

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

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A.T., Appellant )

and )

DEPARTMENT OF THE ARMY, CIVILIAN )  
PERSONNEL ADVISORY CENTER, )  
Fort Dix, NJ, Employer )

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**Docket No. 16-1787  
Issued: February 1, 2017**

*Appearances:*

*Thomas R. Uliase, Esq., for the appellant<sup>1</sup>  
Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

CHRISTOPHER J. GODFREY, Chief Judge  
ALEC J. KOROMILAS, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On September 7, 2016 appellant, through counsel, filed a timely appeal from a May 12, 2016 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.

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<sup>1</sup> 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.

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

## ISSUE

The issue is whether appellant sustained bilateral carpal tunnel syndrome and a bilateral elbow condition causally related to factors of her federal employment.

## FACTUAL HISTORY

On September 16, 2015 appellant, then a 44-year-old human resources assistant, filed an occupational disease claim (Form CA-2) alleging that she sustained bilateral carpal tunnel syndrome and a bilateral elbow condition due to factors of her federal employment. She related that beginning March 1998 she engaged in repetitive work duties using a computer and telephone, including handwriting notes items when she was first employed. Appellant did not stop work and her duties did not change.

OWCP, by letter dated October 14, 2015, requested additional factual and medical information from appellant, including a detailed description of the work factors to which she attributed her condition and a comprehensive medical report from her attending physician addressing the relationship between any diagnosed condition and the identified employment factors.

In a report dated August 10, 2012, Dr. Scott F. Garberman, a surgeon, related that appellant was diagnosed with bilateral carpal tunnel syndrome in 2009. He indicated that an electromyogram revealed mild carpal tunnel syndrome bilaterally. Dr. Garberman opined, "In reviewing [appellant's] activities and job, within reasonable medical probability there is causality between [her] length of activities and work in her present clinical state."

On May 21, 2013 appellant underwent a right carpal tunnel release and multiple flexor tenosynovectomies. On March 20, 2015 she underwent a tenotomy of the left lateral epicondyle.

On July 20, 2015 appellant provided a summary of her job duties. She advised that she worked on the computer daily. Appellant submitted additional medical evidence, including progress reports describing her treatment in 2014 and 2015 for lateral epicondylitis of the elbows bilaterally and progress reports after her March 20, 2015 surgery.

By decision dated December 4, 2015, OWCP denied appellant's claim as she had failed to factually establish that she was exposed to the identified work factors. It further found that the medical evidence was insufficient to support causal relationship between a diagnosed condition and her employment. Appellant requested an oral hearing before a representative of the Branch of Hearings and Review.

At the hearing, held on March 4, 2016, appellant described in detail the work factors to which she attributed her condition. She advised that she began working for the employing establishment in 1986. Appellant's first job required completing handwritten forms for about half of the workday. She subsequently worked from 1987 to 1989 ordering supplies, which required entering information on a computer. In 1989, appellant inventoried property and completed either handwritten or typed reports. She subsequently performed administrative work handwriting and using the computer for 90 percent of the workday. In 1998, appellant began

working in her current position typing and answering telephones. She related, “A lot of it [is] on the keyboard now because we [have] gone to electronic, so there [are] two monitors I have, so you [are] on with the mouse going from one screen to the next screen reviewing documents.” Appellant indicated that since 1998 she had spent around 90 percent of her workday either into the keyboard or working with the telephone and mouse. She also scanned documents on the computer.

On March 18, 2016 OWCP provided the employing establishment with a copy of the hearing transcript.

In a report dated October 2, 2015, received by OWCP on March 22, 2016, Dr. Garberman described appellant’s history of wrist pain and numbness beginning in 2008, treated conservatively, and her history of a right carpal tunnel release on May 21, 2013.<sup>3</sup> He advised that she did not have a systemic condition such as diabetes or a connective tissue disorder. Dr. Garberman related, “[Appellant] has been employed for the [employing establishment] since March 2, 1998. I have reviewed the job description which was provided as a technician at recruiting battalion headquarters. The job is repetitious and is full time at approximately eight hours per day.” He diagnosed right median neuritis, a right upper extremity repetitive stress injury, left carpal tunnel syndrome/inflammatory flexor tenosynovitis, and left lateral epicondylitis. Dr. Garberman attributed the diagnosed conditions to appellant’s work duties. He asserted, “The medical reason behind this is the length of [appellant’s] employment, the repetitious nature of her job, and the physical examinations obtained by me in this office. [She] has no outlined secondary issues which could be precipitating factors as there is no part time employment, systemic disorder, or hobbies which could precipitate this.”

