



## **FACTUAL HISTORY**

On October 12, 2016 appellant, then a 59-year-old city letter carrier, filed an occupational disease claim (Form CA-2) alleging that he developed bilateral ulnar neuropathy as a result of his federal employment duties which entailed sorting mail, picking up large parcels for delivery, grabbing bundles of mail, and delivering packages, and which required fine manipulation of the fingers. He first became aware of his condition on January 12, 2015 and of its relationship to his employment on September 28, 2016. Appellant notified his supervisor of his condition on October 13, 2016. He did not indicate that he had stopped work. On the reverse side of the claim form, appellant's supervisor reported that he had several claims with some of the same body parts and conditions, noting that this was contradictory to the dates appellant had provided pertaining to when he first became aware and related his condition to his employment.<sup>3</sup>

By letter dated October 18, 2016, OWCP informed appellant that the evidence of record was insufficient to support his claim. Appellant was advised of the medical and factual evidence needed and was afforded 30 days to submit the additional evidence. In another letter of that same date, OWCP requested the employing establishment provide additional information pertaining to appellant's occupational disease claim.

In an undated narrative statement received on November 17, 2016, appellant described his employment duties which involved the repetitive use of his arms and hands to case flats and letters. He also explained that he would then load the letters and parcels to his delivery truck and spend the remainder of the day performing curbside deliveries.

In support of his claim, appellant submitted January 12, 2015 and September 28, 2016 medical reports from Dr. Michael T. Acurio, a Board-certified orthopedic surgeon. In the January 12, 2015 report, Dr. Acurio noted that appellant complained of bilateral upper extremity pain, neck pain, and back pain. He noted that appellant underwent nerve studies which demonstrated a moderate neuropathy. Dr. Acurio diagnosed cervical and lumbar disc disease, pelvic girdle dysfunction, and ulnar neuropathy.

In the September 28, 2016 report, Dr. Acurio related that appellant complained of increasing numbness, tingling, and pain in his elbows. He was previously noted to have ulnar neuropathies bilaterally. Appellant reported that his job entailed the repetitive motion of lifting his elbows and transporting mail pieces approximately 1,000 times daily. Physical examination of the upper extremities revealed a markedly positive Tinel's at the elbow. Dr. Acurio diagnosed cervical and lumbar disc disease, bilateral shoulder impingement, sacroiliitis, and ulnar neuropathies. He opined that appellant's condition was work related and he provided work restrictions.

By decision dated November 21, 2016, OWCP denied appellant's claim finding that the medical evidence of record did not show that his diagnosed condition was causally related to the established factors of his federal employment.

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<sup>3</sup> Appellant has seven other traumatic injury claims and two other occupational disease claims with a date of injury ranging from July 5, 2001 through March 28, 2016. The record before the Board contains no other information pertaining to appellant's other claims.

On December 19, 2016 appellant requested reconsideration of OWCP's decision. He provided a narrative statement describing his course of medical treatment for his neck, hand, and elbow injuries. No other evidence was received.

By decision dated January 31, 2017, OWCP denied appellant's request for reconsideration, finding that he neither raised substantive legal questions nor included relevant and pertinent new evidence.

### **LEGAL PRECEDENT -- ISSUE 1**

An employee seeking benefits under FECA<sup>4</sup> 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 filed within the applicable time limitation, that an injury was sustained while in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.<sup>5</sup> These are the essential elements of every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.<sup>6</sup>

In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.<sup>7</sup> The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

To establish that an injury was sustained in the performance of duty in a claim for occupational disease, 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.<sup>8</sup>

To establish causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background, supporting such a causal relationship.<sup>9</sup> The opinion of the physician must be one of reasonable medical certainty and

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<sup>4</sup> *Supra* note 1.

<sup>5</sup> *Gary J. Watling*, 52 ECAB 278 (2001); *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

<sup>6</sup> *Michael E. Smith*, 50 ECAB 313 (1999).

<sup>7</sup> *Elaine Pendleton*, *supra* note 5.

<sup>8</sup> *See Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

<sup>9</sup> *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

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. This medical opinion must include an accurate history of the employee's employment injury and must explain how the condition is related to the injury. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.<sup>10</sup>

### **ANALYSIS -- ISSUE 1**

OWCP accepted that appellant engaged in repetitive activities fulfill his employment duties as a letter carrier. It denied his claim, however, finding that the evidence of record failed to establish causal relationship between those activities and his bilateral ulnar neuropathy condition. The Board finds that the medical evidence of record is insufficient to establish that appellant developed bilateral ulnar neuropathy causally related to factors of his federal employment as a letter carrier.<sup>11</sup>

In a January 12, 2015 report, Dr. Acurio noted that a nerve study demonstrated a moderate neuropathy. As the physician failed to discuss appellant's employment duties or provide any opinion regarding the casual nature of his condition, this report is insufficient to establish appellant's occupational disease claim. 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.<sup>12</sup>

