

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

C.L., Appellant	)	
	)	
and	)	<b>Docket No. 19-0042</b>
	)	<b>Issued: April 17, 2019</b>
U.S. POSTAL SERVICE, POST OFFICE,	)	
Litchfield, IL, Employer	)	
	)	

*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:  
CHRISTOPHER J. GODFREY, Chief Judge  
ALEC J. KOROMILAS, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On October 8, 2018 appellant, through her representative, filed a timely appeal from an August 15, 2018 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 over the merits of this case.

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<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.*

## ISSUE

The issue is whether appellant has met her burden of proof to establish that she sustained an occupational disease in the performance of duty.

## FACTUAL HISTORY

This case has previously been before the Board.<sup>3</sup> 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 March 26, 2015 appellant, then a 51-year-old city carrier, filed an occupational disease claim (Form CA-2) alleging that constant grasping and handling of mail caused severe wrist and arm pain. She indicated that she first became aware of the disease and its relationship to factors of her federal employment on February 6, 2015. On the reverse side of the claim form the employing establishment indicated that appellant was last exposed to the conditions alleged to have caused her disease on March 26, 2015 and that she had not stopped work.

In a development letter dated March 30, 2015, OWCP informed appellant that further information was necessary to establish her claim. It informed her that her statement that the cause of the injury was constant grasping and handling of mail was merely a general description. OWCP advised appellant that she must provide a detailed description of the specific work factors that caused her injury. It afforded her 30 days to submit the necessary evidence. Appellant did not respond.

By decision dated April 30, 2015, OWCP denied appellant's claim. It found that the evidence of record was insufficient to establish that the employment factors occurred as described because grasping and handling mail was a general description of employment duties. OWCP further noted that to meet her burden of proof appellant would have to submit medical evidence establishing causal relationship between a diagnosed medical condition and established employment factors.

On May 13, 2015 appellant requested reconsideration of OWCP's April 30, 2015 decision and submitted medical evidence.

By decision dated August 5, 2015, OWCP denied modification of the April 30, 2015 decision because appellant had not provided a detailed description of the work factors that she believed caused her current medical condition.

On July 26, 2016 appellant, through counsel, requested reconsideration of OWCP's August 5, 2015 decision and submitted additional medical evidence.

By decision dated March 24, 2017, OWCP denied modification of the August 5, 2015 decision. It found that appellant had not responded to the factual development questionnaire or

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<sup>3</sup> C.L., Docket No. 17-1137 (issued September 14, 2017).

submitted a statement explaining the specific work factors or activities that she alleged caused or aggravated her diagnosed conditions.

On May 3, 2017 appellant filed a timely appeal to the Board.

By decision dated September 14, 2017, the Board affirmed OWCP's March 24, 2017 decision, finding that appellant had not met her burden of proof to establish an occupational disease in the performance of duty because she failed to provide a factual statement identifying the factors alleged to have caused her diagnosed conditions.

On January 10, 2018 appellant, through counsel, requested reconsideration. Counsel submitted additional medical evidence along with the request.

By decision dated January 26, 2018, OWCP declined appellant's reconsideration request, finding that the evidence submitted was insufficient to warrant review of its September 14, 2017 decision. Specifically, it indicated that the evidence submitted was irrelevant or immaterial and thus had no bearing on the underlying issue. OWCP again reiterated that appellant had not met the requirements to establish that she sustained an injury in the performance of duty.

On March 23, 2018 appellant, through counsel, requested reconsideration of OWCP's January 26, 2018 decision.

Along with her request for reconsideration, appellant submitted an undated and unsigned statement. She noted that she had been a mail carrier for 23½ years, and her duties consisted of casing mail, pulling and placing mail into trays, loading mail into a big "buggy," sorting parcels, loading everything into her vehicle, and delivering mail. Appellant indicated that she grasped, handled, and held mail with her left hand most of the day.

By decision dated August 15, 2018, OWCP denied modification of its September 14, 2017 decision, finding that the evidence submitted was insufficient because appellant had not provided a detailed description of the employment factors or conditions that she believed caused or adversely affected the condition for which she claimed compensation.

### **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 timely filed within the applicable time limitation period of FECA,<sup>5</sup> and that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally

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<sup>4</sup> *Supra* note 2.

<sup>5</sup> *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

related to the employment injury.<sup>6</sup> 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.<sup>7</sup>

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.<sup>8</sup>

### ANALYSIS

The Board finds that appellant has not met her burden of proof to establish that she sustained an occupational disease in the performance of duty.

Preliminarily, the Board notes that it is unnecessary for the Board to consider the evidence appellant submitted prior to the issuance of OWCP's March 24, 2017 decision because the Board has already considered this evidence in its September 14, 2017 decision, and found that it was insufficient to establish her claim. Findings made in prior Board decisions are *res judicata* absent any further review by OWCP under section 8128 of FECA.<sup>9</sup> The Board will, therefore, not review the evidence addressed in the prior appeal.

Following the Board's review of the case, appellant submitted an undated and unsigned statement. In her statement, she related in general terms her daily employment duties and length of federal employment. However, appellant still did not clearly identify specific employment factors, such as repetitive movements performed and weights lifted. The only explanation provided pertaining to her employment duties was generalized and vague. By failing to describe the employment-related factors and circumstances surrounding the alleged injury, appellant has not established that the occupational exposure occurred as alleged.<sup>10</sup> As the Board explained in the prior decision, it is important that appellant provide that factual statement identifying the factors alleged to have caused the diagnosed conditions so that the medical evidence can be evaluated to determine whether the employment factors identified by the claimant were the

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<sup>6</sup> *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>7</sup> *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>8</sup> *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>9</sup> *S.S.*, Docket No. 17-1106 (issued June 5, 2018); *see H.G.*, Docket No. 16-1191 (issued November 25, 2016).

<sup>10</sup> *See T.B.*, Docket No. 18-1214 (issued January 29, 2019); *P.T.*, Docket No. 14-0598 (issued August 5, 2014).

proximate cause of the alleged condition.<sup>11</sup> As she failed to provide this information, appellant has not met her burden of proof.<sup>12</sup>

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 she sustained an occupational disease in the performance of duty.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the August 15, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 17, 2019  
Washington, DC

Christopher J. Godfrey, 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

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<sup>11</sup> *Supra* note 3.

<sup>12</sup> *Id.*