

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

A.L., Representative of the Estate of M.G., Appellant)	
)	
and)	Docket No. 18-1016
)	Issued: March 6, 2020
U.S. POSTAL SERVICE, POST OFFICE, Bellmawr, NJ, Employer)	
)	

Appearances:
Thomas R. Uliase, Esq., for the appellant¹
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 April 19, 2018 appellant filed a timely appeal from a January 5, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP).² Pursuant to the Federal Employees'

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 The employee passed away on September 10, 2017.

Compensation Act³ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.⁴

ISSUE

The issue is whether appellant has met her burden of proof to establish a bilateral upper extremity condition causally related to the accepted factors of the employee's federal employment.

FACTUAL HISTORY

This case has previously been before the Board.⁵ The facts and circumstances as set forth in the prior Board decision are incorporated herein by reference. The relevant facts are set forth below.

On January 4, 2015 the employee then a 53-year-old mail handler, filed an occupational disease claim (Form CA-2), alleging that she developed carpal tunnel syndrome as a result of performing repetitive duties required by her federal employment. She became aware of her condition on November 3, 2014 and realized that it was causally related to factors of her federal employment on December 17, 2014. The employee stopped work on January 9, 2015.

The employee came under the treatment of Dr. John M. Bednar, a Board-certified orthopedist, who, in a January 9, 2015 report, diagnosed median neuropathy, bilateral carpal tunnel syndrome, bilateral ulnar neuropathy, bilateral cubital tunnel syndrome, and degenerative arthritis of the carpometacarpal joint, thumb and left elbow. Dr. Bednar noted that the employee's history was significant for diabetes. He returned the employee to light duty.

By decision dated April 6, 2015, OWCP denied the employee's occupational disease claim because she failed to establish that her claimed medical condition was causally related to the established employment factors.

On April 14, 2015 the employee requested an oral hearing before a representative of OWCP's Branch of Hearings and Review, which was held on July 9, 2015.

On April 22, 2015 Dr. Bednar diagnosed median neuropathy, bilateral carpal tunnel syndrome, bilateral ulnar neuropathy, bilateral cubital tunnel syndrome, degenerative arthritis of the carpometacarpal joint, thumb and left elbow, and flexor tenosynovitis of the left thumb and left index finger. He opined that the causality of the median and ulnar neuropathy and flexor tenosynovitis diagnoses was multifactorial. Dr. Bednar noted that the employee's diabetes did "have some causal relation with regards to these diagnoses," but opined that the employee's "work

³ 5 U.S.C. § 8101 *et seq.*

⁴ The Board notes that appellant submitted additional evidence on appeal. 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.*

⁵ Docket No. 16-1791 (issued February 22, 2017).

history and work activities as a postal handler were responsible for material worsening of these diagnoses and the resultant impairment.”

In a decision dated September 3, 2015, an OWCP hearing representative affirmed the April 6, 2015 decision.

On September 25, 2015 the employee requested reconsideration. She submitted a January 16, 2015 electromyogram (EMG), which revealed severe left subacute carpal tunnel syndrome, moderate right chronic carpal tunnel syndrome, and left chronic cubital tunnel syndrome. A May 22, 2015 EMG revealed moderate left chronic carpal tunnel syndrome and early/mild right chronic carpal tunnel syndrome.

On July 20, 2015 Dr. Bruce Monaghan, a Board-certified orthopedist, evaluated the employee for pain in both hands and arms that had been present since November 2014. He noted that she attributed her symptoms to pushing and pulling heavy equipment and repetitive lifting of mail and mail tubs. X-rays of both elbows were unremarkable and x-rays of the wrists and thumb revealed basilar joint arthritis. Dr. Monaghan diagnosed bilateral carpal tunnel syndrome and ulnar neuropathy, left index finger and left thumb stenosing tenosynovitis, bilateral thumb carpometacarpal degenerative joint disease, and possible fibromyalgia. He recommended carpal tunnel braces, diagnostic injections, and continued limited duty.

In reports dated August 3 and 31, 2015, Dr. Monaghan found positive Tinel’s sign in both hands and tenderness over the A1 pulley of her left thumb and index finger. He administered a steroid injection of both thumb and index finger with improvement in symptoms. On September 23, 2015 Dr. Monaghan recommended endoscopic carpal tunnel release and A1 pulley release of the thumb and index finger on the left hand.

On October 29, 2015 the employee underwent left index finger A1 pulley release traction tenolysis, left thumb A1 pulley release, and left endoscopic carpal tunnel release.⁶

By decision dated May 18, 2016, OWCP denied modification of the September 3, 2015 decision.

The employee, through counsel, appealed to the Board. By decision dated February 22, 2017,⁷ the Board affirmed the May 18, 2016 decision, finding that she failed to establish that her diagnosed medical conditions were related to the accepted employment factors.

On October 13, 2017 counsel requested reconsideration and submitted an August 9, 2017 report from Dr. Monaghan. Counsel asserted that Dr. Monaghan related the employee’s bilateral carpal tunnel syndrome and tenosynovitis of the left thumb and middle finger to repetitive work duties performed in her clerk position.

