United States Department of Labor
Employees' Compensation Appeals Board

K.C., Appellant	)	
and	)	**Docket No. 20-0899**
	)	**Issued: December 1, 2020**
U.S. POSTAL SERVICE, WATERTOWN POST OFFICE, Watertown, CT, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Deputy Chief Judge
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On March 18, 2020 appellant, through counsel, filed a timely appeal from a February 10, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] 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

On May 4, 2019 appellant, then a 61-year-old mail carrier, filed an occupational disease claim (Form CA-2) alleging that she sustained bilateral carpal tunnel syndrome causally related to factors of her federal employment including repetitive twisting and turning of her wrists and hands. She indicated that she first became aware of her condition on March 24, 2015 and its relationship to her federal employment on February 4, 2016. Appellant did not stop work.

Appellant explained in a narrative statement dated May 4, 2019 that she began to notice numbness of her bilateral hands and fingers as of March 24, 2015, which she attributed to carpal tunnel syndrome. She noted that duties of her federal employment included repetitive twisting and turning of her wrists and hands when sorting and delivering mail, carrying trays, and steering her mail truck. Appellant explained that she had performed these duties for 40 or more hours per week, for 17 years.

In a report dated May 19, 2015, Dr. Craig Rodner, a Board-certified orthopedic hand surgeon, followed up with appellant subsequent to electrodiagnostic testing, which demonstrated bilateral moderate median neuropathy of the wrists. On physical examination of the hands and wrists, he observed a positive Phalen's test and full strength of the adductor pollicis brevis muscle. Dr. Rodner diagnosed carpal tunnel syndrome and discussed surgical options with appellant, which she deferred.

On February 4, 2016 Dr. Rodner examined appellant for bilateral carpal tunnel syndrome. Appellant associated her symptoms with duties of her federal employment for 14 years, noting that she had symptoms for the last 3 years. Dr. Rodner observed the same results on physical examination as in his report of May 19, 2015. He diagnosed bilateral carpal tunnel syndrome and recommended the use of splints.

In a development letter dated May 22, 2019, OWCP informed appellant that the evidence submitted was insufficient to establish her claim. It advised her of the type of medical evidence needed, including a report containing a medical diagnosis and a comprehensive narrative report from a qualified physician explaining how factors of her federal employment caused, contributed to, or aggravated a diagnosed condition. OWCP afforded appellant 30 days to respond and submit additional evidence.

Appellant submitted a September 26, 2017 report by Antigona Ajro, an advanced practice registered nurse, for assessment of complaints of left shoulder pain. In a report dated October 6, 2017, the nurse noted conditions including carpal tunnel syndrome and left shoulder pain.

By decision dated July 26, 2019, OWCP denied appellant's occupational disease claim finding that the evidence of record was insufficient to establish that her diagnosed condition was causally related to the accepted factors of her federal employment.

On January 16, 2020 appellant, through counsel, requested reconsideration.

In support of the reconsideration requested counsel submitted an October 14, 2019 report by Dr. Douglas C. Wisch, a Board-certified orthopedic hand surgeon, noted that he had examined appellant for complaints of a flare-up of her bilateral wrist condition. He reviewed the results of an electromyogram/nerve conduction velocity (EMG/NCV) study dated September 16, 2019, which demonstrated mild carpal tunnel syndrome. Physical examination of the right upper extremity demonstrated positive Tinel's and Phalen's tests and a mildly positive flexion test of the cubital tunnel, while examination of the left upper extremity demonstrated positive Tinel's and Phalen's tests with a positive flexion test of the cubital tunnel. Dr. Wisch diagnosed bilateral cubital tunnel syndrome and bilateral carpal tunnel syndrome. He noted that appellant was currently working under restrictions due to a left shoulder surgery. Dr. Wisch recommended use of splints.

