

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

_____	)	
<b>T.B., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 18-0461</b>
	)	<b>Issued: October 2, 2018</b>
<b>U.S. POSTAL SERVICE, FRANKLIN BRANCH,</b>	)	
<b>Franklin, WI, Employer</b>	)	
_____	)	

*Appearances:*  
*Alan J. Shapiro, Esq.,* for the appellant<sup>1</sup>  
*Office of Solicitor,* for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

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

**JURISDICTION**

On January 4, 2018 appellant, through counsel, filed a timely appeal from an October 26, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.

**ISSUE**

The issue is whether appellant has met her burden of proof to establish right upper extremity conditions causally related to the accepted factors of her federal employment.

---

<sup>1</sup> 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.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On July 8, 2016 appellant, then a 50-year-old rural carrier, filed an occupational disease claim (Form CA-2) alleging that she developed a right bicep/upper arm and elbow condition as the result of her repetitive work duties.<sup>3</sup> She stated that she first became aware of her claimed condition on July 5, 2016, and realized its relation to her federal employment on July 8, 2016. Appellant did not stop work.

On July 8, 2016 appellant was seen by Dr. Rita E. Schulz, a Board-certified family practitioner, for complaints of right arm pain, which appellant attributed to her work duties. She related that she first noticed her arm pain on July 5, 2016 and that her job entailed lots of repetitive activity. Shortly thereafter, appellant noticed that the pain radiated into her right shoulder. Physical examination findings included tenderness along the right elbow medial epicondyles up to the triceps and biceps muscles, right shoulder and scapular area tenderness, and decreased right shoulder range of motion. Dr. Schulz diagnosed right arm sprain and referred appellant to a chiropractor. On July 8, 2016 she reported that appellant was disabled from work as of that day. On July 15, 2016 Dr. Schult released appellant to return to desk work with restrictions.

In a July 11, 2016 report, Dr. Michelle Jermier, a chiropractor, noted that appellant was seen for elbow pain. Appellant related striking her elbow while loading a truck at work and that the pain worsened as the day progressed. Examination findings were provided to include right lateral elbow edema and right elbow and forearm tenderness. Dr. Jermier diagnosed right elbow acute tendinosis/tendinitis.

On July 20, 2016 OWCP received an undated report from Dr. Jermier diagnosing right elbow acute tendinosis/tendinitis and right radial head subluxation. Dr. Jermier reported that appellant developed symptoms after hitting her right elbow while loading a truck on July 5, 2016. Examination findings were detailed. Dr. Jermier noted that anteroposterior (AP) and lateral elbow x-rays had essentially negative findings.

By development letter dated July 26, 2016, OWCP informed appellant that the evidence of record was insufficient to support her claim. It advised her regarding the necessary medical and factual evidence needed to establish her claim. OWCP afforded appellant 30 days to submit the necessary evidence.

On August 10, 2016 Dr. Jermier listed dates of treatment and noted a date of injury of July 5, 2016, when appellant hit her right elbow loading a truck at work. Examination findings included right wrist positive Phalen's, Finkelstein's, and Tinel's signs, right elbow positive valgus stress, extension, and flexion tests, and right shoulder positive Dawburns and Apleys Scratch tests. Dr. Jermier diagnosed right elbow lateral epicondylitis, right shoulder pain, other synovium and tendon specified disorders, and upper extremity segmental and somatic dysfunction. She opined

---

<sup>3</sup> OWCP assigned the present claim File No. xxxxxx000. Appellant also noted on her claim form that she bumped her elbow on a truck on July 2, 2016 while loading it. She then filed a separate claim for the July 2, 2016 injury, assigned OWCP File No. xxxxxx501, which OWCP denied on September 16, 2016. Appellant also subsequently filed other claims alleging injury to her right elbow/arm. On November 29, 2016 she filed a claim for a traumatic injury to her right arm on November 28, 2016, assigned OWCP File No. xxxxxx177. On December 23, 2016 appellant filed a claim for a traumatic injury to her right arm on December 22, 2016, assigned OWCP File No. xxxxxx871.

that the diagnosed conditions were caused by appellant's repetitive work duties and bumping her elbow on July 5, 2016.

On August 26, 2016 OWCP received a July 27, 2016 report from Dr. Darin A. Maccoux, Board-certified in family and sports medicine. Dr. Maccoux diagnosed appellant's condition as right elbow ulnar nerve contusion. He noted that she was disabled from work until August 18, 2016 and that her symptoms should resolve within two to three months.

By decision dated October 13, 2016, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish the factual portion of her claim.

In a letter dated October 24, 2016, counsel requested a telephonic hearing before an OWCP hearing representative. The hearing was held on April 25, 2017.

In an operative report dated March 7, 2017, Dr. Rick F. Papandrea, a treating physician Board-certified in hand surgery, orthopedic surgery, and orthopedic sports medicine, performed right elbow cubital tunnel release, right percutaneous medial epicondyle flexor/pronator release, and right ECRB percutaneous release. Appellant's diagnoses were listed as right lateral epicondylitis, right medial epicondylitis, and right cubital tunnel syndrome.

