

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

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G.A., Appellant )

and )

U.S. POSTAL SERVICE, POST OFFICE, )  
Sarasota, FL, Employer )

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**Docket No. 16-1015  
Issued: September 6, 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  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On April 12, 2016 appellant filed a timely appeal of a February 18, 2016 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 the case.<sup>2</sup>

**ISSUE**

The issue is whether appellant met her burden of proof to establish an occupational disease 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 additional evidence after OWCP rendered its February 18, 2016 decision. The Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its final decision. Therefore, this additional evidence cannot be considered by the Board. *See* 20 C.F.R. § 501.2(c)(1).

## **FACTUAL HISTORY**

On June 30, 2015 appellant then a 46-year-old mail processing clerk, filed an occupational disease claim (Form CA-2), alleging that she developed right shoulder and, elbow pain, and numbness and tingling in her hands as a result of performing repetitive duties as a clerk. She first became aware of her condition and realized that it was causally related to her employment on May 7, 2015. Appellant returned to work full duty.

In a supplemental statement, appellant noted that she had notified her supervisor that she was experiencing pain in the shoulder and tingling in her hands on May 23, 2015 while working on the delivery bar code sorter. She noted that she had worked on a delivery bar code sorter for many years and swept the mail, which required putting her right hand over her head to place the trays on top of the rack.

Appellant submitted x-ray reports for the right and left elbows dated May 29, 2015 which revealed no fracture or dislocation. A May 29, 2015 cervical spine x-ray revealed cervical spondylosis pronounced at the C5-6 level which demonstrated a partial fusion of the C5 and C6 vertebral bodies. An x-ray of the right shoulder dated May 29, 2015 was unremarkable. A June 25, 2015 magnetic resonance imaging (MRI) scan of the cervical spine showed annular bulging and a small protrusion in the cervical spine, but no critical canal or foraminal narrowing, and a partial fusion at C5-6.

Appellant submitted a note from a nurse practitioner dated May 28, 2015 indicating that appellant was treated and could return to work with restrictions on repetitive overhead lifting.<sup>3</sup> She was treated by Dr. Gaelle-Laurore Fray, an osteopath, who submitted a note dated June 25, 2015, indicating that appellant was treated and could return to regular work on June 25, 2015.

In a statement dated June 28, 2015, appellant explained that on May 7, 2015 she was injured at work while assisting a coworker and performing repetitive duties. She noted that when her shift was over at 4:00 a.m. she felt a sharp pain in her shoulder and neck, and her hands were numb and tingling. Appellant sought medical treatment the next day. She later notified the employing establishment that her shoulder, neck and hands were hurting and that her physician recommended taking time off the mail machines.

By letter dated July 7, 2015, OWCP advised appellant of the type of evidence needed to establish her claim. It specifically requested a reasoned physician's opinion addressing the relationship of her claimed condition to specific work factors.

Appellant responded that she worked as a mail processing clerk on the delivery bar code sorter where there were 234 bins to sweep each day. She indicated that she fed mail into the machine and swept the bin by reaching over her head repeatedly pulling trays from the rack. Appellant's hands and arms were raising and lowering over the course of a 12-hour shift, six days a week. Her activities outside of work included taking care of her children, riding bikes, going to the beach, and fishing.

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<sup>3</sup> On June 1, 2015 the employing establishment offered appellant a temporary light-duty position with restrictions on manual casing of letters and flats and repetitive overhead lifting.

Appellant was treated by Dr. Geoffrey Cronen, a Board-certified orthopedist, on July 23, 2015 for cervical pain, right shoulder pain, neck stiffness, and numbness in both hands. She reported to Dr. Cronen that there had been no injury. Appellant indicated that she worked at the employing establishment and was required to perform repetitive-type activities including overhead lifting. Findings on examination included full cervical spine range of motion, increased right shoulder pain on flexion, no weakness with rotator cuff testing, positive Phalen's test bilaterally, intact sensation, and no focal motor or sensory deficits. Dr. Cronen noted that x-rays revealed Klippel-Feil deformity of C5-6, mild degenerative changes, and slight kyphosis of the mid cervical spine. He noted a June 25, 2015 MRI scan of the cervical spine which showed slight disc bulging above and below the Klippel-Feil deformity. Dr. Cronen diagnosed cervical Klippel-Feil deformity, right shoulder bursitis and carpal tunnel syndrome. He recommended that appellant lose weight and attend physical therapy. Dr. Cronen opined that carpal tunnel syndrome was affecting her hands and noted appellant's job required many repetitive tasks which could be an aggravating factor. Also submitted was a July 22, 2015 physical therapy prescription prepared by a physician assistant.

In a decision dated August 11, 2015, OWCP denied the claim because appellant had not submitted any medical evidence containing a medical diagnosis in connection with the injury or events.

On August 20, 2015 appellant requested a review of the written record by an OWCP hearing representative. She submitted a July 23, 2015 Florida Workers' Compensation treatment/status report from Dr. Cronen who noted by checking a box marked "yes" that appellant had been treated for a work-related injury and had objective relevant medical findings. Dr. Cronen diagnosed cervical Klippel-Feil deformity, carpal tunnel syndrome and right shoulder bursitis and recommended physical therapy. He noted that appellant could return to work with restrictions of no repetitive activity. Dr. Cronen indicated that she had not reached maximum medical improvement. In reports dated August 2 and 12, 2016, he treated appellant for cervical pain, right shoulder pain and bilateral hand numbness. Dr. Cronen diagnosed cervicalgia, neck, joint and shoulder pain. On August 26, 2015 he advised that he could treat appellant for her neck condition. Appellant requested to be placed in total disability status but the doctor declined. In work capacity evaluations dated August 12 and 26, 2015, Dr. Cronen advised that appellant was disabled from work.

