

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

A.B., Appellant)
)
and)
)
U.S. POSTAL SERVICE, POST OFFICE,)
Linthicum, MD, Employer)

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**Docket No. 19-0617
Issued: October 3, 2019**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On January 22, 2019 appellant filed a timely appeal from a December 10, 2018 merit 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.²

ISSUE

The issue is whether appellant has met her burden of proof to establish bilateral carpal tunnel syndrome causally related to the accepted factors of her federal employment.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that appellant submitted additional evidence on appeal. 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 February 13, 2018 appellant, then a 58-year-old postal clerk, filed an occupational disease claim (Form CA-2) alleging that she developed bilateral carpal tunnel syndrome while in the performance of duty. She attributed her condition to over 31 years of processing mail, which included activities such as keying, pulling, lifting, and sorting mail and packages, as well as setting up machines and equipment. Appellant first became aware of her condition and related it to factors of her federal employment on September 30, 2017. She did not stop work, but she indicated that her neurologist informed her that surgery was necessary.

A December 22, 2017 electrodiagnostic report noted moderately severe left median neuropathy and mild-to-moderate right median neuropathy.

In a February 23, 2018 development letter, OWCP advised appellant of the deficiencies of her claim. It requested additional factual and medical evidence and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond. No evidence was received.

By decision dated April 4, 2018, OWCP denied appellant's claim as she failed to establish that the injury or event occurred as she alleged. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On April 27, 2018 appellant requested an oral hearing before an OWCP hearing representative. She also submitted an April 27, 2019 statement in response to OWCP's questionnaire. Appellant provided details regarding her employment duties over the past 31 years, noting that repetitive hand movements were necessary. She noted that she was diagnosed with carpal tunnel in 1991 and that the condition improved after she worked light duty for several months. Appellant indicated that her carpal tunnel syndrome worsened during the past year and that she underwent left carpal tunnel release on March 16, 2018. She submitted documentation indicating that she was on leave from March 16 through May 9, 2018.

In a December 8, 2017 report, Jennifer A. Kerr-Logan, a certified physician assistant, noted that appellant had numbness and tingling in her left hand, which begun approximately two months ago with no specific accident or injury.

In a February 13, 2018 progress report, Dr. John Victor Ingari, a Board-certified orthopedic surgeon, indicated that appellant had experienced many years of numbness and tingling in her left hand, which had been effectively treated with bracing years ago. However, "this has gotten significantly worse" in the past five to six months. Dr. Ingari noted that appellant currently had bilateral hand pain, but worse on the left. After noting that appellant underwent electrodiagnostic testing on December 22, 2017, he provided an impression of moderately severe left carpal tunnel syndrome, with mild-to-moderate right carpal tunnel syndrome as well.

On March 16, 2018 Dr. Ingari performed a left carpal tunnel release. In March 16 and 28, 2018 work excuse notes, he let appellant off from work from March 16 through May 15, 2018. In a March 28, 2018 postoperative report, Dr. Ingari indicated that, since appellant worked at the employing establishment sorting and carrying heavy boxes on a regular basis, she would be kept off work during the six-week postsurgical period.

On October 9, 2018 a telephonic hearing was held before an OWCP hearing representative. At the hearing, appellant indicated that she had been treated for employment-related carpal tunnel syndrome in 1991 and that her symptoms improved without surgery. She maintained that performing her job duties for 31 years caused her condition to return. The hearing representative advised appellant of the medical evidence needed to establish her claim and kept the record open for 30 days for the submission of additional evidence.

In an October 12, 2018 report, Dr. Sujay Pathak, a Board-certified internist, opined that appellant's carpal tunnel syndrome was "the direct result of her work as a clerk for the [employing establishment], and the repetitive hand motions required in her duties there." He noted that appellant had suffered from symptoms of carpal tunnel syndrome for years and that only recently had it escalated to the point where she sought specialty care. Dr. Pathak noted that her December 8, 2017 electromyogram (EMG) showed moderately severe left carpal tunnel syndrome and mild-to-moderate right carpal tunnel syndrome and that she required and underwent a left-sided carpal tunnel release surgery on March 16, 2018 due to her symptoms. He opined that the progressive nature of appellant's symptoms with its nonresponse to conventional therapy was the "direct result" of her occupation at the employing establishment.

By decision dated December 10, 2018, an OWCP hearing representative affirmed, as modified, OWCP's April 4, 2018 decision. The hearing representative modified the prior decision to find that fact of injury had been established. However, the claim remained denied as the medical evidence was insufficient to establish causal relationship. The hearing representative found that there was no rationalized medical opinion which established that the claimed condition was causally related to appellant's employment.

