

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

L.H., Appellant	)	
	)	
and	)	Docket No. 24-0326
	)	Issued: May 7, 2024
DEPARTMENT OF THE ARMY, U.S. ARMY	)	
CORPS OF ENGINEERS, Fort Riley, KS,	)	
Employer	)	
	)	

*Appearances:*  
Alan J. Shapiro, Esq., for the appellant<sup>1</sup>  
Office of Solicitor, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
JANICE B. ASKIN, Judge

**JURISDICTION**

On February 9, 2024 appellant, through counsel, filed a timely appeal from a January 23, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

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<sup>1</sup> 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.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## ISSUE

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

## FACTUAL HISTORY

On November 23, 2022 appellant, then a 60-year-old contractor, filed an occupational disease claim (Form CA-2) alleging that she developed carpal tunnel syndrome due to factors of her federal employment including repetitive typing. She noted that she first became aware of her condition on April 1, 2022 and realized its relation to her federal employment on October 19, 2022. Appellant did not immediately stop work. OWCP assigned that claim OWCP File No. xxxxxx267.<sup>3</sup>

OWCP received a position description for a procurement analyst.

In a development letter dated November 30, 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 her 30 days to respond.

An electromyogram and nerve conduction velocity (EMG/NCV) study dated May 11, 2022 revealed severe cubital tunnel syndrome with focal entrapment across the right elbow, significantly reduced amplitude of the right ulnar motor nerve with stimulation proximal to the right elbow, subacute denervation of the abductor digiti minimi (ADM) muscle, probably chronic denervation of the right first dorsal interosseous (FDI) muscle, no evidence of right C7 motor radiculopathy, and very mild carpal tunnel syndrome of the right median sensory nerve only.

On October 6, 2022 Dr. Colin Kennedy, a Board-certified orthopedist, treated appellant for right fourth and fifth finger numbness that was refractory to conservative management. His physical examination of the right upper extremity revealed positive interossei atrophy, diminished sensation to light touch in the ulnar nerve distribution, 4/5 interossei strength compared to the left side, positive Tinel's sign at the ulnar nerve of the elbow, and positive elbow hyperflexion test. Dr. Kennedy noted that EMG/NCV studies revealed advanced ulnar neuropathy on the right side. He diagnosed severe right ulnar neuropathy and recommended surgery. On November 30, 2022 Dr. Kennedy performed a right ulnar nerve decompression with transposition at the elbow. In a letter dated December 15, 2022, he reported appellant's right ulnar neuropathy survey on November 30, 2022 and opined that she could return to typing but will need additional time to complete her tasks including intermittent breaks.

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<sup>3</sup> On October 3, 2023 appellant filed a Form CA-2 alleging that she developed carpal tunnel syndrome due to factors of her federal employment including repetitive motion and typing. She noted that she first became aware of her condition and realized its relation to her federal employment on August 14, 2023. Appellant did not immediately stop work. OWCP assigned the claim OWCP File No. xxxxxx936, and administratively combined OWCP File Nos. xxxxxx936 and xxxxxx267, with the latter serving as the master file.

In a December 19, 2022 response to the development letter, appellant described the factual circumstances surrounding her work injury. She reported working for the employing establishment for 38 years and her duties required her to work on a laptop, computer, and typewriters. Appellant noted that she did not have any outside activities, hobbies, or recreational activities. She indicated that her right-hand numbness began in April 2022 and progressed until she underwent surgery on November 30, 2022.

On December 19, 2022 the employing establishment controverted appellant's claim, contending that there was no medical evidence that related the diagnosed condition to her employment duties as a procurement analyst.

By decision dated April 7, 2023, OWCP denied appellant's occupational disease claim, finding that the medical evidence of record was insufficient to establish that her right carpal tunnel syndrome condition was causally related to the accepted factors of her federal employment.

On September 18, 2023 appellant, through counsel, requested reconsideration.

