

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

S.D., Appellant)	
)	
and)	Docket No. 21-1047
)	Issued: July 7, 2022
GENERAL SERVICES ADMINISTRATION,)	
Kansas City, MO, Employer)	
)	

<i>Appearances:</i> Alan J. Shapiro, Esq., for the appellant Office of Solicitor, for the Director	<i>Case Submitted on the Record</i>
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DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On July 1, 2021 appellant filed a timely appeal from a June 24, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

ISSUE

The issue is whether appellant has met her burden of proof to establish disability from work for the periods August 23 through October 22, 2017 and February 12, 2019 through January 17, 2020 causally related to her accepted July 26, 2017 employment injury.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that counsel did not appeal from OWCP's May 26, 2021 decision denying a request to expand the acceptance of appellant's claim to include left fifth trigger finger and resulting authorization for surgery. Therefore, that decision is not presently before the Board. *See* 20 C.F.R. § 501.3.

FACTUAL HISTORY

On August 28, 2017 appellant, then a 51-year-old program analyst, filed an occupational disease claim (Form CA-2) alleging that she developed carpal tunnel syndrome due to factors of her federal employment including daily typing on a computer. She became aware of her condition and realized it was causally related to factors of her federal employment on July 26, 2017. Appellant stopped work on August 18, 2017.

On August 18, 2017 appellant underwent a magnetic resonance imaging (MRI) scan of the right upper extremity, which revealed hyperintense T2 signal of the median nerve consistent with carpal tunnel syndrome and a small joint effusion about the proximal carpal row suggesting capsulitis.

Appellant was treated by Dr. Salvatore A. Fanto, a Board-certified hand surgeon, who in work status reports dated August 21, September 13 and 20, and October 11 and 26, 2017, diagnosed bilateral wrist pain and advised that appellant was unable to work. In a note dated September 27, 2017, Dr. Fanto treated appellant for bilateral tingling and numbness in the median nerve distribution. Findings on physical examination revealed positive median nerve compression test, positive Phalen's test, and positive Tinel's sign. Dr. Fanto noted appellant's work duties included keyboarding all day for many years.

An electromyogram/nerve conduction velocity (EMG/NCV) study dated October 6, 2017 revealed evidence of mild bilateral and median neuropathies at the wrists and no evidence of cervical radiculopathy, myopathy, or diffuse peripheral neuropathy.

Dr. Fanto evaluated appellant on October 19, 2017 and noted that an MRI scan of the wrist revealed compression of the median nerve in the carpal tunnel and that an NCV study confirmed carpal tunnel syndrome. He noted appellant's work consisted of years of repetitive motion that caused her condition and recommended surgical intervention. On March 13, 2018 Dr. Fanto performed right carpal tunnel release, excision of soft tissue mass, tenolysis of flexor tendons, and debridement and repair of the flexor pollicis longus tendon. He diagnosed right carpal tunnel syndrome and pain.

On August 15, 2018 Dr. Fanto noted that appellant could perform office work.³

On October 19, 2018 Dr. Martin G. Luken, III, a Board-certified neurosurgeon, evaluated appellant for persistent disabling symptoms after right carpal tunnel release on March 13, 2018. He noted that appellant's symptoms kept her off work from July 2017 through September 2018.

³ On September 19, 2018 Dr. Dorothy M. Jones, a Board-certified internist, requested reasonable workplace accommodations on behalf of appellant. She diagnosed bilateral carpal tunnel syndrome status post right carpal tunnel release on March 13, 2018. Dr. Jones indicated that appellant reached maximum medical improvement (MMI), but continued to experience bilateral hand pain. She recommended ergonomic workstation, typing limited to 30 minutes with 10-minute breaks, and lifting limited to 10 pounds. Dr. Jones concluded that appellant was "unable to reasonably perform her duties with the accommodations in place" and that she should "be placed on permanent medical disability."

An October 31, 2018 MRI scan of the right upper extremity revealed an enlarged median nerve through the carpal tunnel with increased signal and slight anterior bowing in the flexor retinaculum.

An EMG/NCV study performed November 7, 2018 revealed evidence of mild bilateral median mononeuropathies across the bilateral wrists.

