

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

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K.C., Appellant)	
)	
and)	Docket No. 22-0250
)	Issued: August 8, 2022
U.S. POSTAL SERVICE, WATERTOWN POST OFFICE, Watertown, CT, Employer)	
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Appearances:
*Alan J. Shapiro, Esq., for the appellant*¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On December 3, 2021 appellant, through counsel, filed a timely appeal from a November 8, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

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.*

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

This case has previously been before the Board.³ The facts and circumstances set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On May 4, 2019 appellant, then a 61-year-old mail carrier, filed an occupational disease claim (Form CA-2) alleging that she sustained bilateral carpal tunnel syndrome causally related to factors of her federal employment including repetitive twisting and turning of her wrists and hands. She indicated that she first became aware of her condition on March 24, 2015 and its relationship to her federal employment on February 4, 2016. Appellant did not stop work.

On May 19, 2015 and February 4, 2016 Dr. Craig Rodner, a Board-certified hand surgeon, examined appellant and diagnosed bilateral carpal tunnel syndrome.

In a report dated September 26, 2017, Antigona Ajro, an advanced practice registered nurse, noted an impression of left arm pain.

By decision dated July 26, 2019, OWCP denied appellant's occupational disease claim, finding that the evidence of record was insufficient to establish that her diagnosed condition was causally related to the accepted factors of her federal employment.

On January 16, 2020 appellant, through counsel, requested reconsideration.

In support of the reconsideration requested, counsel submitted an October 14, 2019 report by Dr. Douglas C. Wisch, a Board-certified orthopedic hand surgeon. Dr. Wisch diagnosed bilateral cubital tunnel syndrome and bilateral carpal tunnel syndrome. In a letter dated January 2, 2020, he opined that appellant's current symptoms of numbness and tingling were consistent with carpal tunnel syndrome and cubital tunnel syndrome and that these conditions were related to her work as a mail handler. Dr. Wisch explained that her diagnosed conditions were related to her job, as she had been a mail handler for 17 years, which involved significant repetitive elbow and wrist motion in sorting mail and performing other duties of the position.

By decision dated February 10, 2020, OWCP denied modification of its July 26, 2019 decision.

On March 18, 2020 appellant, through counsel, timely appealed to the Board from OWCP's February 10, 2020 decision. By decision dated December 1, 2020, the Board reviewed the medical evidence of record affirmed OWCP's February 10, 2020 decision. The Board found

³ Docket No. 20-0899 (issued December 1, 2020).

that appellant had not met her burden of proof to establish that her diagnosed bilateral carpal tunnel syndrome was causally related to the accepted factors of her federal employment.

OWCP thereafter received a report dated August 23, 2021 from Dr. Wisch who related that he had examined appellant for complaints of a flare up of conditions of both hands. He further noted that she had been retired for about a year and that she continued to have symptoms of carpal tunnel syndrome. On physical examination of appellant's hands and wrists, Dr. Wisch observed a positive Tinel's test on the left and negative on the right, a positive bilateral compression test, and reduced strength in gripping and pinching on the right compared to the left. He diagnosed bilateral carpal tunnel syndrome and cubital tunnel syndrome. Dr. Wisch opined that appellant had symptoms of these conditions for quite some time and that it was very likely due to her previous job with the employing establishment due to repetitive activities.

On October 27, 2021 appellant, through counsel, requested reconsideration.

By decision dated November 8, 2021, OWCP reviewed the merits of appellant's claim and denied modification.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ 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 of FECA, 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.⁵ 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.

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.⁶

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁷ The opinion of the physician must be based on a complete factual and medical background, must be one of reasonable medical certainty, and must be supported by

⁴ *Supra* note 2.

⁵ *C.K.*, Docket No. 19-1549 (issued June 30, 2020); *R.G.*, Docket No. 19-0233 (issued July 16, 2019); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁶ *L.D.*, Docket No. 19-1301 (issued January 29, 2020); *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁷ *I.J.*, Docket No. 19-1343 (issued February 26, 2020); *T.H.*, 59 ECAB 388 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment incident.⁸

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.

Preliminary, the Board notes that it is unnecessary for the Board to consider the evidence submitted, prior to OWCP's February 10, 2020 decision, because the Board considered that evidence in its December 1, 2020 decision, finding that it was insufficient to establish appellant's claim. Findings made in prior Board decisions are *res judicata* absent any further review by OWCP under section 8128 of FECA.⁹

Following the Board's review of the case, OWCP received an additional report dated August 23, 2021 from Dr. Wisch. Dr. Wisch noted that he had evaluated appellant for complaints of a flare up of her bilateral carpal tunnel syndrome. On physical examination of appellant's hands and wrists, he observed a positive Tinel's test on the left and negative on the right, a positive bilateral compression test, and reduced strength in gripping and pinching on the right compared to the left. Dr. Wisch diagnosed bilateral carpal tunnel syndrome and cubital tunnel syndrome. He opined that appellant had experienced symptoms of these conditions for quite some time and that it was very likely due to her previous job with the employing establishment, which required that she perform repetitive activities. While Dr. Wisch supported causal relationship, his opinion was conclusory, and he did not provide medical rationale explaining how her work duties caused her claimed condition. Without explaining physiologically how the specific movements involved in appellant's job caused, contributed to, or aggravated the specific diagnosed conditions, his opinion is of limited probative value and insufficient to establish the claim.¹⁰

As the record lacks rationalized medical evidence establishing causal relationship between appellant's claimed bilateral carpal tunnel syndrome and the accepted factors of her federal employment, the Board finds that appellant has not met her burden of proof to establish her claim.

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.

⁸ *D.J.*, Docket No. 19-1301 (issued January 29, 2020).

⁹ See *K.V.*, Docket No. 21-0008 (issued November 15, 2021); *B.R.*, Docket No. 17-0294 (issued May 11, 2018); *Clinton E. Anthony, Jr.*, 49 ECAB 476 (1998).

¹⁰ See *T.F.*, Docket No. 20-0260 (issued June 12, 2020); *D.J.*, Docket No. 18-0694 (issued March 16, 2020); *K.G.*, Docket No. 18-1598 (issued January 7, 2020); *K.O.*, Docket No. 18-1422 (issued March 19, 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 November 8, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 8, 2022
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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