

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

A.H., Appellant	)	
	)	
and	)	<b>Docket No. 19-0566</b>
	)	<b>Issued: August 22, 2019</b>
U.S. POSTAL SERVICE, POST OFFICE,	)	
Sunnyside, NY, Employer	)	
	)	

*Appearances:*  
*Appellant, pro se*  
*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 January 16, 2019 appellant filed a timely appeal from an October 24, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.<sup>2</sup>

**ISSUE**

The issue is whether appellant has met her burden of proof to establish a right wrist injury in the performance of duty, as alleged.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that, following the October 24, 2018 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

## **FACTUAL HISTORY**

On September 6, 2018 appellant, then a 56-year-old custodian, filed an occupational disease claim (Form CA-2) alleging that she sustained de Quervain's tenosynovitis of her wrist due to factors of her federal employment, which included repetitive motion and twisting of her wrists. She did not specify which wrist was involved. Appellant indicated that she became aware of the condition in May 2017 and that it was causally related to factors of her federal employment on May 28, 2017. She stopped work on September 6, 2018.

In a September 6, 2018 supplemental statement, appellant indicated that she went to the urgent care center on May 28, 2017 because she had severe, unrelenting, and nagging pain. She indicated that she was diagnosed with de Quervain's tenosynovitis due to repetitive motion at work. Appellant explained that it was hard to use her right hand for her daily hygiene and to perform work activities.

OWCP received a job description form and e-mails between E.C., a human resource management specialist, and A.B., a manager, describing appellant's duties as sweeping no more than two hours per day.

In a development letter dated September 21, 2018, OWCP advised appellant that it required additional factual and medical evidence to establish her claim. It attached a questionnaire, requesting that she provide a detailed description of the employment factors she believed contributed to her right hand condition, including a description of the exact medical condition she was claiming, relevant dates, and required duties. OWCP also requested that appellant's attending physician provide a comprehensive narrative medical report. It afforded appellant 30 days to submit the necessary evidence.

In August 16, 2018 work excuse and treatment notes, Dr. Judah Fierstein, Board-certified in emergency medicine, indicated that appellant could return to work on August 20, 2018.

In a September 4, 2018 report, Dr. Bradley Horak, an orthopedic hand surgeon, noted that appellant was seen for recurrence of right wrist pain "x 15 months." He noted that she was seen for an injection on June 5, 2017 which relieved her symptoms until March 2018, when she was given an injection by Dr. Jennifer Gordon, Board-certified in emergency medicine, and was seen for urgent care on August 16, 2018 for the same complaint and given a wrist splint. Dr. Horak diagnosed radial styloid tenosynovitis and proposed a decompression of the right first dorsal extensor compartment. A duty status report (Form CA-17) of even date by him noted the diagnosis of radial styloid tenosynovitis and provide restrictions on twisting, pulling/pushing, simple grasping, and fine manipulation.

In a September 27, 2018 treatment note, Dr. Maxim Tyorkin, a Board-certified orthopedic surgeon, noted that he saw appellant for an initial consultation for an employment-related injury that occurred on May 11, 2017, when she injured her right wrist. He diagnosed right wrist de Quervain's syndrome.

By decision dated October 24, 2018, OWCP denied appellant's claim, finding that the evidence of record failed to establish that the occupational exposure occurred as alleged as she had

not responded to the questionnaire provided with its September 21, 2018 development letter. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA 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>3</sup> 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 related to the employment injury.<sup>4</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>5</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>6</sup>

Appellant's burden of proof includes the submission of a detailed description of the employment factors, which he or she believes caused or adversely affected a condition for which compensation is claimed.<sup>7</sup>

### **ANALYSIS**

The Board finds that appellant has not met her burden of proof to establish a right wrist injury in the performance of duty, as alleged.

Appellant has not established the factual component of her claim, as she failed to describe the circumstances surrounding the occupational factors, which she believed caused or contributed to her diagnosed conditions. To establish a claim for compensation in an occupational disease claim, an employee must submit a statement which identifies the factors of employment believed

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<sup>3</sup> See *E.V.*, Docket No. 19-0447 (issued June 25, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>4</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>5</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>6</sup> *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>7</sup> *S.J.*, Docket No. 17-1798 (issued February 23, 2018).

to have caused her condition.<sup>8</sup> Appellant has not provided factual information to establish that an occupational exposure occurred as alleged.<sup>9</sup>

In a development letter dated September 21, 2018, OWCP requested that appellant provide detailed information concerning the occupational factors she believed contributed to her condition and respond to its questionnaire. However, appellant failed to respond or otherwise provide a detailed narrative statement describing the employment factors, which she believed contributed to her condition.<sup>10</sup> The Board notes that she only provided a generalized and vague statement on her Form CA-2, which stated that the repetitive motion and twisting of her wrist caused inflammation. Furthermore, on her claim form appellant did not identify with specificity which wrist was the subject of her complaints. In her September 6, 2018 narrative statement, she indicated that she had severe, unrelenting, and nagging right wrist pain and had been diagnosed with de Quervain's tenosynovitis due to repetitive motion at work. However, the statement again did not describe the specific employment factors appellant believed caused or contributed to her condition.<sup>11</sup>

While appellant submitted medical reports to the record, these reports also did not describe specific employment factors which allegedly caused her right wrist injury.

As appellant has not described the employment factors alleged to have caused her injury, the Board finds that she has not met her burden of proof to establish an injury in the performance of duty, as alleged. As such, the medical evidence need not be addressed.<sup>12</sup>

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of the Board's 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 a right wrist injury in the performance of duty, as alleged.

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<sup>8</sup> *D.M.*, Docket No. 18-0335 (issued June 18, 2018).

<sup>9</sup> *Id.*

<sup>10</sup> *See D.C.*, Docket No. 18-0082 (issued July 12, 2018).

<sup>11</sup> *Id.*

<sup>12</sup> *See E.V.*, *supra* note 3; *see V.F.*, 58 ECAB 321, 327 (2007); *see also Bonnie A. Contreas*, 57 ECAB 364, 368 n.10 (2006).

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 24, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 22, 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