

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

K.G., Appellant)	
)	
and)	Docket No. 18-1598
)	Issued: January 7, 2020
U.S. POSTAL SERVICE, POST OFFICE,)	
Brooklyn, NY, Employer)	
)	

Appearances: *Case Submitted on the Record*
*Thomas R. Uliase, Esq., for the appellant*¹
Office of Solicitor, for the Director

DECISION AND ORDER

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

JURISDICTION

On August 20, 2018 appellant, through counsel, filed a timely appeal from a March 19, 2018 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.³

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.*

³ The Board notes that following the March 19, 2018 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 met her burden of proof to establish cervical and right hand/wrist conditions causally related to the accepted factors of her federal employment.

FACTUAL HISTORY

On May 7, 2015 appellant, then a 56-year-old mail processing clerk, filed a traumatic injury claim (Form CA-1) alleging that on May 7, 2015, while in the performance of duty, she experienced neck pain that radiated to her bilateral upper extremities when “scanning on the platform.” She stopped work on May 7, 2015.

On May 7, 2015 an unidentified health care provider diagnosed right hand/wrist strain. The treatment records also noted a prior history of cervical spine herniated nucleus pulposus (C5-6).

Appellant was treated by a physician assistant on May 8 and 21 and June 4 and 23, 2015, who diagnosed right hand and wrist strain, rule out internal derangement. She was returned to light duty and referred for physical therapy. In duty status reports (Form CA-7) dated June 4 and 23, 2015, the physician assistant diagnosed right hand and wrist strain, ruled out internal derangement, and concluded that appellant was totally disabled. OWCP also received physical therapy treatment records from May 8 to June 24, 2015.

On June 23, 2015 appellant was treated by Dr. Oleg Olshanetskiy, a family medicine practitioner, for a right hand injury. She attributed her right hand pain to repetitive scanner use at work. Appellant denied other trauma to the right hand or a history of a hand injury. Findings on examination revealed limited right wrist range of motion and an inability to adduct the right fifth digit. Dr. Olshanetskiy diagnosed right wrist and hand sprain, and ruled out internal derangement. He recommended a magnetic resonance imaging (MRI) scan and physical therapy.

In a development letter dated July 30, 2015, OWCP advised appellant of the need to submit factual and medical evidence in support of her claimed injury. It specifically noted that it appeared that she was claiming an occupational disease which was produced by continued or repeated exposure to work elements over a period longer than one workday or work shift. OWCP converted appellant’s traumatic injury claim to an occupational disease claim. It further requested that she submit a narrative medical report from a physician that included a medical diagnosis and an explanation as to how the reported employment incident either caused or aggravated the claimed medical conditions. OWCP also requested that appellant respond to a questionnaire to substantiate the factual elements of her claim. In a development letter of even date, it also requested that the employing establishment submit comments from a knowledgeable supervisor on the accuracy of all statements provided by appellant, the tasks the employee performed, and precautions taken to minimize the effects of the activities. OWCP afforded appellant and the employing establishment 30 days to respond.

In a July 10, 2015 report, Dr. Olshanetskiy treated appellant in follow up for right hand and wrist injury that occurred on May 7, 2015. He diagnosed right hand and wrist sprain, and ruled out internal derangement.

Appellant was treated by a physician assistant on August 4, 2015 who diagnosed right hand and wrist sprain and noted appellant was totally disabled.

On August 13 and 26, 2015 appellant was treated by Dr. Ellen Edgar, a Board-certified neurologist, for right arm pain and radiating neck pain. She reported an onset of pain and numbness in her right hand in April 2015 which she believed was due to repetitive hand use at work, lifting, and scanning with her right hand. Appellant reported progressive pain over the last three months with minimal relief from physical therapy. Dr. Edgar noted findings on examination and diagnosed unspecified arthropathy of the right hand “etiology uncertain,” and she ruled out carpal tunnel syndrome.

