

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

S.R., Appellant)	
)	
and)	Docket No. 22-0245
)	Issued: July 18, 2022
U.S. POSTAL SERVICE, POST OFFICE, Indianapolis, IN, Employer)	
)	

Appearances:
Alan J. Shapiro, Esq., for the appellant¹
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
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On December 3, 2021 appellant, through counsel, filed a timely appeal from a November 18, 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.³

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.*

³ The Board notes that, following the November 18, 2021 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

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.

FACTUAL HISTORY

On January 13, 2021 appellant, then a 57-year-old sales, service, and distribution employee, filed an occupational disease claim (Form CA-2) alleging that she injured her arms, wrists, and hands due to factors of her federal employment which required repetitive use of her arms and hands. She noted that she first became aware of her conditions and realized their relation to her federal employment on August 8, 2020.

In a development letter dated January 14, 2021, OWCP advised appellant of the type of factual and medical evidence needed to establish her claim and provided a questionnaire for her completion. By separate development letter of even date, it requested additional information from the employing establishment, including comments from a knowledgeable supervisor regarding her allegations. OWCP afforded both parties 30 days to respond.

In a January 12, 2021 form report, Jacqueline S. Cole, a nurse practitioner, noted a diagnosis of bilateral carpal tunnel syndrome and indicated that appellant could return to work on January 13, 2021.

OWCP received a report dated January 18, 2021 from Dr. Robert Falender, a Board-certified orthopedic surgeon, specializing in hand surgery. Dr. Falender related that appellant experienced numbness and tingling in both of her hands. He noted that she performed repetitive work which aggravated her condition and possibly caused it. Dr. Falender diagnosed bilateral hand numbness.

OWCP received a medical report dated January 21, 2021 from Dr. Vince Hume, a Board-certified physical medicine and rehabilitation specialist. Dr. Hume noted that appellant's electrodiagnostic study revealed evidence of bilateral-moderate sensorimotor median mononeuropathy located at the carpal tunnel. He diagnosed bilateral hand numbness.

In a January 25, 2021 response to OWCP's development questionnaire, appellant stated that her job duties included pushing heavy containers, unloading trays of letters, carrying tubs and trays, unloading, scanning, and tossing packages into carts, delivering packages; and working retail.

In a report dated February 17, 2021, Dr. Casimir R. Starsiak, an osteopathic physician specializing in orthopedic surgery, diagnosed bilateral carpal tunnel syndrome and related that appellant experienced numbness and tingling in both hands. He also indicated that she wanted to proceed with right carpal tunnel release.

By decision dated February 24, 2021, OWCP accepted that the employment factors occurred, as alleged, however it denied appellant's claim as causal relationship had not been established between her diagnosed bilateral carpal tunnel syndrome and the accepted employment factors. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

OWCP continued to receive medical reports.

In a report dated January 21, 2021, Dr. Hume reviewed appellant's nerve conduction velocity and electrodiagnostic studies and related that her right median motor nerves showed prolonged distal onset latency and reduced amplitude, her bilateral ulnar motor nerves showed decreased conduction velocity, and her bilateral median sensory nerves showed prolonged distal peak latency and decreased conduction velocity.

On November 15, 2021 appellant, through counsel, requested reconsideration of OWCP's February 24, 2021 decision and submitted a report dated September 3, 2021 from Dr. Jeffery Bollenbacher, an orthopedic surgeon. Dr. Bollenbacher related that appellant complained of bilateral wrist pain and right elbow pain. He related her diagnoses as bilateral carpal tunnel syndrome, right greater than left, medial epicondylitis of the right elbow, lateral epicondylitis of the right elbow, ulnar nerve entrapment noted on the right elbow, and cubital tunnel syndrome. Dr. Bollenbacher opined that appellant's injury was consistent with her occupation and caused by long-term overuse of her right elbow and wrists.

By decision dated November 18, 2021, denied modification of its February 24, 2021 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ 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 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 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 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

⁴ *Id.*

⁵ *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁷ *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the identified employment factors.⁸

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁹ 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.¹⁰ 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, is sufficient to establish causal relationship.¹¹

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish bilateral carpal tunnel syndrome causally related to the accepted factors of her federal employment.

In a medical report dated September 3, 2021, Dr. Bollenbacher diagnosed appellant with bilateral carpal tunnel syndrome, right greater than left, medial epicondylitis of the right elbow, lateral epicondylitis of the right elbow, ulnar nerve entrapment noted on the right elbow, and cubital tunnel syndrome. He opined that her injury was consistent with her occupation and caused by long-term overuse of her right elbow and wrists. While Dr. Bollenbacher provided an opinion on the causal relationship, he did not offer any rationale to explain how the accepted employment incident would have caused appellant's diagnosed condition.¹² The Board has held that a medical opinion should offer a medically sound explanation of how the specific employment incident physiologically caused the diagnosed condition. As Dr. Bollenbacher's report did not provide the necessary medical rationale to establish causal relationship between the diagnosed conditions and the accepted factors of appellant's employment, it was of limited probative value and insufficient to establish her claim.

Dr. Falender noted appellant's bilateral hand numbness in a report dated January 18, 2021 and indicated that it could have been aggravated or possibly caused by her work activities. The Board has previously explained that symptoms such as pain and numbness are not specific medical diagnoses. As Dr. Falender's report did not provide a firm diagnosis it was insufficient to establish appellant's claim.¹³

⁸ See *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁹ *J.F.*, Docket No. 18-0492 (issued January 16, 2020); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

¹⁰ *A.M.*, Docket No. 18-0562 (issued January 23, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

¹¹ *E.W.*, Docket No. 19-1393 (issued January 29, 2020); *Gary L. Fowler*, 45 ECAB 365 (1994).

¹² *T.W.*, Docket No. 20-0767 (issued January 13, 2021); see *H.A.*, Docket No. 18-1466 (issued August 23, 2019); *L.R.*, Docket No. 16-0736 (issued September 2, 2016).

¹³ See *S.D.*, Docket No. 20-0413 (issued July 28, 2020).

In January 21, 2021 reports, Dr. Hume related appellant's diagnostic findings and in a report dated February 17, 2021, Dr. Starsiak diagnosed her with bilateral carpal tunnel syndrome. However, Drs. Hume and Starsiak did not provide their own medical opinion explaining the cause of her diagnosed conditions. 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.¹⁴ As such, these reports are insufficient to establish appellant's claim.

OWCP also received a January 12, 2021 note from nurse practitioner Ms. Cole. This note does not constitute competent medical evidence because nurse practitioners are not considered physicians as defined under FECA. Consequently, their medical findings and/or opinions are of no probative value and will not suffice for purposes of establishing entitlement to compensation benefits.¹⁵

As the medical evidence of record is insufficient to establish causal relationship between appellant's bilateral carpal tunnel syndrome and the accepted factors of her federal employment, the Board finds that she has not met her burden of proof.

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 that her bilateral carpal tunnel conditions were causally related to the accepted factors of her federal employment.

¹⁴ *D.C.*, Docket No. 19-1093 (issued June 25, 2020); *see L.B.*, Docket No. 18-0533 (issued August 27, 2018).

¹⁵ Section 8101(2) of FECA provides as follows: "(2) physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law." 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *see also R.L.*, Docket No. 19-0440 (issued July 8, 2019) (nurse practitioners and physical therapists are not considered physicians under FECA).

ORDER

IT IS HEREBY ORDERED THAT the November 18, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 18, 2022
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board