

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

D.B., Appellant)	
)	
and)	Docket No. 21-0731
)	Issued: March 14, 2023
U.S. POSTAL SERVICE, PITTSBURGH)	
NETWORK DISTRIBUTION CENTER,)	
Warrendale, PA, Employer)	

Appearances:
Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On April 16, 2021 appellant, through counsel, filed a timely appeal from a March 29, 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 a medical condition causally related to the accepted factors of her federal employment.

FACTUAL HISTORY

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

On June 10, 2015 appellant, then a 47-year-old custodian, filed an occupational disease claim (Form CA-2) alleging that she developed bilateral carpal tunnel syndrome due to factors of her federal employment. She explained that her physicians were unsure if her current symptoms were due to another work-related injury or to carpal tunnel syndrome. Appellant noted that she first became aware of her condition and realized its relation to her federal employment on December 5, 2013.⁴ She retired on January 2, 2015.

Appellant was treated by Dr. Ellen Mustovic, a physiatrist, on March 3, 2015, who performed an electromyogram and nerve conduction velocity (EMG/NCV) study that revealed electrical evidence of bilateral median mononeuropathy at the wrist, severe on the right side and moderately severe on the left side. Dr. Mustovic indicated that appellant's condition progressed since her last study in December 2013. She opined that some of the burning in appellant's hands was related to the September 18, 2013 injury and also to the development of bilateral carpal tunnel syndrome. On July 6, 2015 Dr. Mustovic reported that appellant had neck pain and symptoms in both hands and opined that appellant used her hands on a repetitive basis that could cause bilateral carpal tunnel syndrome.

In a June 10, 2015 statement, appellant further described her alleged injury and employment factors.

In a development letter dated August 5, 2015, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond.

In a letter dated August 14, 2015, the employing establishment challenged appellant's claim.

³ *Order Remanding Case*, Docket No. 19-0262 (issued December 31, 2019).

⁴ OWCP assigned the present claim OWCP File No. xxxxxx783. It previously accepted appellant's September 18, 2013 traumatic injury claim (Form CA-1) for a neck sprain under OWCP File No. xxxxxx139. On June 24, 2015 OWCP proposed to terminate her wage-loss compensation and medical benefits under OWCP File No. xxxxxx139, noting that she did not have residuals of her accepted work-related neck sprain of September 18, 2013. On August 5, 2015 it finalized the termination of appellant's wage-loss compensation and medical benefits under OWCP File No. xxxxxx139, effective August 22, 2015. On May 23, 2016 an OWCP hearing representative affirmed the August 5, 2015 decision.

OWCP subsequently received additional evidence. In an August 27, 2015 report, Dr. Mustovic noted that appellant reported tingling in her hands that was consistent with carpal tunnel syndrome. She indicated that EMG/NCV studies confirmed the existence of bilateral carpal tunnel syndrome. Dr. Mustovic described appellant's housekeeping duties, which involved repetitive use of her hands that could be a causal factor for bilateral carpal tunnel syndrome.

By decision dated September 9, 2015, OWCP denied appellant's occupational disease claim, finding that the medical evidence of record was insufficient to establish that her diagnosed bilateral carpal tunnel syndrome was causally related to the accepted factors of her federal employment.

On September 16, 2015 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held on May 17, 2016. Appellant subsequently submitted additional evidence.

In a September 21, 2015 report, Dr. Mustovic related additional details regarding appellant's duties performed at the onset of her carpal tunnel symptoms. She noted that appellant frequently used a floor cleaner, which had vibration associated with its use. Dr. Mustovic opined, within a reasonable degree of medical certainty, that appellant's job duties as a housekeeper were a causal factor in the development of her bilateral carpal tunnel syndrome. On June 6, 2016 she reported initially treating appellant for neck pain and numbness in her hands related to the work injury of September 18, 2013. An EMG/NCV study revealed bilateral carpal tunnel syndrome, but no evidence of cervical radiculopathy. Dr. Mustovic again opined, within a reasonable degree of medical certainty, that appellant's carpal tunnel syndrome was related to her work duties. She indicated that appellant's work duties as a housekeeper involved use of a large floor cleaner with an associated vibration. Dr. Mustovic opined that this task, along with the repetitive nature of appellant's housekeeping duties including repetitive grasping caused carpal tunnel syndrome.

By decision dated July 28, 2016, OWCP's hearing representative vacated the September 9, 2015 decision and remanded the case for further medical development. She found that Dr. Mustovic provided an affirmative opinion that appellant's work duties caused or contributed to her diagnosed bilateral carpal tunnel syndrome, which warranted further development by a second opinion physician.

