

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

M.R., Appellant	)	
	)	
and	)	<b>Docket No. 19-1954</b>
	)	<b>Issued: March 1, 2021</b>
U.S. POSTAL SERVICE, POST OFFICE,	)	
Tampa, FL, 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  
PATRICIA H. FITZGERALD, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On September 24, 2019 appellant, through counsel, filed a timely appeal from an August 27, 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.<sup>3</sup>

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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.*

<sup>3</sup> The Board notes that, following the August 27, 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 a bilateral upper extremity condition causally related to the accepted factors of her federal employment.

## FACTUAL HISTORY

This case has previously been before the Board.<sup>4</sup> The facts and circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On July 9, 2015 appellant, then a 50-year-old retired letter sorting machine (LSM) operator, manual clerk, and automation operator, filed an occupational disease claim (Form CA-2) alleging that she developed bilateral carpal tunnel syndrome due to factors of her federal employment. She reported that she first became aware of her claimed injury on July 25, 2013 and of its relation to her federal employment on April 15, 2015. On the reverse side of the claim form a supervisor advised that appellant retired on disability retirement with the Office of Personnel Management, effective March 26, 2001. The official reported that appellant first notified her supervisor about her claimed injury on August 11, 2015.

In a June 16, 2015 statement, appellant asserted that her claimed bilateral upper extremity condition developed over years of working at the employing establishment. She reported that she first began having problems with her hands on July 25, 2013, but was not conclusively diagnosed with bilateral carpal tunnel syndrome until April 15, 2015. Appellant advised that her work duties as an LSM operator involved pushing/pulling heavy containers weighing approximately 600 pounds, removing trays from letter cages, dropping mail on a ledge, pulling mail down by reaching overhead, and bending down to place sleeves on mail trays. She also described her other work duties, which involved casing mail, moving containers, grasping handfuls of mail/magazines, bundling mail, filling mail trays, pushing/pulling cages, throwing bundles of magazines weighing 15 to 25 pounds into bins, and picking up and throwing sacks weighing in excess of 120 pounds. Appellant reported that she worked for the employing establishment for approximately 13 years and asserted that the repetitive use of her hands, wrists, arms, and fingers caused her bilateral upper extremity condition to develop over time.

Appellant submitted a March 26, 2001 notification of personnel action (PS Form 50), which indicated that her last day in active pay status was March 15, 1999, after which she went on disability retirement. She also submitted the findings of an April 16, 2015 electromyogram and nerve conduction velocity (EMG/NCV) study of her upper extremities, which revealed abnormal findings of delayed peak latency readings involving both median nerves. The findings were deemed to be suggestive of bilateral carpal tunnel syndrome.

In a development letter dated August 17, 2015, OWCP requested that appellant submit additional evidence in support of her claim, including a physician's opinion explaining how the reported work duties caused or aggravated a medical condition. It provided a questionnaire for her completion, which posed questions regarding her reported work duties. In another development letter of even date, OWCP requested that the employing establishment provide

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<sup>4</sup> Docket No. 18-0164 (issued May 23, 2018).

information pertaining to appellant's work duties. It afforded both parties 30 days to respond. In response, the employing establishment submitted an August 27, 2015 statement in which appellant's former supervisor provided a description of appellant's work duties, which was similar to that provided by appellant in her June 16, 2015 statement.

By decision dated September 24, 2015, OWCP denied appellant's claim on the basis that it was untimely filed. It determined that she failed to file her claim within three years of the date of her last exposure to employment factors on March 15, 1999. OWCP further found that appellant's supervisor had not been given notice of the claimed injury within 30 days of the date of last exposure on March 15, 1999. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On October 13, 2015 appellant requested reconsideration of the September 24, 2015 decision. She asserted that she notified OWCP and the employing establishment of her claimed injury on approximately June 25, 2015. By decision dated July 1, 2016, OWCP denied modification of its September 24, 2015 decision.

