

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

J.T., Appellant	)	
	)	
and	)	Docket No. 22-1308
	)	Issued: May 25, 2023
DEPARTMENT OF VETERANS AFFAIRS,	)	
HAMPTON VA MEDICAL CENTER,	)	
Hampton, VA, Employer	)	
	)	

*Appearances:*

Daniel M. Goodkin, Esq., for the appellant<sup>1</sup>  
Office of Solicitor, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge  
JANICE B. ASKIN, Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On September 13, 2022 appellant, through counsel, filed a timely appeal from an April 1, 2022 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 and bilateral cubital tunnel syndrome causally related to the accepted factors of her federal employment.

## FACTUAL HISTORY

On October 30, 2020 appellant, then a 44-year-old nurse, filed an occupational disease claim (Form CA-2) alleging that she aggravated a preexisting work injury due to factors of her federal employment. She explained that she first realized that her condition was caused or aggravated by her federal employment on June 26, 2020.

In an April 1, 2020 narrative statement, appellant explained that she injured her right wrist while caring for a morbidly obese patient who weighed over 500 pounds. She explained that the pain persisted and she was referred to Dr. Michael T. Davis, an orthopedic surgeon, and underwent carpal tunnel surgery to her right wrist. Appellant also noted that she had undergone prior right carpal tunnel surgery. She explained that she was currently working in a reasonable accommodation position as a care coordinator in home telehealth, her job was sedentary, and her duties included 75 percent typing daily and 25 percent communicating on the telephone. Appellant alleged that the extensive typing caused tremendous pain. She explained that she was required to work 8 hours per day; however, because of her limitations, she often worked 10 to 12 hours per day to complete her work. Appellant noted that she did not get a 30-minute break after 2 hours of typing, as ordered by Dr. Davis.

The employing establishment controverted the claim and noted that appellant was provided oral dictation software and a sit and stand desk for her wrist discomfort, however, appellant indicated that she was not using the assigned software.

In an undated report received on January 13, 2021, Dr. Davis noted that he had been treating appellant for injuries to her right wrist. He noted that appellant had a preexisting history of right wrist injury for which she had undergone unsuccessful percutaneous fixation of a metacarpal fracture, partial wrist fusion, and later a carpal tunnel release. This happened prior to a right wrist employment injury which occurred as appellant was assisting with the care of a 500-pound patient. Dr. Davis also noted that appellant then began duties which required repetitive wrist motion, her symptoms became markedly worse, requiring another surgery, the imposition of work restrictions, and the need for care. He opined, “[i]n my opinion [appellant’s] incident with the morbidly obese patient falling on her wrist and her repetitive motion activities have aggravated her right-sided wrist post-traumatic arthritis and carpal tunnel condition. Carpal tunnel syndrome is caused by abnormal pressure on the median nerve and aggravates her underlying arthritic condition. Further, in my opinion, the repetitive motion [appellant] did caused repeated pressure on that nerve, worsening her condition.”

In a January 15, 2021 development letter, OWCP informed appellant that it had received insufficient evidence in support of her occupational disease 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 noted that appellant’s traumatic injury claim was denied under OWCP File

No. xxxxxx854.<sup>3</sup> It explained that Dr. Davis did not provide any discussion of how the current occupational duties caused, aggravated, or accelerated her preexisting conditions. In a separate development letter on the same date, OWCP requested that the employing establishment provide additional information regarding appellant's employment duties and comments from a knowledgeable supervisor regarding the accuracy of her statements. It afforded both parties 30 days to respond.

OWCP received a copy of the September 25, 2018 reasonable accommodation reassignment of appellant from ER/acute care to home telehealth, nurse care coordinators.

In a January 30, 2021 response to OWCP's development questionnaire, appellant described her employment activities, noting that she typed and manipulated the computer mouse for six to seven hours during an eight-hour shift, which caused tremendous pain and discomfort. She listed all of the steps involved in monitoring the patients, the mandatory reviews, and the training required for the home telehealth competencies. Appellant noted that her workday was scheduled to be 8:00 a.m. to 4:30 p.m., but she started earlier at 7:15 a.m. to get a "jump start" and often worked until between 6:00 p.m. and 9:00 p.m. She denied having any outside activities or hobbies and explained that the initial injury to her hand/wrist occurred in 1998 while she was on active duty. Appellant noted that she fractured and dislocated her carpal and metacarpal, underwent surgery, hardware was placed to keep the bones together, and the pins were later removed. She also noted that she underwent a right-hand carpal boss removal and a carpal tunnel release in 1999, and she had a bone-on-bone fusion of her right index finger in 2000. Regarding the oral dictation software, appellant explained that it was futile because it picked up all the noises in the workspace, she tried coming in earlier when it was quiet, but she was not compensated for coming in earlier.

In a January 27, 2021 statement, the employing establishment noted that appellant was reassigned to be a home telehealth nurse in October 2018, and she did not provide patient care. It also noted that she was provided with the dictation software.

By decision dated April 14, 2021, OWCP denied appellant's occupational disease claim, finding that the evidence of record was insufficient to establish that her diagnosed condition was causally related to the accepted factors of her federal employment.

On March 23, 2022 appellant, through counsel, requested reconsideration and submitted additional evidence.

