

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

C.C., Appellant)	
)	
and)	Docket No. 19-1631
)	Issued: February 12, 2020
U.S. POSTAL SERVICE, POST OFFICE,)	
Urbana, IL, Employer)	
)	

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
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On July 29, 2019 appellant, through counsel, filed a timely appeal from a May 16, 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 that her bilateral hand/thumb condition is causally related to the accepted factors of her federal employment.

FACTUAL HISTORY

On March 14, 2017 appellant, then a 52-year-old carrier technician, filed an occupational disease claim (Form CA-2) for a bilateral hand/thumb condition that allegedly arose while in the performance of duty. She reported that repetitive motion of casing mail, carrying, grasping bundles of mail, and thumbing through each delivery caused pain. Appellant first became aware of her hand condition and first realized it was related to factors of her federal employment on February 12, 2017. She did not stop work.

In an April 4, 2017 attending physician's report (Form CA-20), Dr. Scott Paluska, Board-certified in family medicine and sports medicine, diagnosed osteoarthritis of first carpometacarpal (CMC) joint, bilaterally. He noted that x-rays revealed severe CMC joint arthritis. Dr. Paluska attributed appellant's condition to continuous use of her hands at work. He further noted that appellant could resume work as of March 9, 2017. In an April 4, 2017 duty status report (Form CA-17), Dr. Paluska similarly noted that appellant could return to work as of March 9, 2017 without restrictions.

In a development letter dated May 12, 2017, OWCP advised appellant of the deficiencies in her claim. It requested that she submit a comprehensive narrative medical report containing a detailed description of findings and diagnoses, explaining how accepted work-related factors had caused or aggravated her medical condition. OWCP also provided a factual questionnaire for her completion regarding how she experienced her condition. It afforded appellant 30 days to respond.

In response appellant submitted a handwritten narrative statement, dated May 18, 2017, detailing the development of her condition over the two-year period, her pain progressing with working to the point of hurting all the time. She stated that she had worked 8 to 10 hours each day for five to six days a week, casing and delivering mail.

By decision dated June 14, 2017, OWCP denied appellant's claim, finding that she had not submitted sufficient medical evidence to establish causal relationship between the accepted work-related factors and her medical condition. It concluded, therefore, that the requirements had not been met to establish an injury or condition causally related to the accepted factors of appellant's employment.

Following the June 14, 2017 decision, OWCP received additional evidence including a March 9, 2017 x-ray report and April 20, 2017 progress notes from Dr. Paluska. The March 9, 2017 x-ray revealed no evidence of recent fracture or dislocation and severe arthritis at the first CMC joint bilaterally. In progress notes dated April 20, 2017, Dr. Paluska listed arthritis as appellant's past medical history. He indicated that appellant's pain was onset in the past years. Dr. Paluska noted that he examined both hands and wrists of appellant for recheck after performing bilateral basilar joint injections on appellant at an earlier appointment on March 9, 2017. He observed mild prominence and mild basilar joint swelling. Dr. Paluska performed load and grind

test and observed mildly positive result. He again diagnosed bilateral osteoarthritis of first CMC joint, noting that appellant had “moderate[-]to[-]severe degenerative changes which [were] likely exacerbated from her continuous use of her hands at work.” Dr. Paluska opined that appellant’s degenerative changes may cause long-term disability and dysfunction. He recommended thumb stabilizer splints and oral anti-inflammatories.

On August 28, 2017 appellant requested reconsideration. In progress notes dated August 17, 2017, Dr. Paluska again diagnosed primary osteoarthritis of both first CMC joint and noted pain in both wrists. He related that appellant worked more than 20 years, spending several hours a day casing mail and then delivering mail for several hours, which included letters, packages, and bundles that might have been heavy. Dr. Paluska opined that appellant’s employment clearly contributed significantly to the onset of her present degenerative changes, which likely would persist.

By decision dated November 21, 2017, OWCP denied modification of its June 14, 2017 decision.

On February 26, 2018 appellant again requested reconsideration. In accompanying statements, she discussed her workplace duties. Appellant further explained that she worked as a carrier technician since February 1996. Each day she repeatedly picked up and held a handful of letters, flats, and other large packages, in a bundle with her left hand while casing them. After she finished casing, appellant put the mail into trays for delivery. She also loaded all the letters and flats into her delivery vehicle. Appellant noted that she often held letters and flats in her left hand while her right hand did actual mail delivery. The delivery sequence was repeated for the duration of her workday until she finished her route. Appellant alleged that she continuously used her hands from the start of her workday until the end of it. She had been doing that more than 22 years.

Appellant had also submitted photographs of her workstation, showing various stages of her workplace duties. The photographs documented casing letters, casing flats, filling trays, loading her vehicle, and delivering mail. Appellant also provided a February 19, 2018 letter from Dr. Paluska who noted that he had reviewed appellant’s workplace photographs, as well as her description of her employment duties. He opined that appellant’s bilateral osteoarthritis of first CMC joint was aggravated and accelerated by continual repetitive motions and stretching of the hands and thumbs over the years working as a carrier technician.

