

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

D.A., Appellant)	
)	
and)	Docket No. 19-1965
)	Issued: February 10, 2021
U.S. POSTAL SERVICE, PHILADELPHIA)	
PROCESSING & DISTRIBUTION CENTER,)	
Philadelphia, PA, Employer)	
)	

Appearances:
Thomas R. Uliase, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Deputy Chief Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On September 26, 2019 appellant, through counsel, filed a timely appeal from an April 11, 2019 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 April 11, 2019 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 that the acceptance of the claim should be expanded to include the additional conditions of cervical radiculopathy, cervical facet syndrome, cervical and lumbar radiculopathy, bilateral carpal tunnel syndrome, and bilateral wrist tenosynovitis as causally related to the accepted January 2, 2017 employment injury.

FACTUAL HISTORY

This case has previously been before the Board.⁴ The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are set forth below.

On January 3, 2017 appellant, then a 60-year-old bulk mail technician, filed a traumatic injury claim (Form CA-1) alleging that while at work on January 2, 2017 a chair rolled from out under her causing her to fall to the right side of her body while in the performance of duty. She alleged that this caused pain in her back, left chin, and right leg, which radiated to her hip, neck, and right arm. Appellant also alleged subsequent sporadic headaches. She stopped work on January 3, 2017.

By decision dated March 2, 2017, OWCP found that the January 2, 2017 incident occurred as alleged, but denied the claim, finding that appellant had not submitted medical evidence containing a medical diagnosis in relation to the accepted employment incident. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On March 17, 2017 appellant, through counsel, requested a hearing before an OWCP hearing representative, which was held on July 12, 2017.

In support of her hearing request, appellant submitted reports from Dr. Steven J. Valentino and Dr. Scott M. Fried, both osteopaths Board-certified in orthopedic surgery. In an April 18, 2017 report, Dr. Valentino diagnosed cervical (neck) pain, sprain of ligaments of cervical spine and lumbar spines, and cervical radiculitis caused by the January 2, 2017 employment incident. In a June 15, 2017 report, Dr. Fried diagnosed right median and radial neuropathy, left median neuropathy, right brachial plexopathy/cervical radiculopathy, scapular winging with long thoracic neuritis, cervical strain and sprain with right radiculopathy and aggravation of cervical disc disease, disc space narrowing at multiple levels with radiculopathy, and right shoulder rotator cuff strain and sprain caused by the work incident.

By decision dated August 18, 2017, OWCP's hearing representative modified the March 2, 2017 decision, finding that appellant had established cervical and lumbar sprains and a right shoulder sprain causally related to the accepted January 2, 2017 employment injury. He further found, however, that the medical evidence of record was insufficient to establish that the additional conditions of cervical radiculopathy, cervical facet syndrome, cervical and lumbar radiculopathy, bilateral carpal tunnel syndrome, and bilateral wrist tenosynovitis were causally related to the January 2, 2017 employment injury.

⁴ Docket No. 18-0525 (issued November 12, 2018).

On January 18, 2018 appellant, through counsel, filed a timely appeal with the Board. By decision dated November 12, 2018, the Board affirmed the August 18, 2017 decision.⁵ During the pendency of that appeal, appellant submitted additional medical evidence including a number of reports from Dr. Fried dated from August 8, 2017 to July 31, 2018. In the July 31, 2018 report, Dr. Fried described her complaints of neck pain radiating into the scapular region and the arms. He described physical examination findings including positive Phalen's test bilaterally, and positive Tinel's test bilaterally. Dr. Fried diagnosed right median and radial neuropathy, left median neuropathy, bilateral brachial plexopathy/cervical radiculopathy, scapular winging grade 2 and with long thoracic neuritis, cervical strain and sprain with right radiculopathy, aggravation of cervical disc disease with disc space narrowing at multiple levels with radiculopathy, and right shoulder rotator cuff strain and sprain. He advised that appellant should remain off work. On a work capacity evaluation (Form OWCP-5c) dated May 7, 2018, Dr. Fried indicated that she could work with restrictions.

In a February 6, 2018 letter, Dr. Fried advised that he wished to clarify further that appellant's left carpal tunnel syndrome occurred due to an overuse and subsequent aggravation which resulted in trauma to the left carpal tunnel and its contents. He continued that the left carpal tunnel syndrome was due to overuse on the left to compensate for the right hand injury, and this subsequent aggravation on the left resulted in the carpal tunnel pathology.

