

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

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**M.S., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Bronx, NY, Employer**

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**Docket No. 23-0866  
Issued: March 8, 2024**

*Appearances:*

*Alan J. Shapiro, Esq., for the appellant<sup>1</sup>  
Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On June 12, 2023 appellant, through counsel, filed a timely appeal from a June 1, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant has met her burden of proof to establish a left-hand condition causally related to the accepted factors of her federal employment.

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<sup>1</sup> 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.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

### **FACTUAL HISTORY**

On August 15, 2022 appellant, then a 26-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging left-hand carpal tunnel syndrome due to factors of her federal employment.<sup>3</sup> She noted that in August 2022 she worked double the normal amount of mail. Appellant further indicated that she first became aware of the condition on July 20, 2022, and she subsequently became aware of the relationship to her employment on August 6, 2022. On the reverse side of the claim form, the employing establishment indicated that appellant first reported her condition on August 20, 2022. It further indicated that she stopped work on August 17, 2022. OWCP assigned File No. xxxxxx329.

In a development letter dated August 24, 2022, OWCP advised appellant of the deficiencies in her claim. It noted that no medical evidence was received. OWCP also advised her of the type of factual and medical evidence needed to establish the claim and provided a questionnaire for her completion. Further, it requested that she provide a narrative report from a physician containing a detailed description of findings and a diagnosis, as well as a medical explanation of how the work incident caused or aggravated a medical condition. OWCP afforded appellant 30 days to respond. In a separate development letter of August 24, 2022, it requested that the employing establishment provide additional information regarding appellant's claim. OWCP specifically requested that a knowledgeable supervisor address appellant's claim. By letter dated September 2, 2022, the employing establishment controverted the claim, indicating that appellant had never reported an injury causing carpal tunnel syndrome.

By decision dated October 14, 2022, OWCP denied appellant's occupational disease claim, finding that the evidence of record was insufficient to establish a diagnosed medical condition in connection with the accepted employment factors. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On October 20, 2022 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review regarding the October 14, 2022 decision.

In a supplemental statement received on November 16, 2022, appellant explained that she never experienced wrist pain before she began work at the employing establishment. She related that a diagnostic test on September 21, 2021 assessed her condition as left cubital syndrome. Appellant further related that on "August 13, 2022" she worked double the normal amount of mail, which caused a severe flare of her right wrist cubital tunnel syndrome.

On November 16, 2022 appellant was treated by Dr. Benjamin Berenfeld, a Board-certified orthopedic surgeon. She related left hand and elbow pain from a work incident on

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<sup>3</sup> Appellant previously filed a traumatic injury claim (Form CA-1) for an alleged July 18, 2021 traumatic injury to his left elbow. OWCP assigned the claim OWCP File No. xxxxxx458. It accepted the claim for a left elbow sprain on August 30, 2021. By decision dated March 14, 2023, OWCP denied appellant's recurrence claim as appellant had not established that she was disabled/further disabled due to a material change or worsening of her accepted work-related conditions. OWCP File No. xxxxxx458 has been administratively combined by OWCP with OWCP File No. xxxxxx329, with the former serving as the master file.

August 13, 2022. Appellant indicated that she was wheeling a mail cart at work and the handle of the cart “came off the handle post.” She noted she was previously diagnosed with left elbow tendinitis and treated with corticosteroid injections. Appellant further related a previous diagnosis of carpal tunnel syndrome following an EMG as well as her symptoms of numbness in the left hand, specifically in her thumb, index, and long fingers. She also noted having prior issues in her left upper extremity prior to the alleged work incident. Dr. Berenfeld noted left hand pain and numbness. He opined that the handle coming off the mail cart did not cause the carpal tunnel syndrome. Dr. Berenfeld noted that “overuse” was “definitely possible,” but carpal tunnel syndrome is “unlikely related to her line of duty” and that it should not be treated as a workers’ compensation injury.

On January 12, 2023 a telephonic hearing was held.

