

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

P.E., Appellant	)	
	)	
and	)	<b>Docket No. 17-0408</b>
	)	<b>Issued: July 3, 2017</b>
<b>DEPARTMENT OF THE NAVY, NORTH</b>	)	
<b>ISLAND NAVAL AIR STATION, San Diego, CA,</b>	)	
<b>Employer</b>	)	
	)	

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
COLLEEN DUFFY KIKO, Judge  
ALEC J. KOROMILAS, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On December 14, 2016 appellant filed a timely appeal from a July 11, 2016 merit decision and a September 8, 2016 nonmerit 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 this case.<sup>2</sup>

**ISSUES**

The issues are: (1) whether appellant has met her burden of proof to establish an occupational disease causally related to factors of her federal employment; and (2) whether OWCP properly denied appellant's request for reconsideration of the merits of her claim under 5 U.S.C. § 8128(a).

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board's jurisdiction is limited to the evidence that was before OWCP at the time it issued its final decision. Appellant submitted new evidence on appeal. Therefore, the Board is unable to review evidence submitted by appellant on appeal. *See* 20 C.F.R. § 501.2(c)(1).

## **FACTUAL HISTORY**

On May 2, 2016 appellant, then a 63-year-old financial technician supervisor, filed an occupational disease claim (Form CA-2) alleging that she developed bilateral carpal tunnel syndrome and bilateral trigger fingers due to performing repetitive duties in her job. She first became aware of her condition on January 20, 1993 and realized it was causally related to factors of her federal employment on April 28, 1993. Appellant did not stop work at that time.

In a May 27, 2016 letter, OWCP advised appellant to submit additional information, including a comprehensive medical report from her treating physician, which included a reasoned opinion addressing the relationship between her claimed condition and specific work factors.

In a statement dated June 7, 2016, appellant indicated that she had been diagnosed with multiple trigger finger digits and carpal tunnel syndrome and had undergone multiple surgeries since 1993. In April 1993, she reported being diagnosed with severe bilateral carpal tunnel syndrome and her physicians advised that her condition was the result of her job duties which required use of a keyboard. Appellant underwent a right carpal tunnel release in June 1993 with approved disability and left carpal tunnel release in August 1994 where disability was denied.<sup>3</sup> In 1997, she reported severe wrist pain and trigger finger when she used a computer keyboard. Since 1997, appellant has had multiple cortisone injections. Appellant indicated that the majority of her job functions required keyboard typing and operating computers which aggravated her trigger finger and carpal tunnel syndrome. She also submitted a copy of a Form CA-2, dated April 28, 1993, in which she claimed carpal tunnel syndrome, and a June 3, 1993 claim for compensation (Form CA-7) in which she claimed compensation from May 20 to June 25, 1993 in OWCP File No. xxxxxx800.<sup>4</sup>

Accompanying medical records included an April 1, 1993 electromyogram (EMG) that revealed severe bilateral carpal tunnel syndrome. In a June 2, 1993 attending physician's report, Dr. Dale E. Braun, a Board-certified neurosurgeon, diagnosed bilateral carpal tunnel syndrome. He indicated by checking a box marked "yes" that appellant's condition was caused or aggravated by her employment and noted increase use of her hands aggravated her condition. Dr. Braun noted that appellant was partially disabled from January 20 to June 2, 1993. He further remarked that appellant had electrical evidence of severe bilateral carpal tunnel syndrome, has failed conservative treatment, and was scheduled for right hand surgery on June 10, 1993. In a supplemental report dated June 21, 1993, Dr. Braun reported a follow-up visit after right carpal tunnel release. He noted concurrent disability with left carpal tunnel syndrome. Dr. Braun indicated that he would remove sutures in two weeks and appellant would undergo physical therapy for three weeks.

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<sup>3</sup> Appellant submitted a supervisor's report of mishap dated October 1, 1993 which indicated that she was off work for several days in May and June 1993 and underwent corrective surgery on her right hand for severe bilateral carpal tunnel syndrome.

<sup>4</sup> This other claim is not presently before the Board.

