

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

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R.J., Appellant )  
and ) Docket No. 15-1772  
U.S. POSTAL SERVICE, POST OFFICE, ) Issued: October 7, 2016  
San Francisco, CA, Employer )  
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)

*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  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On August 13, 2015<sup>1</sup> appellant filed a timely appeal from a February 18, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>3</sup>

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<sup>1</sup> On February 9, 2016 the Board issued an order dismissing the appeal finding that appellant's appeal was untimely filed. *Order Dismissing Appeal*, Docket No. 15-1772 (issued February 9, 2016). Appellant subsequently submitted a U.S. Postal Service postmark confirming that the appeal was timely filed. In an order dated September 8, 2016, the Board granted appellant's petition for reconsideration and reinstated the current appeal. *Order Granting Petition for Reconsideration and Reinstating Appeal*, Docket No. 15-1772 (issued September 8, 2016).

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

<sup>3</sup> The Board notes that appellant submitted additional evidence to OWCP after the February 18, 2015 decision was issued. The Board's jurisdiction, however, is limited to reviewing the evidence that was before OWCP at the time of its final decision. Therefore, the Board lacks jurisdiction to review this additional evidence. 20 C.F.R. § 501.2(c)(1).

## **ISSUE**

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

On appeal, appellant contends that her treating physicians and physical therapist submitted supporting evidence to prove that her bilateral carpal tunnel syndrome was due to repetitive use of her hands and twisting and grasping mail in the performance of duty.

## **FACTUAL HISTORY**

On November 22, 2013 appellant, a 48-year-old mail carrier, filed a recurrence claim (Form CA-2a), alleging a recurrence of total disability on November 13, 2013 due to repetitive motions with her arms and hands, including repetitively casing mail, lifting packages, trays of letters, and flats, and gripping and grasping letters and flats. OWCP had previously accepted bilateral/lateral epicondylitis under File No. xxxxxx511, with an August 13, 2008 date of injury.

In reports dated October 29 and November 13, 2013, Dr. Douglas Thierer, a Board-certified occupational medicine specialist, diagnosed bilateral carpal tunnel syndrome and bilateral lateral epicondylitis. He advised appellant to avoid repetitive and forceful gripping, grasping, and pinching activities, especially with her hands in awkward positions. Dr. Thierer recommended 5-minute breaks every 25 minutes from repetitive activities involving the hands in order to allow for stretching.

In a December 27, 2013 letter, OWCP advised appellant that it had administratively created a new claim for an occupational disease because she indicated an injury or medical condition to her bilateral hands and arms on November 13, 2013 due to factors of her federal employment. It notified appellant of the deficiencies of her claim and afforded her 30 days to submit additional evidence and respond to its inquiries.

In response, appellant submitted a January 8, 2014 narrative statement reiterating the factual history of her claim.

By decision dated February 19, 2014, OWCP denied the claim because the medical evidence of record failed to establish a causal relationship between appellant's conditions and factors of her federal employment.

By letter dated October 20, 2014, received November 21, 2014, appellant requested reconsideration and submitted an occupational disease claim (Form CA-2) alleging bilateral hand and arm conditions as a result of repetitive grasping, gripping, and twisting in the performance of duty. She further submitted physical therapy reports dated November 11 through December 3, 2013.

In reports dated June 5, 2012 through October 29, 2014, Dr. Thierer reiterated his diagnoses and opined that appellant's symptoms had been present since 2008 and her conditions developed over time due to repetitive use of her hands, repetitive gripping, and repetitive grasping related to sorting, casing, and delivering mail. On October 29, 2014 he further opined that there was strong evidence that a causal relationship existed between a combination of risk

factors (including repetition, force, and posture) and lateral epicondylitis and carpal tunnel syndrome. Dr. Thierer observed that appellant's job included both repetitive and forceful activities and noted that she already had an accepted claim for bilateral lateral epicondylitis. He concluded that since appellant had already established a causal relationship between her job duties and her bilateral lateral epicondylitis condition, it followed that her bilateral carpal tunnel syndrome was also causally related to the same repetitive and forceful activities required by her job duties.

In reports dated April 22 and 25, 2014, Dr. Leslie H. Kim, a Board-certified orthopedic surgeon, diagnosed chronic progressive left heel plantar fasciitis. On May 5, 2014 she diagnosed carpal tunnel syndrome and lateral epicondylitis and reported that appellant believed that her injury occurred gradually over time as her work was repetitive in nature due to lifting, pushing, and pulling.

By decision dated February 18, 2015, OWCP denied modification of its prior 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 timely filed within the applicable time limitation period of FECA, and that an injury<sup>4</sup> was sustained in the performance of duty. These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>5</sup>

To establish that an injury was sustained in the performance of duty in a claim for an occupational disease claim, an employee must submit 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.<sup>6</sup>

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical evidence. 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

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<sup>4</sup> OWCP regulations define an occupational disease or illness as a condition produced by the work environment over a period longer than a single workday or shift. 20 C.F.R. § 10.5(q).