By decision dated June 16, 2017, the hearing representative found that appellant had established the factual portion of her claim. However, the claim remained denied as appellant had not provided a rationalized medical opinion explaining how the diagnosed conditions were causally related to the accepted employment factors. Thus, appellant affirmed the October 13, 2016 decision, as modified.

On July 28, 2017 appellant, through counsel, requested reconsideration.

In a July 7, 2017 report, Dr. Papandrea diagnosed right cubital tunnel syndrome or right elbow lateral epicondylitis and ulnar neuropathy. He noted that appellant stated that she developed medial and lateral elbow pain after hitting her elbow. Physical examination findings were provided. Dr. Papandrea attributed the diagnosed condition to the hitting of her elbow due to the lack of symptoms prior to the injury. In support of this conclusion, he explained that the direct trauma aggravated a preexisting condition causing it to become symptomatic.

By decision dated October 26, 2017, OWCP denied modification of its prior decision. It found the evidence submitted by appellant was insufficient to establish causal relationship between the diagnosed medical conditions and the accepted factors of appellant's federal employment.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>4</sup> 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 filed within the applicable time limitation, that an injury was sustained while in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are causally related to the

---

<sup>4</sup> *Supra* note 3.

employment injury.<sup>5</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.<sup>6</sup>

To establish that an injury was sustained in the performance of duty in a claim for occupational disease, an employee must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.<sup>7</sup>

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.<sup>8</sup> Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is causal relationship between the employee's diagnosed condition and the compensable employment factors.<sup>9</sup> 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 specific employment factors identified by the employee.<sup>10</sup>

### ANALYSIS

The Board finds that appellant has not met her burden of proof to establish that the accepted factors of her federal employment caused or aggravated her diagnosed medical conditions.

Dr. Schulz diagnosed right arm sprain in a July 8, 2016 report. In the work certificates dated July 8 and 15, 2016, she noted appellant's ability to work status. Dr. Maccoux diagnosed a right elbow ulnar nerve contusion in a July 27, 2016 report. However these physicians did not provide an opinion regarding the cause of appellant's diagnosed conditions.<sup>11</sup> The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.<sup>12</sup>

---

<sup>5</sup> *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

<sup>6</sup> *S.P.*, 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>7</sup> *D.U.*, Docket No. 10-0144 (issued July 27, 2010); *R.H.*, 59 ECAB 382 (2008); *Roy L. Humphrey*, 57 ECAB 238 (2005); *Donald W. Wenzel*, 56 ECAB 390 (2005).

<sup>8</sup> *Y.J.*, Docket No. 08-1167 (issued October 7, 2008); *A.D.*, 58 ECAB 149 (2006); *D'Wayne Avila*, 57 ECAB 642 (2006).

<sup>9</sup> *J.J.*, Docket No. 09-27 (issued February 10, 2009); *Michael S. Mina*, 57 ECAB 379 (2006).

<sup>10</sup> *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>11</sup> *D.H.*, Docket No. 11-1739 (issued April 18, 2012).

<sup>12</sup> *See C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

Dr. Papandrea's July 7, 2017 report did not attribute appellant's diagnosed conditions to her repetitive work duties over a period longer than a single shift. Rather he attributed her diagnoses to a prior traumatic incident when appellant allegedly struck her elbow.<sup>13</sup> As appellant's claim is for an occupational disease, and as Dr. Papandrea's opinion on causal relationship related her diagnoses to a single traumatic incident, his July 7, 2017 report is of diminished probative value on the issue of causal relationship. His report was not based on an accurate factual background. Medical opinions based on an incomplete or inaccurate history are of diminished probative value.<sup>14</sup>

Appellant also submitted reports from Dr. Jermier, a chiropractor. However, her reports are of no probative value because she did not diagnose a subluxation of the spine based upon x-ray evidence, and, therefore, she is not considered a "physician" under FECA.<sup>15</sup>

On appeal counsel contends that the report from Dr. Papandrea established causal relationship. As explained above, appellant has not provided rationalized medical evidence sufficient to establish causal relationship between the accepted employment factors and the diagnosed conditions. The Board thus finds that she failed to meet her burden of proof.

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 that right upper extremity conditions were causally related to the accepted factors of her employment.

---

<sup>13</sup> OWCP's regulations define a traumatic injury as a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. 20 C.F.R. § 10.5(ee). The regulations define an occupational disease or illness as a condition produced by the work environment over a period longer than a single workday or shift. 20 C.F.R. § 10.5(q).

<sup>14</sup> *L.G.*, Docket No. 09-1692 (issued August 11, 2010).

<sup>15</sup> *A.O.*, Docket No. 08-580 (issued January 28, 2009). Under section 8101(2) of FECA, the term physician includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulation by the Secretary. 5 U.S.C. § 8101(2); *see D.S.*, Docket No. 09-860 (issued November 2, 2009).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated October 26, 2017 is affirmed.

Issued: October 2, 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