

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

A.J., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Providence, RI, Employer**

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**Docket No. 18-0905
Issued: December 10, 2018**

Appearances:
Appellant, pro se
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 March 27, 2018 appellant filed a timely appeal from a February 26, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (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 met her burden of proof to establish bilateral wrist and left thumb injuries causally related to the accepted factors of her federal employment.

FACTUAL HISTORY

On March 9, 2017 appellant, then a 61-year-old mail handler, filed an occupational disease claim (Form CA-2) alleging that she developed bilateral carpal tunnel and left thumb basilar arthritis as a result of constantly using both hands to grab heavy bundles of magazines, cutting

¹ 5 U.S.C. § 8101 *et seq.*

them open, and transferring them to “ACTs [automation-compatible trays],” and performing other similar jobs for 21 years at the employing establishment. She believed that the wear and tear from repeated and constant use of her hands was the sole reason for her present symptoms. Appellant alleged that she first became aware of her conditions on January 31, 2016 and of their relationship to her federal employment on May 15, 2016. She did not stop work.

In an accompanying narrative statement dated March 9, 2017, appellant again alleged that she sustained a work-related bilateral hand injury. She described her work duties. Appellant noted that she injured her right wrist at work on January 7, 2016 while constantly lifting heavy trays and putting them in proper trays at work, but that her claim was closed because she did not follow through with workers’ compensation.² She related that, outside of work, she only used her hands to perform normal activities at home.

Appellant submitted a March 2, 2017 medical report from Dr. Eric F. Walsh, an attending Board-certified orthopedic surgeon, who noted that she was seen for follow-up of her bilateral hand numbness, tingling, and pain, and left basilar thumb pain. Dr. Walsh also noted her medical history and discussed findings on physical examination. He diagnosed left basilar thumb arthritis and bilateral carpal tunnel.

By letters dated April 12, 2017, the employing establishment controverted appellant’s claim, noting that she had not established fact of injury.

OWCP, by development letter dated June 6, 2017, advised appellant of the factual and medical deficiencies of her claim. It provided a questionnaire for her completion in order to establish the employment factors alleged to have caused or contributed to her condition and a medical report from her attending physician explaining how and why her federal work activities caused, contributed to, or aggravated her medical condition. By separate letter dated June 6, 2017, OWCP requested that the employing establishment respond to appellant’s allegations and submit treatment notes if she was treated at an employing establishment medical facility. It afforded both parties 30 days to submit additional evidence.

In additional statements dated June 20, 2017, appellant noted that after her January 7, 2016 right hand employment injury she compensated with her left hand. She noted that she had mistakenly indicated that she became aware of the relationship between her employment and claimed conditions on May 15, 2016 as she had a problem long before that date. Appellant explained that the delay in filing her Form CA-2 was due to a problem finding a physician who dealt with a work-related injury. She again described her work duties. Appellant indicated that she had been advised by Dr. Walsh that constant repetitive use of her left hand at work caused wear and tear, which resulted in carpal tunnel, bone wear, and arthritis in the basal area of her left wrist.

Appellant submitted a September 12, 2016 medical report from Dr. Richard L. Cervone, a Board-certified neurologist, who noted that she was referred to him for electromyogram and nerve

² OWCP accepted an aggravation of right carpal tunnel syndrome under File No. xxxxxx761 resulting from the accepted January 7, 2016 employment injury. Following endoscopic carpal tunnel release, appellant returned to full-duty work on July 30, 2017.

conduction velocity (EMG/NCV) testing to assess the bilateral upper extremities for carpal tunnel syndrome. Dr. Cervone indicated that she presented with complaints regarding her right and left hand and fingers and right wrist and forearm. He related a history that the onset of appellant's symptoms began approximately three years ago, but worsened in January 2016 after she picked up a tray at work. Appellant informed Dr. Cervone that her symptoms were related to her job as a mail handler. Her job required frequent and repetitive movement of her hands/upper extremities. Appellant indicated that she had an open workers' compensation claim for this condition, but due to extreme difficulty in obtaining authorization for further examination and due to worsening hand symptoms, she decided to go through her private health coverage. Dr. Cervone noted a history of her social, family, and medical background. He described findings on physical examination and indicated that appellant would undergo EMG/NCV testing.

A September 12, 2016 EMG/NCV study performed by Dr. Cervone demonstrated moderate right carpal tunnel syndrome and very mild left carpal tunnel syndrome. There was no EMG evidence of left or right cervical radiculopathy affecting the left or right upper extremities.

By decision dated July 6, 2017, OWCP denied appellant's occupational disease claim. It found that none of the medical evidence of record contained a rationalized-medical opinion explaining how her diagnosed bilateral wrist and left thumb conditions were causally related to accepted factors of her federal employment.

On July 25, 2017 appellant requested an oral hearing before an OWCP hearing representative. Subsequently, on July 28, 2017 she requested a telephone hearing. Appellant changed her previous request for a telephone hearing to a request for a review of the written record.

