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

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| **G.C., Appellant**<br><br>**and**<br><br>**DEPARTMENT OF JUSTICE, FEDERAL BUREAU OF INVESTIGATION, Newark, NJ, Employer** | )<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>) | **Docket No. 19-0377**<br>**Issued: July 26, 2019** |

*Appearances:*
*James D. Muirhead, Esq.,* for the appellant[1]
*Office of Solicitor*, for the Director

*Case Submitted on the Record*

## DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

### *JURISDICTION*

On December 13, 2018 appellant, through counsel, filed a timely appeal from a July 19, 2018 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 that she sustained a left upper extremity condition causally related to the accepted December 7, 2016 employment incident.

## *FACTUAL HISTORY*

On January 19, 2017 appellant, then a 44-year-old intelligence analyst, filed a traumatic injury claim (Form CA-1) alleging that she sustained a left upper extremity condition in the performance of duty on December 7, 2016. She asserted that, during a polygraph examination conducted at work on that date, the blood-pressure cuff from the polygraph machine cut off all circulation to her left hand, causing numbness and discoloration.

By development letter dated February 3, 2017, OWCP requested that appellant submit additional evidence in support of her claim, including a physician's opinion supported by a medical explanation as to how the reported December 7, 2016 employment incident caused or aggravated a medical condition. It provided an attached questionnaire regarding the reported December 7, 2016 employment incident and asked whether she experienced left upper extremity symptoms prior to December 7, 2016. OWCP afforded appellant 30 days to respond.

In a February 28, 2017 response, appellant explained that during the polygraph examination conducted on December 7, 2016 she noticed tingling and numbness in her left hand within seconds of the blood-pressure cuff being secured to her left forearm. She indicated that the cuff was applied and removed three times and that the tingling and numbness in her left hand accompanied each application of the cuff. Appellant noted that, by the time the last application of the cuff was made, her left hand was numb and discolored. She maintained that, since December 7, 2016, she experienced left-hand numbness on a daily basis, especially at night.

Appellant submitted a February 21, 2017 report from Dr. Monte B. Pellmar, an attending Board-certified neurologist, who indicated that he first saw her on January 26, 2017. She reported that on December 7, 2016 a blood-pressure cuff was placed on her left arm during an evaluation at work and that her left arm became purple and numb during the inflation of the cuff. Dr. Pellmar maintained that appellant's account was documented by a photograph.[3] He further noted that appellant reported continued pain and numbness in her left arm which interfered with sleeping, although her symptoms subsided over the prior two months. Dr. Pellmar reported the findings of his February 21, 2017 physical examination, noting that she had a positive Tinel's sign at her left wrist, difficulty exerting herself with her left hand because of pain, and a sensory deficit in her left hand in the median nerve distribution more than the ulnar nerve distribution. He noted, "I suspect that there has been an ischemic neuropathy in the left upper extremity" and recommended that appellant undergo electrodiagnostic studies and be evaluated and treated by a hand specialist. Dr. Pellmar indicated, "It is my suspicion that the inflation of the cuff injured the median and/or ulnar nerve."

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[3] A black and white photograph showing the top sides of appellant's left and right forearms/hands was attached to Dr. Pellmar's report.

By decision dated March 10, 2017, OWCP denied appellant's claim for a December 7, 2016 employment injury. It accepted that she had a blood-pressure cuff applied to her left forearm during a December 7, 2016 polygraph examination, but found that she did not submit medical evidence sufficient to establish a causal relationship between a diagnosed medical condition and accepted employment incident.

On April 6, 2017 appellant requested reconsideration of the March 10, 2017 decision and submitted a March 31, 2017 report of Dr. Raymond G. Decker, an attending Board-certified hand surgeon.

In his March 31, 2017 report, Dr. Decker indicated that appellant returned for follow-up evaluation after undergoing upper extremity electromyogram (EMG) and nerve conduction velocity (NCV) testing on March 30, 2017 which showed moderately-severe bilateral carpal tunnel syndrome with thenar muscle involvement (left greater than right), severe right ulnar nerve entrapment at the elbow, denervation in the right hand, and very mild left ulnar neuropathy. He asserted that no evidence of diabetic peripheral neuropathy was noted in the EMG/NCV testing report. Dr. Decker noted that appellant reported left elbow pain and constant numbness in her left thumb, index finger, and middle finger, but she reported no symptoms in her right hand. He reported the findings of the physical examination he conducted on March 31, 2017 noting that appellant had positive results for Tinel's sign, Phalen's sign (less than 60 seconds) and carpal tunnel compression test with respect to the left upper extremity. Appellant exhibited no signs of neuropathy of her left ulnar nerve, there was no weakness or atrophy of her left hand, and she had full range of motion of the digits of her left hand. There was no sign of median nerve entrapment of her right wrist. Dr. Decker diagnosed carpal tunnel syndrome of the left wrist, noting that ischemic neuropathy of the left hand with carpal tunnel syndrome was confirmed by EMG/NCV testing. He maintained that appellant did not have any history of difficulties prior to the left hand injury on December 7, 2016. Dr. Decker advised that the left carpal tunnel syndrome condition was functionally disabling for her and recommended that she undergo surgical intervention for the condition. He also diagnosed lesion of the ulnar nerve of the right upper extremity, but noted that appellant did not desire any treatment or intervention for this condition at the present time.

By decision dated June 5, 2017, OWCP denied modification of its March 10, 2017 decision. It found that Dr. Decker's March 31, 2017 report lacked a rationalized medical opinion on causal relationship.