In the letter dated January 2, 2020, Dr. Wisch opined that appellant's current symptoms of numbness and tingling were consistent with carpal tunnel syndrome and cubital tunnel syndrome and that these conditions were related to her work as a mail handler. He explained that her diagnosed conditions were related to her job, as she had been a mail handler for 17 years, which involved significant repetitive elbow and wrist motion in sorting mail and other duties of the position.

By decision dated February 10, 2020, OWCP denied modification of its July 26, 2019 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] 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 of FECA, 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.[4] 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.

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant 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

[3] *Supra* note 2.

[4] *C.K.*, Docket No. 19-1549 (issued June 30, 2020); *R.G.*, Docket No. 19-0233 (issued July 16, 2019); *Elaine Pendleton*, 40 ECAB 1143 (1989).

compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the identified employment factors.[5]

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.[6] The opinion of the physician must be based on a complete factual and medical background, 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.[7]

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.

On May 19, 2015 and February 4, 2016 Dr. Rodner examined appellant and diagnosed carpal tunnel syndrome. In an October 14, 2019 report, Dr. Wisch reviewed the results of an EMG/NCV study dated September 16, 2019, which demonstrated mild carpal tunnel syndrome. Dr. Wisch diagnosed bilateral cubital tunnel syndrome and bilateral carpal tunnel syndrome. These reports addressed her claimed bilateral carpal tunnel syndrome, but did not offer a medical opinion addressing whether the diagnosed conditions were causally related to the accepted employment factors. 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.[8] These reports of Dr. Rodner and Dr. Wisch are therefore insufficient to establish appellant's claim.

In support of her claim, appellant also submitted a letter from Dr. Wisch dated January 2, 2020. Dr. Wisch opined that her symptoms of numbness and tingling were consistent with carpal tunnel syndrome and cubital tunnel syndrome and that these conditions were related to her work as a mail handler. He explained within a reasonable degree of medical certainty that appellant's diagnosed conditions were related to her job, as she had been a mail handler for 17 years, which involved significant repetitive elbow and wrist motion in sorting mail and other duties of the position. While Dr. Wisch supported causal relationship, he did not provide medical rationale explaining how her work duties caused her claimed condition. Without explaining how, physiologically, the specific movements involved in appellant's job caused, contributed to, or

[5] *L.D.*, Docket No. 19-1301 (issued January 29, 2020); *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[6] *I.J.*, Docket No. 19-1343 (issued February 26, 2020); *T.H.*, 59 ECAB 388 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

[7] *D.J.*, Docket No. 19-1301 (issued January 29, 2020).

[8] *A.P.*, Docket No. 18-1690 (issued December 12, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

aggravated the specific diagnosed conditions, his opinion is of limited probative value and insufficient to establish the claim.[9]

Appellant also submitted reports signed by Ms. Ajro, a nurse practitioner, dated September 26 and December 6, 2017. The Board has held that medical reports signed solely by a nurse practitioner are of no probative value, as nurse practitioners are not considered physicians as defined under FECA and therefore are not competent to provide a medical opinion.[10] Thus, these reports are of no probative value and are insufficient to establish appellant's claim.

As the record lacks rationalized medical evidence establishing causal relationship between appellant's claimed carpal tunnel syndrome and the accepted factors of her federal employment, the Board finds that appellant has not met her burden of proof to establish her claim.

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.

[9] *See T.F.*, Docket No. 20-0260 (issued June 12, 2020); *D.J.*, Docket No. 18-0694 (issued March 16, 2020); *K.G.*, Docket No. 18-1598 (issued January 7, 2020); *K.O.*, Docket No. 18-1422 (issued March 19, 2019).

[10] 5 U.S.C. § 8101(2) provides that a physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law. *See also* 20 C.F.R. § 10.5(t); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *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). *See also C.C.* Docket No. 20-0950 (issued October 29, 2020) (nurse practitioners are not considered physicians under FECA).

ORDER

IT IS HEREBY ORDERED THAT the February 10, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 1, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board