In a report dated August 9, 2017, Dr. Monaghan indicated that the employee’s job as a mail handler involved pushing and pulling heavy equipment, repetitive lifting of mail and mail tubs, and repetitive grasping. He opined that, within a medical degree of certainty, the repetitive nature

⁶ The full October 29, 2011 operative report is not in the record.

⁷ *Supra* note 4.

of her job either caused the onset or exacerbation of the symptoms referable to her carpal tunnel syndrome and tenosynovitis of the left thumb, index and middle finger. Dr. Monaghan advised that it was well known that repetitive grasping and gripping was a risk factor for carpal tunnel syndrome and trigger-finger. He opined that, while the causes may be multifactorial, the nature of the employee's work was significant and predominantly responsible for the worsening of these diagnoses and impairment of her hand function. Dr. Monaghan cited to the February 2016 article published in the *Journal of the American Academy of Orthopedic Surgeons*, which supported high hand and wrist repetition rates were associated with increased risk of developing carpal tunnel syndrome.

By decision dated January 5, 2018, OWCP denied modification of the decision dated February 22, 2017.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁸ 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 filed within the applicable time limitation period of FECA,⁹ that an injury was sustained while 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.¹⁰ 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.¹¹

In an occupational disease claim, appellant's burden requires submission of 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.¹²

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical opinion evidence.¹³ The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the

⁸ *Supra* note 2.

⁹ *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

¹⁰ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

¹¹ *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).

¹² *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *R.H.*, 59 ECAB 382 (2008).

¹³ *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *T.H.*, 59 ECAB 388 (2008).

relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹⁴

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a bilateral upper extremity condition causally related to the accepted factors of her federal employment.

Preliminarily, the Board notes that it is unnecessary to consider the evidence submitted prior to the issuance of OWCP's May 18, 2016 decision because the Board has already considered that evidence in its February 22, 2017 decision.¹⁵ Findings made in prior Board decisions are *res judicata* absent any further review by OWCP under section 8128 of FECA.¹⁶

In support of his reconsideration request, counsel submitted an August 9, 2017 report from Dr. Monaghan, who noted that the employee's job duties required repetitive lifting, grasping, and pushing and pulling heavy equipment. Dr. Monaghan opined that her employment duties either caused or aggravated her carpal tunnel syndrome and tenosynovitis of the left thumb, index and middle fingers. He found that, while the causes may be multifactorial, the repetitive nature of the employee's job duties had significantly worsened her diagnosed conditions and her impaired hand function. The Board notes that, while his report provides some support for causal relationship, it is insufficient to establish that the claimed conditions are causally related to her employment duties. Dr. Monaghan failed to offer sufficient medical rationale explaining how the employee's diagnosed bilateral carpal tunnel syndrome and tenosynovitis of the left thumb, index, and middle finger was caused or aggravated by her employment duties.¹⁷ He referenced the repetitive nature of her work without explaining how physiologically specific employment factors caused or aggravated the diagnosed condition.¹⁸ Dr. Monaghan referenced a medical article as support of his opinion. However, the Board has held that newspaper clippings, medical texts, and excerpts from publications are of no evidentiary value in establishing the causal relationship between a claimed condition and an employee's federal employment as such materials are of general application and are not determinative of whether the specific condition claimed is related to the particular employment factors alleged by the employee.¹⁹ For these reasons, the Board finds that the August 9, 2017 report from Dr. Monaghan is insufficient to establish the claim.

The fact that a condition manifests itself during a period of employment is insufficient to establish causal relationship.²⁰ Temporal relationship alone will not suffice. Entitlement to FECA benefits may not be based on surmise, conjecture, speculation, or on the employee's own belief of

¹⁴ *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *I.J.*, 59 ECAB 408 (2008).

¹⁵ *C.T.*, Docket No. 19-0508 (issued September 5, 2019).

¹⁶ *T.H.*, Docket No. 18-1585 (issued March 22, 2019).

¹⁷ *See A.B.*, Docket No. 19-0617 (issued October 3, 2019); *Calvin E. King, Jr.*, 51 ECAB 394 (2000).

¹⁸ *C.E.*, Docket No. 19-0192 (issued July 16, 2019).

¹⁹ *A.M.*, Docket No. 18-0562 (issued January 23, 2020); *William C. Bush*, 40 ECAB 1064, 1075 (1989).

²⁰ *L.A.*, Docket No. 19-0820 (issued December 6, 2019).

a causal relationship.²¹ As appellant has not submitted medical evidence establishing causal relationship between the accepted employment factors and the employee's claimed conditions, she has not met her burden of proof.²²

On appeal counsel disagrees with OWCP's decision denying her claim for compensation and noted that she submitted sufficient evidence to establish her claim. As found above, however, Dr. Monaghan failed to provide sufficient rationale explaining how the diagnosed conditions were causally related to the accepted employment factors.

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 a bilateral upper extremity condition causally related to the accepted factors of the employee's federal employment.

ORDER

IT IS HEREBY ORDERED THAT the January 5, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 6, 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

²¹ *S.G.*, Docket No. 18-1373 (issued February 12, 2019); *D.D.*, 57 ECAB 734 (2006).

²² *C.M.*, Docket No. 19-0264 (issued December 19, 2019).