

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

_____)	
L.D., Appellant)	
)	
and)	Docket No. 22-0214
)	Issued: September 21, 2022
U.S. POSTAL SERVICE, WATERFORD POST OFFICE, Waterford, WI, Employer)	
_____)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On November 24, 2021 appellant filed a timely appeal from an August 30, 2021 merit decision and an October 27, 2021 nonmerit 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

ISSUES

The issues are: (1) whether appellant has met her burden of proof to establish a bilateral wrist or elbow condition causally related to accepted factors of her federal employment; and (2) whether OWCP properly denied appellant's request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the October 27, 2021 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.*

FACTUAL HISTORY

On July 9, 2021 appellant, then a 60-year-old city carrier, filed an occupational disease claim (Form CA-2) alleging that she developed bilateral carpal tunnel syndrome (CTS) caused by repetitive duties of sorting, delivering, and grasping mail. She noted that she first became aware of her condition and realized its relation to factors of her federal employment on June 9, 2021. Appellant did not stop work.

In support of her claim, appellant submitted a narrative statement wherein she related that she had been experiencing pain, numbness and tingling, and loss of grip in both hands for several weeks, which was not subsiding. She noted that her pain worsened when sorting, delivering mail, and handling packages. Appellant indicated that she saw her physician, was diagnosed with CTS, and was fitted for a hand brace. She also noted that she had undergone electromyography (EMG) tests.

Appellant's June 17, 2021 EMG and nerve conduction velocity (NCV) studies were interpreted by Dr. Elizabeth Polachek, Board-certified in physical medicine and rehabilitation, as revealing abnormal findings. Dr. Polachek noted findings which included right greater than left median mononeuropathy about the wrist, *i.e.*, CTS. The studies also revealed right ulnar neuropathy about the elbow and cubital tunnel syndrome.

In a July 7, 2021 duty status report (Form CA-17), Dr. John Schneider, a Board-certified hand surgeon, noted the date of injury as June 9, 2021. He related that appellant's bilateral wrists were affected by CTS, and he indicated that she would not require any restrictions until after surgery.

In a development letter dated July 28, 2021, OWCP informed appellant regarding the deficiencies of her claim. It advised her of the type of additional factual and medical evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond. No response was received.

By decision dated August 30, 2021, OWCP found that the evidence of record was sufficient to establish that the employment factors occurred as described. However, it denied the claim, finding that the medical evidence of record was insufficient to establish causal relationship between her diagnosed medical conditions and the accepted factors of her federal employment.

On September 19, 2021 appellant requested reconsideration. In an accompanying narrative statement, she explained that she was informed by her physician that she had CTS and that she had submitted her medical documents and EMG/NCV studies to OWCP. Appellant also alleged that her occupational activities required flexing of the fingers and wrists, which caused her CTS.

OWCP received additional medical evidence in support of appellant's request for reconsideration. In a June 9, 2021 report, Dr. Schneider diagnosed right CTS and likely left CTS. In a July 7, 2021 report, he noted that he had discussed the etiology of appellant's CTS with appellant. Dr. Schneider related that appellant performed repetitive work activities and that she had severe symptoms with her work activities. He concluded that appellant's CTS had been exacerbated beyond normal progression by her work activities. OWCP also received copies of Dr. Schneider's July 7, 2021 Form CA-17. In a September 7, 2021 report, Dr. Schneider

diagnosed severe right CTS with axon denervation, moderate left CTS without axon denervation, and mild right cubital tunnel syndrome.

In a September 2, 2021 report, Dr. Laurie Potratz, a family medicine specialist, noted that appellant was seen on that date and was provided permanent work restrictions.

OWCP received copies of appellant's June 17, 2021 EMG study.

By decision dated October 27, 2021, OWCP denied appellant's request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA³ 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,⁴ 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.⁶

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.⁷

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁸ The opinion of the physician must be based upon a complete factual and medical background, must be one of reasonable medical certainty, and must be supported by

³ *Supra* note 1.

⁴ *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).

⁵ *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).

⁶ *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).

⁷ *T.W.*, Docket No. 20-0767 (issued January 13, 2021); *L.D.*, Docket No. 19-1301 (issued January 29, 2020); *S.C.*, Docket No. 18-1242 (issued March 13, 2019).

⁸ *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.⁹

In any case where a preexisting condition involving the same part of the body is present and the issue of causal relationship, therefore, involves aggravation, acceleration, or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.¹⁰

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish that a bilateral wrist or elbow condition was causally related to accepted factors of her federal employment.

OWCP received a July 7, 2021 Form CA-17 from Dr. Schneider, which indicated that appellant's diagnosis was bilateral CTS. Dr. Schneider, however, did not opine that her diagnosed condition was causally 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 is of no probative value.¹¹ Accordingly, this report is insufficient to establish appellant's claim.

Appellant also submitted a June 17, 2021 EMG/NCV study read by Dr. Polachek, which revealed bilateral CTS, right ulnar neuropathy about the elbow, and cubital tunnel syndrome. However, the Board has held that diagnostic studies, standing alone, lack probative value as they do not address whether a diagnosed condition was caused by an employment injury.¹² Therefore, this evidence also is insufficient to establish appellant's claim.