<sup>5</sup> See O.W., Docket No. 09-2110 (issued April 22, 2010); *Ellen L. Noble*, 55 ECAB 530 (2004).

<sup>6</sup> See D.R., Docket No. 09-1723 (issued May 20, 2010). See also *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

of the relationship between the diagnosed condition and the specific employment factors identified by the employee.<sup>7</sup>

## ANALYSIS

The Board finds that appellant did not meet her burden of proof to establish her claim that federal employment factors caused or aggravated her bilateral carpal tunnel syndrome. Appellant identified the factors of employment that she believed caused the condition, including repetitive lifting, grasping, gripping, pinching, and twisting with her hands at work, which OWCP accepted as factual. However, in order to establish a claim for an employment-related injury, she must also submit rationalized medical evidence which explains how her medical condition was caused or aggravated by the implicated employment factors.<sup>8</sup>

In his reports, Dr. Thierer diagnosed bilateral carpal tunnel syndrome and bilateral lateral epicondylitis. He opined that appellant's symptoms had been present since 2008 and her conditions developed over time due to repetitive use of her hands, repetitive gripping, and repetitive grasping related to sorting, casing, and delivering mail. Dr. Thierer further opined that there was strong evidence that a causal relationship existed between a combination of risk factors (including repetition, force, and posture) and lateral epicondylitis and carpal tunnel syndrome. He noted that appellant's job included both repetitive and forceful activities and that she already had an accepted claim for bilateral lateral epicondylitis. Dr. Thierer concluded that since appellant had already established a causal relationship between her job duties and her bilateral lateral epicondylitis condition, it followed that her bilateral carpal tunnel syndrome was also causally related to the same repetitive and forceful activities required by her job duties. He failed, however, to provide a rationalized opinion explaining how factors of appellant's federal employment, such as repetitive lifting, grasping, gripping, pinching, and twisting with her hands at work, caused or aggravated her bilateral carpal tunnel syndrome. Dr. Thierer noted that appellant's condition occurred while she was at work, but such generalized observations do not establish causal relationship because they merely repeat appellant's allegations and are unsupported by adequate medical rationale to explain how her physical activity at work actually caused or aggravated the diagnosed conditions.<sup>9</sup> The Board has held that the mere fact that appellant's symptoms might arise during a period of employment or produce symptoms revelatory of an underlying condition does not establish a causal relationship between appellant's condition and her employment factors.<sup>10</sup> Dr. Thierer failed to provide a rationalized opinion explaining how factors of appellant's federal employment, such as lifting, grasping, gripping, pinching, and twisting, caused or aggravated her bilateral carpal tunnel syndrome. Thus, the Board finds that Dr. Thierer's reports are insufficiently rationalized to establish that appellant's condition was caused or aggravated by factors of her federal employment.

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<sup>7</sup> See *O.W.*, *supra* note 5.

<sup>8</sup> See *A.C.*, Docket No. 08-1453 (issued November 18, 2008).

<sup>9</sup> See *K.W.*, Docket No. 10-98 (issued September 10, 2010).

<sup>10</sup> See *Richard B. Cissel*, 32 ECAB 1910, 1917 (1981); *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

In his May 5, 2014 report, Dr. Kim diagnosed carpal tunnel syndrome and lateral epicondylitis and reported that appellant believed that her injury occurred gradually over time as her work was repetitive in nature due to lifting, pushing, and pulling. As noted, the mere fact that appellant's symptoms arise during a period of employment or produce symptoms revelatory of an underlying condition does not establish a causal relationship between appellant's condition and her employment factors.<sup>11</sup> Therefore, the Board finds that Dr. Kim's report is insufficient to establish that appellant sustained an employment-related injury.

In support of her claim, appellant submitted physical therapy reports dated November 11 through December 3, 2013. These documents do not constitute competent medical evidence because a physical therapist is not considered a "physician" as defined under FECA.<sup>12</sup> As such, this evidence is also insufficient to meet appellant's burden of proof.

On appeal, appellant contends that her treating physicians and physical therapist submitted supporting evidence to prove that her bilateral carpal tunnel syndrome was due to repetitive use of her hands and twisting and grasping mail in the performance of duty. Based on the findings and reasons stated above, the Board finds appellant's arguments are not substantiated. As appellant has not submitted any rationalized medical evidence to support her allegation that she sustained an injury causally related to the accepted employment factors, she failed to meet her burden of proof to establish a 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. §§ 10.605 through 10.607.

### **CONCLUSION**

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

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<sup>11</sup> See *id.*

<sup>12</sup> 5 U.S.C. § 8101(2) (this subsection defines a physician as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law); *See David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA).

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 18, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 7, 2016  
Washington, DC

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

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

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