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 filed within the applicable time limitation, that an injury was sustained while 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.³ 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.⁴

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (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

³ *A.F.*, Docket No. 18-1154 (issued January 17, 2019); *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *A.F.*, *id.*; *S.P.*, 59 ECAB 184 (2007); *Victor J. Woodhams*, 41 ECAB 345 (1989); *Joe D. Cameron*, 41 ECAB 153 (1989).

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 claimant.⁵

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical opinion evidence.⁶ 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 accepted employment incident.⁷ 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 incident identified by the employee.⁸

ANALYSIS

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.

In his February 13, 2018 report, Dr. Ingari diagnosed moderately severe left carpal tunnel and mild-to-moderate right carpal tunnel syndrome. He performed appellant's March 16, 2018 left carpal tunnel release and provided a March 28, 2018 postsurgical report along with work excuse notes. Dr. Ingari noted her employment-related duties and advised that she should not perform such activities postsurgery. However, he did not offer an opinion as to whether appellant's bilateral carpal tunnel condition was employment related. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.⁹ Thus, this evidence is insufficient to establish appellant's claim.

In an October 12, 2018 report, Dr. Pathak opined that appellant's carpal tunnel syndrome was "the direct result of her work as a clerk for the [employing establishment] and the repetitive hand motions required in her duties there." He noted diagnostic findings of bilateral carpal tunnel syndrome and related that she required and underwent a left-sided carpal tunnel release surgery on March 16, 2018 due to her symptoms. Dr. Pathak, however, failed to offer medical rationale explaining how appellant's diagnosed bilateral carpal tunnel syndrome was caused or aggravated

⁵ See *M.S.*, Docket No. 18-1554 (issued February 8, 2019).

⁶ *C.B.*, Docket No. 18-0071 (issued May 13, 2019); *Y.J.*, Docket No. 08-1167 (issued October 7, 2008); *A.D.*, 58 ECAB 149, 155-56 (2006); *D'Wayne Avila*, 57 ECAB 642, 649 (2006).

⁷ *C.B.*, *id.*; *J.J.*, Docket No. 09-0027 (issued February 10, 2009); *Michael S. Mina*, 57 ECAB 379, 384 (2006).

⁸ *R.Z.*, Docket No. 19-0408 (issued June 26, 2019); *I.J.*, 59 ECAB 408, 415 (2008); *Victor J. Woodhams*, *supra* note 4.

⁹ *P.S.*, Docket No. 18-1222 (issued January 8, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

by her employment duties.¹⁰ A medical opinion must provide an explanation of how the specific employment factors physiologically caused or aggravated the diagnosed conditions.¹¹ Without medical reasoning explaining how the accepted employment activities caused or contributed to the diagnosed condition, Dr. Pathak's report is insufficient to establish the claim.

Appellant submitted a December 8, 2017 report from Ms. Kerr-Logan, a certified physician assistant, who provided an assessment of numbness and tingling in left hand. The Board has held that a medical report signed solely by a physician assistant is of no probative value as a physician assistant is not considered a physician as defined under FECA and therefore is not competent to provide a medical opinion.¹² Therefore, Ms. Kerr-Logan's report has no probative value.

Finally, appellant has submitted a December 22, 2017 electrodiagnostic report. The Board has explained that diagnostic studies lack probative value as they do not address whether the employment incident caused any of the diagnosed conditions.¹³ This report is therefore also insufficient to establish appellant's claim.

As appellant has not submitted reasoned medical evidence explaining how her bilateral carpal tunnel condition was causally related to her accepted employment factors, she has not met her burden of proof.¹⁴

On appeal appellant contends that Dr. Pathak's report establishes her claim. As previously discussed, Dr. Pathak's report is insufficient to establish her claim as he did not explain how her accepted employment factors caused or contributed to her bilateral carpal tunnel condition.

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 bilateral carpal tunnel syndrome causally related to the accepted factors of her federal employment.

¹⁰ *M.C.*, Docket No. 18-0361 (issued August 15, 2018); *Calvin E. King, Jr.*, 51 ECAB 394 (2000); *see also Frederick E. Howard, Jr.*, 41 ECAB 843 (1990).

¹¹ *C.E.*, Docket No. 19-0192 (issued July 16, 2019); *R.G.*, Docket No. 18-1778 (issued April 9, 2019).

¹² *See David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses and physical therapists are not competent to render a medical opinion under FECA); 5 U.S.C. § 8101(2) (this subsection defines a physician as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law). *T.K.*, Docket No. 19-0055 (issued May 2, 2019) (physician assistants are not considered physicians under FECA); *N.C.*, Docket No. 19-0299 (issued June 24, 2019).

¹³ *R.Z.*, *supra* note 8; *J.S.*, Docket No. 17-1039 (issued October 6, 2017).

¹⁴ *D.B.*, Docket No. 18-1359 (issued May 14, 2019).

ORDER

IT IS HEREBY ORDERED THAT the December 10, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 3, 2019
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board