United States Department of Labor
Employees' Compensation Appeals Board

G.H., Appellant	)	
and	)	**Docket No. 18-0715**
	)	**Issued: March 19, 2020**
U.S. POSTAL SERVICE, HODGE PARK CARRIER ANNEX, Kansas City, MO, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Deputy Chief Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On February 19, 2018 appellant, through counsel, filed a timely appeal from a November 2, 2017 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.

ISSUE

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

[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.*

FACTUAL HISTORY

On June 17, 2016 appellant, then a 55-year-old rural carrier, filed an occupational disease claim (Form CA-2) alleging that she developed carpal tunnel syndrome due to factors of her federal employment. She identified June 15, 2016 as the date she first became aware of her condition and first realized that her condition was employment related. Appellant did not stop work.

In a development letter dated July 12, 2016, OWCP informed appellant of the factual and medical deficiencies of her claim. It advised her of the type of factual and medical evidence necessary to establish her claim and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond. No response was received.

By decision dated September 1, 2016, OWCP denied appellant's claim, finding that she had not met her burden of proof to establish the factual component of her claim, noting that she had not responded to its questionnaire. It further noted that appellant had not submitted medical evidence in support of her claim. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On September 28, 2016 appellant requested reconsideration of OWCP's September 1, 2016 decision. She submitted an undated statement in which she noted that she had been seen by a physician subsequent to OWCP's decision and contended that she had carpal tunnel syndrome in both hands.

In an electrodiagnostic report dated September 1, 2016, it was noted that Dr. Salvatore Miceli, Board-certified in physical medicine and rehabilitation, performed a nerve conduction velocity study and an electromyogram on appellant's right and left arms. Testing revealed moderate-to-severe right-sided carpal tunnel syndrome and moderate left-sided carpal tunnel syndrome.

In a work status report dated September 23, 2016, Dr. Christopher Bagby, a Board-certified orthopedic surgeon, diagnosed bilateral carpal tunnel syndrome, severe on the right, and moderate on the left. He noted that the duties of appellant's employment were "contributing to this issue."

In an undated note, Dr. Bagby advised that appellant was scheduled for a left-sided carpal tunnel release on October 13, 2016.

By decision dated October 31, 2016, OWCP modified its September 1, 2016 decision to accept that the medical evidence submitted had provided a diagnosed medical condition. It found, however, that the medical evidence of record was insufficient to establish causal relationship between the diagnosed carpal tunnel and the accepted factors of appellant's federal employment.

On March 17, 2017 appellant requested reconsideration of OWCP's October 31, 2016 decision. With her request, she attached an undated narrative statement outlining the duties of her federal employment position, including casing mail, pulling mail, starting and loading a mail truck, opening and closing mailboxes, scanning mail, placing mail into slots, lifting parcels and packages, and manipulating mail trays.

On March 21, 2017 OWCP denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

On October 19, 2017 appellant, through counsel, requested reconsideration of OWCP's October 31, 2016 decision. With the request, counsel submitted an October 15, 2017 report from Dr. Neil Allen, a Board-certified internist and neurologist. Dr. Allen reviewed appellant's medical file and noted that she had no history of a hand injury prior to June 15, 2016. He also noted that appellant was employed as a rural carrier when she sustained an injury to her hands, which she attributed to repetitive and overhead tasks. Dr. Allen reviewed the results of the September 1, 2016 electrodiagnostic studies showing evidence of moderate-to-severe right-sided carpal tunnel syndrome and moderate left-sided carpal tunnel syndrome. He opined that appellant's bilateral wrist condition was work related and that her case should be accepted for bilateral carpal tunnel syndrome, noting that medical literature supported that compression of the carpal tunnel produced paresthesia in the radial-palmar aspect of the hand plus pain in the wrist, palm, or proximal to the compression site of the forearm. Dr. Allen advised that possible etiologies for carpal tunnel syndrome generally included repeated forceful wrist flexion, violent muscular activity or forcible overextension, and mechanical stress. He indicated that: appellant started her vehicle up to 200 times per day, which required forceful wrist flexion; performed 440 pinch grip motions during sorting, which constituted repetitive mechanical stress or violent muscular activity; and opened and closed her delivery window numerous times per day, which constituted forceful flexion. Dr. Allen noted that these tasks "resulted in excess mechanical stress on the joints of both the wrist and the hands, beyond that needed to perform normal daily activity." He opined that appellant's work duties, as set forth in his report, were sufficient to cause the development of bilateral carpal tunnel syndrome due to repetitive activity.

By decision dated November 2, 2017, OWCP denied modification of the October 31, 2016 decision.

LEGAL PRECEDENT

A claimant seeking benefits under FECA[3] has the burden of proof to establish the essential elements of his or her claim, including 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 period of FECA,[4] 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

[3] *Supra* note 2.

