

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

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| D.D., Appellant |) | |
| |) | |
| and |) | Docket No. 23-0520 |
| |) | Issued: August 21, 2023 |
| DEPARTMENT OF VETERANS AFFAIRS, |) | |
| WEST LOS ANGELES VA MEDICAL |) | |
| CENTER, Los Angeles, CA, Employer |) | |
| |) | |

Appearances: *Case Submitted on the Record*
Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On March 6, 2023 appellant, through counsel, filed a timely appeal from a February 24, 2023 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 issuance of the February 24, 2023 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 an injury in the performance of duty, as alleged.

FACTUAL HISTORY

On December 20, 2021 appellant, then a 60-year-old medical supply technician, filed an occupational disease claim (Form CA-2) alleging that she developed right carpal tunnel syndrome (CTS) due to factors of her federal employment. She noted that she had undergone carpal tunnel surgery on her right hand in 2018. Appellant noted that she first became aware of her condition on July 18, 2016, and realized its relationship to her federal employment on September 1, 2019. She did not stop work.

In support of her claim, appellant submitted a February 1, 2021 treatment note from Dr. Tung V. Tran, Board-certified in family medicine, indicating that she had numbness and tingling of skin. She was provided work restrictions regarding repetitive left-hand motion, gripping and grasping of the left-hand, lifting and carrying.

In a development letter dated January 4, 2022, OWCP informed appellant of the 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 submit the necessary evidence. OWCP also sent a development letter to the employing establishment on that date.

No response to the questionnaire by appellant was received.

OWCP received pay stubs; notification of personnel action (Standard Form 50) forms dated April 3, 2016 and July 31, 2018; a response from the employing establishment noting that they were unable to provide any information; a position description for medical supply technician; and a leave summary.

Appellant also submitted an additional progress note dated November 18, 2021 from Dr. Frances Elizabeth Sharpe, a Board-certified hand surgeon. Dr. Sharpe related that appellant was first seen on September 17, 2018 with complaints of right ring trigger finger, right hand palmer pain, and left hand pain with numbness and tingling. On July 27, 2021 appellant underwent right ring trigger finger release. She underwent right carpal tunnel release on November 18, 2021.

In a January 25, 2022 note, Dr. Tran diagnosed bilateral CTS. He noted that appellant had undergone right carpal tunnel release, prior to her care with him. A March 18, 2021 electromyography/nerve conduction velocity (NCV) indicated moderate-to-severe CTS. Dr. Tran also related that appellant had received injections for treatment of trigger finger of the bilateral thumbs, left middle finger, and right ring finger.

By decision dated February 11, 2022, OWCP denied appellant's occupational disease claim, finding that she had not established the implicated employment factors as she had not responded to its developmental questionnaire. Consequently, it found that she had not met the requirements to establish an injury as defined by FECA.

On December 6, 2022 counsel for appellant requested reconsideration and submitted new evidence.

In a June 8, 2022 report, Dr. Cary Nelson, a family medicine specialist, diagnosed left CTS and opined that appellant developed the condition while working, as a result of repetitive and almost exclusive use of her left hand due to the prior CTS on the right. He explained that CTS resulted from repetitive flexion of the wrist causing compression of the median nerve. Dr. Nelson related that appellant was using the left hand exclusively due to excessive pain in the right wrist prior to and following right release surgery in 2018, and that she had now developed overuse and compression of the left median nerve. He recommended a release of the left wrist to relieve the symptoms of pain, weakness, and neuropathy.

OWCP received duty status reports (Form CA-17) dated November 17 and December 13, 2022, and January 11 and February 9, 2023, from Dr. Nelson providing restrictions for work.

A December 15, 2022 NCV study related impressions of left median motor neuropathy at the wrist, and right median sensory neuropathy at the wrist (mild right CTS).

By decision dated February 24, 2023, OWCP denied modification of its prior 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 of FECA, that the claim was timely filed within the applicable time limitation 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, an employee 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.⁸

⁴ *Id.*

⁵ See *T.G.*, Docket No. 22-0093 (issued February 7, 2023); *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued December 13, 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).

⁸ *T.W.*, Docket No. 20-0767 (issued January 13, 2021); *L.D.*, Docket No. 19-1301 (issued January 29, 2020); *S.C.*, Docket No. 18-1242 (issued March 13, 2019).

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish an injury in the performance of duty, as alleged.

In a development letter dated January 4, 2022, OWCP requested that appellant provide detailed information concerning the employment factors she believed contributed to her condition and respond to its questionnaire. However, appellant failed to respond or otherwise provide a detailed narrative statement describing the employment factors, which she believed contributed to her condition.⁹ The Board notes that she only provided a generalized and vague statement on her Form CA-2.

While appellant submitted medical reports to the record, these reports also did not describe specific employment factors which allegedly caused her alleged injury.

As appellant has not described the employment factors alleged to have caused her injury, the Board finds that she has not met her burden of proof to establish an injury in the performance of duty, as alleged. As such, the medical evidence need not be further addressed.¹⁰

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 an injury in the performance of duty, as alleged.

⁹ See *D.C.*, Docket No. 18-0082 (issued July 12, 2018).

¹⁰ See *E.V.*, Docket No. 19-0447 (issued June 25, 2019); see also *V.F.*, 58 ECAB 321, 327 (2007); see also *Bonnie A. Contreas*, 57 ECAB 364, 368 n.10 (2006).

ORDER

IT IS HEREBY ORDERED THAT the February 24, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 21, 2023
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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