

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

D.W., Appellant)	
)	
and)	Docket No. 17-1884
)	Issued: November 8, 2018
DEPARTMENT OF DEFENSE, DEFENSE)	
COMMISSARY AGENCY,)	
MCGUIRE AIR FORCE BASE, NJ, Employer)	
)	

Appearances:
Thomas R. Uliase, Esq., for the appellant¹
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 September 6, 2017 appellant, through counsel, filed a timely appeal from an April 25, 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 over the merits of this case.³

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.*

³ The record provided to the Board includes evidence received after OWCP issued its April 25, 2017 decision. The Board's jurisdiction is limited to the evidence that was in the case record at the time of OWCP's final decision. Therefore, the Board is precluded from reviewing this additional evidence for the first time on appeal. 20 C.F.R. § 501.2(c)(1).

ISSUE

The issue is whether appellant has met her burden of proof to establish that she developed bilateral carpal tunnel syndrome causally related to the accepted factors of her federal employment.

FACTUAL HISTORY

This case has previously been before the Board.⁴ The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On September 27, 2012 appellant, then a 51-year-old sales associate/cashier, filed an occupational disease claim (Form CA-2) alleging that she developed carpal tunnel syndrome in the performance of duty on or about February 10, 2010. She explained that her sales associate position entailed lifting food items of various weights, such as canned goods; uncooked meats; gallons of milk, juice, and soda; animal food; and cat litter "10 [to] 50 lbs."

In a note dated October 17, 2012, Dr. Raymond Ragland, III, a Board-certified orthopedic hand surgeon, diagnosed bilateral carpal tunnel syndrome. On physical examination he noted positive bilateral results for Tinel's sign and direct compression. Dr. Ragland reported that, to a reasonable degree of medical certainty, appellant's bilateral carpal tunnel syndrome symptoms were work-related processes. He recommended an open right carpal tunnel release procedure.

Appellant's diagnoses included right de Quervain's tenosynovitis, left trigger thumb, and bilateral carpal tunnel syndrome. On November 9, 2012 Dr. Ragland performed an endoscopic right carpal tunnel release.

By decision dated December 31, 2012, OWCP denied appellant's occupational disease claim, finding that the evidence of record was insufficient to establish that the claimed event(s) occurred as described. It further found that she had not established that her bilateral carpal tunnel syndrome was causally related to her federal employment duties.

In a note dated April 18, 2013, Dr. Ragland indicated that appellant had clinical and neurometric findings consistent with bilateral carpal tunnel syndrome. He added that, in reviewing her history, clinical findings, and neurometric findings, her bilateral carpal tunnel syndrome was a work-related process, and that this opinion was rendered within a reasonable degree of medical certainty.

By decision dated June 12, 2013, a representative of OWCP's Branch of Hearings and Review modified the December 31, 2012 decision to find that appellant had established that the claimed events occurred as alleged. However, the hearing representative affirmed the denial of benefits, finding that the medical evidence of record was insufficient to establish causal relationship between her diagnosed upper extremity conditions and the accepted work factors of "lifting items, scanning items, and keying data into the register."

⁴ Docket No. 13-1873 (issued March 13, 2014).

By decision dated March 13, 2014, the Board affirmed the hearing representative's June 12, 2013 decision. The Board found that the reports of Dr. Ragland were insufficient to establish that appellant's bilateral carpal tunnel syndrome was work related. The Board also found that a July 25, 2012 form report from Dr. Daniel K. Mullin, a Board-certified emergency medicine specialist, was insufficient to establish causal relationship.⁵ Lastly, the Board rejected counsel's argument that appellant had established a *prima facie* case, thereby, warranting further medical development by OWCP.⁶

On March 13, 2015 counsel timely requested reconsideration. He submitted a September 5, 2013 left upper extremity electromyogram and nerve conduction velocity (EMG/NCV) study that revealed evidence of moderate left median nerve neuropathy consistent with a clinical diagnosis of carpal tunnel syndrome.

