

¹ 5 U.S.C. § 8101 *et seq.*

hand, buttocks, left knee, and left ankle when she was attacked by a dog while in the performance of duty. OWCP accepted the claim for an open bite of the left hand.²

An electromyogram (EMG) and nerve conduction velocity (NCV) study obtained on August 5, 2020 revealed left carpal tunnel syndrome.

In a report dated August 5, 2020, Dr. Matthew McClure, a Board-certified physiatrist, recounted appellant's complaints of pain radiating from the wrist to the tips of the fingers with "paresthesias including numbness and tingling." On examination he observed healing scars at the left forearm, wrist, and hand from dog bites and lacerations. Dr. McClure noted that one scar was "along the volar wrist close to the carpal tunnel." He reviewed electrodiagnostic testing obtained on that date which he found showed left median neuropathy, or carpal tunnel syndrome. Dr. McClure related, "[Appellant] presents with ongoing pain and paresthesias after a May 21, 2020 traumatic work accident. Within a reasonable degree of medical probability, the carpal tunnel syndrome diagnosis is causally related to the work accident in question." Dr. McClure continued to submit progress reports. In an August 12, 2020 duty status report (Form CA-17), he provided work restrictions.

By decision dated August 25, 2020, OWCP denied appellant's claim for wage-loss compensation commencing July 4, 2020 causally related to her accepted employment injury.

On September 4, 2020 Dr. McClure related that he had reviewed the mechanism of injury of appellant sustaining open bites of the left hand when a dog latched onto her wrist. He related that based on her symptoms he had ordered an EMG/NCV study which showed carpal tunnel syndrome due to the May 21, 2020 injury. Dr. McClure related, "The carpal tunnel is a canal in which the median nerve lies along the volar aspect of the wrist. It is adjacent to her dog bite wounds. It is very reasonable that the act of a dog latching onto [her] wrist and forcibly moving the wrist could contribute to traumatic carpal tunnel diagnosis." Dr. McClure advised that appellant had no symptoms prior to the accident.

On September 8, 2020 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

In a progress report dated September 14, 2020, Dr. Mark S. Rekant, a Board-certified orthopedic surgeon, evaluated appellant for left hand numbness and noted that testing performed by Dr. McClure had revealed carpal tunnel syndrome. He diagnosed healed left wrist and thumb dog bite puncture lacerations.

On October 6, 2020 appellant accepted a modified city carrier position with the employing establishment.

Following a preliminary review, by decision dated November 9, 2020, OWCP's hearing representative vacated the August 25, 2020 decision. The hearing representative found that Dr. McClure's September 4, 2020 report was sufficient to warrant further development of the

² Appellant has sustained numerous employment injuries to other body parts that have not been combined with the current claim.

medical evidence regarding whether appellant sustained carpal tunnel syndrome and disability on or after July 4, 2020 due to her accepted work injury.

On December 18, 2020 OWCP referred appellant to Dr. Stanley Askin, a Board-certified orthopedic surgeon, for a second opinion examination.

In a report dated January 8, 2021, Dr. Askin discussed appellant's history of injury and symptoms of pain from the left forearm to the thumb, tingling and numbness in the left hand, and tenderness of the wrist area. On examination, he observed a positive Tinel's sign over the scar distal to the radial styloid and a mildly positive Finelstein test showing possible "irritability of the tendons of the first extensor compartment." Dr. Askin noted that appellant had a positive Tinel's sign bilaterally and a positive Phalen's test on the left. He found residue of the dog bite lacerations of the left hand and wrist. Dr. Askin opined that appellant may have clinical bilateral carpal tunnel syndrome and a neuroma of the terminal branch of the lateral antebrachial cutaneous nerve. He advised that the dog bite wounds "did not violate the carpal tunnel" and that there was "nothing about the dog bite that would explain pathology of true carpal tunnel syndrome." Dr. Askin opined that the bite wounds "were sufficiently significant that a period of disability was otherwise reasonable after July 4, 2020 as a consequence of the wounds themselves independent of a carpal tunnel diagnosis." He noted that appellant was currently performing full duty.

