

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

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<b>R.B., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 22-0228</b>
	)	<b>Issued: August 2, 2022</b>
<b>U.S. POSTAL SERVICE, POST OFFICE, Macomb, MI, Employer</b>	)	
_____	)	

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On November 29, 2021 appellant filed a timely appeal from a November 15, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant has met her burden of proof to establish an injury in the performance of duty, as alleged.

**FACTUAL HISTORY**

On August 31, 2021 appellant, then a 45-year-old rural carrier associate, filed an occupational disease claim (Form CA-2) alleging that she developed right tennis elbow and carpal tunnel due to factors of her federal employment. She specifically noted repetitively flexing, gripping, and slinging mail. Appellant indicated that she first became aware of the condition on

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

October 8, 2020 and realized its relationship to her federal employment on June 21, 2021. She stopped work on September 7, 2021.

An authorization for examination and/or treatment (Form CA-16) dated and signed by appellant's supervisor on July 19, 2021 authorized an examination of appellant for complaints of right elbow pain. In an attending physician's report, Part B of the Form CA-16, also dated July 19, 2021, an unknown provider with an illegible signature indicated that appellant had developed carpal tunnel in the right upper limb and that the condition was caused or aggravated by her described employment activity.

In a development letter dated September 15, 2021, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of evidence necessary to establish her claim and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary information.

On September 22, 2021 OWCP received an undated narrative report by Dr. Farzin Namei, a family medicine specialist, who recounted that he treated appellant for right wrist carpal tunnel syndrome and medial epicondylitis. Dr. Namei indicated that appellant's work activities, such as "repetitive use, heavy lifting, reaching, pulling for an extended amount of time," were not helping appellant's symptoms and opined that it was possible that she injured her elbow at work.

By decision dated November 15, 2021, OWCP denied appellant's occupational disease claim, finding that the evidence of record was insufficient to establish the alleged factors of employment. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>2</sup> 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,<sup>3</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>4</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>5</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;

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<sup>2</sup> *Id.*

<sup>3</sup> *D.D.*, Docket No. 19-1715 (issued December 3, 2020); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>4</sup> *Y.G.*, Docket No. 20-0688 (issued November 13, 2020); *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>5</sup> *C.H.*, Docket No. 19-1781 (issued November 13, 2020); *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).

(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.<sup>6</sup>

### ANALYSIS

The Board finds that this case is not in posture for decision.

On her claim form appellant alleged that she developed right tennis elbow and carpal tunnel due to her employment activities. She specifically described activities of repetitively flexing, gripping, and slinging mail. Appellant also submitted a narrative report by Dr. Namei who noted appellant's work activities as repetitive use, heavy lifting, reaching, and pulling for an extended amount of time. By decision dated November 15, 2021, OWCP denied appellant's claim, finding that she had failed to establish that the employment factors occurred, as alleged.

OWCP's procedures provide that a description of job duties will almost always be required to adjudicate an occupational disease claim.<sup>7</sup> It further notes that a claimant should usually be asked to describe the physical and environmental requirements of the job, and the supervisor or injury compensation specialist should review that statement and provide comments if there is any disagreement.<sup>8</sup> While OWCP advised appellant of the type of evidence necessary to establish her claim, it did not request any information from the employing establishment regarding the accuracy of appellant's contention that her position as a rural carrier associate involved repetitive lifting, gripping, reaching, and pulling. For this reason, the Board finds that the case must be remanded for further development of the factual evidence.<sup>9</sup>

It is well established that proceedings under FECA are not adversarial in nature and while the claimant has the responsibility to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence, particularly when such evidence is of the character normally obtained from the employing establishment.<sup>10</sup> OWCP has an obligation to see that justice is done.<sup>11</sup>

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<sup>6</sup> *T.M.*, Docket No. 20-0712 (issued November 10, 2020); *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *R.H.*, 59 ECAB 382 (2008).

<sup>7</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.7(b)(2). (June 2011)

<sup>8</sup> *Id.*

<sup>9</sup> *See J.Q.*, Docket No. 21-1284 (issued March 22, 2022) (case was remanded for OWCP to obtain a detailed description from the employing establishment about the claimant's position as customs inspector); *see also D.C.*, Docket No. 21-0231 (issued August 27, 2021); (case was remanded because the employing establishment did not provide a detailed statement indicating whether it concurred with the claimant's allegations).

<sup>10</sup> *D.O.*, Docket No. 20-0006 (issued September 9, 2020); *R.A.*, Docket No. 17-1030 (issued April 16, 2018); *Walter A. Fundinger, Jr.*, 37 ECAB 200, 204 (1985).

<sup>11</sup> *S.S.*, Docket No. 18-0397 (issued January 15, 2019); *Donald R. Gervasi*, 57 ECAB 281, 286 (2005); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983).

On remand OWCP should obtain a detailed statement from the employing establishment indicating whether it concurred with appellant's allegations and a position description for a rural carrier associate. If the employing establishment fails to respond to a request for comments on appellant's allegations, OWCP's claims examiner may accept the statements as factual.<sup>12</sup> After this, and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

**CONCLUSION**

The Board finds that this case is not in posture for decision.

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 15, 2021 merit decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: August 2, 2022  
Washington, DC

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

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



James D. McGinley, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>12</sup> *Supra* note 7 at Chapter 2.800.5(d)(1) (June 2011). See also *L.B.*, Docket No. 17-1671 (issued November 6, 2018).