

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

P.M., Appellant)	
)	
and)	Docket No. 17-1320
)	Issued: October 16, 2017
OFFICE OF PERSONNEL MANAGEMENT,)	
FEDERAL INVESTIGATIVE SERVICES,)	
Clifton Park, NY, Employer)	

Appearances:
*Paul Kalker, Esq., for the appellant*¹
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 May 30, 2017 appellant, through counsel, filed a timely appeal from a May 5, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the case.

ISSUE

The issue is whether appellant met her burden of proof to establish that she aggravated or accelerated bilateral carpal tunnel syndrome due to factors of her federal employment.

¹ 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.

² 5 U.S.C. § 8101 *et seq.*

On appeal counsel contends that appellant has submitted sufficient medical opinion evidence to establish her occupational disease claim and that OWCP has placed a unreasonably high burden of proof on appellant, requiring her to establish causal relationship beyond a reasonable doubt.

FACTUAL HISTORY

On January 29, 2016 appellant, then a 59-year-old investigator, filed an occupational disease claim (Form CA-2) alleging that she developed bilateral carpal tunnel syndrome due to typing, filing, and driving while performing her job duties. Her supervisor indicated that appellant planned to retire in May 2016. The employing establishment concurred that appellant's work duties required typing, writing, filing, and driving. It noted that she began working as an investigator on March 20, 2005.

Appellant provided a narrative statement and described her employment history. She noted that she began her career in 1976 in a stenographer's pool. Appellant's job duties consistently required typing, filing, writing, and use of a telephone. She worked at the Department of Defense from 1977 until the Defense Security Service became associated with the employing establishment in 2005. As an investigator beginning in 2001, appellant's job additionally required driving. She noted that in the early 1990's she had filed a claim for bilateral carpal tunnel syndrome which was accepted by OWCP.

In a note dated February 2, 2016, Dr. James M. Boler, a Board-certified orthopedic and hand surgeon, noted appellant's long federal service and an accepted 1992 claim for bilateral carpal tunnel syndrome. He found a positive Tinel's sign at the wrists with symptoms into her index, middle, and ring finger. Dr. Boler found that sensation was intact to light touch. He noted appellant's employment duties of typing and driving. Dr. Boler requested electrodiagnostic testing and diagnosed bilateral upper extremity pain and paresthesias.

In a letter dated April 25, 2016, OWCP requested additional factual and medical evidence in support of appellant's occupational disease claim. It afforded appellant 30 days for a response. Appellant responded to OWCP's request for factual information on May 5, 2016. She denied playing sports or hobbies and reported two hours of computer usage at home daily.

By decision dated June 2, 2016, OWCP denied appellant's occupational disease claim, finding that she had failed to submit sufficient factual information to establish that the employment events occurred as alleged as she failed to respond to the development questionnaire.

Dr. Boler completed a note on June 14, 2016. He reported that appellant had bilateral upper extremity pain and paresthesias, likely carpal tunnel syndrome. Dr. Boler noted that appellant felt her symptoms were much worse at work where she typed, wrote, and drove. He opined, "At this point, I do believe she has work-related carpal tunnel syndrome bilaterally." Dr. Boler recommended testing to confirm the diagnosis.

Counsel requested reconsideration on February 8, 2017. In support of this request, he contended that appellant's statements regarding her employment activities were reasonable and credible and that it was contrary to Board precedent for the employing establishment or OWCP

to challenge appellant's accounting of claimed work factors. Counsel also provided additional medical evidence.

In a note dated September 19, 2016, Dr. Kenneth L. Shapiro, an internist, reviewed appellant's electrodiagnostic studies and found that the bilateral median motor distal latencies were prolonged. He diagnosed moderate to severe carpal tunnel syndrome bilaterally.

By decision dated May 5, 2017, OWCP modified its prior decision finding that appellant had established the claimed employment factors, but denying her occupational disease claim as the medical evidence of record filed to establish a causal relationship between her employment duties and her diagnosed bilateral carpal tunnel syndrome.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained 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.⁴

OWCP's regulations define an occupational disease as a condition produced by the work environment over a period longer than a single workday or shift.⁵ 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.⁶

A medical report is of limited probative value if it is unsupported by medical rationale.⁷ Medical rationale includes a physician's detailed opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment activity. The opinion of the physician must be based on a complete factual and medical background of the claim, 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 specific

³ *Supra* note 2.