Based on Dr. Askin's report, OWCP paid appellant wage-loss compensation from July 4 through October 6, 2020.

By decision dated January 20, 2021, OWCP denied expansion of the acceptance of the claim to include left carpal tunnel syndrome as causally related to her May 21, 2020 employment injury.

Subsequently, OWCP received a report dated October 27, 2020 from Dr. Laura E. Ross, an osteopath Board-certified in orthopedic surgery.³ Dr. Ross reviewed appellant's history of injury and the results of electrodiagnostic testing. She diagnosed probable sensory neuroma and multiple lacerations to the dorsal aspect of the left wrist and hand secondary to the May 21, 2020 dog bite.

On January 27, 2021 Dr. McClure evaluated appellant for continuing left wrist pain and paresthesias. He noted that she had healing scars close to the radial aspect of the carpal tunnel and the base of the left thumb "close to the level of the superficial radial nerve which appears slightly hypertrophied compared to the last visit." Dr. McClure diagnosed carpal tunnel syndrome, left wrist sprain/strain, and likely left wrist superficial radial neuritis or neuroma. He attributed the diagnosed conditions to the May 2020 employment injury. Dr. McClure reviewed Dr. Askin's report and noted that appellant had no symptoms of numbness of the left hand preceding her accident or evidence of peripheral nerve entrapment of the right hand. He submitted a similar report on March 29, 2021. Dr. McClure found that appellant had reached maximum medical improvement and recommended consultation with Dr. Ross for possible surgery.

³ OWCP also received a November 18, 2020 progress report from Dr. McClure.

In a report dated June 4, 2021, Dr. Ross recommended a magnetic resonance imaging (MRI) scan of appellant's left hand. On June 22, 2021 she noted that an MRI scan of the left wrist revealed mild first dorsal extensor compartment tendinosis with tenosynovitis, a small ganglion cyst along the volar aspect of the radioscapoid joint, and cystic changes in the proximal aspect of the lunate on the ulnar side that could show degenerative changes or sequela of prior trauma. Dr. Ross again diagnosed probable sensory neuroma and multiple lacerations to the dorsal aspect of the left wrist and hand secondary to the May 21, 2020 dog bite. She provided an additional progress report on July 26, 2021.

On December 21, 2021 appellant, through counsel, requested reconsideration. Counsel asserted that Dr. Askin's report was speculative and contradictory in nature.

On March 11, 2022 OWCP referred appellant to Dr. Noubar A. Didizian, a Board-certified orthopedic surgeon, for a second opinion examination.

In a report dated March 30, 2020, Dr. Didizian discussed appellant's history of injury and continued symptoms of numbness in the digits of the left hand. On examination he observed a negative Finkelstein test and no ganglion cyst formation over the radial styloid. Dr. Didizian determined that a Tinel's sign over the left median nerve "resulted in advancement to the palm, but did not extend to the digits on the left." He indicated that it was negative on the right. Dr. Didizian found a Phalen's test showed numbness in the whole hand and all digits at 20 seconds. He advised that the left wrist MRI scan demonstrated no increased signal in the carpal tunnel or evidence of de Quervain's tenosynovitis or tendinitis. Dr. Didizian found normal two-point discrimination. He determined that there were "no physiologic or objective finding to support the diagnosis of carpal tunnel syndrome on the left." Dr. Didizian opined that EMG testing showed a high percentage of false-positive results especially after pregnancy. He concluded that appellant did not have carpal tunnel syndrome or develop it from the dog bite of May 21, 2020 given the absence of physical findings of carpal tunnel syndrome.

By decision dated September 29, 2023, OWCP denied modification of its January 20, 2021 decision.