On December 8, 2016 OWCP referred appellant, the case record and a statement of accepted facts (SOAF) for a second opinion examination to Dr. Victoria M. Langa, a Board-certified orthopedic surgeon. It requested that Dr. Langa evaluate whether appellant developed bilateral carpal tunnel syndrome causally related to the accepted factors of her federal employment.

In a December 30, 2016 report, Dr. Langa discussed appellant's factual and medical history and reported physical examination findings.⁵ Examination of the wrists/hands revealed no swelling, no tenderness with circumferential palpation of each wrist, full active range of motion, positive Phalen's sign bilaterally, positive Tinel's sign over both carpal tunnels with radiation into the middle digits bilaterally, full active range of motion of all digits without triggering, and altered

⁵ Dr. Langa reported evaluating appellant on February 18, 2015 for another work-related injury that occurred on September 18, 2013 OWCP File No. xxxxxx139.

sensation to light touch in both hands, thumb, index, middle, and right digits. Dr. Langa diagnosed bilateral carpal tunnel syndrome. She opined that appellant's bilateral carpal tunnel syndrome was not work related. Dr. Langa indicated that appellant's work duties were not repetitive in nature and appellant performed a variety of different work activities over any given day. She noted that appellant's usual work activities did not require appellant to work with her wrists in extreme dorsiflexion or palmar flexion for prolonged periods of time, nor did appellant's work activities require prolonged excessive strenuous gripping. Dr. Langa advised that to the extent that appellant operated machines for buffing the floor there was no indication that this activity was performed continuously over prolonged periods of time. She opined that appellant had no work-related disability because her bilateral carpal tunnel syndrome was not work related. In a work capacity evaluation (Form OWCP-5c) dated December 30, 2016, Dr. Langa noted that appellant could perform her usual job without restriction.

By decision dated January 12, 2017, OWCP denied modification of the September 9, 2015 decision, finding that the medical evidence of record was insufficient to establish causal relationship between the diagnosed medical conditions and the accepted factors of appellant's federal employment. It found that the weight of the medical opinion evidence rested with Dr. Langa's opinion.

On January 18, 2017 appellant requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held on July 11, 2017.

By decision dated September 20, 2017, OWCP's hearing representative vacated the January 12, 2017 decision, finding that a conflict in medical opinion evidence existed between Dr. Mustovic, appellant's treating physician and Dr. Langa, OWCP's second opinion examiner, regarding whether the diagnosed bilateral carpal tunnel syndrome was causally related to appellant's employment duties. She remanded the case to OWCP for an impartial medical examination.

On February 16, 2018 OWCP referred appellant, along with an updated SOAF, the medical record, and a series of questions, to Dr. Mark E. Baratz, a Board-certified orthopedist serving as the impartial medical examiner (IME), to resolve the conflict in medical opinion between Dr. Mustovic and Dr. Langa.

In a March 22, 2018 report, Dr. Baratz noted his review of the SOAF and the medical record. On examination of the hands, there was no evidence of neurotrophic changes, no thenar atrophy on either hand, full range of motion of the fingers and wrist, positive Tinel's sign bilaterally, and positive Phalen's sign bilaterally. Dr. Baratz diagnosed bilateral carpal tunnel syndrome. He concluded that appellant's bilateral carpal tunnel syndrome was not related to her work activities. Dr. Baratz indicated that she worked as a custodian since 1997 and had symptoms in her hands since 2004, but insufficiently severe to consider treatment until a neck injury on September 18, 2013. He noted that there was no reason why appellant's carpal tunnel syndrome symptoms would be exacerbated by a neck injury. Dr. Baratz indicated that in her deposition testimony she indicated that she would use a buffer all day every day for a month, but when he spoke to her, she stated that she would use a buffer for four hours a day for two weeks. He opined that in either case this would be inadequate exposure to precipitate or exacerbate carpal tunnel syndrome. Dr. Baratz indicated that heavy vibration over an extended period of time can cause

carpal tunnel syndrome; however, there did not seem to be sufficient evidence to support sustained vibration exposure in this case. He noted that performing a variety of tasks was protective against the onset of carpal tunnel syndrome and appellant described performing a variety of tasks.

By decision dated April 9, 2018, OWCP denied modification of the January 12, 2017 decision. It found that the weight of the medical opinion evidence rested with Dr. Baratz' opinion.

On April 17, 2018 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held on July 11, 2018.

By decision dated August 29, 2018, OWCP's hearing representative affirmed the April 9, 2018 decision. OWCP referenced evidence associated with OWCP File No. xxxxxx139 and discussed Dr. Langa's February 18, 2015 second opinion examination that was performed in this case.

On November 16, 2018 appellant appealed to the Board.⁶ By order dated December 31, 2019, the Board set aside the decision dated August 29, 2018 and remanded the case to OWCP for further development. The Board found that OWCP relied upon evidence associated with OWCP File No. xxxxxx139 in denying appellant's claim, but neglected to include that evidence in the current case file.

