

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

C.H., Appellant)	
)	
and)	Docket No. 18-0016
)	Issued: June 15, 2018
U.S. POSTAL SERVICE, POST OFFICE,)	
PEORIA, AZ, Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 25, 2017 appellant filed a timely appeal from a May 16, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has met her burden of proof to establish a bilateral upper extremity condition causally related to factors of her federal employment.

¹ Together with the appeal request, appellant submitted a timely request for oral argument pursuant to 20 C.F.R. § 501.5(b). After exercising its discretion, by order dated April 6, 2018, the Board denied the request as appellant's arguments on appeal could be adequately addressed in a decision based on a review of the case as submitted on the record. *Order Denying Request for Oral Argument*, Docket No. 17-0468 (issued April 6, 2018).

² 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On March 9, 2017 appellant, then a 62-year-old rural carrier, filed an occupational disease claim (Form CA-2) alleging that she sustained a bilateral upper extremity condition due to her work. She asserted that she had severe pain and numbness in both hands and that she was unable to grip mail at work. Appellant advised that she first became aware of her claimed condition and its relation to her federal employment on February 4, 2017. She stopped work on February 8, 2017.

Appellant initially submitted a February 8, 2017 note in which Dr. Kent H. Chou, an attending Board-certified orthopedic surgeon, indicated that she was incapacitated from work until her workers' compensation claim was processed and testing was completed.

In a March 10, 2017 letter, a health and resource management specialist indicated that the employing establishment was contesting appellant's occupational disease claim. The specialist asserted that appellant had not identified the employment activities which she believed had caused her claimed condition and that she had not submitted probative medical evidence relating a specific condition to her employment activities.

Appellant submitted other medical evidence in support of her claim for an employment-related occupational disease. In a February 6, 2017 report, Dr. Jonathan B. Macknin, an attending Board-certified orthopedic surgeon, noted that appellant presented for a new patient visit with complaints of bilateral hand pain, numbness/tingling, and gripping issues due to weakness. Appellant reported that her hand problems began approximately one year prior with symptoms that increased in severity and frequency over the course of the year.³ Dr. Macknin detailed the findings of his physical examination of appellant's hands and wrists, noting that she had no swelling, deformity, or tenderness. Appellant had normal range of motion in her wrists and the sensory examination was normal. Dr. Macknin diagnosed bilateral hand pain and bilateral carpal tunnel syndrome, and he recommended that appellant undergo electromyogram (EMG) and nerve conduction velocity (NCV) testing.⁴

In a February 8, 2017 report, Dr. Chou indicated that appellant presented with complaints of pain and numbness in her hands for the past year. Appellant reported experiencing hand numbness at night as well as when she drove and worked at the employing establishment. Dr. Chou reported his physical examination findings which included a positive Tinel's sign on the right and a positive Phalen's test bilaterally. He indicated that appellant had bilateral hand numbness suggestive of carpal tunnel syndrome and advised that she would be reevaluated after she underwent EMG and NCV testing.

³ Appellant advised Dr. Macknin that she did not suffer any specific injury, but listed aggravating factors as lifting, reaching, throwing, twisting, and bending.

⁴ Dr. Macknin also noted that appellant was a 62-year-old female with "likely bilateral carpal tunnel syndrome."

In a Family and Medical Leave Act form (WH-380-F) completed on February 24, 2017, Dr. Chou noted that appellant was disabled from work beginning February 8, 2017. He indicated that EMG and NCV testing had been scheduled.

The findings of March 2, 2017 EMG and NCV testing showed moderately severe bilateral neuropathy of the median nerves at both wrists.

In a March 9, 2017 note, Dr. Chou indicated that appellant was on “no work status.”

In an April 4, 2017 development letter, OWCP requested that appellant submit additional evidence in support of her claim, including a physician’s opinion supported by a medical explanation as to how employment duties/activities caused or aggravated her claimed medical condition. It requested that she complete and return an attached questionnaire regarding the employment duties/activities which she contributes to her claimed medical condition. The questionnaire also solicited information regarding the course of appellant’s symptoms and the medical treatment she received for her claimed condition. OWCP afforded appellant 30 days to submit a response.

On April 20, 2017 OWCP appellant responded that she injured her hands/wrists by casing and pulling down mail for 5 or 6 days per week during the past 17 years.

Appellant submitted a March 9, 2017 report from Dr. Chou who detailed the findings of the physical examination he conducted on that date, including the findings of two-point discrimination testing of the upper extremities. Dr. Chou diagnosed bilateral carpal tunnel syndrome as demonstrated by the March 2, 2017 EMG and NCV testing.

