United States Department of Labor
Employees' Compensation Appeals Board

K.R., Appellant	)	
and	)	**Docket No. 17-0928**
	)	**Issued: October 23, 2017**
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Sacramento, CA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On March 22, 2017 appellant filed a timely appeal from a December 21, 2016 merit decision and a February 15, 2017 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). 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.[2]

ISSUES

The issues are: (1) whether appellant met her burden of proof to establish carpal tunnel syndrome causally related to factors of her federal employment; and (2) whether the Branch of Hearings and Review properly denied appellant's request for a review of the written record as untimely filed.

[1] 5 U.S.C. § 8101 *et seq.*

[2] Appellant submitted additional evidence after OWCP rendered its December 21, 2016 decision. The Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its final merit decision. Therefore, this additional evidence cannot be considered by the Board for the first time on appeal. 20 C.F.R. § 501.2(c)(1); *Sandra D. Pruitt*, 57 ECAB 126 (2005).

FACTUAL HISTORY

On September 23, 2016 appellant, then a 43-year-old mail handler, filed an occupational disease claim (Form CA-2) alleging that she sustained mild carpal tunnel syndrome as a result of repetitive movement of her right hand required by her federal employment duties. She first became aware of her claimed condition and of its relationship to her federal employment on July 19, 2016. Appellant did not stop work. A supervisor noted that appellant had previously been off work from July 2015 through February 2016 due to a left thumb injury, but returned to full duties in April 2016.

In a narrative statement dated September 23, 2016, appellant asserted that she first noticed the pain while working limited duty and casing letters. She stated that, after she was released to full duty, the pain would sometimes wake her from her sleep.

In a diagnostic report dated August 5, 2016, Dr. Marcia Redwood, a Board-certified internist, evaluated the results of a nerve conduction velocity study, finding that the test revealed mild carpal tunnel syndrome.

By letter dated October 5, 2016, OWCP requested that appellant submit additional medical evidence in support of her claim. It noted that she had not submitted a physician's opinion regarding a causal relationship between her carpal tunnel syndrome and factors of her federal employment. Appellant was afforded 30 days to submit the additional evidence.

In a report dated October 13, 2016, Dr. Brian Knapp, Board-certified in occupational medicine, diagnosed right carpal tunnel syndrome. He noted that appellant had previously been diagnosed with left carpal tunnel syndrome in 2004 and right carpal tunnel syndrome in 2006, but that appellant reported the symptoms had resolved. Dr. Knapp recounted appellant's history of injury, noting that she had previously been placed on limited duty due to a left thumb injury and that, while she was on limited duty, she began to experience symptoms of carpal tunnel syndrome. On physical examination he noted a positive Phalen's test and a positive Tinel's sign. Dr. Knapp commented that it was unclear if pushing and pulling of carts in the course of employment was a risk factor because appellant had performed these duties for only one month in duration when the symptoms first began, but that typically carpal tunnel syndrome developed over a period of six months or more. He noted that it was interesting that appellant had handled over-the-road containers for nine years without any symptoms. Dr. Knapp concluded that casing and hand-held scanner usage were irrelevant, and that appellant most likely had underlying mild idiopathic near-carpal tunnel syndrome, which was aggravated by handling of over-the-road containers. He noted that this opinion was speculative and that causation was unclear.

On October 18, 2016 Dr. Knapp diagnosed right carpal tunnel syndrome and noted that appellant could return to full duty on October 18, 2016.

In a report dated November 9, 2016, Dr. Knapp noted that appellant was recovering well after a steroid injection and that her paresthesia had almost completely disappeared. He diagnosed right carpal tunnel syndrome and tendinitis of the right forearm. Dr. Knapp opined that the tendinitis was due to repetitive forceful grasping and pulling at work.

On November 30, 2016 Dr. Knapp noted that appellant's right forearm tendinitis symptoms continued, but that her carpal tunnel syndrome symptoms were almost completely

eliminated. Appellant complained of two weeks of pain over the left dorsal thumb. In a work status report of the same date, Dr. Knapp recommended no forceful pushing or pulling with the right hand.

By decision dated December 21, 2016, OWCP denied appellant's claim. It found that she had not submitted sufficient medical evidence to establish that her carpal tunnel syndrome was work related.

By letter dated January 21, 2017, appellant requested a review of the written record by an OWCP hearing representative. The request was postmarked January 23, 2017. With her request, appellant submitted a December 21, 2016 report from Dr. Knapp, modified job offers, and a report of maximum medical improvement dated January 6, 2017.

By decision dated February 15, 2017, an OWCP hearing representative with the Branch of Hearings and Review denied appellant's request for a review of the written record as untimely. She noted that OWCP had issued its decision on December 21, 2016, while appellant's hearing request was postmarked January 23, 2017. Consequently, the hearing representative found that appellant was not entitled to a review of the written record as a matter of right, as the request was submitted more than 30 days after OWCP's decision. She also considered whether to grant appellant a discretionary hearing, but determined that the issue in appellant's case could equally well be addressed by her requesting reconsideration before OWCP.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA 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, that the claim was filed within the applicable time limitation, that an injury was sustained while in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.[3] These are the essential elements of every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[4]

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (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 employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.

