United States Department of Labor
Employees' Compensation Appeals Board

A.J., Appellant	)	
and	)	**Docket No. 20-0239**
	)	**Issued: November 16, 2020**
DEPARTMENT OF VETERANS AFFAIRS, VA PITTSBURGH HEALTH CARE CENTER, Pittsburgh, PA, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Deputy Chief Judge
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On November 11, 2019 appellant, through counsel, filed a timely appeal from an August 5, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (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 August 5, 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 causally related to the accepted factors of her federal employment.

FACTUAL HISTORY

On March 2, 2018 appellant, then a 68-year-old patient services assistant, filed an occupational disease claim (Form CA-2) alleging that she developed wrist pain, numbness, and stinging in her fingers due to factors of her federal employment including daily computer work. She noted that she first became aware of her condition and its relationship to her federal employment on February 1, 2018. Appellant did not stop work.

With her claim, appellant submitted a February 26, 2018 note, wherein Dr. Ellen Berne, a Board-certified internist, requested that appellant be allowed to work wearing wrist splints.

In a development letter dated March 19, 2018, OWCP informed appellant that the evidence of record was insufficient to establish her claim. It advised her of the type of factual and medical evidence needed and attached a questionnaire for her completion. A separate development letter of even date was sent to the employing establishment. OWCP afforded both parties 30 days to respond.

OWCP subsequently received a duty status report (Form CA-17) and an attending physician's report (Form CA-20), both dated March 9, 2018, from Dr. Berne, who diagnosed bilateral carpal tunnel syndrome. On the Form CA-20 report Dr. Berne noted that appellant typed and moved files regularly at work, and she checked a box marked "Yes" to the question of whether the diagnosed condition was caused or aggravated by an employment activity.

The employing establishment submitted a statement dated April 9, 2018 in response to the development letter and a description for the position of program support clerk.

By decision dated April 25, 2018, OWCP denied appellant's occupational disease claim finding that she had not submitted sufficient factual information to establish that the "employment events" occurred as alleged, as she failed to respond to the development questionnaire.

On January 22, 2019 appellant requested reconsideration and submitted a position description in support of her request. She also described her work duties noting that she performed at least two hours of computer work at a time, totaling five hours per day for five days per week. Appellant also alleged that her other duties caused bilateral wrist pain.

OWCP received additional medical evidence. A January 4, 2019 electromyography/nerve conduction velocity (EMG/NCV) study reported bilateral wrist median neuropathies and recommended clinical correlation.

Dr. Berne, in a January 4, 2019 report, informed appellant that a review of the EMG/NCV study suggested bilateral wrist carpal tunnel syndrome. She advised that this would account for appellant's numbness complaints.

On February 12, 2019 appellant, through counsel, requested reconsideration.

OWCP thereafter received a February 11, 2019 letter from appellant's supervisor noting her agreement with appellant's description regarding her typing and filing duties.

By decision dated April 18, 2019, OWCP found that appellant had established employment factors, but denied modification of the claim as she had not established causal relationship between her diagnosed medical condition and the accepted factors of her federal employment.

On May 8, 2019 appellant, through counsel, requested reconsideration and submitted additional evidence.

In a January 31, 2019 report, Dr. Berne noted that appellant has been under her care for many years. She described appellant's work duties and diagnosed bilateral carpal tunnel syndrome based on recent diagnostic testing. In describing appellant's work duties, Dr. Berne indicated that appellant does computer entry and is on the computer about five hours a day and that recently the work load had increased and the pain in her wrists and hands became worse. She also indicated that in addition to working on the computer appellant is responsible for filing papers in patient charts and that the charts are thick and are often difficult to remove from the drawers and to return to the drawers putting a strain on her wrists. Dr. Berne explained that pushing and pulling on the file cabinet drawers had also created more strain worsening her numbness and burning feeling in her fingers on both hands. She opined that appellant's job might have caused the bilateral carpal tunnel syndrome and is now exacerbating the condition.

Dr. Berne, in a progress note dated May 6, 2019, summarized appellant's employment duties. She noted that over the past two years appellant developed bilateral pain and wrist numbness, and tingling and pain from the increased filing and computer use at work. Dr. Berne reported that appellant's January 4, 2019 nerve testing showed bilateral ulnar nerve disease. She opined that appellant's repetitive use of her wrist to perform her work duties caused and aggravated the diagnosed median nerve neuropathy. In support of this conclusion, Dr. Berne explained that appellant worked with thick chart files, which made opening cabinet drawers and removing the files difficult, and placed a strain on her wrists. Appellant's diagnoses included bilateral carpal tunnel syndrome and ulnar nerve disease. Dr. Berne also provided handwritten comments in response to findings in OWCP's April 18, 2019 decision.

