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

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| **P.B., Appellant** | ) | |
| **and** | ) | **Docket No. 13-951** |
| | ) | **Issued: September 10, 2013** |
| **U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Kansas City, MO, Employer** | ) | |

*Appearances:*
*Appellant, pro se*
*Office of Solicitor*, for the Director

*Case Submitted on the Record*

## DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

### ***JURISDICTION***

On March 12, 2013 appellant filed a timely appeal of a January 23, 2013 decision of the Office of Workers' Compensation Programs (OWCP) denying expansion of his claim. Pursuant to the Federal Employees' Compensation Act[1] (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 established that his claim should be expanded to include the conditions of bilateral cubital tunnel syndrome and bilateral/lateral and medial epicondylitis.

[1] 5 U.S.C. § 8101 *et seq.*

## ***FACTUAL HISTORY***

On May 30, 2007 appellant, then a 59-year-old mail handler, filed an occupational disease claim alleging that on March 22, 2004 he first realized that his bilateral carpal tunnel syndrome was due to his employment duties. OWCP accepted the claim for bilateral carpal tunnel syndrome and authorized carpal tunnel release surgery with right carpal tunnel surgery performed on January 28, 2008 and left carpal tunnel surgery performed on February 18, 2008. Appellant retired from the employing establishment effective October 31, 2007.[2]

In a September 3, 2009 report, Dr. Ronald Zipper, a second opinion Board-certified osteopathic orthopedic surgeon provided an impairment rating for appellant's bilateral carpal tunnel condition. He, based upon a review of the medical evidence and physical examination, noted additional diagnoses of bilateral ulnar tunnel syndrome and, cubital and/or wrist ulnar compression neuropathy, which he attributed to appellant's diabetic neuropathy and/or hypothyroidism. Dr. Zipper also opined that these diagnoses were not consistent with the accepted bilateral carpal tunnel condition.

On September 1, 2011 OWCP granted appellant's request to change his treating physician to Dr. Zipper.

In an October 4, 2011 report, Dr. Zipper diagnosed bilateral carpal tunnel condition, bilateral elbow lateral epicondylitis, bilateral elbow medial epicondylitis and bilateral cubital tunnel syndrome. A physical examination revealed good elbow range of motion, no tenderness over the olecranon processes, negative bilateral cubital and carpal tunnel Tinel's sign, negative bilateral Phalen's and Durkin's tests. Dr. Zipper reported that appellant's chief complaints occurred due to palpation over the lateral and medical epicondyles.

On October 15, 2011 Dr. Zipper stated at the time of his second opinion evaluation, that he incorrectly provided an opinion that appellant's bilateral elbow and cubital complaints were not employment related. He explained that he changed his opinion as to the cause of appellant's bilateral elbow and cubital complaints based upon further evaluation of appellant, the fact that appellant returned to work following the carpal tunnel syndrome surgeries and that he did not have at least four records available for review at the time of his September 9, 2009 report. In addition, appellant stated that all his current complaints were present at the time he filed his claim and that his complaints remained following the bilateral carpal tunnel surgeries. Dr. Zipper concluded that appellant's bilateral medial/lateral elbow epicondylitis and bilateral cubital condition were not a result of appellant's diabetes and hypothroidism. He requested that appellant's claim be expanded to include bilateral medial/lateral elbow epicondylitis and bilateral cubital conditions. A physical examination revealed tenderness over the medial and lateral epicondyles and positive bilateral cubital Tinel's signs. Dr. Zipper diagnosed bilateral medial

[2] On May 1, 2009 appellant filed a claim for a schedule award. By decision dated November 12, 2009, OWCP granted him a schedule award for a one percent left upper extremity impairment and a one percent right upper extremity impairment. On April 5, 2012 it issued an amended schedule which found appellant was entitled to a two percent left upper extremity impairment and two percent right upper extremity impairment.

and lateral epicondyles, bilateral cubital tunnel syndrome and bilateral carpal tunnel syndrome, which he attributed to appellant's employment injury.

