

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

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**I.L., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Wailuku, HI, Employer**

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**Docket No. 17-0684  
Issued: July 18, 2017**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

CHRISTOPHER J. GODFREY, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
ALEC J. KOROMILAS, Alternate Judge

**JURISDICTION**

On February 3, 2017 appellant filed a timely appeal from an October 14, 2016 merit decision and a January 13, 2017 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 a bilateral hand condition causally related to factors of her federal employment; and (2) whether OWCP properly denied appellant's request for further merit review of her claim pursuant to 5 U.S.C § 8128(a).

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

<sup>2</sup> Appellant submitted new evidence on appeal. However, the Board is precluded from reviewing evidence which was not before OWCP at the time of its final decision. *See* 20 C.F.R. § 501.2(c)(1).

## **FACTUAL HISTORY**

On July 12, 2016 appellant, then a 57-year-old mail carrier, filed an occupational disease claim (Form CA-2) alleging that she developed pain in her hands and thumbs from her everyday work duties. She first became aware of her condition in March 2016 and of its relationship to her employment on April 12, 2016.

The employing establishment provided an employee information form dated July 19, 2016 which noted her job record, accident and injury history, and prior claims.

By letter dated August 5, 2016, OWCP advised appellant of the deficiencies in her claim and provided her the opportunity to submit additional factual and medical evidence. This included a detailed narrative medical report from her treating physician which contained a history of the injury and a medical explanation with objective evidence of how the reported work exposure contributed to her claimed condition.

In response, appellant submitted an August 20, 2016 narrative statement in which she described her work duties which mainly required the use of her thumbs and fingers. She held mail in bundles in one hand and fingered them individually with the other hand to case them into slots on shelves at work stations. Appellant pulled cased mail down and placed it into work trays or tubs to load into a mail truck for delivery. She related using a heavy and bulky hand-held scanner to scan multiple mail pieces, numerous parcels, and multiple managed service point labels throughout the workday. Appellant fingered through sequenced three-foot long mail trays. Her route usually had five trays that she worked through using her thumbs and index fingers to bring up a letter piece for delivery. Once appellant was in her vehicle, she used her hands to turn the ignition on and off, slide doors to open and close, set a hand brake, roll up the window, and lock her vehicle. Postal regulations required her to do this every time she exited and walked away from the vehicle. This was done numerous times as appellant's route had about 1,000 delivery points. Appellant opened and closed the back hatch of her truck to deliver parcels (she delivered two or three times more than other carriers). Her route consisted of more than half her deliveries to cluster box units (CBUs). Appellant constantly used her hands to open and close these metal units with a key. She noted that heavy latches must be lifted to fully open and close each unit. Appellant delivered mail to individual standing mailboxes which involved using her hands and thumbs to open and close the box doors. She used a pen to write notices and accountable mail, markers to label parcels when delivery could not be made, and rubber bands to bundle mail. Appellant sought medical treatment on April 12, 2016 after pain in both hands persisted for over a month. She was advised by two physicians that her pain was due to repetitive motions and overuse. Appellant asserted that she continued to have pain.

Appellant submitted several reports from Dr. Rebecca A. Romack, a family practitioner. In progress notes and office visit reports dated August 8 and 23, 2016, Dr. Romack indicated that appellant was presented with a work-related injury. She noted appellant's complaints which included pain due to trigger fingers and employment as a postal carrier. Regarding mechanism of injury, Dr. Romack noted that appellant informed her that on March 1, 2016 she repeatedly used her hands throughout the day at work. Appellant grabbed trays of mail with her fingers and lifted them out with her thumbs. She also opened a latch on CBUs and pulled things out of them. Appellant then held a bundle of mail in her left hand and lifted with her right hand. She opened

and closed the hatch all day long when getting in and out of her truck. Appellant had an “old column shiftings” to turn the ignition on and off in her truck. Dr. Romack discussed examination findings and diagnosed bilateral first carpometacarpal (CMC) joint osteoarthritis. She opined that the underlying cause of appellant’s condition was overuse in the course of employment as a postal carrier. Dr. Romack related that there were no known preexisting conditions and/or nonoccupational factors contributing to the development of her injury. She maintained that medical maximum improvement was anticipated in one to two months and appellant’s prognosis was fair.

In industrial work status reports dated August 8 and 23 and September 9, 2016, Dr. Romack restated her diagnosis of bilateral first CMC joint osteoarthritis. She placed appellant on modified activity at work and home from August 8 through October 7, 2016. Dr. Romack indicated that appellant could not work more than 8 hours a day or 40 hours a week. In a September 12, 2016 physician’s form report, she indicated by checking a box marked “yes” that appellant’s March 1, 2016 accident was the only cause of her condition. Dr. Romack noted that appellant had resumed light work on August 8, 2016.

In an after-visit summary dated August 31, 2016, Nancy Zionkowski, an occupational therapist, provided instructions for an arthritis home program.