Appellant was evaluated by Dr. Neil Allen, a Board-certified neurologist, on November 13, 2018. He diagnosed bilateral carpal tunnel syndrome. Dr. Allen opined that appellant's bilateral carpal tunnel syndrome was related to performing repetitive work duties.

By decision dated January 30, 2019, OWCP accepted appellant's claim for carpal tunnel syndrome of the right and left upper limb.

OWCP received additional evidence. In work status notes dated August 31, December 20, 2017 and January 24, 2018, Dr. Fanto diagnosed bilateral wrist pain and noted that appellant could not work. On November 29, 2017 he diagnosed mild carpal tunnel syndrome and returned appellant to restricted duty with no typing, pushing, or pulling. On August 22, 2018 Dr. Fanto released appellant to regular duties. He noted treating appellant again on October 3, 2018.

On October 6, 2017 Dr. Howard Robinson, a Board-certified physiatrist, performed an EMG/NCV study that revealed evidence of mild bilateral median neuropathies at the wrist. He diagnosed cervicalgia, low back pain, and bilateral carpal tunnel syndrome. Dr. Robinson recommended bilateral carpal tunnel splints.

In a Family and Medical Leave Act (FMLA) medical form dated October 24, 2017, Dr. Jones diagnosed bilateral carpal tunnel syndrome, fibromyalgia, and lupus. She noted that appellant was unable to perform her job functions and would be incapacitated from July 26, 2017 through February 1, 2018. In an undated letter, Dr. Jones noted that appellant had been off work since August 22, 2017 and remained severely impaired secondary to bilateral carpal tunnel syndrome. Appellant reported bilateral hand pain daily and difficulty performing her activities of daily living. Dr. Jones advised that appellant was unable to type or work on a computer due to her impairment and indicated that a return to work at this time would worsen her condition. She reported her estimated release to return to work was July 1, 2018 with restrictions.

On February 11, 2019 appellant filed claims for compensation (Form CA-7) for disability from work during the periods October 23, 2017 through August 26, 2018 and August 28, 2018 through February 11, 2019.

In a March 26, 2019 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of additional factual and medical evidence required and afforded her 30 days to submit the requested evidence. No response was received.

By decision dated May 9, 2019, OWCP denied appellant's claims for wage-loss compensation, finding that she had not established disability from work during the period October 23, 2017 through February 11, 2019 causally related to the accepted July 26, 2017 employment injury.

On May 16, 2019 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held on August 28, 2019.

On July 31, 2019 Dr. Jennifer M. Wolf, a Board-certified orthopedist, treated appellant for persistent bilateral carpal tunnel syndrome with an overlay of complex regional pain syndrome (CRPS). Appellant reported undergoing a brachial plexus block and stellate ganglion block that provided some relief in symptoms. Findings on examination of the upper extremities revealed intact sensation bilaterally, positive Phalen's test, Tinel's sign, and carpal tunnel compression testing on the right and tenderness over the fifth A1 pulley on the left with visible locking and clicking. Dr. Wolf diagnosed bilateral carpal tunnel syndrome, worse on the right, with an overlay of active CRPS, left small finger trigger digit and possible pronator syndrome and performed a left trigger finger injection.

By decision dated October 8, 2019, OWCP's hearing representative denied appellant's claims for wage-loss compensation in part, finding that she had not established disability from work for the period October 23, 2017 through March 12, 2018 causally related to the accepted July 26, 2017 employment injury and remanded the case for further development with regard to wage-loss compensation for the period March 13, 2018 through February 11, 2019.

OWCP received additional evidence. On March 18, 2019 Dr. Magdalena Anitescu, a Board-certified anesthesiologist, diagnosed neuropathic pain and performed a right supraclavicular nerve block with ultrasound guidance.

In reports dated October 17 and 18, 2019, Dr. Ralph W. Richter, Jr., a Board-certified orthopedist, treated appellant for bilateral carpal tunnel syndrome. He noted that appellant had right carpal tunnel release on March 13, 2018. Appellant reported not working since November 2018. Findings on examination revealed diffuse pain throughout both upper extremities, occasional numbness and tingling in both hands, negative Tinel's sign over the median nerve bilaterally, negative Phalen's test bilaterally, negative median nerve compression test bilaterally, no thenar atrophy, and no evidence of pronator syndrome bilaterally. Dr. Richter opined that appellant had no evidence of carpal tunnel syndrome in either hand. He diagnosed bilateral hand pain and advised that appellant had reached MMI with regard to bilateral carpal tunnel syndrome and required no further treatment. Dr. Richter opined that the symptoms she experienced in both extremities were related to nonwork-related conditions of fibromyalgia and lupus.

