1510 (issued November 25, 2010); *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[6] *R.H.*, 59 ECAB 382 (2008); *Ernest St. Pierre*, 51 ECAB 623 (2000).

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.[7] 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.[8]

## ***ANALYSIS***

Appellant alleges that she sustained bilateral carpal tunnel syndrome as a result of repetitively casing and delivering mail in the performance of duty. OWCP accepted the repetitive duties of appellant's job and that she was diagnosed with bilateral carpal tunnel syndrome. It denied her claim because the medical evidence failed to establish that her bilateral carpal tunnel syndrome was causally related to her employment. The Board finds that appellant has not met her burden of proof to establish her occupational disease claim.

Appellant was initially treated by Dr. Somerville who provided medical reports dated from October 27, 2014 to September 11, 2015. Dr. Somerville related that since September 27, 2014 appellant had been performing repetitive motion with both upper extremities. She provided examination findings and diagnosed carpal tunnel syndrome. Dr. Somerville explained that carpal tunnel syndrome could be caused or aggravated by repetitive movements of the upper extremities and noted that appellant's current duties entailed at least eight hours of repetitive movements. She opined that there was "a causal relationship with her current work duties." In an addendum report dated September 11, 2015, Dr. Somerville discussed the medical treatment appellant received and noted nerve EMG testing revealed sensorineural median neuropathy at the wrists bilaterally, slightly worse on the right. She reported: "It was felt the carpal tunnel was aggravated and exacerbated by her repetitive movements in her postal position."

Although Dr. Somerville provided an opinion on causal relationship, she failed to provide a well-rationalized medical opinion explaining how appellant's specific employment duties as a rural mail carrier caused or contributed to appellant's bilateral carpal tunnel syndrome. The Board has found that rationalized medical opinion evidence must relate specific employment factors identified by the claimant to the claimant's condition, with medical rationale explaining how the employment factors physiologically caused the diagnosed condition.[9] Dr. Somerville's reports, therefore, fails to establish appellant's claim.

Appellant also submitted treatment notes dated from February 19 to June 9, 2015 including an operative report dated May 1, 2015 from Dr. Isaacs. He related appellant's complaints of bilateral hand numbness and tingling, right wrist pain, and occasional right-sided neck pain. Upon initial examination, Dr. Isaacs reported that Tinel's sign and cubital and carpal tunnel compression tests were positive on both sides. He diagnosed probable greater than left

[7] *I.R.*, Docket No. 09-1229 (issued February 24, 2010); *D.I.*, 59 ECAB 158 (2007).

[8] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

[9] *L.F.*, Docket No. 10-2287 (issued July 6, 2011); *Solomon Polen*, 51 ECAB 341 (2000).

carpal tunnel syndrome, possible right cubital tunnel syndrome, and possible fibromyalgia. The Board notes that Dr. Isaacs did not provide an opinion on the cause of appellant's diagnosed conditions. 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.[10] Likewise, Dr. Steidle's April 14, 2015 electrodiagnostic report also did not provide an opinion relative to the cause of appellant's bilateral carpal tunnel syndrome.

The May 13, 2015 treatment note by Ms. Wheeler, a nurse practitioner, also fails to establish causal relationship. As nurse practitioners are not considered physicians as defined under FECA, her opinion is insufficient to establish appellant's occupational disease claim.[11]

On appeal, appellant alleges that her treating physician, Dr. Somerville, provided an opinion that there was a causal relationship between her diagnosed condition and her employment. She asserted that Dr. Isaacs' medical opinion supported and supplemented Dr. Somerville's original opinion. As explained above, however, the medical reports by Dr. Somerville and Dr. Isaac are of insufficient probative value to establish appellant's occupational disease claim. The mere fact that work activities may produce symptoms revelatory of an underlying condition does not raise an inference of an employment relation. Such a relationship must be shown by rationalized medical evidence of a causal relation based upon a specific and accurate history of employment conditions which are alleged to have caused or exacerbated a disabling condition.[12] Because appellant has not submitted such rationalized medical evidence in this case, the Board finds that she has not met her burden of proof to establish her occupational disease 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. §§ 10.606 through 10.607.

## ***CONCLUSION***

The Board finds that appellant has not met her burden of proof to establish that her bilateral carpal tunnel syndrome was causally related to factors of her federal employment.

[10] *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006).

[11] Section 8102(2) provides that the term "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. 5 U.S.C. § 8101(2); *Roy L. Humphrey*, 57 ECAB 238 (2005).

[12] *Patricia J. Bolleter*, 40 ECAB 373 (1988).

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the October 27, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 8, 2016
Washington, DC

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

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

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