

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

M.B., Appellant	)	
	)	
and	)	Docket No. 20-0265
	)	Issued: June 17, 2020
U.S. POSTAL SERVICE, HILLSBORO POST	)	
OFFICE, Hillsboro, OR, Employer	)	
	)	

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

*Case Submitted on the Record*

**DECISION AND ORDER**

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

**JURISDICTION**

On December 10, 2019 appellant filed a timely appeal from a July 24, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

**ISSUE**

The issue is whether appellant has met his burden of proof to establish a diagnosed medical condition causally related to the accepted factors of her federal employment.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The record provided to the Board includes evidence received after OWCP issued its July 24, 2019 decision. 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 April 26, 2019 appellant, then a 46-year-old postal clerk, filed an occupational disease claim (Form CA-2) alleging that she developed left thumb numbness and tingling due to factors of her federal employment. She noted that she became aware of her conditions and realized their relationship to her federal employment on March, 5, 2019. Appellant did not stop work.

In an attached statement, appellant indicated that on March 5, 2019 she first felt numbness and tingling in her left thumb that radiated into her left elbow. She noted that her job required the use of both hands, particularly the left hand, for typing, grabbing, and holding packages for scanning, fixing devices, pushing containers, and opening and closing a metal door. Appellant explained that one of her job duties included using a mobile point of sale (MPOS) device to scan packages and parcels. She indicated that she was first medically treated on March 28, 2019.

In a March 28, 2019 form report, Dr. Volodymyr Dovhyy, Board-certified in family practice, diagnosed anesthesia of skin (ICD-10 Code R20.0) and advised that appellant could return to work with restrictions. In a duty status report (Form CA-17) and medical notes of even date, he provided work restrictions and diagnosed left upper extremity numbness.

In a May 10, 2019 development letter, OWCP informed appellant of the deficiencies in hers claim. It advised her of the medical evidence necessary to establish her claim. In a separate letter of even date, OWCP also requested that the employing establishment provide additional information concerning appellant's claim. It noted that, in absence of a full reply from the employing establishment, it may accept her allegations as factual. OWCP afforded both parties 30 days to submit the requested information.

In March 28, 2019 progress notes, Dr. Dovhyy noted that appellant experienced numbness and tingling in her left thumb on March 5, 2019. He indicated that she denied a specific injury related to his numbness, but admitted that he had frequently lifted, moved, and thrown packages and parcels with her left hand while scanning them. Dr. Dovhyy diagnosed left upper extremity numbness. In a medical report of even date, he diagnosed anesthesia of skin and numbness.

OWCP received treatment notes covering the period April 5 to 26, 2019 from multiple occupational therapists, who noted appellant's symptoms and treatment for anesthesia of skin and radial tunnel syndrome.

In an April 5, 2019 treatment note, Dr. Dovhyy noted that appellant began experiencing numbness and tingling in her left thumb while working on March 5, 2019. He indicated that she had signs and symptoms consistent with radial tunnel syndrome including paresthesia in a radial nerve pattern and positive radial nerve tension. Dr. Dovhyy diagnosed anesthesia of skin and radial tunnel syndrome. In progress notes of even date, he noted that waking up in the morning made appellant's left hand symptoms worse. In medical notes of even date, Dr. Dovhyy provided work restrictions.

In an April 18, 2019 duty status report (Form CA-17) and medical notes of even date, Dr. Dovhyy provided work restrictions and diagnosed left upper extremity numbness.

In a progress noted dated April 19, 2019, Dr. Dovhyy reiterated appellant's mechanism of injury and his diagnosis of left upper extremity numbness.

OWCP received April 23 and May 14, 2019 requests for authorization for physical/occupational therapy for anesthesia of skin. The occupational therapy authorization request forms identified March 5, 2019 as the date of injury.

By decision dated July 24, 2019, OWCP denied appellant's occupational disease claim, finding that the medical evidence of record was insufficient to establish "a medical diagnosis" causally related to the accepted factors of her federal employment. Thus, it found that the requirements had not been met to establish an injury as defined by FECA.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</sup> 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,<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup>

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

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical opinion evidence.<sup>8</sup> The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical

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<sup>3</sup> *Supra* note 1.

<sup>4</sup> *J.W.*, Docket No. 18-0678 (issued March 3, 2020); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>5</sup> *J.S.*, Docket No.18-0657 (issued February 26, 2020); *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>6</sup> *L.J.*, Docket No. 19-1343 (issued February 26, 2020); *R.R.*, Docket No.18-0914 (issued February 24, 2020); *Delores C. Ellyett*, 41 ECAB 992 (1990).

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

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

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.<sup>9</sup>

### **ANALYSIS**

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

In support of his claim, appellant submitted treatment notes dated April 5, 2019 from Dr. Dovhy who diagnosed radial tunnel syndrome and anesthesia of skin. The Board finds that appellant has established a medical diagnosis in connection with the accepted employment factors and, therefore, established both components of fact of injury.<sup>10</sup> Accordingly, the case must be remanded for consideration with regard to the issue of causal relationship. Following such further development deemed necessary, OWCP shall issue a *de novo* decision as to whether appellant has met her burden of proof to establish that his diagnosed medical condition is causally related to the accepted factors of her federal employment.<sup>11</sup>

### **CONCLUSION**

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

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<sup>9</sup> *R.G.*, Docket No. 18-0792 (issued March 11, 2020); *D.J.*, Docket No. 19-1301 (issued January 29, 2020); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>10</sup> *See K.A.*, Docket No. 18-0999 (issued October 4, 2019).

<sup>11</sup> *E.C.*, Docket No. 19-0854 (issued October 17, 2019).

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 24, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this decision of the Board.

Issued: June 17, 2020  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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