

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

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D.C., Appellant )

and )

**DEPARTMENT OF VETERANS AFFAIRS,** )  
**VETERANS ADMINISTRATION MEDICAL** )  
**CENTER, Washington, DC, Employer** )

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**Docket No. 17-0680**  
**Issued: June 1, 2017**

*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:

PATRICIA H. FITZGERALD, Deputy Chief Judge  
ALEC J. KOROMILAS, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On February 6, 2017 appellant, through counsel, filed a timely appeal from a December 27, 2016 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.

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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.*

## ISSUE

The issue is whether appellant met her burden of proof to establish left carpal tunnel syndrome causally related to factors of her federal employment.

## FACTUAL HISTORY

On November 6, 2015 appellant, then a 48-year-old food service worker, filed an occupational disease claim (Form CA-2) for left carpal tunnel syndrome.<sup>3</sup> She first became aware of her condition on February 12, 2013. However, it was not until July 14, 2015 that appellant realized the condition was employment related. On her Form CA-2, appellant omitted any description of the particular employment activity/activities she believed either caused or contributed to her left carpal tunnel syndrome. The employing establishment represented that appellant continued to work, albeit in a light-duty capacity.

OWCP received September 1 and 14, 2015 records from the employing establishment's occupational health unit where appellant was seen for left hand complaints and initially advised not to use her left hand until further evaluation and diagnosis. The occupational health unit records are unsigned.

OWCP also received a September 8, 2015 "Disability Certificate" from Howard University's Orthopedics and Rehabilitative Services.<sup>4</sup> The document indicated that appellant had been a patient there since 2003. The certificate included the diagnoses of cervical and lumbar disc herniation, with neck and back pain, carpal tunnel syndrome, and trigger finger. Appellant had been totally incapacitated, but had sufficiently recovered such that she could perform light-duty work, effective September 14, 2015. Appellant's work restrictions included a five-pound lifting limitation and she was advised to reduce the frequency of repetitive hand action/movements.

In a December 14, 2015 claim development letter, OWCP informed appellant that the documentation received to date, both factual and medical evidence, was insufficient to establish entitlement to FECA benefits. It afforded appellant at least 30 days to submit a detailed factual statement regarding her implicated employment activities, as well as a narrative medical report that included, among other things, a specific diagnosis and a discussion regarding the etiology of any diagnosed conditions.

In a January 6, 2016 narrative statement, appellant indicated that as of November 23, 2015 she continuously engaged in repetitive motion(s) to complete her assigned duties, which included stacking supplies for the steam line, lifting and repositioning materials, preparing meats and vegetables for the deli, and lifting/repositioning metal food containers. Additional duties

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<sup>3</sup> Appellant has an accepted occupational disease claim for right carpal tunnel syndrome, which arose on or about June 10, 2013 (OWCP File No. xxxxxx156). She was also injured in a July 7, 1998 work-related fall, which OWCP accepted for cervical and lumbar sprains, post-traumatic headache, and left forearm bruise/contusion (OWCP File No. xxxxxx966). Appellant initially filed the current left CTS claim as a recurrence (Form CA-2a) of her July 7, 1998 employment injury.

<sup>4</sup> The certificate bears no signature, signature stamp, or signature block.

included stocking clear trays, labeling Grab-Go foods, sanitizing the coffee area, refilling coffee containers, and providing supplies for the coffee area. Appellant explained that continuous lifting and repositioning of equipment and supplies caused a lot of stress on both hands. She also indicated that she had been diagnosed with diabetes, but this condition was under control.

OWCP received a May 13, 2015 left upper extremity electromyography and nerve conduction velocity (EMG/NCV) study, which revealed mild carpal tunnel syndrome with no evidence of axonopathy.

OWCP also received another disability certificate from Howard University's Orthopedics and Rehabilitative Services. This one, dated November 23, 2015, was electronically signed by Dr. Janaki Kalyanam, a Board-certified physiatrist. Dr. Kalyanam noted that appellant had been under her care since 2003. She also noted that appellant was recently evaluated in 2015 and diagnosed with bilateral carpal tunnel syndrome. Dr. Kalyanam reiterated the diagnosis of bilateral carpal tunnel syndrome, and recommended that appellant continue with occupational therapy, twice weekly.

In a February 17, 2016 decision, OWCP denied appellant's claim, as the evidence of record failed to establish fact of injury. It explained that the medical evidence did not contain a diagnosis and also did not establish that the diagnosed condition was causally related to the accepted employment factors.

Counsel timely requested an oral hearing before a representative of OWCP's Branch of Hearings and Review, which was held on October 13, 2016. During the telephonic hearing, OWCP's hearing representative noted that appellant's accepted claims included a 1998 neck and low back injury, and right carpal tunnel syndrome, which arose in 2013. Appellant testified during the hearing and the record was kept open for at least 30 days post-hearing in order for appellant to submit additional medical evidence.

OWCP subsequently received a November 3, 2016 report from Dr. Kalyanam, who diagnosed bilateral carpal tunnel syndrome, decreased activity tolerance, paresthesias in the left hand, and left wrist pain. Dr. Kalyanam noted that appellant had been a patient of hers since 2003 due to a work injury sustained from a fall, and episodically for exacerbation or reinjury at work since 2013 for bilateral carpal tunnel syndrome, which was confirmed by electrodiagnostic studies. She asserted that appellant had reported symptom exacerbation with increased activity and repetitive movements. Appellant's current hand complaints included pain, stiffness, weak grasp, difficulty opening jars, and numbness.

By decision dated December 27, 2016, the hearing representative affirmed OWCP's February 17, 2016 denial of appellant's occupational disease claim, finding that appellant had not provided sufficient medical evidence of an employment-related condition to establish her claim.

