United States Department of Labor
Employees' Compensation Appeals Board

J.B., Appellant	)	
and	)	
DEPARTMENT OF VETERANS AFFAIRS, VETERANS AFFAIRS NORTH FLORIDA/ SOUTH GEORGIA HEALTH CARE, OCALA WEST SPECIALTY CLINIC, Ocala, FL, Employer	)	**Docket No. 25-0313** **Issued: April 14, 2025**

Appearances:
Wayne Johnson, *Esq.,* for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge

JURISDICTION

On February 17, 2025 appellant, through counsel, filed a timely appeal from an August 19, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (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 an upper extremity condition causally related to the accepted factors of her federal employment.

FACTUAL HISTORY

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

On June 25, 2020 appellant, then a 47-year-old medical clerk, filed an occupational disease claim (Form CA-2) alleging that she sustained right epicondylitis and carpal tunnel syndrome causally related to factors of her federal employment, including repetitive typing, scheduling appointments, folding letters, stuffing envelopes, and writing messages. She noted that she first became aware of her conditions on April 9, 2020 and realized their relationship to her federal employment on May 19, 2020. Appellant did not stop work.[4]

By decision dated July 29, 2020, OWCP denied appellant's occupational disease claim, finding that the evidence of record was insufficient to establish a diagnosed 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 December 31, 2020 appellant requested reconsideration.

By decision dated February 3, 2021, OWCP modified the prior decision to find that the medical evidence of record was sufficient to establish diagnoses of bilateral carpal tunnel syndrome and right cubital tunnel syndrome. However, her claim remained denied as the medical evidence of record was insufficient to establish causal relationship between her diagnosed conditions and the accepted employment factors of her federal employment caused or aggravated her diagnosed conditions.

On April 14, 2021 appellant requested reconsideration.

By decision dated July 8, 2021, OWCP denied modification of its February 3, 2021 decision.

On July 22, 2021 appellant filed an appeal to the Board. By decision dated May 12, 2022, the Board affirmed the July 8, 2021 decision, finding that appellant had not met her burden of

[3] Docket No. 21-1169 (issued May 12, 2022).

[4] OWCP assigned the present claim OWCP File No. xxxxxx967. Appellant has a prior claim before OWCP. On March 29, 2013 appellant filed a traumatic injury claim (Form CA-1) alleging that she sustained inflammation of tissues and tendons of the right forearm, thumb and index finger, due to an assault by a coworker. OWCP assigned that claim OWCP File No. xxxxxx534 and accepted it for right wrist contusion. OWCP has administratively combined OWCP File Nos. xxxxxx967 and xxxxxx534, with the latter serving as the master file.

proof to establish a bilateral upper extremity condition causally related to the accepted factors of her federal employment.[5]

OWCP subsequently received additional medical evidence. In a report dated October 31, 2022, Dr. Mary Sullivan, an osteopath specializing in family medicine, examined appellant for complaints of chronic pain, numbness, tingling, and occasional weakness of the bilateral hands as well as chronic pain of the right elbow. She reviewed appellant's history of injury, noting appellant's duties including typing on a computer using an inappropriately ergonomic workspace. Dr. Sullivan conducted a physical examination, observing a positive Tinel's sign; and reviewed objective findings including a magnetic resonance imaging (MRI) scan of the right elbow obtained on October 13, 2022. She opined that appellant's employment duties, including typing on a computer, were clearly connected to her diagnoses. She noted that appellant had no prior complaints before April 9, 2020; that appellant had normal physical function well before April 9, 2020; and that appellant performed no other physical activities that might account for symptoms commencing on April 9, 2020 with work-related physical activities. Dr. Sullivan opined, that given appellant's history of injury, her physical examination and diagnostic studies, and the physical work activities performed by appellant at the time the claimed injury was sustained, it was much more likely than not that appellant's complaints were directly related to her employment. She further opined that appellant's diagnoses were the direct result of an ergonomically inappropriate workspace that caused bilateral carpal tunnel syndrome, lateral epicondylitis, tendinosis of the extensor tendons in the wrist and hand, synovial fold syndrome of the right elbow, olecranon bursitis, and cervical radiculopathies. Dr. Sullivan explained that appellant's diagnoses were the result of a desk that was inappropriate in height and lacked a necessary ergonomic computer mouse pad along with improper placement of a computer monitor and long-term repetitive motion within the confines of her ergonomically inappropriate workspace. She concluded that her diagnoses were aggravated by a supervisor unwilling to make minimal and necessary adjustments to her workspace to keep it safe.

MRI scans of appellant's shoulders obtained on November 23, 2022 indicated small shoulder joint effusion and mild chronic hypertrophic degenerative changes involving the acromioclavicular joints.

