

FACTUAL HISTORY

On November 10, 2022 appellant, then a 59-year-old claims examiner, filed an occupational disease claim (Form CA-2) alleging that her carpal tunnel syndrome and trigger finger conditions were aggravated by repetitive use of a mouse and typing on the computer. She did not stop work.

In a development letter dated November 16, 2022, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed to establish her claim and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond. In a separate development letter of even date, it requested that the employing establishment provide additional information regarding appellant's claim, including comments from a knowledgeable supervisor. Neither party responded.

By decision dated December 20, 2022, OWCP denied appellant's occupational disease claim, finding that the evidence of record was insufficient to establish the alleged factors of federal employment. It noted that no statement had been received from appellant explaining how her federal employment contributed to the alleged condition. OWCP, therefore, concluded that the requirements had not been met to establish an injury as defined by FECA.

On January 19, 2023 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review. She submitted a completed development questionnaire, along with medical evidence.

In reports dated April 2 and May 21, 2014, Dr. Christopher Goll, a Board-certified orthopedic surgeon, detailed examination findings and reviewed x-rays. Diagnoses included bilateral carpal tunnel syndrome and trigger finger. Dr. Goll noted that appellant had undergone flexor tendon injections.

An office note dated May 21, 2014 contained examination findings and diagnoses of bilateral carpal tunnel syndrome and trigger finger. Kristi Hurt, an advanced registered nurse practitioner, signed the report.

The record also contains office visit notes dated December 27, 2013, January 2, 2014, March 16 and November 16, 2020, August 24, 2021, and December 21, 2022 from Dr. Brett C. Puckett, a Board-certified orthopedic surgeon, noting appellant's medical course and detailed examination findings. On physical examination Dr. Puckett reported that appellant had normal bilateral wrist range of motion (ROM), strength and musculoskeletal findings, positive bilateral median nerve compression, positive right Tinel's sign, and negative left Tinel's sign. Diagnoses included osteoarthritis of the first carpometacarpal joint of the left hand, osteoarthritis of joint of the right hand, bilateral carpal tunnel syndrome, and acquired trigger finger of the left little finger, ring finger, and middle finger.

A May 13, 2014 electromyogram (EMG) study related findings of mild-to-moderate bilateral carpal tunnel syndrome, probable left mild ulnar neuropathy, and no evidence of generalized peripheral neuropathy.

By decision dated July 19, 2023, OWCP's hearing representative modified the December 20, 2022 decision to find that appellant established the factual component of her claim; however, the claim remained denied as the medical evidence of record was insufficient to establish that the diagnosed conditions were causally related to the accepted employment factors.

On July 24, 2023 appellant requested reconsideration. No additional evidence or argument was received.

By decision dated August 9, 2023, 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 FECA² 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,³ 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.⁴ 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.⁵

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 upon a complete factual and medical background, must be one of reasonable medical certainty, and must be supported by

² *Id.*

³ *L.D.*, Docket No. 22-0214 (issued September 21, 2022); *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).

⁴ *L.D.*, *id.*; *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).

⁵ *L.D., 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).

⁶ *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).

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

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.⁹

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish an upper extremity condition causally related to accepted factors of her federal employment.

In support of her claim, appellant submitted reports dated April 2, and May 21, 2014 from Dr. Goll and reports dated December 27, 2013, January 2, 2014, March 16 and November 16, 2020, August 24, 2021, and December 21, 2022 from Dr. Puckett. Neither physician, however, offered an opinion on causal relationship. 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 on the issue of causal relationship.¹⁰ Thus, the Board finds that the evidence from Dr. Goll and Dr. Puckett is insufficient to establish appellant's claim.

The record contains a May 21, 2014 office visit note signed by an advanced registered nurse practitioner who diagnosed bilateral carpal tunnel syndrome and trigger finger. However, certain healthcare providers such as physician assistants, nurse practitioners, and physical therapists are not considered physicians as defined under FECA.¹¹ Consequently, their reports will not suffice for purposes of establishing entitlement to FECA benefits.¹²

The May 13, 2014 EMG study of record revealed mild-to-moderate bilateral median carpal tunnel syndrome, probable left mild ulnar neuropathy, and no evidence of generalized peripheral

⁸ *D.C.*, Docket No. 19-1093 (issued June 25, 2020); *see L.B.*, Docket No. 18-0533 (issued August 27, 2018).