### **LEGAL PRECEDENT**

A claimant seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence,

including that an injury was sustained in the performance of duty as alleged and that any specific condition or disability claimed is causally related to the employment injury.<sup>5</sup>

In an occupational disease claim, for a claimant to establish that an injury was sustained in the performance of duty he or she must submit: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the diagnosed condition is causally related to the identified employment factors.<sup>6</sup>

To establish causal relationship between the condition, as well as any attendant disability claimed, and the employment event or incident, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such causal relationship.<sup>7</sup> The opinion of the physician 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 identified by the claimant. This medical opinion must include an accurate history of the employee's employment injury and must explain how the condition is related to the injury. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.<sup>8</sup>

A medical report should bear the physician's signature or signature stamp.<sup>9</sup> OWCP may require an original signature on the report.<sup>10</sup>

Certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered "physician[s]" as defined under FECA.<sup>11</sup>

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<sup>5</sup> 20 C.F.R. § 10.115(e), (f); see *Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996). Causal relationship is a medical question, which generally requires rationalized medical opinion evidence to resolve the issue. See *Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factors must be based on a complete factual and medical background. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). 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 factors. *Id.*

<sup>6</sup> *Victor J. Woodhams*, *supra* note 5.

<sup>7</sup> See C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

<sup>8</sup> *James Mack*, 43 ECAB 321 (1991).

<sup>9</sup> 20 C.F.R. § 10.331(a).

<sup>10</sup> *Id.*

<sup>11</sup> 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).

Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.<sup>12</sup>

### ANALYSIS

Appellant claimed that her duties as a food service worker either caused or contributed to her diagnosed left carpal tunnel syndrome.<sup>13</sup> The Board finds that appellant did not meet her burden of proof to establish that the implicated employment factors either caused or contributed to her diagnosed left carpal tunnel syndrome.

Appellant identified the factors of her federal employment that she believed caused her left hand/wrist condition, which included stacking supplies, lifting and repositioning materials, preparing meats and vegetables for the deli, stocking clear trays, labeling Grab-Go foods, sanitizing the coffee area, refilling coffee containers, and providing supplies for the coffee area. She explained that continuous lifting and repositioning of equipment and supplies caused a lot of stress on both of her hands. However, in order to establish that she sustained an employment-related injury, appellant must submit rationalized medical evidence, which explains how her medical condition was caused or aggravated by the implicated employment factors.<sup>14</sup>

The May 13, 2015 left upper extremity EMG/NCV study confirmed the diagnosis of mild carpal tunnel syndrome; however, the electrodiagnostic study did not address the etiology of appellant's left hand/wrist condition. As such, the evidence is not probative on the issue of causal relationship.<sup>15</sup>

With respect to the September 1 and 14, 2015 employing establishment occupational health unit records, the Board notes that these were unsigned and did not specifically address the cause of appellant's left hand/wrist complaints. Also, the September 8, 2015 disability slip from Howard University's Orthopedics and Rehabilitative Services is similarly unsigned, and the author did not specifically address the cause of appellant's diagnosed conditions, which included carpal tunnel syndrome. Consequently, the above-noted evidence is insufficient to satisfy appellant's burden of proof with respect to causal relationship.<sup>16</sup>

Dr. Kalyanam found on November 23, 2015 that electrodiagnostic testing of the left upper extremity revealed mild carpal tunnel syndrome with no evidence of axonopathy. She

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<sup>12</sup> *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006). A report from a physician assistant or certified nurse practitioner will be considered medical evidence if countersigned by a qualified physician. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013).

<sup>13</sup> Appellant's personal belief that employment activities either caused or contributed to her condition is insufficient, by itself, to establish causal relationship. 20 C.F.R. § 10.115(e); *Phillip L. Barnes*, 55 ECAB 426, 440 (2004).

<sup>14</sup> See *A.C.*, Docket No. 08-1453 (issued November 18, 2008).

<sup>15</sup> See *T.C.*, Docket No. 16-1652 (issued May 9, 2017); *G.G.*, Docket No. 16-0907 (issued March 20, 2017).

<sup>16</sup> See *supra* notes 7-10.

indicated that appellant had been under her care since 2003 due to a work injury sustained from a fall and episodically for exacerbation or reinjury at work since 2013 for her diagnosis of bilateral carpal tunnel syndrome. On November 3, 2016 Dr. Kalyanam diagnosed carpal tunnel syndrome of the left wrist and paresthesias in the left hand. She asserted that appellant had reported symptomatic exacerbation with increased activity and repetitive movements, including pain, stiffness, weak grasp, difficulty opening jars, and numbness. However, Dr. Kalyanam failed to provide a rationalized opinion explaining how factors of appellant's federal employment, such as repetitive motions required to stack supplies, lift and reposition materials, prepare meats and vegetables, stock trays, label Grab-Go foods, sanitize coffee areas, and refill coffee containers at work, caused or aggravated her left carpal tunnel syndrome. She noted that appellant's condition occurred while she was at work, but such generalized statements do not establish causal relationship because they merely repeat appellant's allegations and are unsupported by adequate medical rationale explaining how her physical activity at work actually caused or aggravated the diagnosed condition.<sup>17</sup> As such, the Board finds that Dr. Kalyanam's reports are insufficient to establish that appellant's condition was either caused or aggravated by factors of her federal employment.

As appellant has not submitted rationalized medical evidence to support her allegation that she sustained an injury causally related to her duties as a food service worker, she failed to meet 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 left carpal tunnel syndrome causally related to factors of her federal employment.

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<sup>17</sup> See *K.W.*, Docket No. 10-98 (issued September 10, 2010).

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 27, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 1, 2017  
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board