In a statement dated August 25, 2015, appellant reported working for the employing establishment since 1984. She performed various duties including keying mail, loading and sweeping mail, and scanning mail. Appellant’s duties required repeated movement of the wrist and hand. She performed these activities for eight hours a day and had no hobbies outside of work. Appellant first noted her symptoms in April 2015 when the fingers on her right hand would hurt and go numb.

By decision dated September 10, 2015, OWCP denied appellant’s claim for compensation because the medical evidence did not establish that the claimed medical condition was related to the established factors of her federal employment.

On September 23, 2015 appellant requested an oral hearing before an OWCP hearing representative which was held on January 7, 2016.

In a state workers’ compensation form dated August 13, 2015, Dr. Kishan Patel, a Board-certified neurologist, diagnosed arthropathy of the hand, unspecified, with a date of injury of May 7, 2015. Appellant reported repetitive hand use at work including lifting and scanning with her right hand. Dr. Patel checked a box marked “yes” in response to the question of whether the incident appellant described was the competent medical cause of her illness and she remained disabled.

On August 20, 2015 Dr. Michael Jurkowich, a Board-certified physiatrist, treated appellant in follow up for right arm and hand pain and numbness. He noted findings of Heberden’s nodes on the joints of the right thumb, positive Finkelstein’s test, and decreased range of motion of the wrists. Dr. Jurkowich diagnosed unspecified arthropathy of the hand.

In state workers’ compensation forms dated August 20 and 26, 2015, Dr. Edgar diagnosed arthropathy of the hand, unspecified, with a date of injury of May 7, 2015. She checked a box marked “yes” in response to the question of whether the incident appellant described was the competent medical cause of the illness. Dr. Edgar noted that appellant was totally disabled.

An electromyogram (EMG) dated September 28, 2015 revealed chronic bilateral C5 and C6 radiculopathy without active denervation, no evidence of carpal tunnel syndrome, or peripheral neuropathy.

On November 11, 2015 Dr. John Goutos, a Board-certified internist, treated appellant for a flare-up of the right hand condition. He noted an EMG revealed chronic C5-6 radiculopathy without active denervation. Dr. Goutos opined that based on the medical history provided,

evaluation, and test results, work-related causality was not established. He diagnosed C5-6 radiculopathy.

Appellant was treated by a physician assistant from November 13, 2015 to January 29, 2016 for bilateral arm and right hand pain. The physician assistant diagnosed cervical sprain, cervical facet joints inflammation, and cervicobrachial syndrome.

On November 23, 2015 appellant was treated by Dr. Donghui Chen, a Board-certified anesthesiologist, for neck, shoulder and bilateral hand pain. She reported working as a platform clerk and on May 7, 2015 when she felt a sudden worsening of right hand pain and numbness to the fourth and fifth digit. An EMG revealed chronic C5-6 radiculopathy with no evidence of carpal tunnel syndrome. Dr. Chen noted findings on examination and diagnosed cervical sprain, cervicobrachial syndrome, cervical facet joint inflammation, and cervical radiculopathy and recommended physical therapy.

By decision dated March 21, 2016, an OWCP hearing representative affirmed the September 10, 2015 decision.

In a report dated October 28, 2015, Dr. Olshanetskiy noted treating appellant for right wrist and hand discomfort since May 2015. Appellant attributed her symptoms to many years of working for the employing establishment repetitively using her hands. She reported some improvement with physical therapy. Dr. Olshanetskiy diagnosed right wrist chronic sprain.

On July 11, 2016 appellant requested reconsideration.

Appellant was treated by a physician assistant on March 18 and April 22, 2016 and a nurse practitioner on April 1, 2016 for neck, left arm/shoulder, and right hand pain. She reported working as a platform clerk and on May 7, 2015 she experienced a sudden worsening of right hand pain and numbness to the fourth and fifth digit. Both care providers diagnosed cervical sprain, cervicobrachial syndrome, cervical facet joint inflammation, and cervical radiculopathy.