By decision dated August 5, 2019, OWCP denied modification, finding that the medical evidence of record was insufficient to establish that her diagnosed bilateral carpal tunnel syndrome was caused or aggravated by the accepted factors of her federal employment.

LEGAL PRECEDENT

An employee seeking benefits under FECA[4] has the burden of proof to establish the essential elements of his or her claim, including the fact 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 period 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

[4] *Supra* note 2.

[5] *O.E.*, Docket No. 20-0015 (issued May 8, 2020); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

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, 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 factors 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 factors.[11]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish bilateral carpal tunnel syndrome causally related to the accepted factors of her federal employment.

In form reports dated March 9, 2018, Dr. Berne noted appellant's diagnosis of bilateral carpal tunnel syndrome. In her CA-20 report, she also noted that appellant typed and moved files at work. In response to a question as to whether the diagnosed condition was caused or aggravated by employment, Dr. Berne checked a box marked "yes," without further comment. 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 limited probative value regarding causal relationship.[12] In the Form CA-17 report, Dr. Berne failed to provide an opinion on the issue of causal relationship. 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

[6] *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[7] *E.S.*, Docket No. 18-1580 (issued January 23, 2020); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

[8] *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *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] *Id.*

[10] *A.M.*, Docket No. 18-0562 (issued January 23, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

[11] *E.W.*, Docket No. 19-1393 (issued January 29, 2020); *Gary L. Fowler*, 45 ECAB 365 (1994).

[12] *M.G.*, Docket No. 18-1616 (issued April 9, 2020); *Sedi L. Graham*, 57 ECAB 494 (2006); *D.D.*, 57 ECAB 734 (2006).

causal relationship.[13] These reports are therefore insufficient to meet appellant's burden of proof to establish causal relationship.

In a January 4, 2019 report, Dr. Berne noted that appellant's EMG/NCV studies were suggestive of bilateral carpal tunnel syndrome. However, she did not offer an opinion regarding causal relationship within this report. As noted, 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.[14]

Dr. Berne, in a January 31, 2019 report, described appellant's employment duties and opined that appellant's job might have caused the bilateral carpal tunnel syndrome and is now exacerbating the condition. Shee, however, offered no medical rationale explaining the basis of her conclusory opinion regarding aggravation of appellant's bilateral carpal tunnel syndrome due to factors of her federal employment. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how a given medical condition was caused or aggravated by the accepted employment factors.[15]

In a progress note dated May 6, 2019, Dr. Berne reported that appellant had experienced increased bilateral wrist pain, numbness, and tingling over the past two years due to increased filing and computer work. She indicated that the repetitive wrist movements from the filing and computer work caused or aggravated appellant's median nerve neuropathy. Dr. Berne also indicated that due to the thickness of the chart files appellant had difficulty opening drawers and removing files, which placed a strain on her wrists. Although this report supports causal relationship between appellant's bilateral carpal tunnel syndrome and the accepted factors of her federal employment, she did not provide rationale explaining her conclusions. Without explaining the mechanism of injury by which the repetitive movements involved in appellant's employment duties caused or contributed to the diagnosis, Dr. Berne's opinion is of limited probative value.[16] Thus, this report is insufficient to meet appellant's burden of proof.

As there is no rationalized medical evidence of record explaining how appellant's federal employment duties caused or aggravated her bilateral carpal tunnel syndrome, the Board finds that she has not met her burden of proof to establish that her bilateral carpal tunnel syndrome is causally related to the accepted factors of her federal employment.

On appeal counsel maintains that the August 5, 2019 decision was contrary to fact and law. As explained above, the Board finds that appellant has not met 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.

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[13] *See C.C.*, Docket No. 19-1071 (issued August 26, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[14] *Id.*

[15] *See Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

[16] *Y.F.*, Docket No. 19-1576 (issued August 4, 2020); *see A.P.*, Docket No. 19-0224 (issued July 11, 2019).

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish bilateral carpal tunnel syndrome causally related to the accepted factors of her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the August 5, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 16, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board