

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

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<b>R.I., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 20-1616</b>
	)	<b>Issued: February 11, 2022</b>
<b>U.S. POSTAL SERVICE, OSHKOSH CARRIER</b>	)	
<b>ANNEX, Madison, WI, 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  
JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On September 3, 2020 appellant filed a timely appeal from an August 10, 2020 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.<sup>2</sup>

**ISSUE**

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

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

<sup>2</sup> The Board notes that following the August 10, 2020 decision, OWCP received additional evidence. 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.*

## **FACTUAL HISTORY**

On June 25, 2020 appellant, then a 65-year-old rural letter carrier, filed an occupational disease claim (Form CA-2) alleging that he developed bilateral carpal tunnel syndrome (CTS) causing pain and numbness in the thumbs and hands as a result of factors of his federal employment, including repetitive motion. He noted that he initially became aware of his conditions and realized their relationship to his federal employment on March 26, 2018. Appellant did not stop work.

In a visit note dated June 5, 2020, Dr. Timothy Bergan, an osteopath Board-certified in occupational medicine, diagnosed arthritis of the carpometacarpal joints of both thumbs as confirmed by bilateral finger x-ray findings. He opined that the condition was work related and that appellant could return to work without restrictions, effective immediately.

In a July 6, 2020 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the factual and medical evidence necessary to establish his claim and also provided a questionnaire for completion. OWCP afforded appellant 30 days to respond. In the same letter, it also informed the employing establishment that if he was treated at an agency medical facility for the alleged medical condition, it must provide treatment notes.

Appellant, in a July 13, 2020 response to OWCP's development questionnaire, indicated that his work duties included daily sorting of 2,000 to 3,000 letters and flats of magazines, flyers, and small catalogs into small one-inch wide openings. He also extracted mail from the case to place it into trays. Appellant explained that he sometimes had to force mail in and out of the slots because they were filled too tightly and had a narrow opening. He related that these duties were extremely repetitive, and he believes this caused great wear and tear to his hands and wrists. Appellant further noted that, while out on his route, he would open and close mailboxes repetitively, which was difficult in the winter when the mailboxes were frozen shut. He stated that he performed all of these activities five to six days per week for 38 years, and an employing establishment supervisor, M.B., signed in concurrence. Appellant denied any prior similar injuries or engaging in any activities outside of work which would cause his symptoms. He noted that the pain had been present for about two years, but decreased when he was off from work for a few days.

In a July 15, 2020 visit note, Dr. Bergan diagnosed bilateral thumb pain. He indicated that the cause of appellant's condition was undetermined, but that he could return to work without restrictions and would be discharged from care.

By decision dated August 10, 2020, OWCP denied appellant's claim finding that the evidence of record was insufficient to establish that the injury or events occurred as alleged. It concluded, therefore, that he had not met the requirements to establish an injury as defined by FECA.

## 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 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>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>

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.<sup>7</sup>

The employee's statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action.<sup>8</sup> Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury and failure to obtain medical treatment may cast doubt on an employee's statements in determining whether he or she had established a *prima facie* claim for compensation. However, an employee's statement is of great probative value and will stand unless refuted by strong and persuasive evidence.<sup>9</sup>

## ANALYSIS

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

Appellant filed an occupational disease claim alleging that he developed bilateral CTS as a result of factors of his federal employment. In response to OWCP's July 6, 2020 development questionnaire, he described his job duties as repetitive in nature, including sorting 2,000 to 3,000

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<sup>3</sup> *Supra* note 1.

<sup>4</sup> *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>5</sup> *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>6</sup> *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>7</sup> *P.L.*, Docket No. 19-1750 (issued March 26, 2020); *R.G.*, Docket No. 19-0233 (issued July 16, 2019); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett, id.*

<sup>8</sup> *G.J.*, Docket No. 19-1826 (issued April 28, 2020); *R.W.*, Docket No. 19-0339 (issued July 12, 2019); *Mary Jo Coppolino*, 43 ECAB 988 (1992).

<sup>9</sup> *Id.*

letters and flats of magazines, flyers and small catalogs per day, which at times required forceful pulling and pushing with his hands and wrists, and that he also repetitively and forcefully opened and closed mailboxes on his route that were sometimes frozen shut. Appellant indicated that he performed these duties five to six days per week for 38 years. The employing establishment did not refute the job duties of appellant and there are no inconsistencies sufficient to cast serious doubt on the type of duties he alleged she performed.<sup>10</sup> In fact, her Supervisor, M.B. agreed as to the recitation of the appellant's duties.

As noted previously, an employee's statement is of great probative value and will stand unless refuted by strong and persuasive evidence.<sup>11</sup> Thus, the Board finds that the available evidence establishes that appellant's employment duties as a rural letter carrier included repetitive activities using his hands and fingers.

As appellant has established accepted factors of his federal employment, OWCP must base its decision on an analysis of the medical evidence. The case will therefore be remanded to OWCP to analyze and develop the medical evidence of record.<sup>12</sup> Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision on the merits of the claim.

### CONCLUSION

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

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<sup>10</sup> See generally *T.A.*, Docket No. 19-1525 (issued March 4, 2020); *J.C.*, Docket No. 18-1803 (issued April 19, 2019); *L.S.*, Docket No. 13-1742 (issued August 7, 2014).

<sup>11</sup> *R.W.*, *supra* note 8; *see B.B.*, Docket No. 12-0165 (issued July 26, 2012); *MaryJo Coppolino*, *supra* note 8.

<sup>12</sup> *T.A.*, *supra* note 10; *J.S.*, Docket No. 19-0381 (issued July 16, 2019).

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 10, 2020 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: February 11, 2022  
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