Appellant came under the treatment of Dr. Irfan Alladin, a Board-certified anesthesiologist, from May 9 to July 8, 2016, for neck, left arm, shoulder, and right hand pain. She reported a sudden worsening of right hand pain and numbness while working as a platform clerk. Appellant's duties included repetitively reaching to scan bar codes located on the sides of the platform bay doors. Dr. Alladin noted findings on examination and diagnosed cervicobrachial syndrome, cervical facet joint inflammation, shoulder pain, and cervical radiculopathy. He recommended physical therapy.

On May 26, 2016 Dr. Michael J. Katz, a Board-certified orthopedist, treated appellant for pain radiating into both hands. Appellant reported working as a postal platform clerk who was responsible for scanning in trucks on the bays upon arriving at the employing establishment. Her duties included cutting seals on the trucks, holding a scanner all day, and looking at the bottom of trucks. Appellant began having neck pain radiating into both hands in April 2015. Findings on examination revealed intact neurovascular examination, restricted range of motion, mild tenderness at C5-6, mild spasm at the bilateral trapezius muscles, limited strength in the left hands, and negative Tinel's sign bilaterally. Dr. Katz recommended selective nerve blocks and physical therapy. He opined that there was a causal relationship between appellant's symptomatic cervical radiculopathy and her job as a platform clerk which involved a lot of bending of her neck while scanning trucks and taking seals off the bottom of trucks. Dr. Katz opined that the compression at

C5-6, degenerative changes of the cervical spine, and hand weakness were related to her job because her job involved a lot of bending and movement of her neck to perform her job as a platform clerk.

By decision dated January 6, 2017, OWCP denied modification of the March 21, 2016 decision.

A cervical spine MRI scan dated May 6, 2016 revealed reversal of the normal cervical lordosis, disc herniations from C3-4 through C6-7, mild central canal stenosis, mild right C2-3 foraminal narrowing, C4-5 foraminal narrowing compressing the C5 nerve roots, bilateral C5-6 foraminal narrowing compressing the C6 nerve roots, and mild degenerative changes.

Appellant was treated by a physician assistant on March 3 and April 28, 2017. Both reports document diagnoses of cervical sprain, cervicobrachial syndrome, cervical facet joint inflammation, and cervical radiculopathy.

On March 26, 2017 Dr. Katz reiterated the history of injury and subsequent medical treatment provided in his report dated May 26, 2016. Findings on examination were unchanged. Dr. Katz noted that appellant's job involved reaching and scanning inbound and outbound trucks using a hand held scanning device weighing approximately three pounds. Her job required that she reach over one foot more than 100 times a day. Dr. Katz opined that the reaching required in the scanning duties resulted in the herniated discs pushing or pressing on the cervical nerves causing pain to radiate along the nerve pathway down the arm. He opined that the diagnosed condition of disc herniation at C4-5 to C7-T1 was causally related to the circumstances and duties of her employment activities.

On March 31, 2017 Dr. Alladin treated appellant in follow-up for neck, left arm, shoulder, and right hand pain. Appellant reported working as a platform clerk repetitively scanning bar codes located on the sides of the platform bay doors. Dr. Alladin noted findings on examination of restricted range of motion and hypoesthesia at C5-8. He diagnosed cervicobrachial syndrome, cervical facet joint inflammation, shoulder pain, and cervical radiculopathy.

On June 20, 2017 appellant requested reconsideration.

By decision dated September 22, 2017, OWCP denied modification of the January 6, 2017 decision.

In state workers' compensation forms dated May 22 and December 8, 2017, Dr. Alladin diagnosed neck pain, cervical radiculopathy, shoulder impingement syndrome, and knee pain. He checked a box marked "yes" noting his agreement that the incident appellant described was the competent medical cause of the conditions.

Appellant was treated by a physician assistant on September 22 and December 8, 2017 for neck, left arm, shoulder, and right hand pain. The physician assistant diagnosed cervical sprain, cervical strain, shoulder pain, knee pain, cervicobrachial syndrome, cervical facet joint inflammation, and cervical radiculopathy.