On remand, OWCP administratively combined OWCP File Nos. xxxxxx783 and xxxxxx139, with the latter serving as the master file.

By decision dated May 27, 2020, OWCP denied modification.

OWCP subsequently received additional evidence, including a May 18, 2020 report, wherein Dr. Gregory F. Habib, a Board-certified orthopedist, noted his treatment of appellant for lumbar and cervical spine pain and dysesthesia of the hands and fingers. Appellant reported sustaining neck and back injuries at work on September 18, 2003. Dr. Habib diagnosed other cervical disc degeneration at C4-5, C5-6, and C6-7, lumbar spondylolisthesis, and bilateral carpal tunnel syndrome. He recommended activity modification and anti-inflammatory medication. On August 10, 2020 Dr. Habib reviewed the diagnostic studies and diagnosed carpal tunnel syndrome bilateral upper limbs and recommended right carpal tunnel release.

On June 8, 2020 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held on September 14, 2020.

On July 27, 2020 Dr. Mustovic performed an EMG/NCV study that revealed electrical evidence of bilateral median mononeuropathy at the wrist, severe in nature with electrical evidence of chronic reinnervation. She found that appellant's condition progressed since the initial study of December 5, 2013.

⁶ *Supra* note 3.

By decision dated November 25, 2020, OWCP's hearing representative affirmed the May 27, 2020 decision.

OWCP continued to receive additional evidence. Appellant was evaluated by Dr. Sami E. Moufawad, a Board-certified physiatrist, on January 9, 2021. Dr. Moufawad noted that she did not come to the office due to the COVID-19 pandemic, but he reviewed the records provided to him and interviewed her over the telephone for over an hour. He indicated that appellant started working at the employing establishment in 1994 as a mail handler and her duties included loading and unloading sacks and pieces of mail weighing between one and 75 pounds, loading parcel trucks, and operating a hand jack. The mail handler job involved using her hands for gripping and grasping pieces of mail repetitively throughout the day.

In 1997, appellant switched to the maintenance department as a custodian moving furniture, moving sack racks, dusting, vacuuming, sweeping, mopping, stripping floors, waxing floors, buffing floors, pulling heavy trash bags, operating various pieces of heavy machinery, and cleaning windows. These tasks put her wrists in extreme extension or flexion for several minutes in addition she would clench her fists around the trash bags. Appellant reported operating the buffer machine for two days for four to eight hours a day, she would hold the handles of the buffer machine and use a trigger on the handle. She operated a vibrating compactor and would push a button on the compactor for about a minute to compress the load four or five times, two to three times a day. Appellant reported alternating jobs; however, most jobs included a component of vibration or extreme range of motion of her wrists in flexion or in extension. She developed electric sensation in her wrists and hands in 2004, but tolerated the symptoms without treatment until her work-related neck injury on September 18, 2003.

Dr. Moufawad opined that based on the interview with appellant, her work duties and review of the medical reports, that the bilateral carpal tunnel syndrome confirmed by electrodiagnostic studies is causally related to her work duties. He indicated that the exposure of the hands and wrists to vibration would induce repetitive trauma to the structures crossing the carpal tunnel and the microtrauma will lead to edema and swelling and increase the size of the structures of the carpal tunnel causing increased pressure on the median nerve. Dr. Moufawad disagreed with Drs. Langa's and Baratz' opinion that appellant did not have enough work exposure to induce carpal tunnel syndrome. He noted that appellant repeatedly used large machines inducing vibration, pushing and pulling racks, and carrying sacks and pieces of mail weighing one to 75 pounds. Dr. Moufawad opined that the use of hands and wrists in a repetitive fashion or in extreme range of motion lead to microtrauma to the wrists leading to edema and increased pressure in the carpal tunnels which led to increased pressure on the median nerves against the surrounding tissues. He indicated that each one of the tasks performed would lead to internal wrist edema and increased pressure and as she went from one task to another. Dr. Moufawad opined that the performance of the job as a mail handler and then custodian using variable machines and performing multiple tasks associated with vibration, putting the wrists in extremes, grasping, pulling, and pushing led to the development of cumulative edema in the carpal tunnels, which in turn led to the progressive development of cumulative injury to the median nerves that slowly accumulated and led to the clinical development of carpal tunnel.

By decision dated March 29, 2021, OWCP denied modification of the November 25, 2020 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁷ 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 period of FECA,⁸ 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.⁹ These are the essential elements of each and every compensation claim, regardless of whether the claim is based upon a traumatic injury or an occupational disease.¹⁰

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant 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 identified employment factors.¹¹

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.¹² The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹³ Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents, is sufficient to establish causal relationship.¹⁴

Section 8123(a) of FECA provides that, if there is a disagreement between the physician making the examination for the United States and the physician of an employee, the Secretary shall appoint a third physician (known as a referee physician or impartial medical specialist) who shall

⁷ *Supra* note 2.