Appellant also submitted copies of previously submitted reports dated February 2 and March 2, 2017.

By decision dated May 16, 2017, OWCP denied appellant’s claim for an employment-related occupational disease. It found that she had established employment factors in the form of casing and pulling down mail, but it further determined that she had failed to establish that her diagnosed medical condition was causally related to the accepted employment factors.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁵ 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 timely filed within the applicable time limitation period of FECA, that the injury was sustained while 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.⁶ To establish fact of injury, an employee must submit evidence sufficient to establish that he or she experienced a specific event, incident, or exposure occurring

⁵ *Supra* note 2.

⁶ 5 U.S.C. § 8101(1); *B.B.*, 59 ECAB 234 (2007); *Elaine Pendleton*, 40 ECAB 1143 (1989).

at the time, place, and in the manner alleged.⁷ An employee must also establish that such event, incident, or exposure caused an injury.⁸ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁹

OWCP regulations define the term “[o]ccupational disease or illness” as a condition produced by the work environment over a period longer than a single workday or shift.¹⁰ To establish that an injury was sustained in the performance of duty in an occupational disease claim, an employee 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 diagnosed condition is causally related to the employment factors identified by the employee.¹¹

The medical evidence required to establish causal relationship generally is rationalized medical opinion evidence.¹² The opinion of the physician must be based on a complete factual and medical background of the employee, 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 established employment factors.¹³

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish an occupational disease causally related to the accepted factors of her federal employment.

Appellant submitted a February 6, 2017 report from Dr. Macknin who noted that she presented for a new patient visit with complaints of bilateral hand pain, numbness/tingling, and gripping issues due to weakness. She reported that her hand problems began approximately one year prior and noted that lifting, reaching, throwing, twisting, and bending were aggravating factors for her condition. Dr. Macknin indicated that appellant likely had bilateral carpal tunnel syndrome and recommended further testing.

The Board finds that Dr. Macknin’s February 6, 2017 report is insufficient to establish appellant’s claim. His report is of no probative value on the relevant issue of the present case

⁷ *J.C.*, Docket No. 16-0057 (issued February 10, 2016); *E.A.*, 58 ECAB 677 (2007).

⁸ *Id.*

⁹ *R.H.*, 59 ECAB 382 (2008); *Ellen L. Noble*, 55 ECAB 530 (2004).

¹⁰ 20 C.F.R. § 10.5(q); *see also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.2b (June 2011).

¹¹ *D.H.*, Docket No. 15-1876 (issued January 29, 2016); *D.I.*, 59 ECAB 158 (2007); *Victor J. Woodhams*, 41 ECAB 345 (1989).

¹² *F.S.*, Docket No. 15-1052 (issued July 17, 2015); *Tomas Martinez*, 54 ECAB 623 (2003).

¹³ *P.K.*, Docket No. 08-2551 (issued June 2, 2009); *John W. Montoya*, 54 ECAB 306 (2003).

because he did not provide an opinion that appellant sustained a diagnosed occupational condition due to the accepted employment factors. In fact, Dr. Macknin did not make any specific reference to appellant's work duties and activities. The Board has held that medical evidence which does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.¹⁴

In February 8 and March 9, 2017 progress reports, Dr. Chou reported the findings of his physical examination of appellant's upper extremities. In the February 8, 2017 report, he briefly discussed the history of appellant's symptoms. On March 9, 2017 Dr. Chou diagnosed bilateral carpal tunnel syndrome as demonstrated by March 2, 2017 EMG and NCV testing. In a February 24, 2017 report, he indicated that appellant was disabled from work beginning February 8, 2017. Dr. Chou did not provide an opinion in any of these reports on the cause of appellant's medical condition. The Board notes that these reports also are of no probative value on the relevant issue of the present case because Dr. Chou did not provide an opinion that appellant sustained a diagnosed condition due to factors of her federal employment.¹⁵ Dr. Chou did not provide any discussion of the accepted employment factors or otherwise provide an opinion on causal relationship.

OWCP provided appellant an opportunity to submit medical evidence relating her claimed medical condition to the accepted employment factors, but she failed to submit rationalized medical evidence containing an opinion on the cause of her condition. Appellant has failed to meet her burden of proof for an employment-related occupational disease under the relevant standards for establishing such claims.¹⁶

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 a bilateral upper extremity condition due to factors of her federal employment.

¹⁴ See *Charles H. Tomaszewski*, 39 ECAB 461 (1988).

¹⁵ *Id.*

¹⁶ See *supra* note 10.

ORDER

IT IS HEREBY ORDERED THAT the May 16, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 15, 2018
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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