By development letters dated October 22 and December 5, 2019, OWCP requested that the employing establishment provide the date appellant returned to work after the March 13, 2018 surgery, a copy of the light-duty job offer or description of duties, and an explanation for appellant's separation. No response was received.

On January 13, 2020 OWCP indicated that the employing establishment failed to respond to the October 22 or December 5, 2019 development letters or provide information regarding a light-duty job or return to work following the March 13, 2018 surgery. It processed a payment for total disability for the period March 13, 2018 through February 11, 2019.

On January 19, 2020 appellant filed CA-7 forms for disability from work for the periods October 23, 2017 through March 10, 2018 and February 12, 2019 through January 17, 2020.

OWCP received additional evidence. A notification of personnel action, Standard Form (SF)50 dated November 19, 2018 indicated that appellant was removed from federal employment effective November 15, 2018 due to a charge of absent without leave (AWOL).

On November 20, 2019 Dr. Wolf treated appellant for left trigger finger and clicking and locking in her left small finger. She noted findings of intact sensation bilaterally, positive Phalen's test bilaterally, positive Tinel's sign bilaterally, positive carpal tunnel compression test bilaterally, and tenderness over the A1 pulley of the fifth finger on the left hand. Dr. Wolf diagnosed recurrent and persistent bilateral carpal tunnel syndrome, active CRPS, and left small finger trigger. She recommended small trigger finger release and left carpal tunnel release.

On January 27, 2020 appellant resubmitted previously filed CA-7 forms for disability from work for the period August 23 through October 22, 2017.

In a development letter dated February 12, 2020, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of additional evidence required and afforded her 30 days to submit the requested evidence.

By decision dated March 12, 2020, OWCP denied appellant's claims for wage-loss compensation, finding that she had not established disability from work for the period February 12, 2019 through January 17, 2020 causally related to the accepted July 26, 2017 employment injury.

On March 17, 2020 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review with regard to the March 12, 2020 decision for the denial of wage-loss compensation during the period February 12, 2019 through January 17, 2020.

By decision dated March 19, 2020, OWCP denied appellant's claims for wage-loss compensation, finding that she had not established disability from work from August 23 through October 22, 2017 causally related to the accepted July 26, 2017 employment injury.

On March 24, 2020 appellant requested an oral hearing from the March 19, 2020 decision before a representative of OWCP's Branch of Hearings and Review. The hearing was held on July 9, 2020 and the hearing representative reviewed both the March 12 and 19, 2020 OWCP decisions.

By decision dated September 22, 2020, OWCP's hearing representative affirmed the March 12 and 19, 2020 decisions, finding that appellant had not established disability from work for the periods August 23 through October 22, 2017 and February 12, 2019 through January 17, 2020 causally related to the accepted July 26, 2017 employment injury.

OWCP received additional evidence. On November 20, 2019 Dr. Wolf treated appellant in follow up for left trigger finger, clicking and locking in her left small finger, and numbness and tingling in both hands. She noted positive findings on examination and diagnosed recurrent or persistent carpal tunnel syndrome, overlay of active CRPS, and left small trigger finger. Dr. Wolf recommended left carpal tunnel release and small trigger finger release.

Appellant was treated by Dr. Sarah T. Yang, a Board-certified physiatrist, on December 14 and 28, 2020, who diagnosed bilateral hand pain and bilateral carpal tunnel syndrome. Dr. Yang performed a right carpal tunnel hydrodissection ultrasound guided injection. On February 8, 2021 she completed a carpal tunnel residual function capacity questionnaire and reported reduced grip strength, tenderness, and decreased sensation in digits one through five bilaterally. Dr. Yang diagnosed bilateral carpal tunnel syndrome and noted appellant's impairment would last at least 12 months.