In an undated statement, appellant reiterated that she sustained a work-related left hand injury. She also claimed that she sustained another employment-related left hand injury on September 10, 2017 for which she filed a traumatic injury claim (Form CA-1).³

Appellant submitted additional reports dated October 18 and November 3, 2017 from Dr. Walsh. Dr. Walsh reviewed x-ray test results and discussed physical examination findings. He diagnosed left thumb carpometacarpal degenerative joint disease. Dr. Walsh opined that the diagnosed condition was caused by appellant's employment as she described to him. He noted that she performed significant work with her nondominant left hand. Dr. Walsh recommended surgery as all conservative management had failed. He also recommended that appellant remain off work.

Appellant also submitted an October 31, 2017 attending physician's report (Form CA-20) from Dr. Walsh who indicated a date of injury as September 10, 2017. Dr. Walsh diagnosed left basilar thumb osteoarthritis/degenerative joint disease. He checked a box marked "yes" indicating that the diagnosed condition was caused or aggravated by an employment activity. Dr. Walsh also indicated that appellant was totally disabled from September 9 through December 7, 2017.

By letter dated November 27, 2017, appellant requested that OWCP authorize the proposed left hand surgery. She submitted further reports from Dr. Walsh who restated his prior diagnoses

³ That claim was assigned File No. xxxxxx197. OWCP denied that claim by decision dated November 9, 2017.

of left basilar thumb arthritis and left carpal tunnel syndrome and opined that the diagnosed conditions were caused by her employment duties. In a November 16, 2017 report, Dr. Walsh believed that appellant's work on an advanced facer-canceler (which ran first-class mail), an automated parcel bundler sorter machine (which involved pulling large postal boxes full of mail and putting boxes weighing up to and more than 500 pounds on a line to be dispatched by forklifts), and a "FFS" machine (which sorted first, second, and third class postal items weighing up to 20 to 30 pounds) and at preparation stations, and repetitively lifting items, including magazines weighing up to 20 to 30 pounds with both hands were all consistent with what was well-documented in orthopedic hand literature to cause and/or exacerbate symptoms of left carpal tunnel syndrome and left basilar thumb arthritis. He maintained that specific gripping, grasping, pinching, holding on with the hand, and flexing and extending the wrist were all consistent with the development of these diagnosed conditions.

In a November 17, 2017 work capacity evaluation, Dr. Walsh advised that appellant was unable to perform her usual job without restrictions. He further advised that she was unable to work eight hours a day with physical restrictions.

By decision dated January 3, 2018, an OWCP hearing representative set aside the July 6, 2017 decision and remanded the case to OWCP. She found that, although Dr. Walsh's November 16, 2017 report was insufficiently rationalized to meet appellant's burden of proof to establish that she sustained wrist and left thumb injuries causally related to the accepted employment factors, it was uncontroverted and raised an inference of causal relationship sufficient to require further development by OWCP. On remand, the hearing representative instructed OWCP to prepare an accurate and complete statement of accepted facts (SOAF) and request Dr. Walsh to explain the medical process of how any specific work factor caused or contributed to appellant's diagnosed conditions and why her conditions would not have been due to nonwork factors such as, age-related degenerative changes.

By letter dated January 8, 2018, OWCP requested that Dr. Walsh review a SOAF, which included a description of appellant's established work duties as a mail handler, and provide a well-rationalized opinion explaining how the accepted factors of her federal employment caused or contributed to her bilateral carpal tunnel syndrome and left basilar thumb arthritis.

OWCP received additional reports dated May 4 and June 14, 2017 from Dr. Walsh who indicated a diagnosis of right carpal tunnel syndrome and that he performed endoscopic carpal tunnel release on the right hand.

In reports dated June 29 to September 28, 2017, Dr. Walsh noted that appellant was seen for follow-up of her right carpal tunnel release. He examined her, again diagnosed right carpal tunnel syndrome and also diagnosed right carpal tunnel release.

Dr. Walsh, in a February 16, 2018 letter, responded to OWCP's January 8, 2018 letter requesting information of how the work duties caused her present complaints. He noted that appellant had bilateral carpal tunnel syndrome and ultimately underwent surgery on the right side. Dr. Walsh also noted that she had some carpal tunnel syndrome on the left, but most of her symptoms were due to the basilar thumb arthritis. He recommended surgery for appellant's left basal thumb as conservative management had not resolved her symptoms. Dr. Walsh related that

based on his experience as a hand surgeon for the last 15 years, if nonwork-related factors such as, age-related degenerative changes, were the primary cause of bilateral carpal tunnel and basilar thumb arthritis, then everybody over time would develop these problems and symptoms. He maintained, however, that this was not the case. Based on the stresses across the basilar thumb arthritis and the wrist and hand positioning, carpal tunnel syndrome and basilar thumb arthritis can be directly related to work activities and exacerbate underlying conditions of arthritis that may be nonwork related but, certainly can become symptomatic as a result of work behaviors. Dr. Walsh believed within a degree of medical certainty and probability that appellant's bilateral carpal tunnel and left basilar thumb arthritis were in fact work related based on the fact that she had been performing the described work duties for 22 years. He indicated that he would feel differently if these work activities had only been performed over, for instance, one year to a few years. However, Dr. Walsh believed that appellant's injuries were work-related based on the significant amount of stress across her bilateral hands and fingers.