A modified-duty work restriction note dated May 23, 2016, prepared by a health care provider whose signature was illegible, indicated that appellant was undergoing left hand surgery and would require restrictions for two weeks.

Appellant came under the treatment of Dr. Eric P. Hofmeister, a Board-certified orthopedist, who prepared an October 21, 2011 work restriction form and diagnosed bilateral osteoarthritis. Dr. Hofmeister recommended a modified computer mouse to assist with symptoms and controls. In a letter dated June 8, 2016, he noted that appellant had left thumb surgery on May 31, 2016 and would be off work for three weeks to allow her incision to heal and to participate in physical therapy.

In a July 11, 2016 decision, OWCP denied appellant's claim, finding that she failed to establish that her claimed medical condition was related to the established work-related events.

On September 6, 2016 appellant requested reconsideration. In her statement, she indicated that the majority of her daily job functions require her to input data using a computer keyboard and to operate computers. Appellant reported working for the federal government for 28 years as a personnel clerk/military pay technician and financial technical supervisor and two years as a cashier checker at the Navy Commissary. She was diagnosed with multiple trigger finger digits and carpal tunnel syndrome and has undergone multiple surgeries since 1993. In April 1993, appellant was diagnosed with severe bilateral carpal tunnel syndrome and her physicians told her that her condition was the result of her computer keyboard use. She reiterated that, in June 1993, she underwent right carpal tunnel release and disability was approved; however, in August 1994, she underwent left carpal tunnel syndrome release and disability was denied. Appellant reported experiencing severe wrist pain and locking trigger fingers in 1997 and underwent cortisone injections beginning in 1997. She indicated that her carpal tunnel syndrome and trigger finger conditions and subsequent surgeries were related to her computer keyboard use at work.

In a September 8, 2016 decision, OWCP denied appellant's September 6, 2016 request for reconsideration as evidence submitted was insufficient to warrant a merit review.

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

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, the employer 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>5</sup>

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<sup>5</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).

Whether an employee actually sustained an injury in the performance of duty begins with an analysis of whether fact of injury has been established.<sup>6</sup> To establish fact of injury in an occupational disease claim, 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>7</sup>

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>8</sup>

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

It is undisputed that appellant's duties as a financial technician supervisor included repetitive use of a keyboard to enter data on a computer. However, appellant failed to submit sufficient medical evidence to establish that her diagnosed medical conditions were causally related to specific factors of her federal employment.

Appellant submitted an attending physician's report from Dr. Braun dated June 2, 1993, who diagnosed bilateral carpal tunnel syndrome. Dr. Braun indicated by checking a box marked "yes" that appellant's conditions were caused or aggravated by her employment and noted that increased use of her hands aggravated her condition. He further remarked that appellant had electrical evidence of severe bilateral carpal tunnel syndrome, had failed conservative treatment, and was scheduled for surgery on the right hand on June 10, 1993. The Board has held that when a physician's opinion on causal relationship consists only of checking "yes" to a form question, without explanation or rationale, that opinion is of diminished probative value and is insufficient to establish a claim.<sup>9</sup>

In a physician's supplemental report dated June 21, 1993, Dr. Braun diagnosed right carpal tunnel release and noted that appellant had right hand surgery. He noted concurrent disability of left carpal tunnel syndrome. Dr. Braun indicated that he would remove sutures in two weeks and refer appellant for physical therapy. This report is insufficient to establish the

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<sup>6</sup> *S.P.*, 59 ECAB 184, 188 (2007).

<sup>7</sup> *R.R.*, Docket No. 08-2010 (issued April 3, 2009); *Roy L. Humphrey*, 57 ECAB 238, 241 (2005).

<sup>8</sup> *Solomon Polen*, 51 ECAB 341 (2000).