Dr. Allen evaluated appellant on January 11, 2021 and diagnosed trigger finger, left little finger. He opined that appellant's digital stenosing tenosynovitis of her left little finger was related to repetitive and prolonged work duties.

On March 26, 2021 appellant requested reconsideration of the September 22, 2020 decision.

By decision dated June 24, 2021, OWCP denied modification of the September 22, 2020 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ has the burden of proof to establish the essential elements of his or her claim, including that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁵ For each period of disability claimed, the employee has the burden of proof to establish that he or she was disabled from work as a result of the accepted employment injury.⁶ Whether a particular injury causes an employee to be disabled from employment and the duration of that disability are medical issues, which must be proven by a preponderance of the reliable, probative, and substantial medical evidence.⁷ Findings on examination are generally needed to support a physician's opinion that an employee is disabled from work.⁸

The term "disability" is defined as the incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of the injury.⁹ Disability is, thus, not synonymous with physical impairment, which may or may not result in an incapacity to earn wages.¹⁰ An employee who has a physical impairment causally related to a federal employment

⁴ 5 U.S.C. § 8101 *et seq.*

⁵ *M.C.*, Docket No. 18-0919 (issued October 18, 2018); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁶ *Id.*; *William A. Archer*, 55 ECAB 674 (2004).

⁷ *V.H.*, Docket No. 18-1282 (issued April 2, 2019); *Amelia S. Jefferson*, 57 ECAB 183 (2005).

⁸ *Dean E. Pierce*, 40 ECAB 1249 (1989).

⁹ 20 C.F.R. § 10.5(f); *S.T.*, Docket No. 18-0412 (issued October 22, 2018); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

¹⁰ *G.T.*, Docket No. 18-1369 (issued March 13, 2019); *Robert L. Kaaumoana*, 54 ECAB 150 (2002).

injury, but who nevertheless has the capacity to earn the wages he or she was receiving at the time of injury, has no disability as that term is used in FECA.¹¹

The Board will not require OWCP to pay compensation for disability in the absence of any medical evidence addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow an employee to self-certify his or her disability and entitlement to compensation.¹²

Where employment is terminated, disability benefits would be payable if the evidence of record established that the claimant was terminated due to injury-related physical inability to perform assigned duties, or the medical evidence of record established that the claimant was unable to work due to an injury-related disabling condition.¹³

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish disability from work for the periods August 23 through October 22, 2017 and February 12, 2019 through January 17, 2020 causally related to the accepted July 26, 2017 employment injury.

During her claimed period of disability, appellant received medical treatment from Dr. Fanto. In work status reports dated August 21, September 13 and 20, October 11 and 26, December 20, 2017 and January 24, 2018, Dr. Fanto diagnosed bilateral wrist pain and advised that appellant was unable to work. However, Dr. Fanto did not provide an opinion on causal relationship. The Board has held that reports that do not provide an opinion on causal relationship are of no probative value.¹⁴ Thus, these reports are insufficient to establish appellant's claim for compensation.

In a letter dated September 27, 2017 and a report dated October 19, 2017, Dr. Fanto diagnosed carpal tunnel syndrome and on March 13, 2018 performed a right carpal tunnel release. In reports dated November 13, 2018 and January 11, 2021, Dr. Allen diagnosed bilateral carpal tunnel syndrome and trigger finger. He opined that appellant's bilateral carpal tunnel syndrome and digital stenosing tenosynovitis were related to repetitive and prolonged work duties. Similarly, in reports dated December 14 and 28, 2020, Dr. Yang diagnosed bilateral hand pain and bilateral carpal tunnel syndrome and performed a right carpal tunnel injection. Likewise, on July 31, 2019, Dr. Wolf treated appellant for persistent bilateral carpal tunnel syndrome, CRPS, and left small finger trigger digit. However, Drs. Fanto, Allen, Yang, and Wolf did not specifically address the

¹¹ See 20 C.F.R. § 10.5(f); *N.M.*, Docket No. 18-0939 (issued December 6, 2018).

¹² See *B.K.*, Docket No. 18-0386 (issued September 14, 2018); *Amelia S. Jefferson*, *supra* note 7; see also *C.S.*, Docket No. 17-1686 (issued February 5, 2019).

