

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

K.B., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
St. Petersburg, FL, Employer**

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**Docket No. 19-1243
Issued: February 21, 2020**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On May 17, 2019 appellant filed a timely appeal from a March 14, 2019 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

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the March 14, 2019 decision, OWCP received additional evidence. 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.*

ISSUE

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

FACTUAL HISTORY

On August 11, 2015 appellant, then a 38-year-old mail handler, filed an occupational disease claim (Form CA-2) alleging that she developed bilateral CTS and bilateral shoulder tendinitis due to factors of her federal employment, including repetitive movements with her “hands, wrists, and bilateral upper extremities.” On the reverse side of the claim form, the employing establishment indicated that appellant was off work due to a prior claim under OWCP File No. xxxxxx810.³

In an undated narrative statement, appellant explained that her federal employment duties required typing and computer use, bending and picking up papers and feeding them into a machine, carrying flyers and walking them to an office, and pushing and pulling carts. She indicated that she was experiencing neck, low back, and bilateral upper extremity pain, as well as tingling, numbness, and a burning sensation radiating into her wrists and hands as a result of her job duties. Appellant concluded that her collective injuries led to permanent cervical disc pathology and nerve impingement in her shoulders.

In a letter dated August 21, 2015, the employing establishment confirmed that appellant’s job duties required using a computer mouse, typing on a keyboard, and using a telephone, which included performing simple grasping, fine manipulation, and intermittent pushing and pulling. It explained that she had flexibility to get up and take breaks as needed during the workday, but she had not worked in this capacity since August 2014.

In a report dated July 29, 2015, Dr. Joel Franck, a Board-certified neurosurgeon, detailed three separate injuries appellant alleged to have sustained and the treatment history following her initial injury in 2012. He diagnosed C6-7 post-traumatic herniated cervical disc with intractable cervical pain, headaches, and radiculopathy and noted planned surgical procedures to include a cervical discectomy at C6-7.

In a development letter dated August 26, 2015, 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 submit additional evidence and respond to its inquiries.

³ Appellant has a prior accepted claim for a September 17, 2012 neck sprain and scalp contusion under OWCP File No. xxxxxx217. She also has a prior accepted claim for cervical intervertebral disc without myelopathy related to a February 19, 2013 work injury under OWCP File No. xxxxxx810. OWCP paid appellant wage-loss compensation for temporary total disability until September 4, 2013 when she returned to part-time, limited-duty work as a sales solution team member.

In response, appellant submitted a narrative statement dated September 2, 2015 reiterating the factual history of her claim and asserting that various repetitive movements, while in the performance of duty, caused her claimed condition. She also submitted diagnostic studies, including an August 13, 2015 nerve conduction study of the upper extremities that was suggestive of CTS on the right side and bilateral ulnar neuropathy, more pronounced in the right elbow. Magnetic resonance imaging (MRI) scans of the wrists dated September 3, 2015 demonstrated plus ulna configuration with a thinned fibrocartilage with signal in both wrists, supporting a tear. A left hand MRI scan on the same date revealed fluid in the trapezium/first metacarpal junction and edema extending along the flexor pollicis longus tendon.

In a September 16, 2015 report, Dr. Kevin L. Scott, a Board-certified orthopedic surgeon, diagnosed bilateral radiculopathy of the upper extremities, bilateral CTS, right shoulder tendon and/or ligament tear, bilateral shoulder impingement, and depression and anxiety secondary to chronic pain and work-related injuries. He opined that, the evidence of record, his positive medical examination, and the confirmation of appellant's orthopedic pathology by diagnostic studies were consistent with the mechanism of injury described by her. Therefore, Dr. Scott concluded that her repetitive work, overhead maneuvers, and continuous use of two computers and telephones in the workplace had caused tears in both of her hands/wrists and her bilateral CTS.

By decision dated October 5, 2015, OWCP denied the claim because the medical evidence of record was insufficient to establish a causal relationship between appellant's diagnosed conditions and the accepted factors of her federal employment.

On November 2, 2015 appellant requested an oral hearing before an OWCP hearing representative.

Appellant continued to submit additional evidence. In a September 2, 2015 report, Dr. Sara Vizcay, a Board-certified family practitioner, reiterated Dr. Scott's diagnoses and ruled out right shoulder tendon and/or ligament tear. Dr. Vizcay opined that based on her review of all of appellant's statements, medical record evaluations, all correspondence available to her, and her physical examination, appellant's statement of the events that occurred during and after her work-related injuries of July 29, 2015 were true and consistent with her report of the facts and medical findings. She concurred with Dr. Scott that, even though appellant had returned to work on September 4, 2013⁴ in a light-duty capacity, her repetitive work, overhead maneuvers, and continuous use of two computers and telephones caused her bilateral shoulder and bilateral CTS pathology.