<sup>9</sup> *Sedi L. Graham*, 57 ECAB 494 (2006); *D.D.*, 57 ECAB 734 (2006).

claim as it does not specifically address whether appellant's employment activities caused or aggravated her diagnosed medical condition.<sup>10</sup>

In an October 21, 2011 work restriction form, Dr. Hofmeister noted treating appellant for bilateral hand osteoarthritis and recommended a modified computer mouse to assist with symptoms and controls. On June 8, 2016 he noted that appellant had left thumb surgery on May 31, 2016 and would be off work for three weeks. Dr. Hofmeister's notes are insufficient to establish the claim as he did not provide a history of injury<sup>11</sup> or specifically address whether appellant's employment activities had caused or aggravated a diagnosed medical condition.<sup>12</sup>

Also received was a May 23, 2016 modified duty work restriction recommendation from a provider with an illegible signature. There is no evidence that the document from the unidentified health care provider is from a physician. Medical documents not signed by a physician are not probative medical evidence and do not establish appellant's claim.<sup>13</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 how the accepted work factors caused or aggravated the claimed condition. Consequently, the medical evidence of record is insufficient to establish appellant's claim.<sup>14</sup>

On appeal appellant disagrees with OWCP's decision denying her claim for compensation. She reiterated the facts surrounding her claim and asserted that her carpal tunnel syndrome and trigger finger were causally related to her work duties. As found above, the medical evidence of record does not establish that appellant has a diagnosed medical condition that is causally related to her employment. Appellant has not submitted a physician's report which describes how work her work activities caused or aggravated her diagnosed carpal tunnel syndrome and trigger finger.<sup>15</sup>

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.

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<sup>10</sup> *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

<sup>11</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>12</sup> *A.D.*, 58 ECAB 149 (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>13</sup> *See R.M.*, 59 ECAB 690 (2008); *Bradford L. Sullivan*, 33 ECAB 1568(1982) (where the Board held that a medical report may not be considered as probative medical evidence if there is no indication that the person completing the report qualifies as a "physician" as defined in FECA).

<sup>14</sup> *A.D.*, *supra* note 12.

<sup>15</sup> This decision does not preclude appellant from seeking to pursue matters under her previous claim, File No. xxxxxx800, which is not presently before the Board.

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

Under section 8128(a) of FECA,<sup>16</sup> OWCP has the discretion to reopen a case for review on the merits. OWCP must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(3) of the implementing federal regulations, which provides that a claimant may obtain review of the merits of his or his written application for reconsideration, including all supporting documents, sets forth arguments and contain evidence that:

- “(i) Shows that OWCP erroneously applied or interpreted a specific point of law;  
or
- (ii) Advances a relevant legal argument not previously considered by the (Office);  
or
- (iii) Constitutes relevant and pertinent new evidence not previously considered by OWCP.”<sup>17</sup>

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by OWCP without review of the merits of the claim.<sup>18</sup>

## **ANALYSIS -- ISSUE 2**

OWCP denied appellant’s claim because she had failed to provide sufficient medical evidence to establish that the diagnosed conditions were causally related to her work duties. On September 6, 2016 appellant requested reconsideration.

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 her request for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law. She did not identify a specific point of law or show that it was erroneously applied or interpreted. Appellant did not advance a new and relevant legal argument not previously considered by OWCP. In her statement dated September 6, 2016, she noted her work duties over the course of her employment and the history of her claimed condition. These assertions do not show a legal error by OWCP or a new and relevant legal argument. The underlying issue in this case is whether appellant sustained an occupational disease causally related to her employment duties. That is a medical issue which must be addressed by relevant new medical evidence.<sup>19</sup> Appellant did not submit any new and relevant medical evidence in support of her claim.

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<sup>16</sup> 5 U.S.C. § 8128(a).

<sup>17</sup> 20 C.F.R. § 10.606(b)(3).

<sup>18</sup> *Id.* at § 10.608(b).

<sup>19</sup> *See Bobbie F. Cowart*, 55 ECAB 746 (2004).

The Board accordingly finds that appellant had not met 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 submit relevant and pertinent new evidence not previously considered. Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

**CONCLUSION**

The Board finds that appellant failed to meet her burden of proof to establish an occupational disease causally related to factors of her federal employment. The Board further finds that OWCP properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 8 and July 11, 2016 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: July 3, 2017  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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