In a September 28, 2016 medical report, Dr. Acurio reported that appellant complained of increasing numbness, tingling, and pain in his elbows. He diagnosed cervical and lumbar disc disease, bilateral shoulder impingement, sacroiliitis, and ulnar neuropathies. Dr. Acurio opined that appellant's condition was work related. The Board finds that Dr. Acurio failed to provide a well-rationalized opinion pertaining to the cause of appellant's injuries and only generally repeated his allegations pertaining to his employment factors. Such generalized statements do not establish causal relationship because they merely repeat appellant's allegations and are unsupported by adequate medical rationale explaining how or why this physical activity actually caused the diagnosed condition.<sup>13</sup> Dr. Acurio failed to provide a fully detailed report as he made no mention of appellant's medical history and only briefly noted findings on physical examination and review of diagnostic testing. Appellant's medical history is of particular importance given that appellant has filed nine prior workers' compensation claims.<sup>14</sup> Moreover, while Dr. Acurio had some knowledge of appellant's repetitive employment duties, his statement on causation failed to provide a sufficient explanation as to the mechanism of injury pertaining to

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<sup>10</sup> *James Mack*, 43 ECAB 321 (1991).

<sup>11</sup> *S.Y.*, Docket No. 11-1816 (issued March 16, 2012).

<sup>12</sup> *B.B.*, Docket No. 17-919 (issued June 28, 2017).

<sup>13</sup> *K.W.*, Docket No. 10-98 (issued September 10, 2010).

<sup>14</sup> A well-rationalized opinion is particularly warranted when there is a history of preexisting condition. *T.M.*, Docket No. 08-975 (issued February 6, 2009); *Michael S. Mina*, 57 ECAB 379 (2006).

this occupational disease claim as alleged by appellant, namely, how repetitive sorting and delivering mail/packages would cause his bilateral ulnar neuropathy.<sup>15</sup> Without explaining how physiologically the movements involved in appellant's employment duties caused or contributed to his diagnosed condition, his opinion on causal relationship is equivocal in nature and of limited probative value.<sup>16</sup>

On appeal appellant asserts that his ulnar nerve condition is work related and caused him difficulty in performing his employment duties. The Board has held an award of compensation may not be based on surmise, conjecture, speculation, or on the employee's own belief of causal relation.<sup>17</sup> Appellant's honest belief that his occupational employment duties caused his medical injury is not in question, but that belief, however sincerely held, does not constitute the medical evidence necessary to establish causal relationship.<sup>18</sup> In the instant case, the record lacks rationalized medical evidence establishing causal relationship between appellant's federal employment duties as a letter carrier and his diagnosed bilateral ulnar neuropathy. Thus, appellant has failed to meet his burden of proof.<sup>19</sup>

Appellant may submit this additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 and 10.607.

### **LEGAL PRECEDENT -- ISSUE 2**

To require OWCP to reopen a case for merit review under FECA section 8128(a), OWCP regulations provide that the evidence or argument submitted by a claimant must: (1) show that OWCP erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by OWCP; or (3) constitute relevant and pertinent new evidence not previously considered by OWCP.<sup>20</sup> Section 10.608(b) of OWCP regulations provide that when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(3), OWCP will deny the application for reconsideration without reopening the case for a review on the merits.<sup>21</sup>

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<sup>15</sup> *S.W.*, Docket 08-2538 (issued May 21, 2009).

<sup>16</sup> *See L.M.*, Docket No. 14-973 (issued August 25, 2014); *R.G.*, Docket No. 14-113 (issued April 25, 2014); *K.M.*, Docket No. 13-1459 (issued December 5, 2013); *A.J.*, Docket No. 12-548 (issued November 16, 2012).

<sup>17</sup> *D.D.*, 57 ECAB 734 (2006).

<sup>18</sup> *P.P.*, Docket No. 17-0483 (issued June 13, 2017).

<sup>19</sup> *See supra* note 16.

<sup>20</sup> *D.K.*, 59 ECAB 141 (2007).

<sup>21</sup> 20 C.F.R. § 10.606(b)(3); *see also K.H.*, 59 ECAB 495 (2008).

## **ANALYSIS -- ISSUE 2**

The Board finds that the refusal of OWCP to reopen appellant's case for further consideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a), did not constitute an abuse of discretion.

The issue presented on appeal is whether appellant met any of the requirements of 20 C.F.R. § 10.606(b)(3), requiring OWCP to reopen the case for review of the merits of the claim. In his application for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law. He did not advance a new and relevant legal argument. Appellant argued that his injury was employment related and described his employment duties and subsequent medical treatment.<sup>22</sup> The underlying issue in this case was whether appellant developed bilateral ulnar neuropathy causally related to his accepted repetitive employment duties. That is a medical issue which must be addressed by relevant new medical evidence.<sup>23</sup> In this case, appellant did not submit any relevant and pertinent new medical evidence.

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(3). Appellant did not show that OWCP erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by OWCP, or constitute relevant and pertinent new evidence not previously considered. Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

## **CONCLUSION**

The Board finds that appellant has not met his burden of proof to establish that his bilateral ulnar neuropathy is causally related to factors of his federal employment as a letter carrier. The Board further finds that OWCP properly denied his request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

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<sup>22</sup> *Sherry A. Hunt*, 49 ECAB 467 (1998).

<sup>23</sup> *See Bobbie F. Cowart*, 55 ECAB 746 (2004).

**ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' decisions dated January 31, 2017 and November 21, 2016 are affirmed.

Issued: August 23, 2017  
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