United States Department of Labor
Employees' Compensation Appeals Board

R.C., Appellant **and** **DEPARTMENT OF JUSTICE, BUREAU OF PRISONS, FEDERAL CORRECTIONS INSTITUTION -- ELKTON, Lisbon, OH, Employer**	)	**Docket No. 18-0546** **Issued: November 14, 2018**

Appearances:
Alan J. Shapiro, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On January 22, 2018 appellant, through counsel, filed a timely appeal from a November 14, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

[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.*

ISSUE

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

FACTUAL HISTORY

On August 9, 2016 appellant, then a 54-year-old tool room officer, filed an occupational disease claim (Form CA-2) alleging that, on or before February 19, 2016, she sustained moderate-to-severe right carpal tunnel syndrome and mild left carpal tunnel syndrome in the performance of duty. She noted that under OWCP File No. xxxxxx560, OWCP had accepted her January 27, 2014 claim for a right hip and groin injury, right de Quervain's tenosynovitis, and a partial tear of the triangular fibrocartilage complex (TFCC) as a result of a slip and fall on ice in the performance of her federal employment duties. Appellant explained that she initially submitted medical evidence relating to her bilateral carpal tunnel syndrome under OWCP File xxxxxx560, however, OWCP instructed her to file a new occupational disease claim.

In a report dated February 19, 2016, Dr. Leslie J. Schwendeman, an attending Board-certified orthopedic surgeon, noted appellant's history of a January 27, 2014 occupational right wrist injury sustained when she "fell on the ice at work" and also fractured her pelvis. Appellant was subsequently diagnosed with right de Quervain's tenosynovitis, treated with bracing and an injection. Dr. Schwendeman elaborated in a report dated April 15, 2016 that appellant had a possible collagen disorder. On examination he found normal sensation throughout both hands with no vascular abnormalities or thenar atrophy. Dr. Schwendeman reported that March 16, 2016 electromyography (EMG) and nerve conduction velocity (NCV) studies demonstrated moderate right and mild left carpal tunnel syndrome, and C6-7 and C7-T1 radiculopathy. He diagnosed right carpal tunnel syndrome, de Quervain's disease of the radial styloid, other articular cartilage disorders of the right wrist, and cervical spondyloarthropathy.

In a report dated June 15, 2016, Dr. Schwendeman noted that a magnetic resonance imaging (MRI) scan study of the right hand and wrist demonstrated some fluid around the first dorsal compartment, carpometacarpal osteoarthritis, and de Quervain's tenosynovitis with a partial tear. On examination he found negative Tinel's, Phalen's, and compression signs, and a negative Finkelstein test. Dr. Schwendeman diagnosed right radial styloid tenosynovitis and a right forearm articular cartilage injury. He explained that appellant's "current exam [did] not match her MRI [scan] findings." Appellant's significant joint laxity indicated a possible congenital collagen disorder.

By development letter dated August 11, 2016 and reissued August 25, 2016, OWCP advised appellant of the type of additional factual and medical evidence needed to establish her occupational disease claim, including factual corroboration of the identified work factors and a report from her physician explaining how and why those factors would have caused the claimed condition. It afforded her 30 days to provide the requested information.

In response, appellant provided a September 1, 2016 statement. She attributed the claimed carpal tunnel syndrome to repetitive upper extremity motion at work, including using keys to unlock doors, gates, cabinets, and tool chests, clipping and unclipping her keys from her duty belt,

turning combination locks on safes and filing cabinets, opening and closing drawers, pulling 135 or more files a day with her right hand, data entry, tool engraving, shredding files, and writing minutes. Appellant contended that she had performed these tasks on a daily basis for 19 years. She noted that the January 27, 2014 right wrist injury accepted under OWCP File No. xxxxxx560 also contributed to the development of right carpal tunnel syndrome.

By decision dated September 16, 2016, OWCP denied appellant's claim, finding that fact of injury had not been established.