¹³ *S.S.*, Docket No. 18-1680 (issued March 4, 2019); *S.J.*, Docket No. 17-0783 (issued April 9, 2018).

¹⁴ See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

relevant issue of disability during the claimed periods and, thus, these reports are of no probative value.¹⁵

On October 6, 2017 Dr. Robinson diagnosed cervicalgia, low back pain, and bilateral carpal tunnel syndrome. Similarly, March 18, 2019, Dr. Anitescu diagnosed neuropathic pain. Likewise, in a report dated November 20, 2019, Dr. Wolf treated appellant for symptoms of CRPS, trigger finger of the left-hand pinky, recurrent or persistent carpal tunnel syndrome. She diagnosed pronator syndrome, trigger finger, and CRPS. Appellant was treated by Dr. Richter on October 17 and 18, 2019, who diagnosed bilateral hand pain related to fibromyalgia and lupus. However, the reports of Drs. Robinson, Anitescu, Wolf, and Richter do not provide an opinion on appellant's disability from work during the claimed period and, thus, these reports are of no probative value.¹⁶ Therefore, the reports of Drs. Robinson, Anitescu, Wolf, and Richter are insufficient to establish appellant's claim.

In an FMLA medical form dated October 24, 2017, Dr. Jones diagnosed bilateral carpal tunnel syndrome, fibromyalgia, and lupus. She noted that appellant was unable to perform her job functions and would be incapacitated from August 21, 2017 through February 1, 2018. In an undated note, Dr. Jones indicated that appellant was off work since August 22, 2017 and remained severely impaired secondary to her bilateral carpal tunnel syndrome and right carpal tunnel release surgery. On October 19, 2018 appellant was evaluated by Dr. Luken for persistent disabling symptoms after right carpal tunnel release on March 13, 2018, which kept her off work from July 2017 through September 2018. While Drs. Jones and Luken provided affirmative opinions that supported causal relationship, they did not offer a rationalized medical explanation in any of these reports to support their opinion. Medical evidence that provides a conclusion, but does not offer a rationalized medical explanation regarding the cause of an employee's condition or disability is of limited probative value on the issue of causal relationship.¹⁷ Thus, these reports are insufficient to establish appellant's claim.

On November 29, 2017 and August 15, 2018 Dr. Fanto diagnosed mild carpal tunnel syndrome and returned appellant to restricted duty. On August 22, 2018 he released her to regular duties. Similarly, on September 19, 2018, Dr. Jones diagnosed bilateral carpal tunnel syndrome status post right carpal tunnel release and released appellant to restricted duty. On February 8, 2021 appellant was evaluated by Dr. Yang who diagnosed bilateral carpal tunnel syndrome and provided work restrictions. However, these reports are of no probative value because the physicians did not provide an opinion that appellant was disabled from work during the claimed period, from August 23 through October 22, 2017 and February 12, 2019 through January 17, 2020, causally related to the accepted July 26, 2017 bilateral carpal tunnel syndrome.¹⁸ Therefore, these reports are also insufficient to establish her claim.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *C.V.*, Docket No. 18-1106 (issued March 20, 2019); *M.E.*, Docket No. 18-0330 (issued September 14, 2018); *A.D.*, 58 ECAB 149 (2006).

¹⁸ *Supra* note 12.

Finally, appellant submitted results from diagnostic testing. The Board has held, however, that diagnostic studies, standing alone, lack probative value as they do not address whether the employment injury caused appellant to be disabled during the claimed period.¹⁹ These reports are, therefore, insufficient to establish the claim.

As the medical evidence of record does not contain rationale sufficient to establish disability from work for the periods August 23 through October 22, 2017 and February 12, 2019 through January 17, 2020 causally related to the accepted July 26, 2017 employment injury, the Board finds that appellant 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 disability from work for the periods August 23 through October 22, 2017 and February 12, 2019 through January 17, 2020 causally related to her accepted July 26, 2017 employment injury.

¹⁹ *A.P.*, Docket No. 21-0300 (issued April 6, 2022); *see also J.S.*, Docket No. 17-1039 (issued October 6, 2017).

ORDER

IT IS HEREBY ORDERED THAT the June 24, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 7, 2022
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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