By decision dated May 16, 2018, OWCP denied modification of the November 21, 2017 decision.

On October 4, 2018 appellant, through counsel, again requested reconsideration.

In an August 31, 2018 letter, Dr. Paluska explained that he was writing in response to a request for further information concerning appellant’s three clinical encounters starting March 9, 2017. He noted that appellant was first seen on March 9, 2017 for complaints of right and left-sided thumb and hand pain. Dr. Paluska opined that she had moderate-to-severe degenerative changes, which were likely exacerbated from continuous use of her hands at work.

Dr. Paluska noted a slight improvement in appellant’s condition during an April 20, 2017 appointment, where she used a brace on the left hand and thumb. His diagnosis did not change

despite observing significantly less tenderness over the basilar joints upon examination of the hands. Dr. Paluska further noted that appellant deferred surgery for time being. He related that he had told her during this appointment that her conditions were likely contributing and aggravating her symptoms and recommended that she modify her daily activities.

Dr. Paluska indicated that by the third and final appointment on August 17, 2017, appellant had some recurrent symptoms and had been using braces on the left hand and anti-inflammatories as needed. He noted that the examination on her hands again demonstrated prominence and tenderness over basilar joints bilaterally, and that her range of motion was limited. Dr. Paluska also observed weakness of intrinsic muscles. He opined that appellant's more than two decades of work as a carrier technician, with several hours a day casing mail and delivering letters, packages, and heavy bundles for several hours a day, likely contributed and significantly aggravated her symptoms.

In closing his August 31, 2018 letter, Dr. Paluska again opined, to a reasonable degree of medical certainty, that appellant's pain and disability were related to permanent degenerative changes, which were clearly related to excessive repetitive use of her hands and fingers for which her work was a strong contributing factor.

By decision dated May 16, 2019, OWCP denied modification of the May 16, 2018 decision, finding that the medical evidence failed to establish that appellant's bilateral hand/thumb condition was causally related to the accepted employment factors.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ has the burden of proof to establish the essential elements of his or her claim, including 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,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) 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 *Id.*

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).

compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.⁷

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical opinion evidence.⁸ 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 specific employment factors identified by the employee.⁹

In any case where a preexisting condition involving the same part of the body is present and the issue of causal relationship therefore involves aggravation, acceleration, or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.¹⁰

ANALYSIS

The Board finds the case not in posture for decision.

Proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter. The claimant has the burden of proof to establish entitlement to compensation; however, OWCP shares responsibility in the development of the evidence to see that justice is done.¹¹

In an August 31, 2018 letter, Dr. Paluska related that appellant's diagnosed condition was due to permanent degenerative changes, including loss of cartilage at the basilar joints of the bilateral hands with the wrist and hand bones transition. He opined to a reasonable degree of medical certainty that, while appellant's work did not cause all of her present symptoms, her excessive repetitive use of her hands and fingers as a carrier technician over two decades was a strong contributing cause to her permanent degenerative changes. The Board finds that, although Dr. Paluska's August 31, 2018 report is not sufficiently rationalized to meet appellant's burden of proof to establish her claim, it is sufficient to require further development of the case by OWCP. It is unnecessary that the evidence of record in a case be so conclusive as to suggest causal connection beyond all possible doubt. Rather, the evidence required is only that which is necessary to convince the adjudicator that the conclusion drawn is rational, sound, and logical.¹²

⁷ *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *R.H.*, 59 ECAB 382 (2008).

⁸ *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *T.H.*, 59 ECAB 388, 393 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

⁹ *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

¹⁰ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); *N.C.*, Docket No. 19-1191 (issued December 19, 2019); Docket No. 18-1551 (issued March 1, 2019).

¹¹ *C.M.*, Docket No. 17-1977 (issued January 29, 2019); *John J Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

¹² *S.M.*, Docket No. 18-1195 (issued January 6, 2020); *W.M.*, Docket No. 17-1244 (issued November 7, 2017); *E.M.*, Docket No. 11-1106 (issued December 28, 2011).

Dr. Paluska's August 31, 2018 letter demonstrated a series of his medical observations that led to his conclusion on the causal relationship between appellant's diagnosed condition and her accepted factors of employment. While not sufficiently rationalized, his conclusion is rational, sound, and logical based on the evidence submitted to OWCP, particularly given over 20 years of appellant's working as a carrier technician which predominately required continual excessive use of her hands. Therefore, the Board finds that the case must be remanded to OWCP.

On remand, OWCP shall prepare a statement of accepted facts concerning appellant's employment factors and refer the matter to an appropriate medical specialist to determine whether appellant's accepted employment factors either caused or contributed to her bilateral hand/thumb condition. The appropriate medical specialist shall also consider the differences, if any, between the effects of appellant's diagnosed condition and her preexisting condition.¹³ After this and other such further development deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the May 16, 2019 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded for further action consistent with this decision.

Issued: February 12, 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

¹³ See *supra* note 10.