On November 15, 2017 Dr. Katz repeated the history of injury and subsequent medical treatment found in his prior reports. He provided a generic summary on how hypermobility led to bony hypertrophy and how cervical radiculopathy was often caused by wear and tear. Dr. Katz

opined that appellant had a combination of job induced and degenerative conditions of the cervical spine. He noted appellant's job duties including scanning required a lot of neck movement which caused bony changes in the spine causing compression of the nerves and cervical radiculopathy. Dr. Katz opined that the reaching required in the scanning duties resulted in the herniated discs pushing or pressing on the cervical nerves causing pain to radiate along the nerve pathway down the arm. He opined that the diagnosed condition of disc herniation at C4-5 to C7-T1 was causally related to the circumstances and duties of her employment activities as described by appellant. Also submitted were excerpts from articles on cervical radiculopathy.

On December 19, 2017 appellant requested reconsideration.

By decision dated March 19, 2018, OWCP denied modification of the September 22, 2017 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ 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,⁵ 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.⁶ 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.⁷

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.⁸

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical opinion evidence.⁹ The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical

⁴ *Supra* note 2.

⁵ *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁷ *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).

⁸ *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *R.H.*, 59 ECAB 382 (2008).

⁹ *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.¹⁰

In a 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.¹¹

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish cervical and right hand/wrist conditions causally related to the accepted factors of her federal employment.

In reports dated June 23 to October 28, 2015, Dr. Olshanetskiy treated appellant for right wrist and hand discomfort since May 2015. He diagnosed right wrist and hand sprain and ruled out internal derangement. Similarly, reports from Dr. Edgar dated August 13 and 26, 2015, noted that she treated appellant for right arm pain and radiating neck pain. Dr. Edgar diagnosed unspecified arthropathy of the right hand etiology “uncertain” and ruled out carpal tunnel. The Board has held that 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.¹² These reports, therefore, are insufficient to establish appellant’s claim.

In state workers’ compensation form reports, Drs. Edgar and Patel both noted by checking a box marked “yes” that the incident appellant described was the competent medical cause of the arthropathy of the hand. The Board has held that when a physician’s opinion on causal relationship consists only of checking “yes” to a form question, without explanation or rationale, that opinion is of diminished probative value and is insufficient to establish a claim.¹³ These reports are therefore insufficient to establish causal relationship in this claim.

On August 20, 2015 Dr. Jurkowich treated appellant in follow-up for right arm and hand pain and numbness. He diagnosed unspecified arthropathy of the hand. However, he did not specifically provide an opinion regarding whether appellant’s condition was work related.¹⁴ As such, Dr. Jurkowich’s opinion is insufficient to establish causal relationship.

An EMG dated September 28, 2015 revealed chronic bilateral C5 and C6 radiculopathy without active denervation. The Board has held that reports of diagnostic tests lack probative value

¹⁰ *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

¹¹ *M.S.*, Docket No. 19-0913 (issued November 25, 2019); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013).

¹² *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹³ *Sedi L. Graham*, 57 ECAB 494 (2006); *D.D.*, 57 ECAB 734 (2006).

¹⁴ *Supra* note 12.

as they do not provide an opinion on causal relationship between appellant's employment duties and a diagnosed condition.¹⁵

On November 11, 2015 Dr. Goutos treated appellant for a flare-up of the right hand injury. However, his report failed to establish causal relationship as he diagnosed C5-6 radiculopathy and opined that based on the medical history provided, evaluation, and test results, the work-related causality was not established.