Dr. Kennedy treated appellant on February 2, 2023 after an in-situ right ulnar nerve decompression. His physical examination revealed a healed surgical incision, resolving ecchymosis, and decreased small and ring finger sensation. Dr. Kennedy opined that because of the severity of the ulnar neuropathy appellant would not have full return of sensation or reversal of the weakness or muscle atrophy following surgery but continued symptomatic improvement. On August 14, 2023 he treated appellant for numbness in the right thumb, index, and middle fingers that was constant and kept her up at night. Dr. Kennedy's physical examination revealed a well-healed surgical scar on the medial elbow, decreased sensation in the median nerve distribution, FDI atrophy, thenar atrophy, positive carpal compression test, and positive Tinel's sign at the carpal tunnel. He indicated that he did not have direct medical evidence establishing a causal link between the ulnar neuropathy and appellant's job duties; however, he opined that "there can be a causal link between overuse with clerical duties and upper extremity neuropathy symptoms" such as cubital tunnel syndrome, ulnar neuropathy, and carpal tunnel syndrome. Dr. Kennedy recommended right carpal tunnel release.

By decision dated January 23, 2024, OWCP denied modification of the April 7, 2023 decision.

### **LEGAL PRECEDENT**

A claimant seeking benefits under FECA<sup>4</sup> 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,<sup>5</sup> 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

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<sup>4</sup> *Supra* note 2.

<sup>5</sup> *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).

employment injury.<sup>6</sup> 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.<sup>7</sup>

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.

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.<sup>8</sup> The opinion of the physician must be based upon a complete 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 accepted employment factors.<sup>9</sup>

### ANALYSIS

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

In a report dated October 6, 2022, Dr. Kennedy diagnosed severe right ulnar neuropathy confirmed by EMG/NCV studies and recommended right an in-situ ulnar nerve decompression with transposition which was performed on November 30, 2022. In a letter dated December 15, 2022, he reported appellant's right ulnar neuropathy survey on November 30, 2022, and opined that she could return to typing but will need additional time to complete her tasks including intermittent breaks. On February 2, 2023 Dr. Kennedy treated appellant after surgery and opined that because of the severity of the ulnar neuropathy appellant would not have full return of sensation or reversal of the weakness or muscle atrophy but continued symptomatic improvement. However, these reports failed to provide an opinion regarding the cause of appellant's right ulnar neuropathy.<sup>10</sup> 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.<sup>11</sup> Therefore this evidence is insufficient to establish causal relationship.

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<sup>6</sup> *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).

<sup>7</sup> *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).

<sup>8</sup> *I.J.*, Docket No. 19-1343 (issued February 26, 2020); *T.H.*, 59 ECAB 388 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>9</sup> *D.C.*, Docket No. 19-1093 (issued June 25, 2020); *see L.B.*, Docket No. 18-0533 (issued August 27, 2018).

<sup>10</sup> *L.D.*, Docket No. 18-1468 (issued February 11, 2019).

<sup>11</sup> *See L.B.*, *supra* note 9; *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

On August 14, 2023 Dr. Kennedy indicated that he did not have direct medical evidence establishing a causal link between the ulnar neuropathy and appellant's job duties; however, he opined that there "can" be a causal link between overuse with clerical duties and upper extremity neuropathy symptoms such as cubital tunnel syndrome, ulnar neuropathy, and carpal tunnel syndrome. While he attributed appellant's medical condition to her employment, the Board has held that medical opinions that are speculative or equivocal in character are of diminished probative value.<sup>12</sup> As such, this report by Dr. Kennedy is insufficient to establish the claim.

The record also contains an EMG/NCV study. The Board has held, however, that diagnostic studies, standing alone, lack probative value on the issue of causal relationship as they do not address whether the accepted employment injuries resulted in appellant's diagnosed medical conditions.<sup>13</sup> For this reason, this evidence is also insufficient to establish the claim.

As the medical evidence of record is insufficient to establish causal relationship between appellant's right carpal tunnel syndrome and the accepted factors of her federal employment, 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 right carpal tunnel syndrome causally related to the accepted factors of her federal employment.

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<sup>12</sup> *J.W.*, Docket No. 18-0678 (issued March 3, 2020).

<sup>13</sup> *L.A.*, Docket No. 22-0463 (issued September 29, 2022); *D.K.*, Docket No. 21-0082 (issued October 26, 2021); *O.C.*, Docket No. 20-0514 (issued October 8, 2020); *R.J.*, Docket No. 19-0179 (issued May 26, 2020).

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 23, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 7, 2024  
Washington, DC

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

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board