On November 8, 2017 appellant, through counsel, requested reconsideration of the June 5, 2017 decision. Counsel argued that an attached November 6, 2017 report of Dr. Decker established appellant's claim for left hand neuropathy and left carpal tunnel syndrome.

In his November 6, 2017 report, Dr. Decker indicated that his office first evaluated appellant on March 24, 2017 and that she reported that her left upper extremity symptoms began on December 7, 2016 when she was undergoing a required polygraph examination at work. Appellant advised that the polygraph technician applied a compression cuff to her left arm and inflated it three times for approximately three or four minutes each time. Dr. Decker noted that appellant noticed a "congestion" during the examination with regard to her left hand, wrist, and forearm distal to the cuff, and a feeling of numbness and parasthesias in her left hand. Appellant reported that her left upper extremity symptoms persisted thereafter but diminished with time.

Dr. Decker indicated that in January 2017 an attending neurologist diagnosed possible ischemic neuropathy of the left upper extremity. Appellant had been an insulin-dependent diabetic for more than 20 years, but she denied any evidence of diabetic neuropathy or any history of trauma to her left upper extremity other than the December 7, 2016 incident. Dr. Decker detailed the findings of the physical examination he conducted in March 2017, noting clinical signs of left carpal tunnel syndrome, and discussed the results of the March 30, 2017 EMG/NCV testing of her upper extremities.

Dr. Decker further discussed in his November 6, 2017 report appellant's June 23, July 14, and October 2, 2017 office visits, and noted that she had reported progressively diminishing symptoms of her left upper extremity. He then diagnosed ischemic neuropathy of the left hand due to polygraph cuff compression, carpal tunnel syndrome of the left upper extremity due to polygraph cuff compression, and right ulnar nerve neuropathy at the right elbow (unrelated to any known work incident). Dr. Decker opined within a degree of medical probability "that the injuries [appellant] sustained to her left upper extremity were directly related to the compression of her arm when the polygraph cuff was inflated. As this testing was a requirement of [appellant's] employment, this injury is directly related to her employment. The compression of the cuff caused an ischemic neuropathy of the left hand which compressed the carpal tunnel and subsequently caused her median nerve innervated fingers to become numb and tingle."

By decision dated February 1, 2018, OWCP denied modification of its June 5, 2017 decision.

On April 30, 2018 appellant, through counsel, requested reconsideration of the February 1, 2018 decision. In an undated statement, appellant's immediate supervisor indicated that she saw appellant immediately after she underwent a polygraph examination on December 12, 2016.[4] She observed that appellant appeared to be in pain and that her left hand and arm were a deep purple color.

By decision dated July 19, 2018, OWCP denied modification of its February 1, 2018 decision.

## ***LEGAL PRECEDENT***

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 timely filed within the applicable time limitation period of FECA,[5] 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

[4] The Board notes that, while the supervisor indicated a December 12, 2016 polygraph, appellant has maintained that the polygraph evaluation was conducted on December 7, 2016.

[5] *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.,* 59 ECAB 178 (2007); *Joe D. Cameron,* 41 ECAB 153 (1989).

to the employment injury.[6] 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.[7]

To determine if an employee has sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.[8] The second component is whether the employment incident caused a personal injury.[9]

Rationalized medical opinion evidence is required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, 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 incident.[10]

## ***ANALYSIS***

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

In a November 6, 2017 report, Dr. Decker noted that appellant reported that her left upper extremity symptoms began on December 7, 2016 when she was undergoing a required polygraph examination at work. Appellant advised that the polygraph technician applied a compression cuff to her left arm and inflated it three times for approximately three or four minutes each time. Dr. Decker provided a diagnosis of ischemic neuropathy of the left hand due to polygraph cuff compression and carpal tunnel syndrome of the left upper extremity due to polygraph cuff compression. He expressed his belief that appellant's left upper extremity conditions were directly related to the compression of her left arm when the polygraph cuff was inflated on December 7, 2016. Dr. Decker concluded that the compression of the cuff caused an ischemic neuropathy of the left hand which compressed the left carpal tunnel and subsequently caused her left digits to become numb and tingle.

Proceedings under FECA are not adversarial in nature, and OWCP is not a disinterested arbiter.[11]

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[6] *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.,* 59 ECAB 427 (2008); *James E. Chadden, Sr.,* 40 ECAB 312 (1988).

[7] *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett,* 41 ECAB 992 (1990).

[8] *Elaine Pendleton*, 40 ECAB 1143 (1989).

[9] *M.H.,* Docket No. 18-1737 (issued March 13, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

[10] *S.S.,* Docket No. 18-1488 (issued March 11, 2019).

[11] *See B.B.*, Docket No. 18-1321 (issued April 5, 2019).

The Board finds that, while Dr. Decker's November 6, 2017 report is insufficient to meet appellant's burden of proof, it raises an uncontroverted inference of causal relationship between her claimed condition and the accepted December 7, 2016 employment incident. Further, development of appellant's claim is therefore required.[12]

On remand, OWCP shall prepare a statement of accepted facts and refer appellant to an appropriate Board-certified specialist for a second opinion examination and an evaluation regarding whether she sustained a left upper extremity condition due to the accepted December 7, 2016 employment incident. Following any necessary further development, it shall issue a *de novo* decision.

## ***CONCLUSION***

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

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the July 19, 2018 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision.

Issued: July 26, 2019
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

[12] *See C.M.*, Docket No. 17-1977 (issued January 29, 2019); *John J. Carlone*, 41 ECAB 354 (1989).