Dr. Fried continued to submit periodic treatment notes in which he reiterated his findings and conclusions and advised that appellant could continue part-time modified-duty work.

In a report dated December 5, 2018, Dr. Valentino noted appellant's complaints of neck pain that radiated into both arms and low back pain radiating into the legs with paresthesias. Examination demonstrated significantly limited neck and lumbar range of motion with positive Spurling's maneuver and straight leg raising test. Dr. Valentino diagnosed cervical pain, cervical radiculopathy, cervical spinal stenosis, cervical degenerative disc disease, and lumbar radiculopathy. In a letter to counsel of even date, he explained that appellant had confirmed that her injury occurred when she fell onto her right side when a chair rolled out from under her and she first landed on her buttocks and then tilted to the right. Dr. Valentino concluded that the mechanism of injury was consistent with the aggravation of cervical and lumbar degenerative disc disease causing cervical and lumbar radiculopathy. He explained that the fall on appellant's buttocks would have caused a force to be transmitted up to her spine, and the tilting to the right would have further caused compression and irritation of the exiting nerve roots. In a brief note dated January 8, 2019, Dr. Valentino held her off work.

On January 11, 2019 appellant, through counsel, requested reconsideration.

Dr. Fried continued to submit treatment notes describing his findings and diagnoses. In a report dated March 26, 2019, he related that on physical examination appellant had positive bilateral Phalen's tests, and positive bilateral Tinel's tests, and positive bilateral Roos and Hunter's tests. Dr. Fried continued to diagnose median and radial right neuropathy, median left neuropathy, brachial plexopathy/cervical radiculopathy on the right, scapular winging Grade 2, with long thoracic neuritis, cervical strain/strain with radiculopathy on the right, aggravation of cervical disc

⁵ *Id.*

disease, multiple levels disc space narrowing with radiculopathy, and right shoulder rotator cuff strain/sprain. OWCP also continued to receive numerous physical therapy reports.

On March 20, 2019 appellant saw Dr. Deborah K. Witt, a family medicine practitioner. On examination she noted that appellant had normal range of motion of the neck and normal musculoskeletal range of motion.

By decision dated April 11, 2019, OWCP denied modification.

LEGAL PRECEDENT

When an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.⁶

The medical evidence required to establish a causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.⁷ The opinion of the physician must be based on 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 specific employment incident.⁸

OWCP's procedures provide that carpal tunnel syndrome is a condition which involves the compression of the medial nerve between the longitudinal tendons of the wrist musculature and the transverse superficial carpal ligament along the palmar aspect of the wrist. Symptoms resulting from this compression include pain, numbness, tingling, and weakness of the affected hand (usually the dominant one, though bilateral involvement does occur). Causes which may be work related include constant exertion and/or repetitive motion with the wrist flexed or extended against resistance, and acute trauma. A medical report diagnosing carpal tunnel syndrome should contain clear evidence that the disease is present. Among the clinical findings are: positive Phalen's sign, positive Tinel's sign, neurological abnormality, decreased nerve conduction velocity, as measured during nerve conduction testing, and decreased muscle motor activity, as measured by electromyography.⁹

ANALYSIS

The Board finds that this case is not in posture for decision.

Preliminarily, the Board notes that it is unnecessary for the Board to consider the evidence appellant submitted prior to the issuance of OWCP's August 8, 2017 decision because the Board considered that evidence in its November 2, 2018 decision and found that it was insufficient to establish her claim. Findings made in prior Board decisions are *res judicata* absent further review

⁶ *S.M.*, Docket No. 20-0241 (issued August 25, 2020); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

⁷ *B.C.*, Docket No. 20-0498 (issued August 27, 2020).

⁸ *T.L.*, Docket No. 19-1467 (issued July 24, 2020); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁹ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.8.c (September 1995).

by OWCP under section 8128 of FECA.¹⁰ The Board, therefore, need not review the evidence addressed in the prior appeal.

With regard to the claimed additional cervical conditions, appellant submitted a December 5, 2018 report and correspondence of the same date from Dr. Valentino who noted her complaints of neck pain that radiated into both arms and low back pain that radiated into her legs with paresthesias. Dr. Valentino described examination findings that included significantly limited neck and lumbar range of motion and a positive straight leg raising test. He diagnosed cervical pain, cervical radiculopathy, cervical spinal stenosis, cervical degenerative disc disease, and lumbar radiculopathy. Dr. Valentino explained that appellant had confirmed that her injury occurred when she fell on January 2, 2017. He advised that the mechanism of injury was consistent with the aggravation of cervical and lumbar degenerative disc disease causing cervical and lumbar radiculopathy, indicating that the fall on her buttocks would have caused a force to be transmitted up to her spine and the tilting to the right would have further caused compression and irritation of the exiting nerve roots.