On September 26, 2016 appellant requested reconsideration. She submitted an undated report from Dr. John L. Dunne, an attending osteopathic physician Board-certified in family practice. Dr. Dunne noted treating appellant from January 30 to December 23, 2014 for a fall on snow and ice at work. He diagnosed articular cartilage disorders of the right wrist, severe right carpal tunnel syndrome, and right radial styloid tenosynovitis. Dr. Dunne attributed these conditions to a February 19, 2016 fall at work.[3]

By decision dated December 15, 2016, OWCP modified its prior decision to reflect that appellant had established fact of injury, but denied the claim as the medical evidence submitted was insufficient to establish causal relationship.

On January 9, 2017 appellant requested reconsideration.

By decision dated March 23, 2017, OWCP denied reconsideration of the merits of the claim because appellant had not submitted new and relevant evidence or legal argument.

On April 12, 2017 appellant again requested reconsideration. In a June 30, 2017 statement, she explained that OWCP instructed her to file a new claim for bilateral carpal tunnel syndrome under the present claim, OWCP File No. xxxxxx059, as OWCP File No. xxxxxx560 concerned only the right wrist injury sustained on January 27, 2014. Appellant asserted that ambulating with crutches following the accepted January 27, 2014 pelvic and coccygeal fractures put additional stress on both wrists. She submitted additional medical evidence.

In a December 20, 2016 report, prepared pursuant to OWCP File No. xxxxxx560, Dr. Dunne opined that the accepted January 27, 2014 right wrist injury had progressed to compressive median neuropathy due to its inherent severity and the physical stress of ambulating on crutches. He also opined that appellant's "continued work duties of data entry, typing, and constantly turning keys in locking and unlocking prison doors, gates, cabinets, tool chests, etc., is all contributing to her carpal tunnel findings." Appellant provided a second copy of Dr. Dunne's undated report, in which she blacked out OWCP File No. xxxxxx560 and substituted OWCP File No. xxxxxx059. She also blacked out the January 27, 2014 date of injury and replaced it with February 19, 2016.

[3] Appellant also provided a March 16, 2016 EMG and NCV report which demonstrated mild-to-moderate right carpal tunnel syndrome and borderline-to-mild left carpal tunnel syndrome. She also submitted a physical therapy appointment log.

By decision dated July 12, 2017, OWCP denied modification of its prior decision, finding that Dr. Dunne's new undated report contained insufficient medical rationale to establish causal relationship. It found that Dr. Dunne did not set forth his reasoning in support of his conclusion that the accepted repetitive work duties contributed to the claimed carpal tunnel syndrome.

On August 18, 2017 appellant requested reconsideration. In a letter dated September 5, 2017, counsel asserted that new medical evidence was sufficient to meet appellant's burden of proof to establish causal relationship. He submitted a report dated July 25, 2017 from Dr. Dunne, who opined that repetitive pinching, gripping, and grasping at work over a 20-year period was "the direct and proximate cause" of appellant's bilateral carpal tunnel syndrome. Dr. Dunne noted that the medical literature was "quite clear in the causative role that repetitive grasping and gripping and pinching activities play in the development of carpal tunnel syndrome."

By decision dated November 14, 2017, OWCP denied modification of its prior decision, finding that Dr. Dunne's July 25, 2017 report was insufficient to establish causal relationship. It found that Dr. Dunne had changed his opinion on the etiology of appellant's bilateral wrist condition without explanation. Although Dr. Dunne previously attributed appellant's carpal tunnel syndrome to the January 27, 2014 fall and ambulating with crutches afterward, he newly opined that repetitive pinching, gripping, and grasping over a 20-year period caused the condition. OWCP found that the equivocal nature of Dr. Dunne's opinion diminished its probative value.

LEGAL PRECEDENT

An employee seeking benefits under FECA[4] 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.[5]

To establish that an injury was sustained in the performance of duty in an occupational disease claim, an employee 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.[6]

Causal relationship is a medical question that generally requires rationalized medical opinion evidence to resolve the issue.[7] The physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factor(s) must be

[4] *See supra* note 2.

[5] 20 C.F.R. § 10.115(e), (f); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

[6] *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[7] *Robert G. Morris*, 48 ECAB 238 (1996).

based on a complete factual and medical background.[8] 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 factor(s).[9]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish that she sustained bilateral carpal tunnel syndrome causally related to the accepted factors of her federal employment.