In an April 1, 2012 report, an OWCP medical adviser reviewed the medical evidence including Dr. Zipper's recent reports. He noted that the diagnoses of bilateral cubital syndrome and bilateral medial/lateral elbow epicondylitis did not appear until after appellant retired from the employing establishment in 2007. In addition, the December 28, 2007 electromyography only had findings of bilateral carpal tunnel syndrome and no findings supporting a diagnosis of cubital tunnel syndrome. As to the diagnosis of lateral medial epicondylitis, OWCP's medical adviser pointed out that this condition is not mentioned in any medical reports until Dr. Zipper's October 4, 2011 report, which is approximatley four years after appellant's retirement. The medical adviser noted that Dr. Zipper, in a September 3, 2009 report, concluded that the condition of bilateral cubital syndrome was not consistent with the records review of the accepted claim and that Dr. Zipper provided insufficient medical rationale to explain the change in his opinion that the bilateral cubital syndrome was employment related. In addition, Dr. Zipper offered no explanation as to why this condition was not diagnosed until three years after appellant retired from the employing establishment.

By letter dated April 4, 2012, OWCP informed appellant that the evidence of record was insufficient to warrant expansion of his claim. Appellant was advised as to the medical and factual evidence required to support his claim and given 30 days to provide the requested information.

In an April 12, 2012 report, Dr. Zipper provided physical findings and diagnosed bilateral medial and lateral epicondyles, bilateral cubital tunnel syndrome and bilateral carpal tunnel syndrome. He reviewed the medical adviser's report and noted his disagreement with the conclusions made therein.

By decision dated June 11, 2012, OWCP denied appellant's requested to expand his claim.

Appellant's representative requested an oral hearing before an OWCP hearing representative and a telephonic hearing was held on November 9, 2012.

By decision dated January 23, 2013, an OWCP hearing representative affirmed the June 11, 2013 decision denying appellant's request to expand the accepted conditions in his claim.

## ***LEGAL PRECEDENT***

A claimant seeking benefits under FECA[3] has the burden of proof to establish the essential elements of his or her claim by the weight of the evidence,[4] including that he or she

[3] 5 U.S.C. §§ 8101-8103.

[4] *C.B.*, Docket No. 08-2268 (issued May 22, 2009); *J.P.*, 59 ECAB 178 (2007); *Amelia S. Jefferson*, 57 ECAB 183 (2005).

sustained an injury in the performance of duty and that any specific condition or disability for work for which he or she claims compensation is causally related to that employment injury.[5]

The evidence generally required to establish causal relationship is rationalized medical opinion evidence.[6] The claimant must submit a rationalized medical opinion that supports a causal connection between his or her current condition and the employment injury. The medical opinion must be based on a complete factual and medical background with an accurate history of the claimant's employment injury and must explain from a medical perspective how the current condition is related to the injury.[7]

## ***ANALYSIS***

OWCP accepted appellant's claim for bilateral carpal tunnel syndrome. Appellant had authorized right carpal tunnel surgery on January 28, 2008 and left carpal tunnel surgery performed on February 18, 2008. The record reflects that he retired from the employing establishment effective October 21, 2007. OWCP denied appellant's request to expand his claim to include additional conditions in a June 11, 2012 decision, which was affirmed by an OWCP hearing representative on January 23, 2013. The issue on appeal is whether appellant has established that his claim should be expanded to include the conditions of bilateral cubital tunnel syndrome and bilateral/lateral and medial epicondylitis. The Board finds that he failed to meet his burden of proof.