In a March 24, 2015 report, Dr. Ragland reviewed his treatment of appellant dating back to May 2011, including the surgery he performed on November 9, 2012, and her postoperative care through December 21, 2012. He noted that, after a long absence, she returned on February 11, 2015 at which time she presented with persistent left carpal tunnel syndrome symptoms. Examination of the left hand revealed normal range of motion with positive tests for Tinel's sign, Phalen's test, and a median nerve compression test. There was diminished sensation in the thumb, index, and middle fingers. An EMG was performed and Dr. Ragland recommended a left carpal tunnel release. Dr. Ragland noted that he reviewed appellant's medical records as well as her job description. He noted that she was a cashier who, on occasion, had been required to lift heavy items between 25 and 60 pounds. Dr. Ragland observed, "The repetitive stress nature of [appellant's] job has most certainly been an aggravating factor, if not a causative factor, in her current complaints of left carpal tunnel syndrome pain. He explained that the medical literature supports repetitive stress injury as an aggravating or causative factor of carpal tunnel syndrome in the workplace setting. Dr. Ragland also found noteworthy the fact that appellant had no complaints of carpal tunnel syndrome symptoms prior to her current job. He concluded that, to a reasonable degree of medical certainty, appellant's current left carpal tunnel syndrome complaints were work related. Dr. Ragland reiterated that in light of her continued discomfort and dysfunction, left carpal tunnel release was recommended.

By decision dated June 9, 2015, OWCP reviewed the merits of appellant's case, but denied modification of its December 31, 2012 decision. It found that Dr. Ragland's report of March 24, 2015 was insufficient to establish the claim because he did not note how often she performed any specific duties of her federal employment or how those work factors had caused or aggravated her diagnosed condition. OWCP noted that he had not demonstrated a thorough understanding of appellant's duties, as he did not explain what "repetitive stress" he was referring to.

OWCP subsequently received additional treatment records from Dr. Ragland dated between February 11 and September 2, 2015, including a June 16, 2015 operative report. On

⁵ Dr. Mullin reported that appellant sustained an overuse injury requiring follow-up with a hand surgeon. He indicated by checkmark that the injury "was incurred in line of duty."

⁶ *Id.*

June 16, 2015 Dr. Ragland performed a left carpal tunnel release on appellant's left upper extremity, which was completed without complications.

By letter dated September 17, 2015, Dr. Ragland observed that appellant had persistent bilateral carpal tunnel syndrome symptoms, which were "most certainly a work-related process." He reviewed her responsibilities at work, including significant repetitive activities such as cash register keying, merchandise scanning, and intermittent lifting of heavy items at work. Dr. Ragland explained that these activities had caused a significant worsening of her symptoms overtime, requiring multiple bilateral carpal tunnel injections and therapy. He concluded, "To a reasonable degree of medical certainty, the patient's bilateral carpal tunnel syndrome symptoms are work related."

On March 11, 2016 counsel requested reconsideration of OWCP's June 9, 2015 decision. He referenced Dr. Ragland's September 17, 2015 letter, as well as his treatment records.

By decision dated July 15, 2016, OWCP reviewed the merits of appellant's case and denied modification of its June 9, 2015 decision. It found that, while Dr. Ragland had opined as to the causal relationship between her bilateral carpal tunnel syndrome and specific duties of her federal employment, his opinion was insufficient to establish causal relationship because he did not explain how cash register keying, merchandise scanning, and lifting of heavy items at work directly caused or aggravated her carpal tunnel syndrome. OWCP further noted that he should also explore and consider nonwork-related factors when providing an explanation on causal relationship.

On October 17, 2016 appellant, through counsel, requested reconsideration of OWCP's July 15, 2016 decision. Attached to the request was a September 16, 2016 report from Dr. Ragland. Dr. Ragland reported that appellant had bilateral carpal tunnel syndrome, with a history of bilateral carpal tunnel release surgery and a revision procedure on the left. He noted persistent burning pain and weakness in both hands despite conservative and surgical treatment. Dr. Ragland further reported that appellant's carpal tunnel syndrome symptoms were related to her prior employment as a cashier, noting that in prior correspondence, he had delineated her subjective and objective findings consistent with the diagnosis of bilateral carpal tunnel syndrome. He cited three medical journal articles regarding carpal tunnel syndrome. Dr. Ragland explained, "A review of her job history shows relevant exposure risk with regard to significant intermittent peak hand force use, forceful hand repetition rates and percentage of time in forceful hand exertions." He noted that these factors were clinically significant risks in the development of carpal tunnel syndrome.