On June 23, 2017 appellant, through counsel, requested reconsideration of the July 1, 2016 decision. Counsel asserted that the three-year time limitation for filing a claim did not begin to run until April 15, 2015, the date appellant first became aware of the relationship between her federal employment and the compensable disability. By decision dated August 18, 2017, OWCP denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

Appellant appealed to the Board and, by decision dated May 23, 2018,<sup>5</sup> the Board set aside the August 18, 2017 finding that appellant was entitled to merit review because counsel had presented a new and relevant legal argument on reconsideration, *i.e.*, that appellant's claim was timely filed as she was not aware of her claimed injury's relation to her federal employment until April 15, 2015 and filed her claim within three years of that date. The Board remanded the case to OWCP for a merit review to be followed by the issuance of an appropriate decision.

By decision dated August 14, 2018, OWCP considered the merits of appellant's claim. It determined that appellant had filed a timely occupational disease claim alleging a bilateral upper extremity injury and had established employment factors in the form of the repetitive motion required by her work duties. However, OWCP denied appellant's claim because she failed to submit a medical report relating a diagnosed condition to the accepted employment factors.

On July 29, 2019 appellant, through counsel, requested reconsideration of the August 14, 2018 decision. She submitted a November 27, 2018 report from Dr. Robert R. Reppy, an osteopath Board-certified in family medicine, who noted that she reported sustaining bilateral carpal tunnel syndrome due to years of repetitive keying on a mail sorting machine, casing mail, and pushing/pulling heavy equipment while working for the employing establishment. Dr. Reppy advised that appellant complained of aching pain in her wrists, hands, and fingers and noted, in connection with her "working status," that she last worked in 2014. He maintained that a July 1,

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<sup>5</sup> See *id.*

2016 EMG/NCV study was pathognomic for bilateral carpal tunnel syndrome.<sup>6</sup> Upon physical examination, appellant exhibited full range of wrist motion, normal grip strength, and intact sensation in both upper extremities. Dr. Reppy noted that appellant had a positive Tinel's sign and negative Phalen's sign bilaterally, and he diagnosed bilateral carpal tunnel syndrome.

In a January 28, 2019 report, Dr. Reppy provided findings for bilateral grip and pinch strength and diagnosed bilateral carpal tunnel syndrome. A February 6, 2019 EMG/NCV study of appellant's upper extremities contained bilateral amplitude signal and conduction velocity findings for the ulnar/median nerves, but did not contain an impression. In a March 13, 2019 report, Dr. Reppy opined that the February 6, 2019 EMG/NCV study revealed abnormal findings, including decreased amplitude signal of the right ulnar nerve and reduced conduction velocity of the left median nerve. He noted that appellant had a positive Tinel's sign and negative Phalen's sign bilaterally, and he again diagnosed bilateral carpal tunnel syndrome. On June 24, 2019 Dr. Reppy advised that appellant reported her bilateral wrist pain was directly related to activity, indicated that she had no grossly visible edema of the wrists, and diagnosed bilateral carpal tunnel syndrome.

In a July 11, 2019 report, Dr. Reppy noted that, in July 2015, appellant filed an occupational disease claim, alleging that years of repetitive motion keying on an LSM, casing mail, and pushing/pulling heavy equipment had damaged her wrists and hands.<sup>7</sup> Appellant identified July 25, 2013 as the date the condition of bilateral carpal tunnel syndrome was diagnosed and complained of aching pain at the wrists, hands, and fingers, accompanied by paresthesias and progressive loss of grip strength. Dr. Reppy noted that appellant reported the loss of sensation in her hands caused her to drop objects spontaneously, making her a danger to herself and coworkers. He indicated that appellant reported she had no prior history of similar symptoms and advised that, upon physical examination, appellant had a positive Phalen's test and Tinel's sign, both of which were correlates of carpal tunnel syndrome. Dr. Reppy noted, "The patient's injury was caused by her workplace while she was in performance of her duties at the [employing establishment], Tampa." He indicated that the repetitive nature of appellant's lifting, keying, and sorting tasks at work caused the damage to her median nerves over time. Dr. Reppy maintained that these tasks were a common and well-understood cause of carpal tunnel syndrome, noting that the medical literature was replete with similar cases.

