

FACTUAL HISTORY

This case was previously before the Board.³ The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On January 13, 2021 appellant, then a 57-year-old sales, service, and distribution associate, filed an occupational disease claim (Form CA-2) alleging that she injured her upper extremities 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. Appellant did not stop work.

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 advised 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 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 related 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

³ Docket No. 22-0245 (issued July 18, 2022).

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 osteopath Board-certified in orthopedic surgery. 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, OWCP denied modification of its February 24, 2021 decision.

Appellant appealed to the Board. The Board, by decision dated July 18, 2022, affirmed OWCP's November 18, 2021 decision.

On April 4, 2023 appellant, through counsel, requested reconsideration before OWCP. In support of her request, she resubmitted her January 21, 2021 electrodiagnostic study and submitted an November 1, 2021 report from an unidentifiable medical provider with an illegible signature diagnosing right carpal tunnel syndrome, and right cubital tunnel syndrome. In a November 16, 2021 operative report, Dr. Bollenbacher performed an unauthorized right wrist carpal tunnel release, right elbow cubital tunnel release and modified Nischl procedure of medial epicondyle. Appellant provided physical therapy notes beginning November 23, 2021.

Dr. Bollenbacher indicated that she required physical therapy and could use her left hand only. He examined appellant on December 21, 2022 and recounted her symptoms of continued wrist and elbow pain. Dr. Bollenbacher described appellant's work activities of sorting mail and lifting packages. He provided additional diagnoses following the November 16, 2021 surgery of flexor carpi ulnar tenodesis of the right wrist, and right elbow lateral epicondylitis. On February 11, 2022 he determined that appellant could return to full-duty work with no restrictions. In a February 15, 2023 note, Dr. Bollenbacher related that she worked at the employing establishment and that due to cumulative trauma with repetitive motion she had developed carpal and cubital tunnel syndromes.

Appellant requested leave in accordance with the Family and Medical Leave Act (FMLA) on December 3, 2021.

By decision dated October 6, 2023, OWCP denied modification of its November 18, 2021 decision.

On March 25, 2024 appellant, through counsel, requested reconsideration of the October 6, 2023 decision. In support of this request, she provided a February 6, 2024 note from Dr. Bollenbacher. He diagnosed right elbow cubital tunnel and epicondylitis and bilateral carpal tunnel syndrome with resulting surgeries. Dr. Bollenbacher opined that these conditions were consistent with an occupational injury due to long-term overuse. He related that appellant was employed as a postal worker moving multiple packages and weights with both of her arms for many years.

By decision dated March 27, 2024, OWCP denied modification of the October 6, 2023 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, 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 employment factors identified by the employee.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 upon a complete

⁴ *Supra* note 2.

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).

⁸ *P.L.*, Docket No. 19-1750 (issued March 26, 2020); *R.G.*, Docket No. 19-0233 (issued July 16, 2019); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett, id.*

⁹ *I.J.*, Docket No. 19-1343 (issued February 26, 2020); *T.H.*, 59 ECAB 388 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

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 factors.¹⁰

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.

Preliminarily, the Board notes that it is unnecessary to consider the evidence appellant submitted prior to the issuance of the November 18, 2021 decision because the Board considered that evidence in its July 18, 2022 decision. Findings made in prior Board decisions are *res judicata* absent any further review by OWCP under section 8128 of FECA.¹¹

Appellant submitted a November 16, 2021 operative report from Dr. Bollenbacher describing her right wrist carpal tunnel release, right elbow cubital tunnel release, and modified Nischl procedure of medial epicondyle. On December 21, 2022 Dr. Bollenbacher recounted her symptoms of continued wrist and elbow pain and described her work activities of sorting mail and lifting packages. As these reports do not address causation, they are of no probative value and insufficient to meet appellant's burden of proof.¹²