December 7, 2016 EMG/NCV studies revealed bilateral median nerve impairments at the wrists, moderate at the right and mild on the left. The EMG/NCV studies further revealed severe left bilateral ulnar nerve impairment and significant right bilateral ulnar nerve impairment, as well as moderate right posterior interosseous nerve impairment at the dorsal elbow/radial tunnel level.

By decision dated December 20, 2016, OWCP reviewed the merits of appellant's case, but denied modification of its July 15, 2016 decision. It found that Dr. Ragland's September 16, 2016 report was insufficient to establish her claim because, although he included her job history and described forceful hand use, exertion, and repetition, he did not describe her specific work factors or provide a rationalized medical opinion as to how the work factors directly caused or aggravated

her condition. OWCP further noted that he had provided medical studies to support his opinion and that these studies were of no evidentiary value in establishing causal relationship, because they were of general application.

In a report dated October 26, 2016, Dr. Scott M. Fried, an osteopath and Board-certified orthopedic surgeon, reviewed appellant's list of duties, noting regular keying and scanning on a register, lifting and carrying, handling of groceries, and lifting of large bags. He noted that, prior to February 10, 2010, she had no problems, but that on or about that date she began developing progressive problems in her hands, including numbness and tingling. Dr. Fried reviewed appellant's medical history with Dr. Ragland, including her surgery for her right carpal tunnel syndrome in 2012 and for her left carpal tunnel syndrome on June 16, 2015. He examined her, finding positive tests for carpal tunnel syndrome bilaterally. Dr. Fried opined that there is "no doubt a direct cause and effect relationship between this patient's work activities and the current clinical complaints and physical manifestations of these injuries." He explained the general causes of her condition, including repeated stress and strain on the flexor tendons and her prognosis, recommending continued treatment.

In a functional capacity evaluation (FCE) dated November 29, 2016, Dr. Fried noted that appellant was employed as a military cashier and had sustained repetitive strain injuries to her upper extremities resulting in right radial neuropathy, bilateral median neuropathy, brachial plexopathy, and right cervical radiculopathy while at work. He reviewed her history of treatment with Dr. Ragland and noted that she had not worked since shortly after her first carpal tunnel surgery. Dr. Fried performed a hand function evaluation, administration of standardized tests, and observation of performance of physical demands with job simulation. He concluded that appellant was unable to perform repetitive activities including simple grasping, fine manipulation, firm grasping, pushing/pulling, or overhead/shoulder-level reaching with her upper extremities. Dr. Fried noted that she was unable to lift more than two pounds or carry more than one pound of weight without complaining of nerve symptoms.

On December 23, 2016 Dr. Fried reviewed the FCE of November 29, 2016. He noted that appellant had increased symptoms with work simulation activities, diminished ability to manipulate small objects, and increased symptoms with lifting and carrying activity. Appellant was able to write for 2.75 minutes and key for 1 minute before exacerbating her symptoms. Dr. Fried noted that these should be considered permanent limits.

On January 30, 2017 appellant, through counsel, requested reconsideration of OWCP's December 20, 2016 decision. He argued that Dr. Fried's November 29, 2016 FCE, read together with diagnostic tests and the previous reports of Dr. Ragland, provided sufficient medical evidence to establish her claim for bilateral carpal tunnel syndrome. Counsel further argued that there existed at least *prima facie* evidence of appellant's claimed occupational disease.

By decision dated April 25, 2017, OWCP reviewed the merits of appellant's case, but denied modification of its December 20, 2016 decision. It found that Dr. Fried's October 26, 2016 report did not sufficiently explain how her diagnosed conditions were caused or aggravated by factors of her federal employment. As such, it was insufficient to establish appellant's claim.

