

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

D.K., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Union, ME, Employer**

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**Docket No. 17-1829
Issued: February 7, 2018**

Appearances:
Appellant, pro se
Daniel Colbert, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On August 29, 2017 appellant filed a timely appeal from a July 28, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (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 established a recurrence of her medical condition on or after November 1, 2016 causally related to the accepted employment injury.

On appeal a November 17, 2017 memorandum was received from the Solicitor of Labor, on behalf of the Director of OWCP. The Director argues that pursuant to the Federal (FECA) Procedure Manual, Chapter 2.1500.4(b) appellant has not met her burden of proof to establish a recurrence of a medical condition, noting that, as more than 90 days elapsed after appellant's release from medical care to the alleged recurrence, appellant was responsible for submitting a

¹ 5 U.S.C. § 8101 *et seq.*

rationalized medical report supporting causal relationship between her current condition and the original injury. He asserts that appellant did not submit a well-rationalized medical opinion supporting causation.

FACTUAL HISTORY

On March 7, 2002 appellant, then a 43-year-old rural carrier associate, filed an occupational disease claim (Form CA-2) alleging that she developed tendinitis in her left elbow while driving her postal vehicle and lifting mail. By decision dated April 4, 2002, OWCP accepted her claim for left lateral epicondylitis. Appellant did not stop work.

In a note dated March 26, 2002, Peter C. Scherb, a physician assistant, diagnosed bilateral lateral epicondylitis more severe on the left, left distal bicipital tendinitis, and early mild carpal tunnel syndrome. Appellant submitted a series of notes from Mr. Scherb. On September 4, 2002 Dr. W. Kevin Olehnik, a Board-certified orthopedic surgeon, diagnosed right lateral epicondylitis. He treated appellant for bilateral lateral epicondylitis on November 26, 2002.

Appellant filed a recurrence claim (Form CA-2a) on May 31, 2017. She listed her date of original injury as November 2, 2007 and her date of recurrence as November 1, 2016. Appellant noted that her claim was for medical treatment only and that she had not stopped work. She explained that she performed her regular duties after her original injury, but received occupational therapy. Appellant noted that her job was extremely repetitive and that her arms, elbows, and hands seemed less painful after therapy.

On May 8, 2017 Dr. Michael D. Pleacher, a Board-certified pediatrician specializing in sports medicine, examined appellant for bilateral carpal tunnel syndrome worse on the left. He reported that appellant had been diagnosed with bilateral carpal tunnel syndrome in 2002 with a recurrence in 2007. At the end of 2016 appellant developed increasingly severe paresthesias in both hands in the median nerve distribution. Dr. Pleacher examined appellant on January 6, 2017 for this condition and recommended therapy. Appellant was unable to attend therapy as she sustained a radial head fracture of the right elbow which required splinting and focused therapy. On physical examination on May 8, 2017 appellant had positive Phalen's test, and Tinel's sign with diminished sensation to light touch in a median nerve distribution on the left. Dr. Pleacher diagnosed bilateral, left greater than right, carpal tunnel syndrome, "likely a recurrence of her prior episodes of carpal tunnel related to her work in the post office." He opined that appellant's condition was a recurrence of a prior work-related condition and recommended electrodiagnostic testing.

In a letter dated June 20, 2017, OWCP informed appellant that her claim had been accepted for left lateral epicondylitis and noted that Dr. Pleacher's report did not establish that her current condition was related to her original injury. It requested additional medical evidence and afforded appellant 30 days to respond.

By decision dated July 28, 2017, OWCP denied appellant's claim for a recurrence of medical treatment as the evidence of record was insufficient to establish that she required additional medical treatment due to a worsening of her accepted work-related conditions.

LEGAL PRECEDENT

FECA provides that the United States shall furnish to an employee who is injured while in the performance of duty the services, appliances, and supplies prescribed or recommended by a qualified physician that the Secretary of Labor considers likely to cure, give relief, reduce the degree or the period of any disability, or aid in lessening the amount of any monthly compensation.²

Recurrence of a medical condition means a documented need for further medical treatment after release from treatment for the accepted condition or injury when there is no accompanying work stoppage. Continuous treatment for the original condition or injury is not considered a need for further medical treatment after release from treatment, nor is an examination without treatment.³

If a claim for recurrence of medical condition is made more than 90 days after release from medical care, a claimant is responsible for submitting a medical report supporting causal relationship between the employee's current condition and the original injury in order to meet his or her burden of proof.⁴

An employee has the burden of proof to establish a recurrence of a medical condition that is causally related to an accepted employment injury. To meet this burden, the employee must submit medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, supports that the condition is causally related and supports the conclusion with sound medical rationale.⁵

ANALYSIS

The Board finds appellant has not established a recurrence of her accepted medical condition on or after November 1, 2016 causally related to her accepted employment injury.

OWCP accepted appellant's occupational disease claim for left lateral epicondylitis on April 4, 2002. Appellant did not stop work due to her accepted condition and has continued to perform the duties of a rural carrier. On May 31, 2017 appellant claimed a recurrence of medical condition. She listed her date of recurrence as November 1, 2016. OWCP denied her recurrence claim on July 28, 2017.

In support of her claimed recurrence, appellant submitted the May 8, 2017 report from Dr. Pleacher which diagnosed bilateral carpal tunnel syndrome. However, OWCP has not

² 5 U.S.C. § 8103(a).

³ 20 C.F.R. § 10.5(y).

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.4(b) (June 2013); *see also* *J.H.*, Docket No. 17-1456 (issued December 11, 2017); *J.M.*, Docket No. 09-2041 (issued May 6, 2010).

⁵ *See J.H.*, *supra* note 4; *K.T.*, Docket No. 15-1758 (issued May 24, 2016).

accepted appellant's claim for bilateral carpal tunnel syndrome.⁶ For conditions not accepted by OWCP as being employment related, it is the employee's burden of proof to provide rationalized medical evidence sufficient to establish causal relation, not OWCP's burden to disprove such relationship.⁷ Dr. Pleacher did not offer an opinion or provide medical rationale causally relating the diagnosis of bilateral carpal tunnel syndrome to appellant's accepted condition of left lateral epicondylitis. His report is, therefore, insufficient to establish appellant's claim for recurrence of a medical condition.⁸ The Board finds that appellant failed to establish her recurrence claim due to deficits in the medical evidence as noted above. Appellant is not precluded, however, from filing a new occupational disease claim (Form CA-2).

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 not established a recurrence of her medical condition on or after November 1, 2016 causally related to her accepted employment injury.

⁶ The diagnosis of carpal tunnel syndrome was originally made on March 26, 2002 by Mr. Scherb, a physician assistant. Certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered physicians as defined under FECA.⁶ Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits. *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006).

⁷ See *J.H.*, *supra* note 4; *T.M.*, Docket No. 16-1456 (issued January 10, 2017); *E.C.*, Docket No. 10-1554 (issued April 1, 2011); *Alice J. Tysinger*, 51 ECAB 638 (2000).

⁸ See *J.H.*, *supra* note 4.

ORDER

IT IS HEREBY ORDERED THAT the July 28, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 7, 2018
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