Dr. Reppy referenced a medical journal abstract, which described carpal tunnel syndrome as arising from compression of the median nerve where it passed through the carpal tunnel in the wrist and as being characterized by sensory and, less commonly, motor symptoms and signs in the peripheral distribution of the median nerve. The abstract further explained that particularly high prevalence rates and relative risks were found in jobs involving repetitive and forceful gripping. Dr. Reppy indicated that other literature concluded that there was evidence of positive association of carpal tunnel syndrome with work entailing highly repetitive or forceful movement of the hands and high prevalence rates and relative risks in a number of jobs involving repetitive gripping. He noted, "Repetitive gripping is precisely the action required of appellant in her employment as [an LSM] operator, and she did it for years." Dr. Reppy further advised that carpal tunnel syndrome

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<sup>6</sup> The case record does not contain an EMG/NCV study dated July 1, 2016.

<sup>7</sup> Dr. Reppy indicated that appellant's actual job title was letter sorting machine operator, manual clerk, and automation operator. He noted that, when she filed her claim, appellant referenced a "date of injury" of July 25, 2013.

was comprised of sensory and motor features in the median nerve distribution of the hand, including delayed nerve conduction and gradual onset of numbness/tingling and pain in that distribution. He indicated, “This exactly matches the symptomatology reported by this patient.” Dr. Reppy advised that in the carpal tunnel the median nerve was located immediately beneath the palmaris longus tendon and was anterior to the flexor tendons. He noted that conditions which decreased the carpal tunnel’s size, or swelled the structures in the tunnel, compressed the median nerve against the transverse ligament bounding the tunnel’s roof. Dr. Reppy maintained that such circumstances could arise traumatically, as was the case for appellant. He advised that carpal tunnel syndrome was caused by extreme flexion/extension of the wrist, which increased the pressure in the carpal tunnel sufficiently to impair blood perfusion of the median nerve. Dr. Reppy found that the same mechanism applied in appellant’s case. He noted, “The patient’s injury was caused by her workplace while she was in performance of her duties at the [employing establishment], Tampa. This is my rationalized medical opinion based on my medical experience, objective evidence, and my examination of the patient.”

By decision dated August 27, 2019, OWCP affirmed its August 14, 2018 decision as modified to reflect that appellant had submitted medical evidence addressing causal relationship to the claimed condition, but that it was insufficient to establish a bilateral upper extremity condition causally related to the accepted factors of her federal employment.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>8</sup> has the burden of proof to establish the essential elements of his 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, 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.<sup>9</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.<sup>10</sup>

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant 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 identified employment factors.<sup>11</sup>

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<sup>8</sup> *Supra* note 2.

<sup>9</sup> *E.S.*, Docket 18-1580 ( issued January 23, 2020); *M.E.*, Docket No. 18-1135 (issued January 4, 2019); *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

<sup>10</sup> *E.S.*, *id.*; *S.P.*, 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>11</sup> *R.G.*, Docket No. 19-0233 (issued July 16, 2019). *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).

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.<sup>12</sup> A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.<sup>13</sup> 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 factor(s).<sup>14</sup>

