

ISSUE

The issue is whether appellant has met her burden of proof to establish an occupational disease due to factors of her federal employment.

FACTUAL HISTORY

On June 24, 2016 appellant, then a 56-year-old nurse, filed an occupational disease claim (Form CA-2) alleging that she sustained finger, hand, and wrist conditions, which resulted in her inability to normally move those body parts.³ She asserted that 99.9 percent of her workday (8 to 12 hours per day) required rapid hand/finger movement using a mouse and keyboard.⁴ Appellant indicated that she first became aware of her claimed condition on February 28, 2014 and first realized on November 10, 2014 that it was caused or aggravated by factors of her federal employment. She did not stop work.

In a July 7, 2016 development letter, OWCP requested that appellant submit additional evidence, in support of her claim, including a physician's opinion supported by a medical explanation explaining how the alleged employment factors caused or aggravated a medical condition. It requested that she complete and return an attached development questionnaire which posed various questions regarding the employment factors that she believed caused or aggravated her claimed condition. On July 7, 2016 OWCP also requested additional information from the employing establishment.

In an undated statement received on August 5, 2016, appellant responded to OWCP's July 7, 2016 development letter and provided additional discussion of her work duties in the various positions she has held at the employing establishment since 1981. She indicated that in late 2004 she was granted permission to work two night shifts per week with each shift lasting 12 hours. Appellant noted that she began working as an admission/discharge nurse in 2009 and then started having upper extremity symptoms. She discussed the diagnostic testing she underwent in 2011 which confirmed bilateral carpal tunnel syndrome and noted that she associated her increased upper extremity symptoms with her increased use of a computer at work. Appellant discussed her attempts to obtain adaptive computer equipment and described the course of her medical treatment.

Appellant submitted various documents, mostly from January 2016, regarding her attempts to obtain adaptive computer equipment and other work accommodations. Some of the documents were signed by Dr. Benton A. Emblom, an attending Board-certified orthopedic surgeon.⁵

Appellant also submitted various other documents in support of her claim. The findings of July 26, 2011 electromyogram (EMG) and nerve conduction velocity (NCV) testing contained an

³ Appellant noted that she had pain, redness, and swelling in her hands and wrists.

⁴ Appellant claimed that the equipment she used at work was "ergonomically challenged." She indicated that her pain symptoms only occurred at work and that she experienced very little pain when she used a computer at home. Appellant attributed her experiencing very little pain at home to the adaptive computer equipment she used there.

⁵ The record also contains two undated statements in which appellant further discussed her work history. It is unclear from the record when these documents were produced or for what purpose they were produced.

impression of bilateral carpal tunnel syndrome. In an October 27, 2015 report, Dr. Emblom diagnosed bilateral carpal tunnel syndrome and indicated that he would proceed with release surgery. In an October 28, 2015 report, he discussed his performance of bilateral mini open carpal tunnel release on that date. In a November 5, 2015 report, Dr. Emblom detailed appellant's follow-up care and, in a November 23, 2015 report, he provided work restrictions.

In an August 5, 2016 letter, the employing establishment controverted appellant's claim for a work-related occupational disease by arguing that she had not submitted medical evidence sufficient to establish such a condition.

In a September 23, 2016 decision, OWCP denied appellant's claim for work-related occupational disease of her upper extremities. It found that she had established that the employment factors occurred as alleged (including repetitive upper extremity motion), that a medical condition has been diagnosed, and that she was within the performance of duty. However, OWCP further found that appellant's claim was denied because she failed to submit medical evidence sufficient to establish a diagnosed medical condition causally related to the accepted employment factors.

Appellant, through counsel, requested a telephone hearing with a representative of OWCP's Branch of Hearings and Review.

During the hearing, held on May 8, 2017, appellant testified that she began working for the employing establishment in 1981 and changed to working on a part-time basis in 2005 (24 hours per week) due to her restless leg syndrome. She indicated that she continued working on a part-time basis to the present. Appellant provided a discussion of her current upper extremity symptoms and detailed her medical care.

After the hearing, appellant submitted a May 9, 2017 report in which Dr. Emblom indicated that she "subjectively" reported that 99.9 percent of her workday she performed near-continuous, rapid, fast paced, extremely high volume repetitive movements on a work computer and mouse. She reported that her computer use at work increased beginning in 2006 and that her upper extremity symptoms began in 2009 with EMG/NCV testing confirming a diagnosis of bilateral carpal tunnel syndrome in 2011. Appellant also reported continuing to have upper extremity numbness and weakness with activity for the last six months despite having splints on her wrists. She noted that she had minimal pain and she localized all of the numbness and tingling in her palms around the course of the median nerve distribution. Dr. Emblom noted that, upon physical examination, appellant exhibited positive Tinel's and Phalen's signs. He indicated that appellant possibly had relative atrophy of her thenar musculature on both sides and that x-rays of both wrists showed normal findings without arthritic changes. Dr. Emblom diagnosed symptomatic carpal tunnel syndrome of both wrists over the past four years despite conservative treatment. He noted, "In my medical opinion, the facts of injury are the direct and proximate cause of the diagnosis that I cited above. This is based on reasonable medical probability. There may be other causes for this medical problem, but one of the causes is clearly the activities of work described by the patient and described above."