Dr. Bollenbacher completed a February 15, 2023 note, relating that due to repetitive motion and cumulative trauma at the employing establishment appellant had developed carpal and cubital tunnel syndromes. In a February 6, 2024 note, he diagnosed right elbow cubital tunnel and epicondylitis of the right elbow and bilateral carpal tunnel syndrome with resulting surgeries and opined that these conditions were consistent with an occupational injury due to long-term overuse. Dr. Bollenbacher related that appellant was employed as a postal worker moving multiple packages and weights with both her arms for many years. While he provided affirmative opinions, which supported causal relationship, he did not offer rationalized medical explanations in these reports to support his opinion. Dr. Bollenbacher did not explain the physiological process through which repetitive motion or moving multiple packages and weights with both her arms at the employing establishment would cause cumulative trauma resulting in epicondylitis of the right elbow and carpal and cubital tunnel syndromes.¹³ The Board has held that medical evidence should offer a medically-sound and rationalized explanation by the

¹⁰ *D.C.*, Docket No. 19-1093 (issued June 25, 2020); *see L.B.*, Docket No. 18-0533 (issued August 27, 2018).

¹¹ *G.W.*, Docket No. 22-0301 (issued July 25, 2022); *M.D.*, Docket No. 19-0510 (issued August 6, 2019); *Clinton E. Anthony, Jr.*, 49 ECAB 476, 479 (1988).

¹² *See R.B.*, Docket No. 23-1027 (issued April 3, 2024); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹³ *See R.B., id.*; *S.B.*, Docket No. 24-0064 (issued February 28, 2024); *S.C.*, Docket No. 21-0929 (issued April 28, 2023); *J.D.*, Docket No. 19-1953 (issued January 11, 2021); *M.W.*, Docket No. 14-1664 (issued December 5, 2014).

physician of how employment duties physiologically caused or aggravated the diagnosed conditions.¹⁴ Therefore, this evidence is insufficient to meet appellant's burden of proof.

Appellant also submitted notes signed by a physical therapist. The Board has long held that certain healthcare providers such as physician assistants, nurse practitioners, and physical therapist are not considered physicians as defined under FECA.¹⁵ Their medical findings, reports and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits. Consequently, these notes are also insufficient to establish the claim.

Appellant also submitted unsigned medical records. The Board has held that medical evidence containing an illegible signature, or which is unsigned has no probative value, as it is not established that the author is a physician.¹⁶

The remaining medical evidence of record consists of reports of diagnostic studies. The Board has held that diagnostic studies, standing alone, lack probative value, and are insufficient to establish the claim.¹⁷ Therefore, these reports are also insufficient to meet appellant's burden of proof.

As the medical evidence of record is insufficient to establish bilateral upper extremity conditions causally related to the accepted employment factors, the Board finds that appellant 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 bilateral carpal tunnel syndrome causally related to the accepted factors of her federal employment.

¹⁴ See *S.B., id.*; *T.L.*, Docket No. 23-0073 (issued January 9, 2023); *V.D.*, Docket No. 20-0884 (issued February 12, 2021); *Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

¹⁵ Section 8101(2) of FECA provides that 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); *R.L.*, Docket No. 19-0440 (issued July 8, 2019) (a physical therapist is not considered a physician as defined under FECA). *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA).

¹⁶ See *C.C.*, Docket No. 23-1006 (issued December 28, 2023); *T.C.*, Docket No. 21-1123 (issued April 5, 2022); *Z.G.*, Docket No. 19-0967 (issued October 21, 2019); see *R.M.*, 59 ECAB 690 (2008); *Merton J. Sills*, 39 ECAB 572, 575 (1988); *Bradford L. Sullivan*, 33 ECAB 1568 (1982).

¹⁷ *J.K.*, Docket No. 20-0591 (issued August 12, 2020); *A.B.*, Docket No. 17-0301 (issued May 19, 2017).

ORDER

IT IS HEREBY ORDERED THAT the March 27, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 2, 2024
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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