

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

A.P., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Salisbury, NC, Employer**

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**Docket No. 19-0224
Issued: July 11, 2019**

Appearances:
Appellant, pro se
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 November 5, 2018 appellant filed a timely appeal from a May 24, 2018 merit decision and a September 7, 2018 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant has met her burden of proof to establish bilateral carpal tunnel syndrome causally related to the accepted factors of her federal employment; and (2) whether OWCP properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On February 10, 2018² appellant, then a 44-year-old rural carrier associate, filed an occupational disease claim (Form CA-2) alleging that on or before January 29, 2018 she sustained bilateral carpal tunnel syndrome, greater on the right, while in the performance of duty. She did not stop work.

In support of her claim appellant submitted a report dated January 29, 2018 by Dr. Mark Warburton, an attending Board-certified orthopedic and hand surgeon. Dr. Warburton diagnosed bilateral carpal tunnel syndrome, worse on the right, based on electrodiagnostic studies. He opined that lifting heavy trays, sorting mail, exposure to cold weather, and driving while in the performance of duty had contributed to and aggravated her carpal tunnel syndrome.³

In a development letter dated March 28, 2018, OWCP informed appellant that the evidence submitted was insufficient to establish the claim. It advised her of the type of medical and factual evidence needed, including corroboration of the employment factors alleged to have caused the claimed condition, and a narrative report from her physician explaining how and why those events would cause that condition. OWCP afforded appellant 30 days to respond.

In response, appellant provided her April 19, 2018 statement. She attributed the development of bilateral carpal tunnel syndrome to repetitive lifting and grasping while casing and delivering mail while in the performance of duty. Appellant indicated that she first became aware of her condition on January 29, 2018, the date Dr. Warburton had first diagnosed bilateral carpal tunnel syndrome related to her federal employment duties. She also provided a January 5, 2018 report by Dr. Warburton in which he prescribed medication and ordered electrodiagnostic testing of the bilateral upper extremities.

By decision dated May 24, 2018, OWCP denied appellant's occupational disease claim. It accepted her duties as a rural carrier associate and diagnosis of bilateral carpal tunnel syndrome, but denied her claim because the medical evidence of record failed to establish that her diagnosed condition was causally related to the accepted employment factors.

On August 27, 2018 appellant requested reconsideration. She submitted an incomplete copy of a November 8, 2016 physical therapy report for treatment of the right shoulder.

By decision dated September 7, 2018, OWCP denied appellant's request for reconsideration finding that the evidence submitted was insufficient to warrant review of its May 24, 2018 decision. It found that the evidence submitted in support of her request was irrelevant to the claim.

² Appellant dated the claim form "February 10, 2017." However, she noted January 29, 2018 as the date she first realized her claimed condition could be related to factors of her federal employment. Also, OWCP had imaged the claim form into the integrated Employees' Compensation System on March 22, 2018. Therefore, the appropriate date appears to be February 10, 2018.

³ Appellant also submitted physical therapy treatment notes dated in June 2016.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA⁴ 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 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, that an injury was sustained in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁵ These are the essential elements of every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁶

OWCP's regulations define the term "occupational disease or illness" as a condition "produced by the work environment over a period longer than a single workday or shift."⁷ To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (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 employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁸ A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factors(s) must be based on a complete factual and medical background.⁹ 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).¹⁰

⁴ *Supra* note 1.

⁵ *K.V.*, Docket No. 18-0947 (issued March 4, 2019); *M.E.*, Docket No. 18-1135 (issued January 4, 2019); *Kathryn Haggerty*, 45 ECAB 383, 388 (1994).

⁶ *K.V.*, and *M.E.*, *id.*; *K.B.*, Docket No. 17-1997 (issued July 27, 2018).

⁷ 20 C.F.R. § 10.5(q).

⁸ *K.V.*, *supra* note 5; *A.D.*, 58 ECAB 149 (2006); *D'Wayne Avila*, 57 ECAB 642 (2006).

⁹ *K.V.*, *supra* note 5; *Michael S. Mina*, 57 ECAB 379 (2006); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

¹⁰ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, *id.*

ANALYSIS -- ISSUE 1

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.