As the medical evidence of record is insufficient to establish causal relationship between appellant's diagnosed conditions and the accepted employment factors, 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.

⁹ *D.C.*, Docket No. 19-1093 (issued June 25, 2020); *see L.B.*, Docket No. 18-0533 (issued August 27, 2018).

¹⁰ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); *G.T.*, Docket No. 21-0170 (issued September 29, 2021); *D.W.*, Docket No. 20-0674 (issued September 29, 2020); *V.W.*, Docket No. 19-1537 (issued May 13, 2020); *N.C.*, Docket No. 19-1191 (issued December 19, 2019); *R.D.*, Docket No. 18-1551 (issued March 1, 2019).

¹¹ *L.T.*, Docket No. 20-0582 (issued November 15, 2021); *A.C.*, Docket No. 21-0087 (issued November 9, 2021); *D.B.*, Docket No. 19-0514 (issued January 27, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹² *See P.A.*, Docket No. 18-0559 (issued January 29, 2020); *A.P.*, Docket No. 18-1690 (issued December 12, 2019); *R.M.*, Docket No. 18-0976 (issued January 3, 2019).

LEGAL PRECEDENT -- ISSUE 2

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation. The Secretary of Labor may review an award for or against compensation at any time on his own motion or on application.¹³

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or argument which: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.¹⁴

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.¹⁵ If it chooses to grant reconsideration, it reopens and reviews the case on its merits.¹⁶ If the request is timely, but fails to meet at least one of the requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.¹⁷

ANALYSIS -- ISSUE 2

The Board finds that OWCP improperly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

On reconsideration appellant did not show that OWCP erroneously applied or interpreted a specific point of law and did not advance a new and relevant legal argument not previously considered. Thus, she is not entitled to a review of the merits based on the first and second above-noted requirements under 20 C.F.R. § 10.606(b)(3).¹⁸

The underlying issue on reconsideration is medical in nature, whether appellant's diagnosed bilateral wrist or elbow conditions were causally related to accepted factors of her federal employment. In support of her request for reconsideration, appellant submitted new reports from Dr. Schneider dated June 9, July 7, and September 7, 2021 and a September 2, 2021 report from Dr. Potratz. Dr. Schneider specifically opined in his July 7, 2021 report that appellant's CTS

¹³ *Supra* note 1 at § 8128(a); *see S.A.*, Docket No. 21-0813 (issued December 27, 2021); *see also P.S.*, Docket No. 20-1090 (issued September 9, 2021); *W.C.*, 59 ECAB 372 (2008).

¹⁴ 20 C.F.R. § 10.606(b)(3); *see also K.L.*, Docket No. 17-1479 (issued December 20, 2017); *C.N.*, Docket No. 08_1569 (issued December 9, 2008).

¹⁵ *Id.* at § 10.607(a). The one-year period begins on the next day after the date of the original contested decision. *Supra* note 10 at Chapter 2.1602.4 (February 2020). Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the received date in the Integrated Federal Employees' Compensation System (iFECS). *Id.* at Chapter 2.1602.4(b).

¹⁶ 20 C.F.R. § 10.608(a).

¹⁷ *Id.* at § 10.608(b); *M.S.*, Docket No. 19-0291 (issued June 21, 2019); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

¹⁸ *Id.* at § 10.606(b)(3); *see R.L.*, Docket No. 21-0220 (issued October 19, 2021); *K.F.*, Docket No. 19-1846 (issued November 3, 2020); *L.D.*, Docket No. 18-1468 (issued February 11, 2019).

had been exacerbated beyond normal progression by her work activities. As this new evidence addresses the underlying issue of whether her diagnosed medical condition was caused or exacerbated by her employment activities, the Board finds that this report constitutes relevant and pertinent new evidence that was not substantially similar to evidence previously of record. Therefore, the Board finds that the submission of this evidence requires reopening of appellant's claim for merit review pursuant to the third requirement of 20 C.F.R. § 10.606(b)(3).¹⁹

The Board will, therefore, set aside the October 27, 2021 OWCP decision and remand the case for an appropriate merit decision on appellant's claim.²⁰

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a bilateral wrist or elbow condition causally related to accepted factors of her federal employment. The Board further finds that OWCP improperly denied her request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

¹⁹ 20 C.F.R. § 10.606(b)(3); *see M.N.*, Docket No. 22-0243 (issued June 28, 2022); *see also S.C.*, 20-1661 (issued May 6, 2022); *J.T.*, Docket No. 20-1301 (issued July 28, 2021); *M.J.*, Docket No. 20-1067 (issued December 23, 2020).

²⁰ *F.K.*, Docket No. 21-0998 (issued December 29, 2021).

ORDER

IT IS HEREBY ORDERED THAT the August 30, 2021 decision of the Office of Workers' Compensation Programs is affirmed. The October 27, 2021 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: September 21, 2022
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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