On November 23, 2015 appellant was treated by Dr. Chen. He noted diagnoses and documented the history of injury as provided by appellant. Similarly, in reports dated May 9, 2016 to December 8, 2017, Dr. Alladin provided diagnoses and documented appellant's history of injury of working as a platform clerk repetitively scanning barcodes. Regarding causal relationship, Drs. Chen and Alladin repeated the history of injury as reported by appellant without providing their own opinion regarding whether appellant's condition was work related. The mere recitation of patient history does not suffice for purposes of establishing causal relationship between a diagnosed condition and the employment incident.¹⁶ Without explaining physiologically how the accepted employment incident caused or contributed to the diagnosed conditions, the physician's reports are of limited probative value.¹⁷

Appellant submitted reports from Dr. Katz dated May 26, 2016 and March 26, 2017. Dr. Katz noted that appellant reported working as a postal platform clerk and was responsible for scanning in trucks, cutting seals on the trucks, and looking at the bottom of trucks. He opined that there was a causal relationship between appellant's symptomatic cervical radiculopathy and her job as a platform clerk, which involved a lot of bending of her neck and repetitive reaching when scanning trucks and taking seals off the bottom of trucks. Dr. Katz further opined that the degenerative changes of the cervical spine and disc herniations at C4-5 through C7-T1 were related to her job because it involved a lot of bending and movement of the neck. The Board finds that, although Dr. Katz supported causal relationship, he did not provide medical rationale explaining the basis of his conclusory opinion regarding the causal relationship between appellant's cervical radiculopathy and disc herniation at C4-5 to C7-T1 and the factors of employment.¹⁸ Therefore, these reports are insufficient to meet appellant's burden of proof.

On November 15, 2017 Dr. Katz provided a generic summary on how hypermobility could lead to bony hypertrophy and how cervical radiculopathy is often caused by wear and tear. He opined that appellant had a combination of job-induced and degenerative conditions of the cervical spine. As noted above, Dr. Katz did not provide medical rationale explaining how bending and moving her neck directly caused or aggravated the diagnosed medication conditions. Also Dr. Katz noted that appellant had a combination of job-induced and degenerative conditions of the

¹⁵ See *J.M.*, Docket No. 17-1688 (issued December 13, 2018).

¹⁶ See *J.G.*, Docket No. 17-1382 (issued October 18, 2017).

¹⁷ See *A.B.*, Docket No. 16-1163 (issued September 8, 2017).

¹⁸ See *T.M.*, Docket No. 08-975 (issued February 6, 2009) (a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

cervical spine, but he failed to specifically differentiate between the effects of the preexisting conditions and the symptoms of the job-related factors.¹⁹

Appellant's initial May 7, 2015 treatment records do not clearly identify the healthcare provider who examined and treated her that day. The Board has previously held that unsigned reports or reports that bear illegible signatures cannot be considered as probative medical evidence because they lack proper identification that the author is a physician.²⁰ Therefore, these reports are of no probative value and are insufficient to establish appellant's claim.

The record also includes numerous reports and treatment records provided by physician assistants, nurse practitioners, and physical therapists. Certain healthcare providers such as physician assistants, nurse practitioners, and physical therapists are not considered "physician[s]" as defined under FECA.²¹ Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.²²

On appeal counsel argues that Dr. Katz's November 15, 2017 report is sufficient to establish causal relationship or at least sufficient to warrant further medical development by OWCP. As discussed above, the medical evidence of record, including Dr. Katz's various reports, is insufficient to establish causal relationship. Because appellant has not submitted rationalized medical evidence to establish causal relationship, the Board finds that she has not met her burden of proof to establish her occupational disease claim.²³

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 cervical and right hand/wrist conditions causally related to the accepted factors of her federal employment.

¹⁹ *Supra* note 11.

²⁰ *G.N.*, Docket No. 19-0184 (issued May 29, 2019); *Thomas L. Agee*, 56 ECAB 465 (2005); *Richard F. Williams*, 55 ECAB 343 (2004).

²¹ 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).

²² *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006). A report from a physician assistant or certified nurse practitioner will be considered medical evidence if countersigned by a qualified physician. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013).

²³ *See M.C.*, Docket No. 19-0673 (issued September 6, 2019).

ORDER

IT IS HEREBY ORDERED THAT the March 19, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 7, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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