⁹ 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).

¹⁰ *See C.R.*, Docket No. 23-0330 (issued July 28, 2023); *K.K.*, Docket No. 22-0270 (issued February 14, 2023); *S.J.*, Docket No. 19-0696 (issued August 23, 2019); *M.C.*, Docket No. 18-0951 (issued January 7, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹¹ Section 8101(2) provides that physician "includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law." 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). *See supra* note 9 at Chapter 2.805.3a(1) (September 2020); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA). *See also T.E.*, Docket No. 23-0484 (issued September 8, 2023 (nurse practitioners are not considered physicians as defined under FECA).

¹² *See S.P.*, Docket No. 23-0327 (issued August 8, 2023); *M.C.*, Docket No. 19-1074 (issued June 12, 2020) (nurse practitioners are not considered physicians under FECA).

neuropathy. The Board has held that diagnostic test reports, standing alone, lack probative value as they do not provide an opinion on causal relationship between the employment incident and a diagnosed condition.¹³

As the medical evidence of record is insufficient to establish causal relationship between the diagnosed upper extremity conditions and the accepted factors of federal employment, 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.

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.¹⁴

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.¹⁵

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.¹⁶ If it chooses to grant reconsideration, it reopens and reviews the case on its merits.¹⁷ 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.¹⁸

¹³ See *J.A.*, Docket No. 22-0869 (issued July 3, 2023); *L.M.*, Docket No. 22-0667 (issued November 1, 2022); *T.H.*, Docket No. 18-1736 (issued March 13, 2019).

¹⁴ *Supra* note 1 at § 8128(a); see *L.D.*, *supra* note 3; *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).

¹⁵ 20 C.F.R. § 10.606(b)(3); see also *L.D.*, *id.*; *K.L.*, Docket No. 17-1479 (issued December 20, 2017); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

¹⁶ *Id.* at § 10.607(a). The one-year period begins on the next day after the date of the original contested decision. *Supra* note 9 at Chapter 2.1602.4 (September 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).

¹⁷ *Id.* at § 10.608(a).

¹⁸ *Id.* at § 10.608(b); *L.D.*, *supra* note 3; *M.S.*, Docket No. 19-0291 (issued June 21, 2019); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly 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 or second above-noted requirements under 20 C.F.R. § 10.606(b)(3).¹⁹

Additionally, appellant has not submitted relevant and pertinent new evidence in support of her reconsideration request. Consequently, she is not entitled to a review of the merits of the claim based on the third above-noted requirement under 20 C.F.R. § 10.606(b)(3).²⁰

The Board, accordingly, finds that appellant has not met any of the requirements under 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.²¹

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish an upper extremity condition causally related to the accepted factors of her federal employment. The Board further finds that OWCP properly denied appellant's request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

¹⁹ *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).

²⁰ *See R.C.*, Docket No. 22-1118 (issued December 14, 2022); *L.M.*, Docket No. 22-0902 (issued September 19, 2022); *W.C.*, Docket No. 20-0691 (issued July 19, 2022); *M.K.*, Docket No. 21-1399 (issued July 14, 2022); *M.O.*, Docket No. 19-1677 (issued February 25, 2020); *C.B.*, Docket No. 18-1108 (issued January 22, 2019).

²¹ *S.T.*, Docket No. 23-0185 (issued July 18, 2023); *D.G.*, Docket No. 19-1348 (issued December 2, 2019); *S.H.*, Docket No. 19-1115 (issued November 12, 2019); *M.E.*, 58 ECAB 694 (2007); *Susan A. Filkins*, 57 ECAB 630 (2006).

ORDER

IT IS HEREBY ORDERED THAT the July 19 and August 9, 2023 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: February 5, 2024
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