

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

D.J., Appellant	)	
	)	
and	)	Docket No. 20-0684
	)	Issued: September 21, 2020
U.S. POSTAL SERVICE, KING GEORGE POST	)	
OFFICE, King George, VA, Employer	)	
	)	

*Appearances:*  
Alan J. Shapiro, Esq., for the appellant<sup>1</sup>  
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 February 7, 2020 appellant, through counsel, filed a timely appeal from a November 6, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

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<sup>1</sup> 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.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## ISSUE

The issue is whether appellant met her burden of proof to establish that she developed carpal tunnel syndrome (CTS) in the performance of duty, as alleged.

## FACTUAL HISTORY

On June 26, 2018 appellant, then a 56-year-old rural carrier, filed an occupational disease claim (Form CA-2) alleging that she developed moderate-to-severe CTS due to factors of her federal employment, including repetitive movement of the hands and finger. She noted that she first became aware of her condition on May 4, 2018 and realized that it was caused or aggravated by factors of her federal employment on June 1, 2018. Appellant stopped work on March 12, 2018.

In a May 4, 2018 diagnostic report, Dr. Arnold Aguilera, a Board-certified neurologist, conducted an electromyography (EMG) of appellant's left wrist and diagnosed moderate-to-severe "left median mononeuropathy at the wrist CTS."

Dr. Ali Hashemi, a Board-certified orthopedic surgeon, opined in a June 1, 2018 medical note that a work injury caused appellant's left CTS. He noted that she did not have CTS prior to her injury and that her EMG clearly showed that she had the condition. Dr. Hashemi explained that, because of compensation and a lack of nerve gliding, carpal tunnel developed in appellant's hand and wrist as a result of the injury. He reasoned that her condition would only get worse without undergoing a carpal tunnel release procedure.

In a development letter dated July 6, 2018, OWCP informed appellant that the evidence submitted was insufficient to establish her claim. It advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. In a separate development letter of even date, OWCP also requested additional information from the employing establishment. It afforded both parties 30 days to respond.

In physical therapy notes dated from May 15 to July 17, 2018, Steven Wasilewski, an occupational therapist, evaluated appellant with regard to stiffness of the left finger joints. He noted a June 2017 injury in which her left finger got caught when she slammed a truck door shut. Appellant reported that she had underwent a magnetic resonance imaging scan and a nerve study that revealed severe CTS.

In a July 19, 2018 medical report, Dr. Hashemi noted appellant's symptoms related to her diagnosis of left CTS. He recommend that she undergo carpal tunnel release and an intrinsic release to treat her condition.

In an August 10, 2018 statement, A.R., a supervisor, challenged the claim, indicating that she disagreed with appellant's allegations and argued that appellant had no complaints working six hours per day on limited duty. She asserted that, after returning to full-duty work on February 24, 2018, appellant only worked full time for seven days before returning to appellant's physician saying that appellant was in pain. A.R. noted that appellant was casing and delivering mail until appellant decided that she could not do it anymore out of fear of causing permanent damage to her finger. Appellant did not notify A.R. until she filled out her Form CA-2 on June 26, 2018. A.R.

also detailed appellant's duties during her limited duty and noted her hourly breaks, lunch breaks, and package delivery assistance that she received.

OWCP also received a position description detailing appellant's responsibilities as a rural carrier.

By decision dated August 31, 2018, OWCP denied appellant's occupational disease claim, finding that the evidence of record was insufficient to establish that she sustained an injury in the performance of duty, as no clarifying statement regarding the duties she believed caused or aggravated her condition had been submitted. As such, it concluded that the requirements had not been met to establish an injury as defined by FECA.

OWCP continued to receive evidence. In a July 19, 2018 medical note, Dr. Hashemi indicated that appellant would be undergoing surgery on July 31, 2018 and would be out of work until further notice.

In physical therapy notes dated from August 21 to November 29, 2018, Mr. Wasilewski provided updates on appellant's treatment for CTS of the left wrist.

In a January 9, 2019 functional capacity evaluation (FCE), Ann Davis, a physical therapy assistant, recounted that on June 12, 2017 appellant was loading her mail truck when the door became jammed. While releasing the door, it broke free and appellant's left index finger became caught in the door. Appellant went to urgent care for treatment and was out of work for two months per the physician's orders. After an August 2017 x-ray scan, she was diagnosed with a fracture and referred to physical therapy and light duty. Appellant stopped work on March 12, 2018 after the employing establishment did not agree to an adjustment of her light-duty restrictions. She later underwent carpal tunnel surgery on July 31, 2018 and a release on her left index finger. Ms. Davis reasoned that appellant was able to work at the sedentary physical demand level for activity above and below the waist. She opined that appellant would be unable to return to her previous position as a rural carrier as she was unable to tolerate the repetitive movements, lifting, and use of the left hand and wrist as needed to complete her tasks. Ms. Davis recommended work restrictions of lifting no more than 20 pounds.