In a progress note dated January 24, 2023, Dr. Sullivan reviewed appellant's history of injury and diagnosed cervical radiculopathy, lateral epicondylitis of the right elbow, and carpal tunnel syndrome.

In a progress note dated March 21, 2023, Dr. Sullivan reviewed appellant's history of injury and noted that appellant had been evaluated on December 23, 2022 by Dr. Zakarian Mahmood, an orthopedic surgeon, who diagnosed radial tunnel syndrome and right carpal tunnel syndrome. She related that appellant followed up with Dr. Mahmood, who noted that appellant's symptoms were consistent with carpal tunnel syndrome. Dr. Sullivan stated that appellant received a right wrist injection for relief of pain and inflammation. She further related that appellant obtained an electromyogram and nerve conduction velocity (EMG/NCV) study on November 10, 2022, which demonstrated evidence of bilateral moderate median mononeuropathy, with conduction slowing at

[5] *Supra* note 3.

the wrist and evidence of mild left ulnar mononeuropathy. Dr. Sullivan reviewed the results of an MRI scan of the right wrist obtained on November 21, 2022, which was significant for grade 1 tendinosis of the distal extensor carpi ulnaris tendon and grade 1 tendinosis of the exterior pollicis brevis and abductor pollis longus with minimal tenosynovitis. An MRI scan of the right elbow obtained on the same date was significant for tendinosis of the distal triceps tendon with olecranon bursitis and evidence of chronic tendinitis of the common extensor group origin from the lateral epicondyles. Dr. Sullivan opined that appellant sustained carpal tunnel syndrome as a direct result of her required work duties as of April 9, 2020, stating that there was a definite causal relationship between this diagnosis and chronic repetitive use of her elbows, wrists, and hands with lack of necessary adjustments to her workspace that were identified as not being optimally ergonomic and never corrected. She explained that, as in appellant's case, when the wrists and hands perform repetitive movements, the soft tissues of the wrist become inflamed and swell, causing entrapment of the median nerve, resulting in numbness, weakness, and pain. Dr. Sullivan noted that appellant additionally developed chronic tendinosis of the distal extensor carpi ulnaris tendon due to the lack of necessary adjustment to her workspace in order to prevent progression of carpal tunnel syndrome and extensor tendinosis. She explained that appellant compensated for pain, numbness, and tingling of the hands by changing the position and usage of other portions of the upper extremity, and that in appellant's case, this compensation and change of usage resulted in olecranon bursitis and lateral epicondylitis.

On May 12, 2023 appellant, through counsel, requested reconsideration.

In a progress note dated June 14, 2023, Dr. Sullivan reviewed appellant's history of injury and diagnosed cervical radiculopathy, lateral epicondylitis, and carpal tunnel syndrome.

By decision dated August 2, 2023, OWCP denied modification.

OWCP continued to receive additional medical evidence. In a progress note dated September 25, 2023, Dr. Thomas Wolfe, a Board-certified family practitioner, examined appellant for complaints of worsening carpal tunnel syndrome of the right wrist and struggles with lateral epicondylitis. On physical examination, he observed positive Tinel's, Phalen's, and prayer tests of the bilateral wrists. Dr. Wolfe diagnosed cervical radiculopathy, lateral epicondylitis, and carpal tunnel syndrome. He reviewed the diagnostic studies noted by Dr. Sullivan in her March 21, 2023 note. Dr. Wolfe further reported that a pain management evaluation by Dr. Calderin dated September 25, 2023 indicated right carpal tunnel syndrome and electrophysiological evidence consistent with bilateral mononeuropathy with conduction slowing at the wrist. He provided the same causality analysis as provided by Dr. Sullivan in her March 21, 2023 note.

In a progress note dated October 23, 2023, Dr. Wolfe noted that he followed up with appellant for discussion of treatment. He diagnosed cervical radiculopathy, lateral epicondylitis of the right elbow, and carpal tunnel syndrome.

In a report dated November 20, 2023, Dr. Ricky Lockett, Board certified in physical medicine and rehabilitation, reviewed appellant's history of injury and diagnosed cervical radiculopathy, lateral epicondylitis, and carpal tunnel syndrome.

In reports dated December 18, 2023, Dr. Lockett reviewed appellant's history of injury and diagnosed cervical radiculopathy, lateral epicondylitis of the right elbow, and carpal tunnel syndrome. A report from Dr. Lockett dated January 17, 2024 provided the same history of injury and diagnoses.

On August 2, 2024 appellant, through counsel, requested reconsideration.

By decision dated August 6, 2024, OWCP denied appellant's August 2, 2024 request for reconsideration of the merits of her claim, finding that it was untimely filed and failed to demonstrate clear evidence of error.