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

employment injury.[5] 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.[6]

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the identified employment factors.[7]

Causal relationship is a medical question, which requires rationalized medical opinion evidence to resolve the issue.[8] 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.[9] 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.[10] The absence of a physical examination by a physician may affect the weight to be given a medical report, but does not render it incompetent as medical evidence.[11] In cases where the sole issue is one of causal relationship, a physical examination is unnecessary as it would be of no consequence and would only result in additional delay and cost.[12]

ANALYSIS

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

In a report dated October 15, 2017, Dr. Allen reviewed appellant's medical file and noted that she was employed as a rural carrier when she sustained injury to her hands, which she attributed to repetitive and overhead tasks. He indicated that the electrodiagnostic studies of September 1, 2016 had revealed evidence of moderate-to-severe right-sided carpal tunnel

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

[6] *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).

[7] *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[8] *See A.L.*, Docket No. 19-1122 (issued January 7, 2020); *Robert G. Morris*, 48 ECAB 238 (1996).

[9] *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *Victor J. Woodhams*, *supra* note 7.

[10] *Id.*

[11] *See W.C.*, Docket No. 18-1386 (issued January 22, 2019); *M.M.*, Docket No. 17-0438 (issued March 13, 2018); *C.B.*, Docket No. 17-0726 (issued July 3, 2017); *Melvina Jackson*, 38 ECAB 443, 447-52 (1987).

[12] *See Sherry Shreiber*, Docket No. 04-1966 (issued January 24, 2005) (the Board held that the fact that an OWCP-selected second opinion physician had not physically examined the claimant was of no consequence as the diagnosis had already been established and, thus, the only question was causal relationship); *see also W.C., id*.

syndrome and moderate left-sided carpal tunnel syndrome. Dr. Allen opined that appellant's bilateral wrist condition was work related and that her case should be accepted for bilateral carpal tunnel syndrome. He advised that medical literature provided that compression of the carpal tunnel produced paresthesia in the radial-palmar aspect of the hand plus pain in the wrist, palm, or proximal to the compression site of the forearm, and that possible etiologies for carpal tunnel syndrome generally included repeated forceful wrist flexion, violent muscular activity or forcible overextension, and mechanical stress. Dr. Allen considered appellant's employment duties noting that she was required to start her vehicle up to 200 times per day, which constituted forceful wrist flexion, to perform 440 pinch grip motions during sorting, which constituted repetitive mechanical stress or violent muscular activity, and open/close her delivery window numerous times per day, which constituted forceful flexion. He opined that these tasks resulted in excess mechanical stress on the joints of both the wrist and the hands, beyond what was required for normal daily activity. Dr. Allen concluded that appellant's work duties led to the development of bilateral carpal tunnel syndrome due to repetitive activity. He noted that her past medical history was unremarkable for a prior injury to her hands.

The Board finds that the October 15, 2017 report of Dr. Allen is sufficient to require further development of the medical evidence to see that justice is done.[13] Dr. Allen is a Board-certified physician who is qualified in his field of medicine to render rationalized opinions on the issue of causal relationship. He indicated that he had reviewed appellant's medical records and noted her medical history. Dr. Allen provided a pathophysiological explanation as to how the accepted factors of appellant's federal employment were sufficient to have caused bilateral carpal tunnel syndrome, the established diagnosed condition in this claim. The Board has long held that it is unnecessary that the evidence of record in a case be so conclusive as to suggest causal connection beyond all reasonable doubt. Rather, the evidence required is only that necessary to convince the adjudicator that the conclusion drawn is rationale, sound, and logical.[14] Dr. Allen's opinion is not contested by other medical evidence of record.

It is well established that proceedings under FECA are not adversarial in nature and, while appellant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.[15] It has an obligation to see that justice is done.[16]

On remand OWCP should refer appellant to an appropriate specialist, along with the case record and a statement of accepted facts, for a well-rationalized opinion regarding whether she sustained bilateral carpal tunnel syndrome causally related to the accepted factors of her federal employment. If the physician opines that the bilateral carpal tunnel syndrome is not causally related to the accepted employment factors, he or she must explain with rationale how or why their opinion differs from that of Dr. Allen. After this and such other further development as OWCP deems necessary, it shall issue a *de novo* decision.

[13] *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *X.V.*, Docket No. 18-1360 (issued April 12, 2019).

[14] *C.C.*, Docket No. 18-1453 (issued January 28, 2020).

[15] *K.P.*, Docket 18-0056 (issued January 27, 2020); *see also A.P.*, Docket No. 17-0813 (issued January 3, 2018).

[16] *C.C.*, *supra* note 14.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the November 2, 2017 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: March 19, 2020
Washington, DC

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

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

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