

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

_____)
D.W., Appellant)

and)

DEPARTMENT OF VETERANS AFFAIRS,)
PUGET SOUND HEALTH CARE SYSTEM,)
Seattle, WA, Employer)
_____)

Docket No. 19-0968
Issued: October 9, 2019

Appearances:

Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On April 4, 2019 appellant, through counsel, filed a timely appeal from a January 30, 2019 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 causally related to the accepted factors of her federal employment.

FACTUAL HISTORY

This case has previously been before the Board.³ The facts and circumstances as presented in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On January 4, 2017 appellant, then a 38-year-old dental hygienist, filed an occupational disease claim (Form CA-2) alleging that she sustained carpal tunnel syndrome causally related to factors of her federal employment. She performed modified work duties effective January 4, 2017.

In a development letter dated January 18, 2017, OWCP advised appellant of the deficiencies of her claim and requested additional factual and medical evidence. It provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence.

Thereafter, OWCP received a November 23, 2016 report from Dr. Wren V. McCallister, a Board-certified orthopedic surgeon. Dr. McCallister evaluated appellant for tingling and numbness in her hands bilaterally and noted that she intended to file a workers' compensation claim. He indicated that an x-ray revealed cervical spondylosis. Dr. McCallister diagnosed numbness and tingling of the bilateral upper extremities that may "have elements of carpal tunnel syndrome, thoracic outlet [syndrome], and possible cervicalgia."

A December 16, 2016 nerve conduction velocity study and electromyogram revealed right carpal tunnel syndrome with a moderate conduction delay, left carpal tunnel syndrome with a mild motor conduction delay and no evidence of right cervical radiculopathy or ulnar neuropathy.

Appellant further submitted a December 23, 2016 report by Dr. Matthew C. Keifer, a Board-certified internist. Dr. Keifer reviewed her history of bilateral numbness, weakness, and tingling in her hands and forearms, worse on the left, for the past three months, and diagnosed carpal tunnel syndrome. He noted that appellant attributed her symptoms to her employment activities as a dental hygienist.

On January 4, 2017 Dr. Keifer again discussed appellant's history of numbness, weakness, and tingling in both hands, worse on the left, for the past three months. He diagnosed carpal tunnel syndrome and provided work restrictions. Dr. Keifer advised that appellant believed that her symptoms were aggravated by her employment duties as a dental hygienist.

³ Docket No. 18-0509 (issued October 3, 2018).

In a statement dated January 11, 2017, appellant described the duties required of her position as a dental hygienist. She advised that prior to working for the employing establishment she had worked part time as a dental hygienist without problems.⁴

In a report dated January 26, 2017, Dr. McCallister evaluated appellant for continued complaints of upper extremity numbness. He reviewed the results of electrodiagnostic studies and found a positive Durkan's compression test bilaterally on examination. Dr. McCallister diagnosed numbness and tingling of the right upper extremity suspected to be "secondary to a combination of carpal tunnel syndrome and likely, thoracic outlet syndrome." He noted that appellant had significant delay on electrodiagnostic tests, but that her symptoms were not completely consistent with carpal tunnel syndrome. Dr. McCallister reviewed OWCP's January 18, 2017 development letter and advised that he would defer an opinion on the cause of her condition to an independent examiner.

By decision dated April 3, 2017, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish an injury or medical condition causally related to the accepted factors of her federal employment.

On April 18, 2017 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. On October 2, 2017 OWCP scheduled a telephonic hearing for October 20, 2017 and also provided her with the time, telephone number, and required passcode.

By decision dated October 31, 2017, OWCP determined that appellant had abandoned her request for a telephonic hearing before a representative of its Branch of Hearings and Review. It found that she had received written notice of the telephonic hearing 30 days prior to the scheduled hearing, but that she had failed to attend or contact the Branch of Hearings and Review either before or after the scheduled hearing to explain her absence.

Appellant appealed to the Board. By decision dated October 3, 2018, the Board set aside the October 31, 2017 OWCP decision.⁵ The Board found that OWCP had improperly determined that appellant abandoned her request for a telephonic hearing as it failed to provide her with 30 days written notice of the time of the scheduled telephonic hearing. The Board remanded the case for OWCP to schedule another hearing.

On remand OWCP's Branch of Hearings and Review held a telephonic hearing on November 16, 2018. During the hearing, appellant described her employment duties. OWCP's hearing representative advised her to submit evidence addressing the relationship between her condition and employment factors.

By decision dated January 30, 2019, OWCP's hearing representative affirmed the April 3, 2017 decision.

⁴ On February 3, 2017 the employing establishment advised that appellant's statement was accurate.

⁵ See *supra* note 3.

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 period of FECA,⁶ 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.⁷ 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.⁸

In an occupational disease claim, appellant's burden requires submission of 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 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.⁹

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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 factors identified by the claimant.¹⁰

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 a report dated November 23, 2016, Dr. McCallister described appellant's symptoms of bilaterally tingling and numbness of the hands. He noted that she intended to pursue obtaining workers' compensation benefits. Dr. McCallister reviewed an x-ray finding cervical spondylosis. He diagnosed elements of carpal tunnel syndrome, thoracic outlet syndrome, and possible cervicalgia. While Dr. McCallister provided a diagnosis, he failed to offer an opinion on causal

⁶ *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

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

⁸ *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).

⁹ *R.M.*, Docket No. 18-0976 (issued January 3, 2019); *P.D.*, Docket No. 17-1885 (issued September 17, 2018).

¹⁰ *H.B.*, Docket No. 18-0781 (issued September 5, 2018).

relationship. 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.¹¹

On December 27, 2016 and January 4, 2017 Dr. Keifer discussed appellant's three-month history of tingling, numbness, and weakness of the hands. He diagnosed carpal tunnel syndrome and noted that she believed that her work as a dental hygienist contributed to her condition. Dr. Keifer did not, however, render an independent finding relative to causation. A physician's report is of little probative value when it is based on a claimant's belief rather than a physician's independent judgment.¹² Without providing an independent opinion explaining how physiologically the accepted employment factors caused or contributed to the diagnosed condition, Dr. Keifer's opinion is of limited probative value.¹³

In a January 26, 2017 report, Dr. McCallister attributed appellant's upper extremity numbness and tingling to a combination of carpal tunnel syndrome and possible thoracic outlet syndrome. He advised that electrodiagnostic studies showed a significant delay. Dr. McCallister deferred a finding on the cause of the diagnosed condition to another examiner. As he declined to address causation, his opinion is of no probative value on the issue.¹⁴

As the evidence of record does not include rationalized medical evidence sufficient to establish causal relationship, the Board finds that appellant has not met her burden of proof.

On appeal counsel argues that OWCP failed to adjudicate the claim in accordance with the proper standard of causation and failed to give due deference to the findings of the attending physician. As discussed, however, appellant has not provided rationalized medical evidence sufficient to establish that she sustained carpal tunnel syndrome causally related to factors of her federal employment.¹⁵ She has, therefore, not met her burden of proof to establish a claim for compensation.

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.

¹¹ *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018).

¹² *T.S.*, Docket No. 18-1501 (issued March 4, 2019).

¹³ *A.B.*, Docket No. 18-0577 (issued October 10, 2018).

¹⁴ *See supra* note 11.

¹⁵ *See N.C.*, Docket No. 19-0299 (issued June 24, 2019).

ORDER

IT IS HEREBY ORDERED THAT the January 30, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 9, 2019
Washington, DC

Patricia H. Fitzgerald, Deputy 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