In support of appellant's request to expand his claim to include additional conditions, he submitted various reports written over the period October 4, 2011 to April 12, 2012. Dr. Zipper, an attending Board-certified orthopedic surgeon, diagnosed bilateral elbow lateral and medial epicondylitis and bilateral cubital tunnel syndrome, which he opined were employment related. In an October 15, 2011 report, he explained the reason for his change of opinion as to the cause of these conditions. Dr. Zipper noted that at the time of his second opinion evaluation in 2009 he incorrectly determined that appellant's bilateral elbow and cubital complaints were not employment related. He concluded that these conditions were employment related based on further evaluation of appellant and the fact that appellant returned to work following the carpal tunnel syndrome surgeries. Dr. Zipper also related that he reviewed four records which were unavailable for review at the time of his September 9, 2009 report. In addition, he noted that all of appellant's current complaints were present at the time he filed his claim and continued following the bilateral carpal tunnel surgeries. For these reasons, Dr. Zipper concluded that appellant bilateral medial/lateral elbow epicondylitis and bilateral cubital conditions were employment related and not due to preexisting conditions of diabetes and hypothyroidism. Although, he attributed these conditions to appellant's accepted employment injury, he offered

[5] *W.W.*, Docket No. 09-1619 (issued June 2, 2010); *G.T.*, 59 ECAB 447 (2008); *Frankie A. Farinacci*, 56 ECAB 723 (2005); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[6] *W.D.*, Docket No. 09-658 (issued October 22, 2009); *T.H.*, 59 ECAB 388 (2008); *Elizabeth H. Kramm (Leonard O. Kramm)*, 57 ECAB 117 (2005); *Thomas L. Agee*, 56 ECAB 465 (2005).

[7] *D.U.*, Docket No. 10-144 (issued July 27, 2010); *D.G.*, 59 ECAB 734 (2008); *Donald W. Wenzel*, 56 ECAB 390 (2005).

no medical rationale explaining how or why additional conditions he diagnosed were caused by the accepted bilateral carpal tunnel syndrome or appellant's employment duties in any of his reports. This is particularly important as appellant retired in October 2007 and was not exposed to the work factors which caused his accepted bilateral carpal tunnel condition. As Dr. Zipper failed to provide sufficient reason for the change in his opinion or present any explanation explaining how or why the accepted bilateral carpal tunnel syndrome or employment duties had caused bilateral medial/lateral elbow epicondylitis and bilateral cubital conditions, his opinion is of diminished probative value.[8] His opinion is of further diminished probative value as it is based on an incorrect factual history. Dr. Zipper stated that his conclusion that appellant's bilateral medial/lateral elbow epicondylitis and bilateral cubital conditions was in part due to the fact that appellant returned to work following his carpal tunnel surgeries. However, the facts of the record show that appellant retired in October 2007 and had both carpal tunnel surgeries in early 2008. The Board has held that medical reports based on an inaccurate factual history are entitled to little probative value.[9] For these reasons, Dr. Zipper's reports and opinion are insufficient to support expansion of appellant's claim. Thus, appellant has failed to establish that his bilateral medial/lateral elbow epicondylitis and bilateral cubital conditions were employment related.

The record also contains an April 1, 2012 report from an OWCP medical adviser who reviewed the medical evidence including Dr. Zipper's recent reports and concluded that the diagnoses of bilateral cubital syndrome and bilateral medial/lateral elbow epicondylitis were not employment related. In support of this conclusion, the medical adviser noted that the diagnosis did not appear until after appellant retired from the employing establishment in 2007 and a December 28, 2007 electromyography reported no findings supporting a diagnosis of cubital tunnel syndrome. In addition, he noted that Dr. Zipper had previously opined that the condition of bilateral cubital syndrome was not consistent and he has not provided sufficient medical rationale to explain his change of opinion.

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 established that his claim should be expanded to include the conditions of bilateral cubital tunnel syndrome and bilateral/lateral and medial epicondylitis.

[8] *Robert Broome*, 55 ECAB 339 (2004).

[9] *James R. Taylor*, 56 ECAB 537 (2005).

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated January 23, 2013 is affirmed.

Issued: September 10, 2013
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board