By decision dated October 14, 2016, OWCP denied appellant’s occupational disease claim. It found that Dr. Romack had not provided a rationalized opinion, supported by a medical explanation, as to how the established employment factors caused, contributed to, or aggravated appellant’s bilateral hand condition.

OWCP received a February 12, 2016 laboratory report which provided blood test results. In progress notes dated September 9 and October 7, 2016, Dr. Lisa K. Sodemani, a Board-certified internist, discussed examination findings and assessed appellant with bilateral first CMC joint osteoarthritis and de Quervain’s tenosynovitis. In an industrial work status report dated September 9, 2016, she restated her diagnosis and placed appellant off work through October 7, 2016.

On December 31, 2016 appellant requested reconsideration. She noted that she would submit additional argument from her physician at a later time. Appellant related that her physician was on maternity leave.

In a January 13, 2017 decision, OWCP denied appellant’s request for reconsideration. It found that the evidence of record was insufficient to warrant merit review of the prior decision. OWCP noted that “[n]o new evidence was presented for 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, 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 and/or specific condition for which compensation is claimed are causally related to the

employment injury.<sup>3</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>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) a 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 a causal relationship is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable 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 employee.<sup>5</sup>

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

There is no dispute that appellant's employment activities included fingering, pulling, lifting, turning, sliding, and rolling. The Board finds, however, that the medical evidence of record is insufficient to establish that these accepted factors of her federal employment caused or aggravated her bilateral hand conditions.

Appellant submitted medical evidence primarily from her family physician, Dr. Romack. In progress notes and office visit reports dated August 8 and 23, 2016, Dr. Romack noted appellant's history of injury, set forth examination findings, and diagnosed bilateral first CMC joint osteoarthritis. She opined that the diagnosed condition was caused by overuse at work. Although Dr. Romack found that appellant was injured at work, she did not provide medical rationale explaining the basis of her conclusory opinion regarding the causal relationship between her bilateral hand condition and the established employment factors.<sup>6</sup> This is especially important as she also indicated that appellant had preexisting conditions and/or nonoccupational factors that contributed to the development of her condition. The Board finds, therefore, that this evidence is insufficient to meet appellant's burden of proof.

In a September 12, 2016 physician's form report, Dr. Romack indicated by checking a box marked "yes" that appellant's March 1, 2016 accident was the only cause of her condition.

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<sup>3</sup> C.S., Docket No. 08-1585 (issued March 3, 2009); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>4</sup> S.P., 59 ECAB 184 (2007); *Victor J. Woodhams*, 41 ECAB 345 (1989); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>5</sup> I.J., 59 ECAB 408 (2008); *Victor J. Woodhams*, *id.*

<sup>6</sup> See *T.M.*, Docket No. 08-0975 (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).

However, she did not provide a firm diagnosis of a particular medical condition.<sup>7</sup> Moreover, the Board has held that when a physician's opinion on causal relationship consists only of checking "yes" to a form question, without more by way of medical rationale, it is of little probative value and insufficient to establish appellant's claim.<sup>8</sup> A mere conclusory opinion provided by a physician without the necessary rationale explaining how and why the incident or work factors were sufficient to result in the diagnosed medical condition is insufficient to meet a claimant's burden of proof.<sup>9</sup> Dr. Romack has not offered sufficient explanation to address how the established work factors caused or aggravated a diagnosed medical condition. For the stated reasons, her report is insufficient to establish appellant's claim.

Other reports from Dr. Romack are of limited probative value as she did not offer a medical opinion on whether the diagnosed conditions were caused or aggravated by the established employment factors.<sup>10</sup> Thus, her reports are insufficient to establish appellant's burden of proof.

The August 31, 2016 after-visit summary of Ms. Zionkowski, an occupational therapist, is insufficient to establish appellant's claim. This evidence has no probative medical value as an occupational therapist is not considered a physician as defined under FECA.<sup>11</sup>

Appellant's belief that factors of employment caused or aggravated her condition is insufficient, by itself, to establish causal relationship.<sup>12</sup> The issue of causal relationship is a medical one and must be resolved by probative medical opinion from a physician. The Board finds that there is insufficient medical evidence of record to establish that appellant's bilateral hand condition was caused or aggravated by the established employment factors. Appellant, therefore, did not meet her burden of proof.

On appeal appellant contends that her claim should not have been denied because her physician's notes did not provide sufficient details. She noted that since her insurance provider did not have a physician specializing in occupational health and safety for federal employees, she was scheduled for an appointment with a regular physician, Dr. Romack. Appellant has the burden of proof, however, to establish her claim and OWCP notified her of the type of evidence

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<sup>7</sup> See *Deborah L. Beatty*, 54 ECAB 340 (2003) (where the Board found that, in the absence of a medical report providing a diagnosed condition and a reasoned opinion on causal relationship with the employment incident, appellant did not meet her burden of proof).