Appellant submitted a right hand MRI scan dated September 3, 2015 in support of her request. The scan demonstrated plus ulna configuration with a thinned renal fibrocartilage with signal supporting a tear in the right hand.

In a December 1, 2015 medical report from Dr. Vizcay, she again noted appellant's complaints of severe pain in her neck and right shoulder, as well as complaints of numbness and

⁴ The Board notes that Dr. Vizcay initially indicated that appellant's return to work date was September 4, 2015. Dr. Vizcay later correctly indicated, as quoted by Dr. Franck, that appellant's return to work date was September 4, 2013. The Board considers the initially referenced return to work date to be a typographical error.

tingling in appellant's upper extremities. She was observed to be in acute distress and on physical examination she had tenderness and reduced range of motion in both shoulders, more severe on the right. Dr. Vizcay reiterated her concurrence with Drs. Franck and Scott's opinion that repetitive movements at work, including overhead maneuvers and use of a computer and telephone, caused appellant's shoulder conditions and bilateral CTS.

In a progress note dated May 11, 2015, Dr. Jay Parekh, a Board-certified anesthesiologist and pain management specialist, reported administering cervical branch blocks to treat appellant's conditions.

On May 18, 2015 Dr. Parekh noted that appellant had 50 percent relief following the cervical branch blocks, but continued with pain. He performed a cervical medial branch radiofrequency ablation and indicated that she reported improvement in her pain.

In a follow-up note dated February 12, 2016, Dr. Parekh noted that appellant had good relief from the cervical ablation, but the pain in her neck and shoulder gradually returned.

On October 4, 2016 appellant, through counsel, requested reconsideration of the October 5, 2015 decision. In support of this request, appellant submitted a September 22, 2016 medical report from Dr. Theodore Vlahos, a Board-certified orthopedic surgeon, who detailed her treatment history, and diagnostic and examination findings. Dr. Vlahos administered a right shoulder steroid injection to treat appellant's ongoing pain, which he attributed to work-related activity on or around July 29, 2015.

By decision dated December 23, 2016, OWCP denied modification of its prior decision.

On February 13, 2017 appellant, through her representative, requested reconsideration of OWCP's December 23, 2016 decision. In an attached report from Dr. Vlahos dated February 7, 2017, he diagnosed chronic neck pain with disc herniations at C4-5 and C6-7 with displacement and radiculitis and found subjective evidence of right CTS, right cubital tunnel syndrome, and bilateral shoulder impingement syndrome. He opined that appellant's CTS and shoulder impingement were the result of work-related activities that occurred in July 2014. Dr. Vlahos asserted that repetitive overhead lifting as she described was clearly associated as a mechanism causing impingement of the shoulders as the elevation of the arm caused approximation of the supraspinatus tendon against the acromion and acromial arch, thus leading to direct impingement. He further opined that repetitive typing, keyboarding, and other repetitive activities such as using a computer mouse had been associated with increased frequency of CTS and were noted as a common predisposing activity for CTS, which appellant had clinically on the right and was documented with the nerve conduction velocity (NCV) study.

By decision dated April 7, 2017, OWCP denied modification of its prior decision.

On February 14, 2018 appellant, through her representative, requested reconsideration of the April 7, 2017 decision.

In a January 11, 2018 report, Dr. Mark A. Seldes, a Board-certified family practitioner, diagnosed bilateral shoulder impingement, bilateral elbow lateral epicondylitis, bilateral CTS, and cervical radiculopathy of the bilateral upper extremities, related to a separate case. He opined that

appellant's federal duties of repetitive movement, heavy lifting, and constant pulling and pushing over many years aggravated the prior injuries to her shoulders, elbows, wrists, and hands. Dr. Seldes noted that, even when she returned to work in a limited-duty capacity, she was moving materials above her shoulders, stuffing materials into envelopes, working on the computer, and using a mouse and opined that these activities aggravated her CTS.

A January 31, 2018 MRI scan of the cervical spine revealed posterior disc bulges at C4-5, C5-6, and C6-7, with minimal indentation of the ventral thecal sac.

In a February 20, 2018 medical report, Dr. Robert Nucci, a Board-certified orthopedic surgeon, indicated that he was seeing appellant for a work-related injury that occurred on February 19, 2013. He detailed her treatment history and examination findings, and attached the results of an August 21, 2017 electromyography (EMG) and NCV study revealing probable right-sided cervical radiculopathy

Appellant submitted additional reports from Dr. Nucci dated July 19 and August 9, 2018 noting continued complaints of neck pain radiating into her shoulder and arm.

On January 23, 2019 OWCP referred appellant to Dr. Patrick Horan, a Board-certified orthopedic surgeon, for a second opinion evaluation to determine the nature and extent of her employment-related conditions.