Appellant alleged that she sustained bilateral carpal tunnel syndrome due to repetitive upper extremity motions in the performance of her federal duties, including data entry, turning keys, tool engraving, pulling files, shredding files, and writing minutes. She also believed that right de Quervain's tendinitis and a partial tear of the right TFCC accepted under OWCP File No. xxxxxx560, as well as ambulating with crutches due to a right hip injury accepted under OWCP File No. xxxxxx560, contributed to the development of bilateral carpal tunnel syndrome.

Appellant provided reports dated from February 19 to June 15, 2016 from Dr. Schwendeman. He noted the injuries accepted under OWCP File No. xxxxxx560. Dr. Schwendeman diagnosed bilateral carpal tunnel syndrome, right de Quervain's tenosynovitis, and a possible idiopathic cartilage disorder of the right wrist. However, he did not provide medical rationale attributing bilateral carpal tunnel syndrome to the accepted factors of appellant's federal employment. Therefore, Dr. Schwendeman's opinion is insufficient to meet appellant's burden of proof to establish causal relationship.[10]

Appellant also submitted reports from Dr. Dunne who treated appellant for the employment-related January 27, 2014 fall beginning on January 30, 2014. In an initial undated report, Dr. Dunne opined that the January 27, 2014 employment injury caused articular cartilage disorders of the right wrist, severe right carpal tunnel syndrome, and right radial styloid tenosynovitis. He altered his opinion in a December 20, 2016 report, finding that the bilateral carpal tunnel syndrome resulted from progression of the January 27, 2014 right wrist injury and the cumulative effects of repetitive motion at work. Dr. Dunne changed his reasoning again in a report dated July 25, 2017, concluding that repetitive pinching, gripping, and grasping at work over a 20-year period directly caused appellant's bilateral carpal tunnel syndrome, without any mention of the January 27, 2014 employment-related injuries. The Board finds that the equivocal nature of Dr. Dunne's opinion on the critical issue of causal relationship diminishes its probative value.[11] It lacks the definite, persuasive quality needed to meet appellant's burden of proof to

[8] *Supra* note 6.

[9] *Id.*

[10] *Supra* note 6.

[11] *See Steven S. Saleh*, 55 ECAB 169 (2003).

establish an employment-related condition.[12] Furthermore, Dr. Dunne failed to provide a sufficient explanation as to the mechanism of injury, namely how the identified work duties would cause or aggravate appellant's bilateral carpal tunnel syndrome.[13] As such, Dr. Dunne's reports are of limited probative value and insufficient to meet her burden of proof.[14]

In order to establish causal relationship, a physician must provide an opinion that the injury or condition for which compensation is claimed is causally related to federal employment and such relationship must be supported with affirmative evidence, explained by medical rationale, and be based upon a complete and accurate medical and factual background of the claimant.[15] Appellant was provided an opportunity to submit evidence to establish how the claimed left lower extremity injury occurred. By development letter dated August 11, 2016 and reissued August 25, 2016, OWCP requested that appellant obtain an opinion from her attending physician with medical rationale addressing causal relationship. She has not submitted a medical report sufficient to show that the diagnosed bilateral carpal tunnel syndrome was causally related to the accepted work factors, and thus did not meet her burden of proof.[16]

On appeal, counsel contends that Dr. Dunne's opinion was "not etched in stone" and that he was at liberty to change it. The issue, however, is not that Dr. Dunne changed his opinion, but that he failed to provide medical reasoning as to why he did so. As noted above, Dr. Dunne provided insufficient medical reasoning explaining why he changed his opinion from attributing appellant's bilateral carpal tunnel syndrome solely to the January 27, 2014 employment injury, to attributing it solely to repetitive upper extremity movements at work.

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 bilateral carpal tunnel syndrome causally related to the accepted factors of her federal employment.

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[12] *Supra* note 6.

[13] *P.D.*, Docket No. 17-1885 (issued September 17, 2018); *S.W.*, Docket No. 08-2538 (issued May 21, 2009).

[14] *P.D.*, *id*.

[15] *See J.W.*, Docket No. 17-0870 (issued July 12, 2017).

[16] *P.D.*, *supra* note 13.

ORDER

IT IS HEREBY ORDERED THAT the November 14, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 14, 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