

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

S.W., Appellant)	
)	
and)	Docket No. 21-1105
)	Issued: December 17, 2021
U.S. POSTAL SERVICE, POST OFFICE,)	
Milwaukee, WI, Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On July 13, 2021 appellant, through counsel, filed a timely appeal from a March 29, 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 met her burden of proof to establish a right wrist condition causally related to the accepted August 8, 2020 employment incident.

FACTUAL HISTORY

On August 24, 2020 appellant, then a 63-year-old postal distributor, filed a traumatic injury claim (Form CA-1) alleging that on August 8, 2020 she felt a lump and severe pain on her right wrist when cutting strapping while in the performance of duty. She did not stop work.

In an August 24, 2020 development letter, OWCP informed appellant that it had received no evidence in support of her claim. It advised her of the factual and medical evidence necessary to establish her claim and also provided a questionnaire for completion. OWCP afforded appellant 30 days to respond. No response was received.

By decision dated October 7, 2020, OWCP accepted that the August 8, 2020 employment incident occurred, as alleged. However, it denied appellant's traumatic injury claim, finding that she had not submitted evidence containing a medical diagnosis in connection with the injury and/or events. OWCP, therefore, concluded that the requirements had not been met for establishing an injury as defined by FECA.

OWCP thereafter received a September 3, 2020 medical note by Dr. David Siverhus, a Board-certified orthopedic surgeon with added qualifications in hand surgery, who noted that appellant related a history of numbness and tingling in her right hand and a lump over the palmar radial aspect of the right wrist, which she attributed to repetitive forceful gripping and grasping activities at work over an extended period of time. Dr. Siverhus obtained x-rays, which were normal, and, on physical examination, he documented positive Tinel's sign and a visible palpable mass over the palmar radial aspect of the right wrist. He noted an impression of right hand numbness and tingling and a right volar wrist mass consistent with a ganglion cyst. Dr. Siverhus recommended that appellant undergo an electromyography/nerve conduction velocity (EMG/NCV) study and opined that her ganglion cyst and probable carpal tunnel were either caused or aggravated by her activities at work. A report of x-rays of the right wrist of even date was negative.

In a September 22, 2020 report, Dr. John Roffers, a specialist in electrodiagnostic medicine, indicated that appellant related a progressive history of numbness, tingling and pain in the right hand and wrist. He performed an EMG/NCV, which was consistent with right carpal tunnel syndrome.

In a medical note dated September 28, 2020, Dr. Siverhus reviewed appellant's EMG/NCV results and noted her ongoing complaints of numbness and tingling. He examined her and noted that the ganglion cyst was asymptomatic, but that she wished to proceed with median nerve decompression surgery of the right hand to treat her carpal tunnel syndrome.

A separate narrative report of even date, Dr. Siverhus indicated that he had evaluated appellant on September 3 and 28, 2020 for complaints of pain, numbness and tingling in the right

hand and wrist and a visible palpable mass over the palmar radial aspect of the wrist, which she attributed to repetitive gripping and grasping at work. He diagnosed carpal tunnel syndrome and a volar wrist ganglion cyst. Dr. Siverhus opined that these conditions were caused or substantially aggravated by her work activities. He noted that the medical literature was conflicting, but that it suggested that workplace forceful gripping and exertion were associated with an increased risk of carpal tunnel syndrome.

In a statement dated October 20, 2020, appellant indicated that she injured her right wrist on August 8, 2020 and that she also believed there was damage in the wrist due to repetitious use of the same muscles in the wrist.

On October 28, 2020 appellant, through counsel, requested a hearing before a representative of OWCP's Branch of Hearings and Review, which was held on February 4, 2021.

By decision dated March 29, 2021, OWCP's hearing representative affirmed the October 7, 2020 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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,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 determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. The first component is that the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time and place, and in the manner alleged. The second component is whether the employment incident caused a personal injury and can be established only by medical evidence.⁷

³ *Id.*

⁴ *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).

⁵ *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).

⁶ *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).

⁷ *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.⁸ A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment incident 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 incident.¹⁰

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a right wrist condition causally related to the accepted August 8, 2020 employment incident.

In his September 3, 2020 medical note, Dr. Siverhus noted that appellant related a history of forceful repetitive gripping and grasping with the right hand. He diagnosed right hand numbness and tingling and a ganglion cyst, and he opined that the conditions were caused or aggravated at work. In his September 28, 2020 narrative report, Dr. Siverhus diagnosed appellant with carpal tunnel syndrome and a volar wrist ganglion and opined that these conditions were caused or substantially aggravated by her work activities. He explained that medical literature suggested that workplace forceful gripping and exertion was associated with an increased risk of carpal tunnel syndrome. However, Dr. Siverhus failed to explain, with adequate rationale, how the accepted employment incident either caused or contributed to appellant's right wrist condition. The Board has held that a medical opinion should reflect a correct history and offer a medically-sound and rationalized explanation by the physician of how the specific employment incident physiologically caused or aggravated the diagnosed conditions.¹¹ In addition, the Board has held that reliance on medical literature has little probative value in resolving medical questions unless a physician shows the applicability of the general medical principles discussed in the articles to the specific factual situation at issue in the case.¹² Dr. Siverhus did not identify any specific article, and he did not explain how the accepted employment incident of August 8, 2020 actually physiologically caused any diagnosed condition or how any medical literature supported causal relationship in this matter.¹³ The Board, therefore, finds that his opinions on causation in the September 3, 2020 medical note and the September 28, 2020 narrative report failed to provide a sufficient explanation

⁸ *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

⁹ *C.F.*, Docket No. 18-0791 (issued February 26, 2019); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

¹⁰ *Id.*

¹¹ *T.G.*, Docket No. 21-0175 (issued June 23, 2021); *J.D.*, Docket No. 19-1953 (issued January 11, 2021); *see K.W.*, Docket No. 19-1906 (issued April 1, 2020).

¹² *S.J.*, Docket No. 20-0896 (issued January 11, 2021); *R.G.*, Docket No. 18-0917 (issued March 9, 2020); *T.S.*, Docket No. 18-1518 (issued April 17, 2019); *K.U.*, Docket No. 15-1771 (issued August 26, 2016); *Roger D. Payne*, 55 ECAB 535 (2004).

¹³ *S.J., id.*; *A.H.*, Docket No. 19-0270 (issued June 25, 2019); *M.W.*, Docket No. 18-1624 (issued April 3, 2019).

as to how the August 8, 2020 employment incident would have aggravated or accelerated appellant's diagnosed right wrist conditions.

In his September 28, 2020 medical note, Dr. Siverhus diagnosed right carpal tunnel syndrome and an asymptomatic volar wrist ganglion cyst. However, the note does not contain an opinion on causation. 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 Therefore, Dr. Siverhus' September 28, 2020 medical note is also insufficient to establish appellant's claim.

The remaining evidence of record consists of reports of x-rays and an EMG/NCV study of the right wrist. The Board has held that diagnostic reports, standing alone, lack probative value on the issue of causal relationship as they do not provide an opinion as to whether the accepted employment incident caused a diagnosed condition.¹⁵ Consequently, these diagnostic reports are also insufficient to establish appellant's claim.

As appellant has not submitted rationalized medical evidence to establish a right wrist condition causally related to the accepted August 8, 2020 employment incident, 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 a right wrist condition causally related to the accepted August 8, 2020 employment incident.

¹⁴ See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁵ *W.L.*, Docket No. 20-1589 (issued August 26, 2021); *A.P.*, Docket No. 18-1690 (issued December 12, 2019).

ORDER

IT IS HEREBY ORDERED THAT the March 29, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 17, 2021
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

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