⁴ *Kathryn Haggerty*, 45 ECAB 383, 388 (1994).

⁵ 20 C.F.R. § 10.5(q).

⁶ *Victor J. Woodhams*, 41 ECAB 345 (1989); *see also J.H.*, Docket No. 17-1643 (issued June 23, 2017).

⁷ *T.F.*, 58 ECAB 128 (2006).

employment activity or factors identified by the claimant.⁸ The belief of a claimant that a condition was caused or aggravated by the employment is insufficient to establish causal relation.⁹

ANALYSIS

The Board finds that appellant has failed to meet her burden of proof to establish that she aggravated or accelerated bilateral carpal tunnel syndrome due to factors of her federal employment.

Appellant noted that she had a previous claim with OWCP accepted for bilateral carpal tunnel syndrome; however, there is no evidence in the record to establish a prior accepted claim. She alleged that she aggravated or accelerated her previously diagnosed bilateral carpal tunnel syndrome due to typing, filing, writing, and driving during her employment. OWCP accepted that the employment activities occurred as alleged, but denied appellant's occupational disease claim for bilateral carpal tunnel syndrome as the medical evidence of record was not sufficiently detailed to establish a causal relationship between appellant's diagnosed condition and her employment duties.

In support of her bilateral carpal tunnel syndrome claim, appellant submitted medical reports from Dr. Shapiro and Dr. Boler. In his initial report, Dr. Boler diagnosed bilateral upper extremity pain and paresthesias. The Board has held that the mere diagnosis of "pain" does not constitute the basis for payment of compensation.¹⁰ As Dr. Boler did not provide a clear diagnosis this report is insufficient to meet appellant's burden of proof.

In a second note, Dr. Boler provided speculative and equivocal opinions of the diagnosis of carpal tunnel syndrome finding that appellant "likely [had] carpal tunnel syndrome." He also noted that he "believed" that appellant had carpal tunnel syndrome, but was awaiting electrodiagnostic test results. Dr. Boler further reported that appellant felt her symptoms were much worse at work where she typed, wrote, and drove. An award of compensation may not be based on surmise, conjecture, speculation, or upon appellant's own belief that there is a causal relationship between her claimed condition and her employment.¹¹ Dr. Boler did not provide a clear diagnosis and did not provide his own opinion that appellant's accepted employment duties accelerated or aggravated her bilateral carpal tunnel syndrome. Therefore, this report is insufficient to meet appellant's burden of proof.

Dr. Shapiro diagnosed moderate-to-severe carpal tunnel syndrome bilaterally based on electrodiagnostic studies. He did not provide any opinion regarding the causal relationship between appellant's diagnosed condition and her employment. Without an opinion on causal

⁸ *A.D.*, 58 ECAB 149 (2006).

⁹ *Lourdes Harris*, 45 ECAB 545, 547 (1994).

¹⁰ *Robert Broome*, 55 ECAB 339 (2004).

¹¹ *R.W.*, Docket No. 15-0345 (issued September 20, 2016); *Robert A. Boyle*, 54 ECAB 381 (2003).

relationship, Dr. Shapiro's report is insufficient to meet appellant's burden of proof to establish a causal relationship between her diagnosed condition and her implicated employment duties.¹²

The Board rejects counsel's argument on appeal that OWCP had placed an unreasonably high burden of proof on appellant, requiring her to establish causal relationship beyond a reasonable doubt. Rather, appellant did not submit the necessary medical opinion evidence necessary to establish her claim.¹³

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 has failed to meet her burden of proof to establish that she aggravated or accelerated bilateral carpal tunnel syndrome due to factors of her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the May 5, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 16, 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

¹² *D.R.*, Docket No. 16-0528 (issued August 24, 2016).

¹³ If appellant does have a prior accepted claim, a recurrence of disability claim could be pursued before OWCP.