By decision dated February 26, 2018, OWCP again denied appellant's occupational disease claim. It found that Dr. Walsh's February 16, 2018 report failed to sufficiently explain how the established work factors caused or contributed to her diagnosed conditions.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ 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.⁵ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁶

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.

⁴ *Id.*

⁵ *T.H.*, Docket No. 17-0747 (issued May 14, 2018); *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁶ *T.H.*, *id.*; *S.P.*, 59 ECAB 184 (2007); *Victor J. Woodhams*, 41 ECAB 345 (1989); *Joe D. Cameron*, 41 ECAB 153 (1989).

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

Proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter. While the claimant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility to see that justice is done.¹⁰ The nonadversarial policy of proceedings under FECA is reflected in OWCP's regulations at section 10.121.¹¹

OWCP's procedures provide that the claims examiner should refer the case to a second opinion physician when it has gathered all the medical evidence from the attending physician and does not have enough evidence about a diagnosis or an adequately reasoned opinion about causal relationship to accept the case, but does have sufficient evidence to suggest that the claimant might be entitled to benefits.¹²

ANALYSIS

The Board finds that this case is not in posture for decision as to whether appellant's bilateral wrist and left thumb injuries were causally related to the accepted factors of her federal employment.

By decision dated July 6, 2017, OWCP denied appellant's occupational disease claim, finding that none of the medical evidence of record contained a rationalized medical opinion explaining how her diagnosed bilateral carpal tunnel syndrome and left basilar thumb arthritis were causally related to the accepted factors of her federal employment. By decision dated January 3, 2018, an OWCP hearing representative determined that while a November 16, 2017 report of Dr. Walsh, an attending physician, did not provide sufficient medical rationale to support his opinion that her bilateral carpal tunnel syndrome and left basilar thumb arthritis were causally

⁷ *Y.J.*, Docket No. 08-1167 (issued October 7, 2008); *A.D.* 58 ECAB 149 (2006); *D'Wayne Avila*, 57 ECAB 642 (2006).

⁸ *J.J.*, Docket No. 09-0027 (issued February 10, 2009); *Michael S. Mina*, 57 ECAB 379 (2006).

⁹ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, *supra* note 6.

¹⁰ *See S.M.*, Docket No. 16-0990 (issued February 8, 2017); *Jimmy A. Hammons*, 51 ECAB 219 (1999).

¹¹ 20 C.F.R. § 10.121.

¹² Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluation Medical Evidence*, Chapter 2.0810.9.b (1) (June 2015).

related to the established employment factors, it was uncontroverted and raised an inference of causal relationship to warrant development of the medical evidence by OWCP.

OWCP undertook further development of the medical evidence upon the hearing representative's instructions and, consistent with its procedures, offered appellant's attending physician an opportunity to further expound upon his opinion.¹³

Upon response to OWCP's January 8, 2018 development letter, Dr. Walsh submitted a February 16, 2018 report. In a February 26, 2018 decision, OWCP again denied appellant's claim. It found that Dr. Walsh's February 16, 2018 report was insufficiently rationalized to establish causal relationship between appellant's bilateral wrist and left thumb conditions and the established employment factors.

In his February 16, 2018 report, Dr. Walsh opined that the established work duties, which appellant had performed for 22 years, caused her bilateral carpal tunnel syndrome and left basilar thumb arthritis, right carpal tunnel release, and need to undergo left basal thumb surgery. He reasoned that the stresses across her basilar thumb arthritis and wrist and positioning of her hand during the performance of the established work activities resulted in the diagnosed conditions. Dr. Walsh described the specific machines, weights and tasks of gripping, grasping, pinching, holding on with the hand, and flexing and extending the wrist.

Dr. Walsh has unequivocally stated that appellant's bilateral carpal tunnel syndrome and left basilar thumb arthritis were caused by the established employment factors. He responded to OWCP's request to review a SOAF which contained a description of her established work duties and provided an opinion on the causal relationship between her diagnosed conditions and the established work factors. The Board finds that Dr. Walsh's opinion, while not sufficiently rationalized to meet appellant's burden of proof, is sufficient to require further development of the case record.¹⁴ As noted, while the claimant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence. It has the obligation to see that justice is done.¹⁵

The case will be remanded to OWCP for referral of appellant, the case record, and a SOAF to an appropriate Board-certified specialist for a second opinion evaluation and rationalized medical opinion regarding whether the established employment factors caused or contributed to her bilateral wrist and left thumb conditions.¹⁶ On remand after such further development of the case record as OWCP deems necessary, it shall issue a *de novo* decision.

¹³ *Id.* at Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.0800.8c (1) (June 2011).

¹⁴ See *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *A.F.*, Docket No. 15-1687 (issued June 9, 2016). See also *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

¹⁵ *C.H.*, Docket No. 18-0108 (issued July 19, 2018).

¹⁶ *Supra* note 12.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the February 26, 2018 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to OWCP for further proceedings consistent with this decision of the Board.

Issued: December 10, 2018
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