The claimant has the burden of establishing by the weight of reliable, probative, and substantial evidence that the condition for which compensation is sought is causally related to a

[3] *Gary J. Watling*, 52 ECAB 278, 279 (2001); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[4] *Michael E. Smith*, 50 ECAB 313, 315 (1999).

specific employment incident or to specific conditions of employment.[5] An award of compensation may not be based on appellant's belief of causal relationship. 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 a causal relationship.[6]

Causal relationship is a medical issue and the evidence generally required to establish causal relationship is rationalized medical opinion evidence.[7] Rationalized medical opinion evidence is medical evidence which includes a physician's reasoned opinion on whether there is a causal relationship between the claimant's diagnosed condition and the compensable employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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.[8] 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.[9]

ANALYSIS -- ISSUE 1

OWCP accepted that appellant was a federal civilian employee who filed a timely claim that the work factors occurred as alleged, that a medical condition had been diagnosed, and that appellant was within the performance of duty. It denied her claim as appellant had not submitted sufficient medical evidence to establish a causal relationship between her carpal tunnel syndrome and the accepted factors of her federal employment.

In support of her claim, appellant initially submitted a diagnostic report from Dr. Redwood dated August 5, 2016. This report related that a nerve conduction velocity study revealed mild carpal tunnel syndrome. However, Dr. Redwood offered no opinion regarding the cause of this condition. The Board has held that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[10]

In a report dated October 13, 2016, Dr. Knapp diagnosed right carpal tunnel syndrome. He recounted appellant's history of injury, noting that she had previously been placed on limited duty due to a left thumb injury, and that, while she was on limited duty, she began to experience symptoms of carpal tunnel syndrome. Dr. Knapp commented that it was unclear if pushing and pulling of carts in the course of employment was a risk factor, because the symptoms first began,

[5] *Roma A. Mortenson-Kindschi*, 57 ECAB 418, 428 n.37 (2006); *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

[6] *P.K.*, Docket No. 08-2551 (issued June 2, 2009); *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

[7] *Elizabeth H. Kramm (Leonard O. Kramm)*, 57 ECAB 117, 123 (2005).

[8] *Leslie C. Moore*, 52 ECAB 132, 134 (2000).

[9] *Jennifer Atkerson*, 55 ECAB 317, 319 (2004); *Naomi A. Lilly*, 10 ECAB 560, 573 (1959).

[10] *See E.R.*, Docket No. 16-1634 (issued May 25, 2017).

after only one month. Typically, he believed carpal tunnel syndrome develops over a period of six months or more. Dr. Knapp noted that it was interesting that appellant handled over-the-road containers for nine years without any symptoms. He stated that he felt casing and hand-held scanner usage were not relevant, and that appellant most likely had underlying mild idiopathic near-carpal tunnel syndrome, which was aggravated by handling of over-the-road containers.

As Dr. Knapp indicated in his October 13, 2016 report, his opinion as to the cause of appellant's carpal tunnel syndrome was speculative, and that the actual cause of her condition was unclear. While the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. To be of probative value, a physician's opinion on causal relationship should be expressed in terms of reasonable medical certainty.[11]

There are no other medical reports of records containing a clear opinion as to the cause of appellant's carpal tunnel syndrome. As such, appellant has not submitted any medical evidence containing a physician's well-rationalized opinion, based on a complete factual and medical background, expressed within a reasonable degree of medical certainty, and supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by appellant.[12]

The Board finds that as appellant has not submitted any rationalized medical evidence to support her claim for compensation for carpal tunnel syndrome sustained in the course of her federal employment, she has not met her burden of proof to establish a claim.

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.

LEGAL PRECEDENT -- ISSUE 2

A claimant, injured on or after July 4, 1966, who has received a final adverse decision by OWCP, may obtain a hearing by writing to the address specified in the decision.[13] The hearing request must be sent within 30 days (as determined by postmark or other carrier's date marking) of the date of the decision for which a hearing is sought. The claimant must not have previously submitted a reconsideration request (whether or not it was granted) on the same decision. If the request is not made within 30 days, a claimant is not entitled to a hearing as a matter of right. However, the Branch of Hearings and Review may exercise its discretion to either grant or deny a hearing.[14]

[11] *D.F.*, Docket No. 17-0135 (issued June 5, 2017).

[12] *Supra* note 8.

[13] 20 C.F.R. § 10.616(a).

[14] 5 U.S.C. §§ 8124(b)(1) and 8128(a); *Hubert Jones, Jr.*, 57 ECAB 467, 472-73 (2006); *Herbert C. Holley*, 33 ECAB 140 (1981).

ANALYSIS -- ISSUE 2

Appellant's January 21, 2017 request for a review of the written record was postmarked on January 23, 2017. OWCP issued its last merit decision on December 21, 2016. The regulations provide that "[t]he hearing request must be sent within 30 days […] of the date of the decision for which a hearing is sought."[15] Because appellant's request postmarked January 23, 2017 was untimely, she was not entitled to a review of the written record as a matter of right. OWCP's hearing representative also denied appellant's request finding that the issue of causal relationship could equally well be addressed by requesting reconsideration before OWCP. The Board finds that the hearing representative properly exercised her discretionary authority in denying appellant's request for a hearing.[16]

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish carpal tunnel syndrome causally related to factors of her federal employment. The Board further finds that the Branch of Hearings and Review properly denied appellant's request for a review of the written record as untimely filed.

[15] 20 C.F.R. § 10.616(a).

[16] *Mary B. Moss*, 40 ECAB 640, 647 (1989). Abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from known facts. *See André Thyratron*, 54 ECAB 257, 261 (2002).

ORDER

IT IS HEREBY ORDERED THAT the February 15, 2017 and December 21, 2016 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: October 23, 2017
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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