By decision dated July 11, 2017, OWCP's hearing representative affirmed OWCP's September 23, 2016 decision. She determined that appellant failed to submit medical evidence

sufficient to establish causal relationship of a diagnosed upper extremity condition to the accepted employment factors. The hearing representative found that Dr. Emblom's May 9, 2017 report lacked probative value with respect to appellant's claim for a work-related upper extremity condition because the report did not contain medical rationale in support of his opinion on causal relationship.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁶ 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.⁷ 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 at the time, place, and in the manner alleged.⁸ An employee must also establish that such event, incident, or exposure caused an injury.⁹ 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.¹⁰

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.¹¹ 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.¹²

The medical evidence required to establish causal relationship generally is rationalized medical opinion evidence.¹³ The opinion of the physician must be based on a complete factual

⁶ *Supra* note 2.

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

⁸ *J.C.*, Docket No. 16-0057 (issued February 10, 2016); *E.A.*, 58 ECAB 677 (2007).

⁹ *Id.*

¹⁰ *R.H.*, 59 ECAB 382 (2008); *Ellen L. Noble*, 55 ECAB 530 (2004).

¹¹ 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).

¹² *D.H.*, Docket No. 15-1876 (issued January 29, 2016); *D.I.*, 59 ECAB 158 (2007); *Victor J. Woodhams*, 41 ECAB 345 (1989).

¹³ *F.S.*, Docket No. 15-1052 (issued July 17, 2015); *Tomas Martinez*, 54 ECAB 623 (2003).

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.¹⁴

ANALYSIS

Appellant claimed that she sustained an upper extremity condition due to performing repetitive work duties, including rapid hand/finger movement, using a mouse and keyboard. In decisions dated September 23, 2016 and July 11, 2017, OWCP denied appellant's claim noting that, although she established employment factors as alleged, she failed to submit medical evidence sufficient to establish a diagnosed medical condition causally related to the accepted employment factors.

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

In a May 9, 2017 report, Dr. Emblom indicated that appellant "subjectively" reported that 99.9 percent of her workday she performed near-continuous, rapid, fast paced, extremely high volume repetitive movements on a work computer and mouse. Appellant reported that her upper extremity symptoms began in 2009 with EMG/NCV testing confirming a diagnosis of bilateral carpal tunnel syndrome in 2011. Dr. Emblom noted that, upon physical examination, appellant exhibited positive Tinel's and Phalen's signs. He diagnosed symptomatic carpal tunnel syndrome of both wrists over the past four years despite conservative treatment. Dr. Emblom noted, "In my medical opinion, the facts of injury are the direct and proximate cause of the diagnosis that I cited above. This is based on reasonable medical probability. There may be other causes for this medical problem, but one of the causes is clearly the activities of work described by the patient and described above."

The Board finds that Dr. Emblom's May 9, 2017 report is insufficient to establish appellant's claim because the report does not contain adequate medical rationale in support of its opinion on causal relationship. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how an employment activity could have caused or aggravated a medical condition.¹⁵ Dr. Emblom did not discuss the accepted employment factors in any significant detail or explain how they could have been competent to cause appellant to develop bilateral carpal tunnel syndrome. He generally mentioned appellant's use of a work computer and mouse, but he did not specify the extent to which appellant performed different work tasks during specific periods. Dr. Emblom did not provide a detailed discussion of the specific findings on physical examination and diagnostic testing which would further explain his opinion that appellant's bilateral carpal tunnel syndrome was related to employment factors. In rendering his opinion on causal relationship, he introduced an equivocal aspect to his opinion by noting that there might "be other causes for this medical problem." The Board has held that an opinion which is equivocal or speculative in nature is of

¹⁴ *P.K.*, Docket No. 08-2551 (issued June 2, 2009); *John W. Montoya*, 54 ECAB 306 (2003).

¹⁵ *See Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

limited probative value regarding the issue of causal relationship.¹⁶ In the absence of further explanation, Dr. Emblom has provided a mere conclusory opinion without the necessary rationale explaining how and why the employment factors were sufficient to result in the diagnosed medical condition. The Board has found that such an opinion is insufficient to meet a claimant's burden of proof to establish a claim.¹⁷

Appellant did not submit any other medical evidence which addressed the cause of her upper extremity condition. For the above-noted reasons, she failed to establish a work-related occupational disease of her upper extremities.

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 met her burden of proof to establish an occupational disease due to factors of her federal employment.

¹⁶ See *Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962); *James P. Reed*, 9 ECAB 193, 195 (1956).

¹⁷ *J.D.*, Docket No. 14-2061 (issued February 27, 2015).

ORDER

IT IS HEREBY ORDERED THAT the July 11, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 23, 2018
Washington, DC

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

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

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