⁸ *E.W.*, Docket No. 19-1393 (issued January 29, 2020); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁹ *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

¹⁰ 20 C.F.R. § 10.115; *E.S.*, Docket No. 18-1580 (issued January 23, 2020); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

¹¹ *See T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

¹² *J.F.*, Docket No. 18-0492 (issued January 16, 2020); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

¹³ *A.M.*, Docket No. 18-0562 (issued January 23, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

¹⁴ *E.W.*, *supra* note 8; *Gary L. Fowler*, 45 ECAB 365 (1994).

make an examination.¹⁵ This is called a referee examination and OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.¹⁶ When there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.¹⁷

ANALYSIS

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

Dr. Baratz, an IME, opined in his March 22, 2018 report that appellant's bilateral carpal tunnel syndrome was not related to her work activities. He opined that she had inadequate exposure to precipitate or exacerbate carpal tunnel syndrome. Dr. Baratz indicated that heavy vibration over an extended period of time could cause carpal tunnel syndrome; however, there did not seem to be sufficient evidence to support sustained vibration exposure in this case. He noted that performing a variety of tasks was protective against the onset of carpal tunnel syndrome and appellant described performing a variety of tasks.

OWCP denied the claim, according the weight of the medical evidence to the IME. It, thereafter, continued to receive additional evidence. In a January 9, 2021 report, Dr. Moufawad described appellant's employment duties and opined that the bilateral carpal tunnel syndrome is causally related to her work duties. He indicated that the exposure of the hands and wrists to vibration would induce repetitive trauma to the structures crossing the carpal tunnel, and the microtrauma will lead to edema and swelling and increase the size of the structures of the carpal tunnel causing increased pressure on the median nerve. Dr. Moufawad disagreed with Drs. Langa and Baratz' opinions that appellant did not have enough work exposure to induce carpal tunnel syndrome. He noted that she repeatedly used large machines inducing vibration, pushing and pulling racks, and carrying sacks and pieces of mail weighing one to 75 pounds. Dr. Moufawad opined that the use of hands and wrists in a repetitive fashion or in extreme range of motion lead to microtrauma to the wrists leading to edema and increased pressure in the carpal tunnels which led to increased pressure on the median nerves against the surrounding tissues. He indicated that each one of the tasks performed would lead to internal wrist edema and increased pressure and as appellant went from one task to another. Dr. Moufawad opined that the performance of the job as a mail handler and then custodian using variable machines and performing multiple tasks associated with vibration, putting the wrists in extremes, grasping, pulling, and pushing led to the development of cumulative edema in the carpal tunnels, which in turn led to the progressive development of cumulative injury to the median nerves that slowly accumulated and led to the clinical development of carpal tunnel. OWCP, however, did not refer Dr. Moufawad's opinion to

¹⁵ 5 U.S.C. § 8123(a); *M.W.*, Docket No. 19-1347 (issued December 5, 2019); *C.T.*, Docket No. 19-0508 (issued September 5, 2019); *R.S.*, Docket No. 10-1704 (issued May 13, 2011); *S.T.*, Docket No. 08-1675 (issued May 4, 2009).

¹⁶ 20 C.F.R. § 10.321.

¹⁷ *M.W.*, *supra* note 15; *C.T.*, *supra* note 15; *Darlene R. Kennedy*, 57 ECAB 414 (2006); *Gloria J. Godfrey*, 52 ECAB 486 (2001).

the IME for comment.¹⁸ The Board notes that proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter. While the claimant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence to see that justice is done.¹⁹ Once OWCP undertakes to develop the medical evidence, it has the responsibility to do so in a manner that will resolve the relevant issues in the case.²⁰

Accordingly, the Board finds that the case must be remanded for further development. On remand, OWCP shall prepare a complete and accurate SOAF, and request that the IME submit a supplemental opinion that considers all additional employment-related conditions and the well-rationalized opinion of Dr. Moufawad. Following 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.

¹⁸ See *Stephanie M. Gilliam*, Docket No. 01-538 (issued March 27, 2002)

¹⁹ See *T.C.*, Docket No. 19-0771 (issued March 17, 2021); *E.W.*, Docket No. 17-0707 (issued September 18, 2017).

²⁰ See *M.B.*, Docket No. 21-0060 (issued March 17, 2022); *D.S.*, Docket No. 19-0292 (issued June 21, 2019).

ORDER

IT IS HEREBY ORDERED THAT the March 29, 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: March 14, 2023
Washington, DC

Patricia H. Fitzgerald, Deputy 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