### 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.

Appellant submitted a July 11, 2019 report in which Dr. Reppy noted that, in July 2015, she alleged that years of repetitive motion keying on an LSM, casing mail, and pushing/pulling heavy equipment had damaged her wrists and hands. Dr. Reppy discussed appellant's upper extremity symptoms and noted that she reported having no prior history of similar symptoms. He indicated, "The patient's injury was caused by her workplace while she was in performance of her duties at the [employing establishment], Tampa." Dr. Reppy opined that the repetitive nature of appellant's lifting, keying, and sorting tasks at work caused the damage to her median nerves over time. He discussed medical literature, which explained that there was evidence of positive association of carpal tunnel syndrome with work entailing highly repetitive/forceful movement of the hands and repetitive gripping. Dr. Reppy noted, "Repetitive gripping is precisely the action required of appellant in her employment as [an LSM] operator, and she did it for years." He indicated that conditions that decreased the carpal tunnel's size, or swelled the structures in the tunnel, compressed the median nerve against the transverse ligament bounding the tunnel's roof. Dr. Reppy maintained that such circumstances could arise traumatically, as was the case for appellant. He advised that carpal tunnel syndrome was caused by extreme flexion/extension of the wrist, which increased the pressure in the carpal tunnel sufficiently to impair blood perfusion of the median nerve. Dr. Reppy found that the same mechanism applied in appellant's case. He noted, "The patient's injury was caused by her workplace while she was in performance of her duties at the [employing establishment], Tampa. This is my rationalized medical opinion based on my medical experience, objective evidence, and my examination of the patient."

The Board finds that Dr. Reppy's July 11, 2019 report is of limited probative value with respect to appellant's claim for an employment-related upper extremity condition. Dr. Reppy did not describe appellant's work duties in detail or provide adequate medical rationale in support of his opinion that appellant's work duties caused bilateral carpal tunnel syndrome. Although he noted that appellant engaged in such activities as grasping and lifting mail, he did not provide sufficient detail regarding the frequency she performed such duties over the years she worked for the employing establishment. Dr. Reppy referenced medical literature of general application

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<sup>12</sup> *W.M.*, Docket No. 14-1853 (issued May 13, 2020); *T.H.*, 59 ECAB 388, 393 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>13</sup> *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

<sup>14</sup> *Id.*; *Victor J. Woodhams*, *supra* note 11.

regarding carpal tunnel syndrome, but he did not adequately describe the medical mechanism for an upper extremity injury in appellant's specific case. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how an employment activity could have caused or aggravated a medical condition.<sup>15</sup>

Additionally, Dr. Reppy's July 11, 2019 opinion on causal relationship is of limited probative value for the further reason that it is not based on a complete factual history. He did not discuss the fact that appellant was last exposed to employment factors at the employing establishment on March 15, 1999 or describe appellant's activities since that date in her private life and any nonfederal employment, which might have affected the condition of her upper extremities. Dr. Reddy did not provide adequate bridging evidence regarding appellant's medical condition/treatment between the late-1990s and the late-2010s, which would help to establish an employment-related cause for her upper extremity condition.<sup>16</sup> There is no indication in the case record that Dr. Reppy examined appellant prior to late-2018, *i.e.*, a time almost 10 years after she stopped working for the employing establishment. This circumstance only increases the need for medical rationale relating appellant's bilateral carpal tunnel syndrome to employment factors and, for the reasons explained above, Dr. Reppy failed to provide adequate medical rationale on causal relationship. Therefore, Dr. Reppy's July 11, 2019 report is insufficient to establish appellant's claim.

Appellant submitted other reports from Dr. Reppy, dated November 27, 2018, January 28, March 13, and June 24, 2019. However, these reports are of no probative value regarding the present occupational disease claim because Dr. Reppy failed to provide an opinion in these reports that appellant's bilateral carpal tunnel syndrome was related to the accepted employment factors. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value on the issue of causal relationship.<sup>17</sup> Therefore, these reports of Dr. Reppy are insufficient to establish appellant's claim.

As appellant has not submitted rationalized medical evidence establishing causal relationship between her diagnosed conditions and the accepted factors of her federal employment, the Board finds that she 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.

### **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 her federal employment.

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<sup>15</sup> *Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

<sup>16</sup> *See L.A.*, Docket No. 18-1570 (issued May 23, 2019) (regarding the importance of bridging evidence in establishing causal relationship between a claimed injury and employment factors).

<sup>17</sup> *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 27, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 1, 2021  
Washington, DC

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

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

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