Appellant submitted two orders from Dr. Ira Guttentag, a Board-certified orthopedist, dated November 25, 2015 for physical therapy and an electromyogram (EMG). She submitted after care instructions from a physician assistant dated November 29, 2015. An EMG dated December 10, 2015 revealed severe bilateral carpal tunnel syndrome. An MRI scan of the right shoulder dated January 19, 2016 revealed mild signal abnormality distal supraspinatus tendinosis, fluid in the subacromial subdeltoid space like bursitis, and split tear of the extra-articular portion of the long head of the biceps.

In a decision dated February 18, 2016, OWCP's hearing representative affirmed the decision dated August 11, 2015.

## LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim. When an employee claims that he or she sustained an injury in the performance of duty, he or she must submit sufficient evidence to establish that he or she experienced a specific event, incident or exposure occurring at the time, place, and in the manner alleged. Appellant must also establish that such event, incident or exposure caused an injury.<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 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>

## ANALYSIS

It is not disputed that appellant's work duties as a mail processing clerk included using a delivery bar code sorter where she fed mail into the machine and swept the bin by reaching over her head and pulling trays from a rack. However, she has not submitted sufficient medical evidence to establish that her diagnosed conditions were causally related to specific work factors.

Appellant was treated by Dr. Cronen on July 23, 2015 for cervical pain, right shoulder pain, neck stiffness and numbness in both hands. She indicated that she worked in the employing establishment and was required to do a lot of overhead lifting and repetitive activities. Dr. Cronen diagnosed cervical Klippel-Feil deformity, right shoulder bursitis and carpal tunnel syndrome. He recommended that appellant lose weight and attend physical therapy. Dr. Cronen opined that carpal tunnel syndrome was affecting her hands and noted appellant's job required a lot of repetitive tasks which may be an aggravating factor. The Board finds that, although Dr. Cronen concluded that appellant's job required repetitive tasks which could have aggravated

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<sup>4</sup> See *Walter D. Morehead*, 31 ECAB 188, 194 (1979) (occupational disease or illness); *Max Haber*, 19 ECAB 243, 247 (1967) (traumatic injury). See generally *John J. Carlone*, 41 ECAB 354 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

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

her condition, he did not provide medical rationale explaining the basis of his conclusory opinion regarding the causal relationship between appellant's Klippel-Feil deformity, right shoulder bursitis and carpal tunnel syndrome and the factors of her federal employment.<sup>6</sup> Dr. Cronen did not explain the process by which repetitive overhead lifting would have caused the diagnosed condition and why such condition would not have been due to any nonwork factors such as age-related degenerative changes. Other reports from Dr. Cronen are of limited probative value as they did not specifically address whether employment factors caused or aggravated the diagnosed conditions.<sup>7</sup> Therefore, these reports are insufficient to meet appellant's burden of proof.

Appellant was treated by Dr. Fray who submitted a work excuse note dated June 25, 2015, indicating that appellant was treated and could return to work on June 25, 2015. She submitted two orders from Dr. Guttentag, dated November 25, 2015 for physical therapy and an EMG. However, these reports are insufficient to establish the claim as the physicians did not provide a history of injury<sup>8</sup> or specifically address whether appellant's employment activities had caused or aggravated a diagnosed medical condition.<sup>9</sup>

Appellant submitted evidence from a nurse practitioner and a physician assistant. The Board has held that treatment notes signed by a nurse or physician assistant have no probative value as these providers are not considered physicians under FECA.<sup>10</sup>

The remainder of the medical evidence, including reports of diagnostic testing, are of limited probative value as they fail to provide an opinion on causal relationship between appellant's job and her diagnosed bilateral carpal tunnel syndrome. For this reason, this evidence is not sufficient to meet appellant's burden of proof.<sup>11</sup>

On appeal appellant asserts that OWCP improperly denied the claim and that she submitted sufficient medical evidence to establish that she developed bilateral carpal tunnel syndrome and a shoulder condition as a result of performing repetitive duties at work. As noted above, the medical evidence of record does not establish that appellant's diagnosed conditions

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<sup>6</sup> See *T.M.*, Docket No. 08-975 (issued February 6, 2009) (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).

<sup>7</sup> *A.D.*, 58 ECAB 149 (Docket No. 06-1183, issued November 14, 2006) (medical evidence which 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>8</sup> *Frank Luis Rembisz*, 52 ECAB 147 (2000) (medical opinions based on an incomplete history or which are speculative or equivocal in character have little probative value).

<sup>9</sup> See *supra* note 6.

<sup>10</sup> 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); 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).

<sup>11</sup> *Supra* note 6.

are causally related to her employment. Appellant has not submitted a physician's report, based on an accurate history, which explains how work activities caused or aggravated her bilateral carpal tunnel syndrome and shoulder condition. Thus, she has failed to meet her burden of proof.

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 did not meet her burden of proof to establish that her claimed conditions were causally related to factors of her federal employment.

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 18, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 6, 2016  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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