

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

D.S., Appellant)

and)

DEPARTMENT OF HOMELAND SECURITY,)
U.S. CITIZENSHIP & IMMIGRATION)
SERVICES, Los Angeles, CA, Employer)

Docket No. 19-0203
Issued: June 3, 2019

Appearances:

Alan J. Shapiro, Esq., for the appellant¹
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
 JANICE B. ASKIN, Judge

JURISDICTION

On November 5, 2018 appellant, through counsel, 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 Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this 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 bilateral carpal tunnel syndrome in the performance of duty, as alleged.

FACTUAL HISTORY

On January 24, 2018 appellant, then a 56-year-old immigration services officer, filed an occupational disease claim (Form CA-2) alleging that she developed bilateral carpal tunnel syndrome due to factors of her federal employment. She related that she initially developed the condition in 1990, that on April 17, 2008 she sought medical treatment for finger tingling and arm numbness, on October 1, 2013 she again sought treatment for the same symptoms, and that her symptoms worsened after she began work as an interviewing officer on March 23, 2015.³ Appellant related that her Form CA-2 was not filed with the employing establishment within 30 days of the date she first realized her condition was caused or aggravated by her federal employment because she filed the wrong form back in February 2016, and she was instructed to file the correct Form CA-2 with new medical evidence.

On the reverse side of the claim form the employing establishment indicated that appellant first reported her condition to her supervisor on January 16, 2018. It did not indicate whether she stopped or returned to work. The employing establishment checked the box marked “no” when asked whether medical reports showed that appellant was disabled for work.

In a development letter dated January 30, 2018, OWCP advised appellant of the type of factual and medical evidence needed to establish her claim, including a detailed description and factual corroboration of the identified employment factors, and a report from her physician explaining how and why her employment tasks would cause the claimed conditions. It also requested that she respond to a questionnaire to substantiate the factual elements of her claim. In a separate development letter of the same date, OWCP requested that the employing establishment provide additional information regarding appellant’s occupational disease claim, including comments from a knowledgeable supervisor regarding the accuracy of appellant’s statements, and a copy of appellant’s position description and physical requirements of her position. It afforded both parties 30 days to submit the requested evidence. In a letter dated January 30, 2018, the employing establishment related that appellant first became aware of her condition on April 17, 2008 when she was employed under a different “CIS agency code.” It indicated that appellant started her current position in March 2015, and that her previous condition was aggravated by her employment duties on February 8, 2016.

In a subsequent letter dated February 21, 2018, an employing establishment official indicated that appellant’s supervisor was unable to provide information stemming from the injury in April 2008 because she had only been her supervisor for two years; however, appellant’s claims were not disputed. She noted that appellant wore wrist guards at work and that her primary duties were interviewing applicants and determining their eligibility for citizenship. The employing establishment further related that appellant interviewed approximately 8 to 12 applicants per day,

³ Appellant has filed several prior claims for FECA benefits which are not presently before the Board in this case.

thoroughly reviewed each of their files, took notes of the interview responses, and typed, updated, and uploaded her notes into various computer systems for each applicant.

By decision dated March 14, 2018, OWCP denied appellant's claim finding that the evidence of record was insufficient to establish that the claimed injury or events occurred as alleged. It noted that she neither responded to the January 30, 2018 questionnaire, nor submitted evidence containing a medical diagnosis in connection with the alleged factors.

On April 30, 2018 appellant, through counsel, requested reconsideration of OWCP's March 14, 2018 decision. She submitted additional medical evidence along with her request.

In a letter dated August 20, 2017, received by OWCP on April 30, 2018, Dr. John Knight, an orthopedic surgeon, indicated that he evaluated appellant on July 19, 2017 and diagnosed bilateral carpal tunnel syndrome. He noted that she underwent electrodiagnostic testing in 2013 and had previously received two cortisone shots. Dr. Knight related that appellant had developed a cumulative trauma injury of bilateral upper extremities as a result of the usual and customary factors of her federal employment. He recommended that she undergo surgery at that time.

By decision dated August 15, 2018, OWCP denied modification of its March 14, 2018 decision, finding that appellant had not provided a description of the employment factors leading to her claimed injury. It further found that the medical evidence provided was insufficient to establish that appellant developed carpal tunnel syndrome.

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,⁴ 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.⁵ 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.⁶

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

⁴ *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *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).

disease or condition; and (3) medical evidence establishing that the diagnosed condition is causally related to the identified employment factors.⁷

An injury does not have to be confirmed by an eyewitness in order to establish the fact that an employee sustained an injury while in the performance of duty. However, the employee's statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action.⁸ Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury, and failure to obtain medical treatment may cast doubt on an employee's statements in determining whether he or she had established a *prima facie* claim for compensation. However, an employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong and persuasive evidence.⁹

ANALYSIS

The Board finds that this case is not in posture for decision.

OWCP denied appellant's claim because she failed to establish that the alleged work events occurred as alleged. However, the evidence of record supports that her job duties required performing repetitive tasks including writing and typing. Specifically, in its February 21, 2018 letter, the employing establishment did not dispute appellant's claims and related that appellant interviewed 8 to 12 applicants per day, took notes, and then typed her notes into various computer systems for each applicant. Thus, the Board finds that the evidence is undisputed that appellant performed employment duties which included performing repetitive activities using both of her wrists.

As appellant has alleged and established occupational exposure, further consideration of the medical evidence is necessary.¹⁰ This case will therefore be remanded to OWCP for evaluation of the medical evidence to determine whether there is a causal relationship between the claimed carpal tunnel condition and the accepted factors of her federal employment. Following such further development as OWCP deems necessary, it shall issue a *de novo* decision.¹¹

⁷ *M.S.*, Docket No. 18-1554 (issued February 8, 2019); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁸ *M.S.*, *id.*; *see B.B.*, Docket No. 12-0165 (issued July 26, 2012); *Mary Jo Coppolino*, 43 ECAB 988 (1992).

⁹ *Id.*

¹⁰ *M.D.*, Docket No. 18-1365 (issued March 12, 2019).

¹¹ OWCP's procedures provide that cases should be combined when correct adjudication of the issues depends on frequent cross-referencing between files. For example, if a new injury case is reported for an employee who previously filed an injury claim for a similar condition or the same part of the body, doubling is required. *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance & Management*, Chapter 2.400.8(c) (February 2000). On remand OWCP shall administratively combine all necessary file numbers for a full and fair adjudication of appellant's pending claim.

CONCLUSION

The Board finds that this case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the August 15, 2018 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision.

Issued: June 3, 2019
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board