In his February 27, 2019 report, Dr. Horan noted that the only objective finding on examination was appellant's loss of full flexion and abduction of the shoulders. He found that the NCV studies were borderline positive and recommended readministering the test with a neurologist to get a definitive diagnosis on radiculopathy or the possibility of CTS because in reviewing the tests there was minimal difference in the median nerve, although it read as suggestive of CTS. Dr. Horan noted that the objective findings of the MRI scans of the shoulders were normal. Appellant had some arthritis in the acromioclavicular joint and some tendinosis in the supraspinatus, which he did not find consistent with her injury. Dr. Horan opined that she had a radicular pain pattern that radiated down her small finger, but her NCV tests were borderline and could not be identified as CTS. He further found no elbow pathology and concluded that the MRI scans of the shoulder were consistent with normal wear and tear and that she did not have a specific mechanism of injury for shoulder impingement, with the exception that she was previously working at shoulder level. Dr. Horan concluded that appellant's subjective complaints greatly outweighed her objective findings and that her work restrictions were related to her diagnosis of cervical radiculopathy.

By decision dated March 14, 2019, OWCP denied modification of its prior decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁵ 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

⁵ *Id.*

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.⁶ These are the essential elements of every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁷

To establish that an injury was sustained in the performance of duty in an occupational disease claim, an employee 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 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.⁸

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁹ A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.¹⁰ 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).¹¹

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish bilateral CTS and bilateral shoulder tendinitis causally related to the accepted factors of her federal employment.

OWCP properly referred appellant to Dr. Horan for a second opinion evaluation to determine the nature and extent of her bilateral CTS and bilateral shoulder conditions. In his February 27, 2019 second opinion report, Dr. Horan found that her NCV tests were borderline and could not be read to positively diagnose CTS. He also noted that appellant had no elbow pathology, her shoulder MRI scans were consistent with normal wear and tear and she did not have a specific mechanism of injury for shoulder impingement, with the exception that she was working at shoulder level previously. Dr. Horan noted that her subjective complaints greatly outweighed

⁶ *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).

⁷ *K.V.* and *M.E.*, *id.*; *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁸ *R.G.*, Docket No. 19-0233 (issued July 16, 2019). *See also* *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁹ *T.H.*, 59 ECAB 388, 393 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

¹⁰ *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

¹¹ *Id.*; *Victor J. Woodhams*, *supra* note 8.

her objective findings and concluded that her work restrictions were related to her diagnosis of cervical radiculopathy, not her claimed conditions of bilateral CTS and shoulder tendinitis.

The Board finds that Dr. Horan's report represents the weight of the medical evidence. The Board finds that he had full knowledge of the relevant facts and evaluated the course of appellant's condition. Dr. Horan is a specialist in the appropriate field. His opinion is based on proper factual and medical history and his report contained a detailed summary of this history. Dr. Horan addressed the medical records to formulate his own examination findings to reach a reasoned conclusion regarding appellant's conditions.¹² He found no basis on which to establish a causal relationship between her bilateral CTS and bilateral shoulder conditions and her repetitive duties at work. Dr. Horan's opinion as set forth in his February 27, 2019 report is found to be probative evidence and reliable.

The Board notes that, while the reports from Drs. Scott, Vizcay, Vlahos, and Seldes provided diagnoses and are generally supportive of causal relationship, they are insufficient to establish the claimed bilateral CTS and shoulder condition is causally related to appellant's employment duties. They failed to identify the specific employment factors alleged by her and did not provide a pathophysiological explanation as to how those activities either caused or contributed to her diagnosed condition.¹³ Moreover, the Board has held that neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.¹⁴ For these reasons, the Board finds that the reports from appellant's physicians are insufficient to meet appellant's burden of proof or create a conflict, as they do not provide adequate physiological explanation regarding the cause of her diagnosed conditions.

Appellant was also followed by Drs. Franck, Parekh, and Nucci for her previously accepted cervical injuries. As these physicians failed to address causal relationship related to her claimed CTS and shoulder tendinitis conditions, their reports are of no probative value and are insufficient to meet her burden of proof.¹⁵

Appellant further submitted various diagnostic studies in support of her claim. The Board has held that diagnostic studies lack probative value as they do not provide an opinion on causal relationship between the employment incident and her diagnosed conditions.¹⁶ These reports are therefore also insufficient to establish appellant's claim.

¹² See *R.C.*, Docket No. 14-1964 (issued January 22, 2015); *Michael S. Mina*, 57 ECAB 379 (2006) (the opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion are facts which determine the weight to be given to each individual report).

¹³ *Supra* note 9.

¹⁴ See *J.L.*, Docket No. 18-1804 (issued April 12, 2019).

¹⁵ See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁶ See *I.C.*, Docket No. 19-0804 (issued August 23, 2019).

As appellant has not submitted any rationalized medical evidence to support her claim that she sustained bilateral CTS or bilateral shoulder tendinitis causally related to the accepted employment factors, she has failed to meet her burden of proof.

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 CTS and bilateral shoulder tendinitis causally related to the accepted factors of her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the March 14, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 21, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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