LEGAL PRECEDENT

Where an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.⁴

The medical evidence required to establish causal relationship between a specific condition, as well as any attendant disability claimed, and the employment injury, is rationalized medical opinion evidence.⁵ A physician's opinion on whether there is causal relationship between

⁴ *L.M.*, Docket No. 23-1040 (issued December 29, 2023); *J.R.*, Docket No. 20-0292 (issued June 26, 2020); *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

⁵ *C.S.*, Docket No. 23-0746 (issued December 11, 2023); *T.C.*, Docket No. 19-1043 (issued November 8, 2019); *M.W.*, 57 ECAB 710 (2006); *John D. Jackson*, 55 ECAB 465 (2004).

the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.⁶ Additionally, the opinion of the physician must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and the specific employment factor(s) identified by the claimant.⁷

Section 8123(a) of FECA provides in pertinent part that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.⁸ 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.⁹

ANALYSIS

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

The Board finds that a conflict in medical opinion evidence exists between Dr. McClure, appellant's treating physician, and Dr. Didizian, the second opinion physician, regarding whether her claim should be expanded to include left carpal tunnel syndrome as causally related to the accepted employment injury.

In an August 5, 2020 report, Dr. McClure found that appellant had healing scars from dog bites to the left forearm, wrist, and hand, including one scar along the volar wrist near the carpal tunnel. He noted that an EMG/NCV study demonstrated left carpal tunnel syndrome. Dr. McClure attributed the carpal tunnel syndrome to the employment injury. On September 4, 2020 he noted that the medial nerve was in the carpal tunnel canal along the volar aspect of the wrist adjacent to appellant's wounds from the dog bite. Dr. McClure opined that it was "very reasonable" that the dog latching onto her wrist and moving it by force would contribute to traumatic carpal tunnel syndrome. In a January 27, 2021 report, he diagnosed carpal tunnel syndrome, left wrist sprain/strain, and left wrist likely superficial radial neuritis or neuroma causally related to the accepted May 2020 employment injury. Dr. McClure noted that appellant had no prior evidence of left-hand numbness prior to the accident. He advised that an examination showed healing scars near the radial aspect of the carpal tunnel and base of the left thumb near the superficial radial nerve, which seemed hypertrophied.

Dr. Didizian, on the other hand, in his March 30, 2020 report, found no ganglion cyst over the radial styloid, normal two-point discrimination, and that a Tinel's sign over the left medial nerve resulted in advancement to the palm but not the digits. He further found that a Phalen's test

⁶ *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

⁷ *D.W.*, Docket No. 22-0136 (issued October 10, 2023); *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁸ 5 U.S.C. § 8123(a); *A.E.*, Docket No. 23-0756 (issued December 14, 2023); *G.S.*, Docket No. 20-0562 (issued June 23, 2022); *M.S.*, 58 ECAB 238 (2007).

⁹ 20 C.F.R. § 10.321.

demonstrated whole hand and digit numbness at 20 seconds. Dr. Didizian opined that an MRI scan showed no increased signal in the carpal tunnel or evidence of de Quervain's tenosynovitis or tendinitis. He found no objective evidence of carpal tunnel syndrome and advised that EMG/NCV studies had high rates of false-positive results.

As noted above, if there is a disagreement between an employee's physician and an OWCP referral physician, OWCP will appoint a referee physician or impartial medical specialist who shall make an examination.¹⁰ The Board finds that a conflict in medical opinion exists between Dr. McClure and Dr. Didizian regarding whether the acceptance of appellant's claim should be expanded to include left carpal tunnel syndrome as causally related to the accepted May 21, 2020 employment injury.¹¹

The Board, therefore, will remand the case for OWCP to refer appellant to an impartial medical examiner for resolution of the conflict in medical opinion evidence in accordance with 5 U.S.C. § 8123(a).¹² After such further development as OWCP deems necessary, it shall issue a *de novo* decision.

CONCLUSION

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

¹⁰ See *E.B.*, Docket No. 23-0169 (issued August 24, 2023); *S.S.*, Docket No. 19-1658 (issued November 12, 2020); *C.S.*, Docket No. 19-0731 (issued August 22, 2019).

¹¹ *S.T.*, Docket No. 21-0906 (issued September 2, 2022); *S.M.*, Docket No. 19-0397 (issued August 7, 2019).

¹² *Y.M.*, Docket No. 23-0091 (issued August 4, 2023); *V.B.*, Docket No. 19-1745 (issued February 25, 2021).

ORDER

IT IS HEREBY ORDERED THAT the September 29, 2023 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 26, 2024
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

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

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