LEGAL PRECEDENT

A claimant seeking benefits under FECA⁷ 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 that an injury was sustained in the performance of duty as alleged and that any specific condition or disability claimed is causally related to the employment injury.⁸

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit: (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 identified employment factors.⁹

Causal relationship is a medical question, which generally requires rationalized medical opinion evidence to resolve the issue.¹⁰ A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factors must be based on a complete factual and medical background.¹¹ Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors.¹²

ANALYSIS

The Board finds that this case is not in posture for decision.¹³

The record contains medical reports from Dr. Ragland dated March 24, 2015; September 17, 2015; and September 16, 2016, as well as a report from Dr. Fried dated October 26, 2016.¹⁴ In his report dated March 24, 2015, Dr. Ragland indicated that he first treated appellant on May 6, 2011 for with complaints of discomfort of the radial aspect of her right wrist,

⁷ *Supra* note 2.

⁸ 20 C.F.R. § 10.115(e), (f); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

⁹ *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

¹⁰ *See Robert G. Morris*, 48 ECAB 238 (1996).

¹¹ *Supra* note 8.

¹² *Id.*

¹³ *See E.B.*, Docket No. 17-1909 (issued March 16, 2018).

¹⁴ With regard to the reports of Dr. Ragland and other medical evidence the Board notes that it is unnecessary for the Board to consider the evidence appellant submitted prior to the issuance of OWCP's June 9, 2015 decision because the Board has already considered this evidence in its March 13, 2014 decision and found that it failed to establish that she developed bilateral carpal tunnel syndrome causally related to factors of her federal employment. Findings made in prior Board decisions are *res judicata* absent further review by OWCP under section 8128(a) of FECA. *See A.C.*, Docket No. 18-0484 (issued September 7, 2018).

with intermittent paresthesias in the median nerve distribution of the right hand, and saw her again on additional occasions. He noted that she had no prior complaints of carpal tunnel syndrome symptoms prior to her current place of employment at her current job. Dr. Ragland reviewed specific appellant's duties of her federal employment in his report of September 17, 2015 and opined that these duties had caused or aggravated her bilateral carpal tunnel syndrome within a reasonable degree of medical certainty. He also reviewed test results demonstrating positive testing for symptoms of bilateral carpal tunnel syndrome, as well as her medical history. On October 17, 2016 Dr. Ragland explained how specific movements related to appellant's duties had caused or aggravated her bilateral carpal tunnel syndrome, writing, "A review of [appellant's] job history shows relevant exposure risk with regard to significant intermittent peak hand force use, forceful hand repetition rates and percentage of time in forceful hand exertions." Dr. Fried's medical report of October 26, 2016 concurred with Dr. Ragland's opinion that her condition had been caused by specific factors of her federal employment.

Dr. Ragland and Dr. Fried provided affirmative opinions on causal relationship. They accurately identified specific employment factors to which appellant claimed caused her condition and identified findings on examination.

The Board notes that, while none of the reports of appellant's attending physicians is completely rationalized, they are consistent in indicating that she sustained an employment-related wrist condition and are not contradicted by any substantial medical or factual evidence of record. While the reports are insufficient to meet her burden of proof to establish her claim, they raise an uncontroverted inference between her wrist condition and the identified employment factors and are sufficient to require OWCP to further develop the medical evidence and the case record.¹⁵

The Board finds that the March 24 and September 17, 2015, and September 16, 2016 reports of Dr. Ragland, considered together with the report of Dr. Fried are sufficient, given the absence of any opposing medical evidence, to require further development of the record.¹⁶

It is well established that proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter. While the claimant has the burden of proof to establish entitlement to compensation, OWCP shares the responsibility in the development of the evidence to see that justice is done.¹⁷ The case shall, therefore, be remanded to OWCP. On remand, it shall refer appellant, a statement of accepted facts, and the medical evidence of record to an appropriate Board-certified specialist for an examination, diagnosis, and a rationalized opinion as to whether she sustained an employment-related occupational disease. After this and other such further development deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that this case is not in posture for decision.

¹⁵ *E.J.*, Docket No. 09-1481 (issued February 19, 2010); *see also John J. Carlone*, 41 ECAB 354, 360 (1989).

¹⁶ *See A.F.*, Docket No. 15-1687 (issued June 9, 2016); *Id.*

¹⁷ *D.G.*, Docket No. 15-0702 (issued August 27, 2015); *Donald R. Gervasi*, 57 ECAB 281, 286 (2005); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983).

ORDER

IT IS HEREBY ORDERED THAT the April 25, 2017 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to OWCP for proceedings consistent with this opinion of the Board.

Issued: November 8, 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