The record contains January 5 and 29, 2018 reports by Dr. Warburton. Dr. Warburton diagnosed bilateral carpal tunnel syndrome caused and aggravated by lifting trays, sorting mail, exposure to cold weather, and driving while at work. While he provided an affirmative opinion on causal relationship, his opinion is insufficiently rationalized. Dr. Warburton failed to explain the pathophysiologic mechanism by which the accepted employment duties caused, aggravated, or accelerated appellant's bilateral carpal tunnel syndrome. Without explaining how the repetitive movements involved in appellant's employment duties caused or contributed to carpal tunnel syndrome, his opinion on causal relationship is of limited probative value.¹¹ As such, Dr. Warburton's reports lack the specificity and detail needed to establish that appellant's bilateral carpal tunnel syndrome is the result of the accepted employment duties.¹²

The fact that a condition manifests itself during a period of employment is insufficient to establish causal relationship.¹³ Temporal relationship alone will not suffice. Entitlement to FECA benefits may not be based on surmise, conjecture, speculation, or on the employee's own belief of a causal relationship.¹⁴ Herein, the record lacks rationalized medical evidence establishing causal relationship between the accepted employment duties and appellant's bilateral carpal tunnel syndrome.¹⁵ Thus, appellant has not met her burden of proof.

On appeal appellant contends that the medical evidence of record indicates that her claimed condition was employment related. As noted above, Dr. Warburton did not provide sufficient medical rationale to meet appellant's burden of proof to establish a causal relationship between the accepted employment duties and the claimed bilateral carpal tunnel syndrome.

Appellant may submit new evidence 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.

LEGAL PRECEDENT -- ISSUE 2

To require OWCP to reopen a case for merit review under FECA section 8128(a), OWCP regulations provide that the evidence or argument submitted by a claimant must: (1) show that OWCP erroneously applied or interpreted a specific point of law; (2) advance a relevant legal

¹¹ *K.V.*, *supra* note 5.

¹² *Id.*; *M.E.*, *supra* note 5.

¹³ *M.H.*, Docket No. 18-1737 (issued March 13, 2019); *Daniel O. Vasquez*, 57 ECAB 559 (2006).

¹⁴ *S.G.*, Docket No. 18-1373 (issued February 12, 2019); *D.D.*, 57 ECAB 734 (2006).

¹⁵ *M.H.*, *supra* note 13; *see J.S.*, Docket No. 17-0507 (issued August 11, 2017).

argument not previously considered by OWCP; or (3) constitute relevant and pertinent new evidence not previously considered by OWCP.¹⁶

A request for reconsideration must be received by OWCP within one year of the date of its decision for which review is sought.¹⁷ If it chooses to grant reconsideration, it reopens and reviews the case on its merits.¹⁸ If the request is timely, but fails to meet at least one of the requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.¹⁹

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

In her application for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law, nor did she advance a new and relevant legal argument not previously considered. Accordingly, appellant is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(3).

With her reconsideration request, appellant submitted an incomplete physical therapy treatment note dated November 8, 2016. This evidence, while new, is not relevant to the underlying medical issue of causal relationship. Evidence which does not address the particular issue under consideration does not constitute a basis for reopening a case.²⁰ Further, physical therapists are not considered physicians as defined under FECA and thus their reports do not constitute competent medical evidence.²¹

The Board accordingly finds that appellant has not met any of the requirements of 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.²²

¹⁶ 20 C.F.R. § 10.608(b)(3); *see also H.H.*, Docket No. 18-1660 (issued March 14, 2019); *L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

¹⁷ 20 C.F.R. § 10.607(a).

¹⁸ *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

¹⁹ *Id.* at § 10.608(b); *H.H.*, *supra* note 16; *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

²⁰ *See F.B.*, Docket No. 18-1039 (issued December 6, 2018).

²¹ 5 U.S.C. § 8101(2); *J.L.*, Docket No. 17-1207 (issued December 8, 2017); *F.L.*, Docket No. 17-0528 (issued June 6, 2017); *G.C.*, Docket No. 16-0681 (issued October 18, 2016); *J.M.*, 58 ECAB 448 (2007); *G.G.*, 58 ECAB 389 (2007); *David P. Sawchuk*, 57 ECAB 316, 322 n.11 (2006); *Allen C. Hundley*, 53 ECAB 551 (2002).

²² *M.E.*, 58 ECAB 694 (2007); *Susan A. Filkins*, 57 ECAB 630 (2006) (when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b), OWCP will deny the application for reconsideration without reopening the case for a review on the merits).

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. The Board further finds that OWCP properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the September 7 and May 24, 2018 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: July 11, 2019
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