<sup>8</sup> See *J.T.*, Docket No. 15-0196 (issued March 23, 2015); *Lillian M. Jones*, 34 ECAB 379 (1982).

<sup>9</sup> *J.D.*, Docket No. 14-2061 (issued February 27, 2015).

<sup>10</sup> *A.D.*, 58 ECAB 159 (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>11</sup> 5 U.S.C. § 8101(2); see *R.S.*, Docket No. 16-1303 (issued December 2, 2016) (occupational therapists are not considered physicians as defined under FECA); *J.J.*, Docket No. 15-0727 (issued July 16, 2015) (reports from an occupational therapist have no probative value as an occupational therapist is not a physician as defined under FECA).

<sup>12</sup> 20 C.F.R. § 10.115(e); *Phillip L. Barnes*, 55 ECAB 426, 440 (2004).

needed to establish her claim. Because she has not provided such medical opinion evidence in this case, 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.

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

Section 8128 of FECA vests OWCP with a discretionary authority to determine whether it will review an award for or against compensation, either under its own authority or on application by a claimant.<sup>13</sup> Section 10.608(b) of OWCP's regulations provide that a timely request for reconsideration may be granted if OWCP determines that the claimant has presented evidence and/or argument that meet at least one of the standards described in section 10.606(b)(3).<sup>14</sup> This section provides that the application for reconsideration must be submitted in writing and set forth arguments and contain evidence that either: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.<sup>15</sup> Section 10.608(b) provides that when a request for reconsideration is timely, but fails to meet at least one of these three requirements, OWCP will deny the application for reconsideration without reopening the case for a review on the merits.<sup>16</sup>

### **ANALYSIS -- ISSUE 2**

OWCP issued a decision on October 14, 2016 denying appellant's occupational disease claim, finding that the medical evidence did not contain a rationalized medical opinion explaining the causal relationship between the established employment factors and her diagnosed medical condition. On December 31, 2016 appellant requested reconsideration of this decision. Prior to her request for reconsideration on December 31, 2016 and after the issuance of OWCP's decision on October 14, 2016, she submitted additional new medical evidence. Appellant submitted a February 12, 2016 laboratory report, which provided blood test results, Dr. Sodetani's September 9 and October 7, 2016 progress notes, and an industrial work status report addressing appellant's bilateral hand condition and disability from work. OWCP declined her request for reconsideration in a January 13, 2017 final nonmerit decision. It noted that no further evidence had been presented for review.

The issue presented 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.

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<sup>13</sup> 5 U.S.C. § 8128(a).

<sup>14</sup> 20 C.F.R. § 10.608(a).

<sup>15</sup> *Id.* at § 10.606(b)(3).

<sup>16</sup> *Id.* at § 10.608(b).

The Board notes that the record is clear that OWCP received the February 12, 2016 laboratory report and Dr. Soretani's September 9 and October 7, 2016 progress notes and industrial work status report prior to the issuance of its January 13, 2017 final nonmerit decision. OWCP, however, incorrectly determined in its January 13, 2017 decision denying appellant's request for reconsideration of the merits of her claim that no new evidence was presented for review.

FECA provides that OWCP shall determine and make findings of fact in making an award for or against payment of compensation after considering the claim presented by the employee and after completing such investigation as OWCP considers necessary with respect to the claim.<sup>17</sup> Since the Board's jurisdiction of a case is limited to reviewing that evidence which is before OWCP at the time of its final decision,<sup>18</sup> it is necessary that OWCP review all evidence submitted by a claimant and received by OWCP prior to issuance of its final decision. As the Board's decisions are final as to the subject matter appealed,<sup>19</sup> it is crucial that all evidence relevant to that subject matter which was properly submitted to OWCP prior to the time of issuance of its final decision be addressed by OWCP.<sup>20</sup>

The Board finds that OWCP improperly failed to consider all the relevant evidence submitted by appellant in denying her request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a). Therefore, the case is remanded to OWCP for consideration of the evidence she submitted in connection with her reconsideration request, to be followed by the issuance of an appropriate decision regarding her reconsideration request.

### **CONCLUSION**

The Board finds that appellant has failed to meet her burden of proof to establish a bilateral hand condition causally related to factors of her federal employment. The Board further finds that OWCP did not consider all the evidence submitted by appellant before denying her request for reconsideration pursuant to 5 U.S.C. § 8128(a). The case is remanded to OWCP for consideration of the evidence appellant submitted in connection with her reconsideration request.

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<sup>17</sup> 5 U.S.C. § 8124(a)(2).

<sup>18</sup> 20 C.F.R. § 501.2(c).

<sup>19</sup> *Id.* at § 501.6(d).

<sup>20</sup> *See E.P.*, Docket No. 14-0278 (issued February 26, 2014); *see also William A. Couch*, 41 ECAB 548, 553 (1990).

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 14, 2016 decision of the Office of Workers' Compensation Programs is affirmed. The January 13, 2017 decision of OWCP is set aside, and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: July 18, 2017  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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