In a January 23, 2019 medical report, Dr. Hashemi evaluated appellant's left hand and opined that she had reached maximum medical improvement and agreed with the January 9, 2019 FCE.

On August 21, 2019 appellant, through counsel, requested reconsideration of OWCP's August 31, 2018 decision. Counsel for the appellant attached an October 10, 2018 medical report in which Dr. Hashemi evaluated her left hand. Dr. Hashemi opined that her CTS was related to her accident because she has had stiffness in her index finger for months that did not improve. He explained that this put more strain on the other tendons in appellant's other fingers, which caused irritation across her median nerve. This irritation caused appellant to compensate with her wrist and other fingers and develop inflammation around the nerve. Dr. Hashemi reasoned that, because her carpal tunnel release improved her condition, her diagnosis was a result of her injury.

By decision dated November 6, 2019, OWCP denied modification of its August 31, 2018 decision.

## 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 the fact 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 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>

OWCP's regulations define an occupational disease as a condition produced by the work environment over a period longer than a single workday or shift.<sup>7</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 identified employment factors.<sup>8</sup>

## ANALYSIS

The Board finds that appellant has not met her burden of proof to establish that she developed CTS in the performance of duty, as alleged.

To establish a claim for compensation in an occupational disease claim, an employee must submit a statement which identifies the factors of employment believed to have caused his or her condition.<sup>9</sup> Appellant has not provided sufficient detail to establish that an occupational exposure occurred, as alleged, because she did not adequately describe the circumstances of her injury, the duties she was performing which caused her injury or the mechanism of injury.<sup>10</sup>

In a development letter dated July 6, 2018, OWCP requested that appellant provide detailed information concerning the occupational factors she believed contributed to her condition and

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<sup>3</sup> *Id.*

<sup>4</sup> *T.W.*, Docket No. 18-0788 (issued July 22, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>5</sup> *T.W.*, *id.*; *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *Gary J. Watling*, 52 ECAB 278 (2001); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>6</sup> *T.W.*, *id.*; *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>7</sup> 20 C.F.R. § 10.5(q).

<sup>8</sup> *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>9</sup> *E.V.*, Docket No. 19-0447 (issued June 25, 2019); *H.O.*, Docket No. 17-1176 (issued November 27, 2018).

<sup>10</sup> *Id.*

respond to its questionnaire. However, appellant did not respond or otherwise provide a detailed narrative statement describing the employment factors, which she believed contributed to her condition.<sup>11</sup> While she submitted a position description, as well as multiple physical therapy notes and an October 10, 2018 medical report from Dr. Hashemi opining that her left CTS was the result of her overusing her other fingers to compensate for her left index finger after it was injured in a June 2017 incident, there is no information from her describing the specific employment-related activities which she believed contributed to her condition and the amount of time she spent engaging in such activities.<sup>12</sup> Accordingly, the Board finds that appellant failed to present a clear factual statement identifying specific employment factors or conditions alleged to have caused or contributed to her claimed medical condition, and therefore, has not met her burden of proof.<sup>13</sup>

On appeal counsel for appellant contends that the June 26, 2018 Form CA-2 was sufficient to meet appellant's burden of proof and that there was no contradictory evidence. An employee's statement as to how the injury occurred is of great probative value and will stand unless refuted by strong or persuasive evidence.<sup>14</sup> However, in this instance, appellant's Form CA-2 only provided that she underwent an EMG due to a work injury that diagnosed CTS and did not provide a statement as to the employment factors she believed contributed to her condition. Additionally, in her August 10, 2018 statement, A.R., a supervisor at the employing establishment, controverted appellant's claim. As noted, appellant bears the burden of submitting a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition.<sup>15</sup> Accordingly, she has not established an injury in the performance of duty, as alleged.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of the Board's 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 that she developed CTS in the performance of duty, as alleged.

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<sup>11</sup> See *D.C.*, Docket No. 18-0082 (issued July 12, 2018).

<sup>12</sup> *L.W.*, Docket No. 19-0196 (issued July 2, 2019); *D.C.*, Docket No. 18-0082 (issued July 12, 2018).

<sup>13</sup> See *D.C.*, *id.*; *D.D.*, 57 ECAB 734 (2006).

<sup>14</sup> See *D.C.*, Docket No. 18-0314 (issued September 24, 2019).

<sup>15</sup> *Supra* note 10.

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 6, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 21, 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