On August 19, 2024, OWCP on its own motion vacated the August 6, 2024 decision on August 19, 2024, finding that the August 2, 2024 request for reconsideration was received within one year and must therefore be considered a timely request for reconsideration.

By decision dated August 19, 2024, OWCP denied modification.

LEGAL PRECEDENT

An employee seeking benefits under FECA[6] 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,[7] 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 employment injury.[8] 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.[9]

To establish that an injury was sustained in the performance of duty in an occupational disease claim, an employee 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 employment factors identified by the employee.[10]

[6] *Supra* note 1.

[7] *E.K.*, Docket No. 22-1130 (issued December 30, 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).

[8] *K.M.*, Docket No. 24-0752 (issued October 16, 2024); *S.H.*, Docket No. 22-0391 (issued June 29, 2022); *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).

[9] *E.H.*, Docket No. 22-0401 (issued June 29, 2022); *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).

[10] *E.K.*, Docket No. 25-0077 (issued January 21, 2025); *R.G.*, Docket No. 19-0233 (issued July 16, 2019); *see also Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.[11] A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.[12] Additionally, the physician's opinion 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 appellant's specific employment factor(s).[13]

ANALYSIS

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

In a progress note dated March 21, 2023, Dr. Sullivan reviewed appellant's history of injury and noted diagnoses of radial tunnel syndrome and right carpal tunnel syndrome. Dr. Sullivan opined that appellant sustained carpal tunnel syndrome as a direct result of her required work duties as of April 9, 2020, stating that there was a definite causal relationship between this diagnosis and chronic repetitive use of her elbows, wrists, and hands with lack of necessary adjustments to her workspace that were identified as not being optimally ergonomic and never corrected. She explained that, as in appellant's case, when the wrists and hands perform repetitive movements, the soft tissues of the wrist become inflamed and swell, causing entrapment of the median nerve, resulting in numbness, weakness, and pain. Dr. Sullivan noted that appellant additionally developed chronic tendinosis of the distal extensor carpi ulnaris tendon due to the lack of necessary adjustment to her workspace in order to prevent progression of carpal tunnel syndrome and extensor tendinosis. She explained that appellant compensated for pain, numbness, and tingling of the hands by changing the position and usage of other portions of the upper extremity, and that in appellant's case, this compensation and change of usage resulted in olecranon bursitis and lateral epicondylitis. The Board finds that Dr. Sullivan's opinion, while insufficient to meet appellant's burden of proof to establish the claim, is sufficient to require further development of the medical evidence.[14]

[11] *S.M.*, Docket No. 22-0075 (issued May 6, 2022); *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

[12] *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

[13] *J.D.,* Docket No. 22-0935 (issued December 16, 2022); *T.L.,* Docket No. 18-0778 (issued January 22, 2020); *Y.S.,* Docket No. 18-0366 (issued January 22, 2020).

[14] *Y.B.*, Docket No. 22-0121 (issued November 19, 2024); *B.S.*, Docket No. 22-1289 (issued August 20, 2024); *J.L.,* Docket No. 23-0733 (issued October 12, 2023); *C.S.*, Docket No. 22-1087 (issued May 1, 2023); *D.W.*, Docket No. 17-1884 (issued November 8, 2018); *E.J.,* Docket No. 09-1481 (issued February 19, 2010); *John J. Carlone*, 41 ECAB 354 (1989).

It is well established that proceedings under FECA are not adversarial in nature and, while appellant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.[15] OWCP has an obligation to see that justice is done.[16]

The Board shall, therefore, remand the case to OWCP for further development of the medical evidence. On remand, OWCP shall refer appellant, along with a statement of accepted facts, the medical record, and a series of questions to a specialist in the appropriate field of medicine for a rationalized opinion regarding whether appellant sustained an upper extremity condition causally related to the accepted employment factors. If the second opinion physician disagrees with the opinion of Dr. Sullivan, he or she must provide a fully rationalized explanation of why the accepted employment factors were insufficient to have caused or contributed to appellant's upper extremity conditions. After 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.

[15] *Id.*; *see also S.G.*, Docket No. 22-0330 (issued April 4, 2023); *M.G.*, Docket No. 18-1310 (issued April 16, 2019); *Walter A. Fundinger, Jr.*, 37 ECAB 200, 204 (1985); *Michael Gallo*, 29 ECAB 159, 161 (1978).

[16] *See C.M.*, Docket No. 17-1977 (issued January 29, 2019); *A.J.*, Docket No. 18-0905 (issued December 10, 2018); *B.C.*, Docket No. 15-1853 (issued January 19, 2016); *E.J., supra* note 14; *John J. Carlone*, *supra* note 14.

ORDER

IT IS HEREBY ORDERED THAT the August 19, 2024 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: April 14, 2025
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board