

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

A.A., Appellant)

and)

**DEPARTMENT OF AGRICULTURE, FOOD)
SAFETY & INSPECTION SERVICE,)
Enterprise, AL, Employer)**

**Docket No. 21-1113
Issued: January 6, 2022**

Appearances:

*Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge

JANICE B. ASKIN, Judge

VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On July 15, 2021 appellant, through counsel, filed a timely appeal from a June 17, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (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 established right upper extremity cubital tunnel syndrome and right middle finger tenosynovitis causally related to the accepted factors of her federal employment.

FACTUAL HISTORY

On November 16, 2020 appellant, then a 48-year-old food inspector, filed an occupational disease claim (Form CA-2) alleging that she developed a pinched nerve and cubital tunnel syndrome in her right hand due to factors of her federal employment, including repetitive use of both hands. She reported experiencing hand pain and swelling every time she went to work. Appellant reported that she first became aware of her claimed condition on August 27, 2019 and of its relation to factors of her federal employment on September 10, 2020. She stopped work on September 20, 2020.³

On September 21, 2020 appellant underwent an electromyogram/nerve conduction velocity (EMG/NCV) study of the right upper extremity, which revealed findings consistent with a mild ulnar nerve injury at or near the right elbow.

In an October 1, 2020 report, Dr. David H. MacDonald, an osteopath and Board-certified orthopedist specializing in hand surgery, reviewed the September 21, 2020 EMG/NCV study and diagnosed cubital tunnel syndrome of the right upper extremity, tenosynovitis of the right middle finger and right hand pain. Appellant was scheduled to undergo a right ulnar nerve neuroplasty and A1 pulley release of the right middle finger for October 9, 2020.

In a November 29, 2020 note, Dr. MacDonald diagnosed synovitis and tenosynovitis of the right hand. He advised that appellant would need a job she could perform with her left hand as she could not use her right hand.

In a development letter dated January 5, 2021, OWCP advised appellant of the factual and medical deficiencies of her claim. It asked her to complete a questionnaire to provide further details regarding the circumstances of her claimed injury and requested a narrative medical report from her treating physician, which contained a detailed description of findings and diagnoses, explaining how her work activities caused, contributed to, or aggravated her medical condition. In a separate development letter of even date, OWCP requested that the employing establishment provide comments from a knowledgeable supervisor regarding the accuracy of appellant's allegations. It afforded both parties 30 days to respond.

On January 13, 2021 an employing establishment human resources specialist, responded to OWCP's development questionnaire. In an e-mail of even date, appellant's supervisor,

³ Appellant also included a statement wherein she reported that on August 27, 2019 she originally saw Dr. Orvis Chitwood, a Board-certified orthopedist specializing in hand surgery, who diagnosed right hand-acquired trigger finger and administered cortisone injections. She related that repetitive motion seemed to be the cause of her injury, which she alleged occurred while performing work at the employing establishment. Appellant further stated that only her right hand was affected and she had no other similar conditions.

concurrent with appellant's allegations. She reported that appellant's shifts consisted of postmortem inspection of between 16,875 and 17,500 poultry carcasses per eight-hour workday. The supervisor explained that appellant used a two-handed inspection technique to reflect the carcasses' abdominal flaps, which required down and forward movement of the arms, rotation of the wrists, flexion of the thumbs, and some use of the fingers. She noted that appellant occasionally had to reach forward 8 to 12 inches from a standing or sitting position in order to inspect viscera. The employing establishment also submitted appellant's job description.

Appellant responded to OWCP's development questionnaire on January 25, 2021, relating that she had to reflect the flaps of a chicken to inspect the cavity 35 times per minute for at least 8 hours a day. She indicated that this required repeated movement of the hand or wrist and, thus, she believed it contributed to her medical conditions. Appellant also noted that she was unable to open her two middle fingers all the way and that she experienced pain, especially with repeated use. Finally, she reported that she sustained a hairline fracture to her right wrist in 2003.

By decision dated February 11, 2021, OWCP denied appellant's occupational disease claim, finding that the evidence of record was insufficient to establish that her medical conditions were causally related to the accepted factors of her federal employment.

On February 23, 2021 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

OWCP received additional medical evidence including September 9, October 28, and December 3, 2020, and January 14, 2021 follow-up reports from Dr. MacDonald. In the September 9, 2020 report, he reported that appellant could return to light modified-duty work. On October 28, 2020 he released appellant from work for four weeks. Dr. MacDonald further noted, in the December 3, 2020 and January 14, 2021 reports, that appellant would need to have a job that she could safely perform with her left hand because she could not use her right hand. He recommended ongoing occupational therapy and prescribed Medrol Dose Pak. Appellant also submitted an October 23, 2020 surgery report from Dr. MacDonald, who performed a right elbow ulnar neuroplasty and right middle finger A1 pulley release. Dr. MacDonald diagnosed right cubital tunnel syndrome and right middle trigger finger.

During a telephonic hearing held before an OWCP hearing representative on May 11, 2021, appellant described inspecting around 16,000 poultry carcasses per eight-hour shift with extensive upper extremity movement. She testified that, at some point, she began to notice that her right hand would freeze into place while inspecting. Appellant also outlined her treatment thereafter and testified that her two middle fingers continued to lock, even after surgery. She did not return to work because Dr. MacDonald advised that she could not use her right hand. The hearing representative advised appellant of the type of medical evidence necessary to establish her occupational disease claim and held the case record open for 30 days for the submission of additional evidence. OWCP did not receive any further evidence.

By decision dated June 17, 2021, OWCP's hearing representative affirmed the February 11, 2021 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,⁴ 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 to the 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 the following: (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 that requires rationalized medical opinion evidence to resolve the issue.⁸ A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factor(s) 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 factor(s).¹⁰

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish right upper extremity cubital tunnel syndrome and right middle finger tenosynovitis causally related to the accepted factors of her federal employment.

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

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 *R.G.*, Docket No. 19-0233 (issued July 16, 2019). *See also Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁸ *T.H.*, 59 ECAB 388, 393 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

⁹ *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

¹⁰ *Id.*; *Victor J. Woodhams*, *supra* note 7.

In medical notes dated September 9, 2020 through January 14, 2021, Dr. MacDonald diagnosed right upper extremity cubital tunnel syndrome with middle finger tenosynovitis. However, he did not discuss appellant's accepted work factors or offer an opinion on causal relationship. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.¹¹ For this reason, Dr. MacDonald's medical evidence is insufficient to meet appellant's burden of proof.

The remaining medical evidence consisted of a September 21, 2020 EMG/NCV study. The Board has held, however, that diagnostic testing reports, standing alone, lack probative value on the issue of causal relationship as they do not address the relationship between the accepted employment factors and a diagnosed condition.¹² For this reason, this evidence is also insufficient to meet appellant's burden of proof.

As appellant has not submitted rationalized medical evidence establishing that her right upper extremity cubital tunnel syndrome and right middle finger tenosynovitis are causally related to the accepted factors of her federal employment, the Board finds that she has not met her burden of proof to establish her 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.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish right upper extremity cubital tunnel syndrome and right middle finger tenosynovitis causally related to the accepted factors of her federal employment.

¹¹ *S.J.*, Docket No. 19-0696 (issued August 23, 2019); *M.C.*, Docket No. 18-0951 (issued January 7, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹² *W.M.*, Docket No. 19-1853 (issued May 13, 2020); *L.F.*, Docket No. 19-1905 (issued April 10, 2020).

ORDER

IT IS HEREBY ORDERED THAT the June 17, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 6, 2022
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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