By decision dated May 12, 2016, an OWCP hearing representative affirmed the December 4, 2015 decision. He found that appellant had not factually established that she performed repetitive work duties or adequately explained that her work duties were sufficient to cause an upper extremity condition.

On appeal counsel argues that appellant provided both a written statement and testimony at the hearing about her job duties. He notes that the employing establishment did not dispute exposure to the implicated work factors. Counsel also maintains that appellant provided sufficient medical evidence to establish lateral upper extremity conditions causally related to her employment.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>4</sup> has the burden of establishing 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

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<sup>3</sup> Appellant also submitted additional progress reports and the results of electrodiagnostic testing in 2009 and 2014.

<sup>4</sup> *Supra* note 2.

disability and/or specific condition for which compensation is claimed are causally related to the employment injury.<sup>5</sup> 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.<sup>6</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;<sup>7</sup> (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;<sup>8</sup> and (3) medical evidence establishing 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.<sup>9</sup>

Appellant's burden of proof includes the submission of a detailed description of the employment factors or conditions which he believes caused or adversely affected a condition for which compensation is claimed.<sup>10</sup>

The medical evidence required to establish causal relationship generally is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the claimant,<sup>11</sup> must be one of reasonable medical certainty<sup>12</sup> explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>13</sup>

### ANALYSIS

Appellant filed an occupational disease claim alleging bilateral carpal tunnel syndrome and a bilateral elbow condition causally related to factors of her federal employment. She attributed her condition to repetitive use of the computer, telephone, and mouse at the employing establishment. OWCP denied appellant's claim based on its finding that she did not sufficiently identify the work factors to which she attributed her condition.

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<sup>5</sup> *Tracey P. Spillane*, 54 ECAB 608 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>6</sup> *See Ellen L. Noble*, 55 ECAB 530 (2004).

<sup>7</sup> *Michael R. Shaffer*, 55 ECAB 386 (2004).

<sup>8</sup> *Marlon Vera*, 54 ECAB 834 (2003); *Roger Williams*, 52 ECAB 468 (2001).

<sup>9</sup> *Beverly A. Spencer*, 55 ECAB 501 (2004).

<sup>10</sup> *P.G.*, Docket No. 15-1345 (issued August 23, 2016); *Lori A. Facey*, 55 ECAB 217 (2004).

<sup>11</sup> *Tomas Martinez*, 54 ECAB 623 (2003); *Gary J. Watling*, 52 ECAB 278 (2001).

<sup>12</sup> *John W. Montoya*, 54 ECAB 306 (2003).

<sup>13</sup> *Judy C. Rogers*, 54 ECAB 693 (2003).

The Board finds that the case is not in posture for decision. At the hearing, appellant thoroughly described her work duties. She maintained that, beginning in 1986 she copied handwritten forms, from 1987 to 1989, she entered information on a computer, and beginning in 1989 she inventoried property and completed handwritten and typed reports. Appellant began working in her current position in 1998, which required using a computer, a telephone, and a mouse, scrolling between two monitors to review documents. She specified that she used a keyboard or a telephone and mouse for 90 percent of her workday. OWCP provided the employing establishment with a copy of the hearing transcript and 30 days to comment on appellant's testimony. The employing establishment did not challenge her description of her work duties nor did it provide any alternative position description and there is no evidence to suggest that her description was inaccurate. Consequently, the Board finds that appellant has established exposure to the work duties she identified as causing her condition.<sup>14</sup>

The hearing representative did not review or consider the medical evidence as he found that appellant had not factually established the work factors as causing her condition.<sup>15</sup> Appellant has submitted August 10, 2012 and October 2, 2015 reports from Dr. Garberman diagnosing bilateral upper extremity conditions and addressing causation. On remand, OWCP should review the medical evidence and determine whether she sustained an upper extremity condition as a result of the established employment factors. After such further development as deemed necessary, it shall issue *de novo* decision.

### **CONCLUSION**

The Board finds that the case is not in posture for decision.

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<sup>14</sup> See *N.B.*, Docket No. 13-0513 (issued August 27, 2013).

<sup>15</sup> OWCP's hearing representative noted that appellant's work duties were not sufficient to have resulted in the diagnosed conditions. The issue of whether the established work factors caused or aggravated a medical condition, however, is a medical determination.

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 12, 2016 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: February 1, 2017  
Washington, DC

Christopher J. Godfrey, 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