The Board finds that these reports of Dr. Valentino are sufficient to require further medical development of the claim as he described the January 2, 2017 employment injury and provided an explanation as to how this work injury contributed to appellant's cervical and lumbar conditions. Dr. Valentino is a physician in the appropriate field of medicine and is, therefore, qualified to render rationalized opinions on the issue of causal relationship.¹¹

The Board has long held that it is unnecessary that the evidence of record in a case be so conclusive as to suggest causal connection beyond all possible doubt. Rather, the evidence required is only that necessary to convince the adjudicator that the conclusion drawn is rational, sound, and logical.¹² The Board thus finds that, while insufficiently rationalized to establish the claim, Dr. Valentino's opinion is of sufficient probative value to require further development of the case record by OWCP.¹³

It is well established that, proceedings under FECA are not adversarial in nature, and while appellant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.¹⁴ The nonadversarial policy of proceedings under FECA is reflected in OWCP's regulations at section 10.121.¹⁵ OWCP has an obligation to see that justice is done.¹⁶

On remand OWCP shall refer appellant to a specialist in the appropriate field of medicine, along with the case record and a statement of accepted facts. The referral physician shall be

¹⁰ *G.B.*, Docket No. 19-1448 (issued August 21, 2020).

¹¹ *See T.F.*, Docket No. 19-1900 (issued October 27, 2020).

¹² *Id.*

¹³ *D.D.*, Docket No. 19-1606 (issued November 16, 2020).

¹⁴ *R.M.*, Docket No. 20-0342 (issued July 30, 2020); *S.C.*, Docket No. 19-0920 (issued September 25, 2019).

¹⁵ 20 C.F.R. § 10.121.

¹⁶ *F.M.*, Docket No. 20-0065 (issued November 24, 2020); *John J. Carlone*, 41 ECAB 354 (1989).

instructed to provide a well-rationalized opinion as to whether appellant's diagnosed cervical and lumbar conditions are causally related to the accepted January 2, 2017 employment injury. If the physician opines that the diagnosed conditions are not causally related to the January 2, 2017 employment injury, he or she must explain with rationale how or why their opinion differs from that articulated by Dr. Valentino.

With regard to appellant's claimed carpal tunnel syndrome, the Board notes that Dr. Fried submitted multiple reports, which were not previously reviewed by the Board, in which he noted physical examination findings consistent with bilateral carpal tunnel syndrome, including positive Phalen's and Tinel's tests bilaterally. As previously noted, OWCP's procedures outline the criteria upon which carpal tunnel syndrome can be diagnosed and these procedures also describe the basis for a finding of causal relationship.¹⁷ On February 6, 2018 Dr. Fried advised appellant's left carpal tunnel syndrome occurred due to an overuse and subsequent aggravation which resulted in trauma to the left carpal tunnel and its contents. He continued that the left carpal tunnel syndrome was due to overuse on the left to compensate for the right hand injury, and this subsequent aggravation on the left resulted in the carpal tunnel pathology.

On remand OWCP shall also review Dr. Fried's opinion regarding his diagnosis of carpal tunnel syndrome in accordance with Chapter 3.600.8(c) of its procedures which lists the requirements for a medical report when carpal tunnel syndrome is diagnosed. It shall determine whether appellant's carpal tunnel syndrome meets the diagnosis and causal relationship criteria as outlined by OWCP's procedure, and if further development of the medical evidence is necessary following review.¹⁸ After this and other such further development of the case record as OWCP deems necessary, it shall issue a *de novo* decision.¹⁹

CONCLUSION

The Board finds that this case is not in posture for decision.

¹⁷ *Supra* note 9.

¹⁸ *Supra* note 9.

¹⁹ *L.C.*, Docket No. 20-0505 (issued November 24, 2020).

ORDER

IT IS HEREBY ORDERED THAT the April 11, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.²⁰

Issued: February 10, 2021
Washington, DC

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

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

²⁰ Christopher J. Godfrey, Deputy Chief Judge, who participated in the preparation of the decision, was no longer a member of the Board after January 20, 2021.