By decision dated February 13, 2023, an OWCP hearing representative modified OWCP’s October 14, 2022 decision finding that appellant had established the factual component of the claim. The hearing representative further found, however, that she had not established that the accepted factors of her federal employment caused a medical condition.

Appellant filed a claim for compensation (Form CA-7) on April 12, 2023, claiming wage loss from March 10 through April 30, 2023.

On May 26, 2023 appellant, through counsel, requested reconsideration. In support of her reconsideration request, appellant submitted a report dated May 1, 2023 from Dr. Stephen Wade, a Board-certified physiatrist. Dr. Wade indicated that he saw appellant for a “work-related injury” when she allegedly injured her left elbow and wrist. Appellant related that she was pushing a cart when she felt a pop in her left elbow, and that she also had left hand pain “due to the nature of her work.” Dr. Wade opined that her “carpal tunnel injury” was caused by her employment.

By decision dated June 1, 2023, OWCP denied modification of its February 13, 2023 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>4</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, 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

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<sup>4</sup> *Id.*

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, 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 by the claimant.<sup>7</sup>

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.<sup>8</sup> The opinion of the physician must be based on a complete factual and medical background, 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.<sup>9</sup> 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.<sup>10</sup>

### ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a left-hand condition causally related to the accepted employment factors.

On November 16, 2022 Dr. Berenfeld noted that “overuse” was “definitely possible,” but carpal tunnel syndrome is “unlikely related to her line of duty” and that it should not be treated as a workers’ compensation injury. The Board has held that evidence which negates disability during the claimed period, is of no probative value and therefore insufficient to establish the disability claim.<sup>11</sup> This report is, therefore, insufficient to establish appellant’s claim.

Appellant further submitted a report dated May 1, 2023 from Dr. Wade who opined that her “carpal tunnel injury” was caused by her employment. The Board has explained that a

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<sup>5</sup> *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>6</sup> *B.H.*, Docket No. 20-0777 (issued October 21, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>7</sup> *S.H.*, Docket No. 22-0391 (issued June 29, 2022); *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).

<sup>8</sup> *D.S.*, Docket No. 21-1388 (issued May 12, 2022); *I.J.*, Docket No. 19-1343 (issued February 26, 2020); *T.H.*, 59 ECAB 388 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>9</sup> *D.S. id.*; *D.J.*, Docket No. 19-1301 (issued January 29, 2020).

<sup>10</sup> *T.M.*, Docket No. 22-0220 (issued July 29, 2022); *S.S.*, Docket No. 18-1488 (issued March 11, 2019); *see also J.L.*, Docket No. 18-1804 (issued April 12, 2019).

<sup>11</sup> *T.W.*, Docket No. 19-0677 (issued August 16, 2019); *N.A.*, Docket No. 23-0532 (issued January 24, 2024)

purported diagnosis of “injury” is not a firm diagnosis.<sup>12</sup> While Dr. Wade offered an opinion on the causal relationship between appellant’s left-hand condition and appellant’s accepted employment factors, the Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how a given medical condition was related to accepted employment factors. This report is therefore insufficient to establish appellant’s claim.

Appellant also submitted narrative statements in support of her claim. As noted above, causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.<sup>13</sup> A lay opinion regarding causal relationship does not constitute probative medical evidence.<sup>14</sup> Appellant’s statements are therefore also insufficient to establish the claim.

As the evidence of record does not include a medical report establishing a left-hand condition causally related to the accepted employment factors, 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 a left-hand condition causally related to the accepted employment factors.

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<sup>12</sup> *A.T.*, Docket No. 21-0985 (issued April 27, 2022); *R.L.*, Docket No. 20-0284 (issued June 30, 2020).

<sup>13</sup> *Supra* note 8.

<sup>14</sup> *See E.H.*, Docket No. 19-0365 (issued March 17, 2021).

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 1, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 8, 2024  
Washington, DC

Alec J. Koromilas, 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