In a December 17, 2021 report, Dr. Davis, noted that appellant was last seen on November 1, 2021, after a four-week history of numbness and tingling involving the bilateral fourth and fifth digits, right worse than left. He related that appellant primarily described paresthesia involving the fourth and fifth digits, that her employment as a telehealth nurse entailed multiple hours of keyboarding/typing, her symptoms worsened when her elbows were at a bent position at her desk for prolonged periods of time, her previous neutral wrist splints had not

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<sup>3</sup> On December 1, 2016 appellant filed a traumatic injury claim (Form CA-1) alleging that on November 28, 2016 she injured her right wrist while turning a patient who weighed over 500 pounds. OWCP denied the claim as she had not established causal relationship between the diagnosed condition and the accepted employment incident. The Board affirmed the denial of the claim in Docket No. 18-0664 (issued August 12, 2019).

alleviated her symptoms. Dr. Davis noted that his examination revealed positive Tinel's sign at the elbow bilaterally and positive Froment's sign. He also noted that a June 9, 2021 electromyography (EMG) study revealed a normal study, mildly limited due to motion application prior to testing, with no clear signs of focal right median or ulnar neuropathy, right brachial plexopathy, or right cervical motor radiculopathy. Dr. Davis diagnosed bilateral cubital tunnel syndrome, right worse than left. He related that appellant believed that her constant typing and arm positioning to fulfill her job role exacerbated her symptoms. Dr. Davis explained that, "There are plenty of literature sources supporting the fact, and it is commonly accepted, that the incidence of cubital tunnel syndrome is much higher in individuals who work for long periods with elbows bent or with pressure applied to the elbow region, *i.e.*, typing, custodial work, or scanning items at a checkout. I do believe [appellant] in stating that her symptoms are exacerbated by her job role. I also believe that the dictation system could be a viable option for her and allow her to continue working in her current job role if she were in a quiet environment, such as her own office so that the dictation system would be more efficient. Otherwise, having to constantly correct her dictations as she is typing, results in her doubling the amount of keyboarding, and further exacerbating her condition." Dr. Davis opined, "I do concur with the history provided by the patient, her clinical exam[ination] and objective testing that her current job role is more likely than not exacerbating her preexisting condition. I do believe her current job station can be optimized to provide her the opportunity to continue her employment without further worsening her symptoms."

By decision dated April 1, 2022, OWCP denied modification of the April 14, 2021 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>4</sup> has the burden of proof to establish the essential elements of his or her claim, including the fact 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 period 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 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 the following: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the

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

<sup>5</sup> *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>6</sup> *C.K.*, Docket No. 19-1549 (issued June 30, 2020); *R.G.*, Docket No. 19-0233 (issued July 16, 2019); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>7</sup> *See J.L.*, Docket No. 20-1662 (issued October 7, 2022); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

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.<sup>8</sup>

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.<sup>9</sup> A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.<sup>10</sup> 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 factor(s).<sup>11</sup>

In any case where a preexisting condition involving the same part of the body is present and the issue of causal relationship, therefore, involves aggravation, acceleration, or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.<sup>12</sup>

### ANALYSIS

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

Appellant submitted two reports from Dr. Davis. In an undated report received on January 13, 2021, Dr. Davis explained that appellant had a preexisting wrist injury, which required unsuccessful percutaneous fixation of metacarpal fractures, leading to partial wrist fusion and later a carpal tunnel release. He also noted that she had a subsequent work incident while assisting a morbidly obese patient, and that she then performed typing and duties requiring repetitive motion as a reasonable accommodation assignment. Dr. Davis opined, "[i]n my opinion [appellant's] incident with the morbidly obese patient falling on her wrist and her repetitive motion activities have aggravated her right sided wrist post-traumatic arthritis and carpal tunnel condition. Carpal tunnel syndrome is caused by abnormal pressure on the median nerve and aggravates her underlying arthritic condition. Further, in my opinion, the repetitive motion she did caused repeated pressure on that nerve, worsening her condition." In a December 17, 2021 report, Dr. Davis diagnosed bilateral cubital tunnel syndrome, right worse than left. He opined, appellant primarily described paresthesia involving the fourth and fifth digits, that her employment as a telehealth nurse entailed multiple hours of keyboarding/typing, her symptoms worsened when her elbows were at a bent position at her desk for prolonged periods of time, Dr. Davis also noted that it was commonly accepted, that the incidence of cubital tunnel syndrome was much higher in

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<sup>8</sup> *R.G.*, *supra* note 6. See also *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>9</sup> *T.H.*, 59 ECAB 388, 393 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>10</sup> *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

<sup>11</sup> *Id.*; *Victor J. Woodhams*, *supra* note 8.

<sup>12</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013). See *R.D.*, Docket No. 18-1551 (issued March 1, 2019).

individuals who worked for long periods with elbows bent or with pressure applied to the elbow region, *i.e.*, typing, custodial work, or scanning items at a checkout.

Dr. Davis identified employment factors which appellant claimed caused her condition and explained how the identified employment factors, specifically the repetitive typing and motion activities physiologically caused her right carpal tunnel syndrome and appellant's work with her elbow bent caused her bilateral cubital tunnel syndrome. He provided a pathophysiological explanation as to how the accepted employment factors were sufficient to cause the diagnosed conditions. The Board finds that Dr. Davis's opinion, while insufficiently rationalized to meet appellant's burden of proof, is sufficient to require further development of the record.<sup>13</sup>

Proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter. While it is appellant's burden of proof to establish the claim, OWCP shares responsibility in the development of the evidence.<sup>14</sup> It has the obligation to see that justice is done.<sup>15</sup>

The Board shall therefore remand the case to OWCP for further development of the medical evidence. On remand, OWCP shall refer appellant, along with a statement of accepted facts and the medical record to a physician in the appropriate field of medicine for a rationalized opinion regarding whether appellant's diagnosed right shoulder conditions are causally related to the accepted factors of her federal employment. If the physician opines that the diagnosed condition is not causally related to the accepted employment factors, he or she must explain with rationale how or why their opinion differs from that of Dr. Davis. OWCP, for full and fair adjudication, shall also administratively combine the present claim with OWCP File No. xxxxxx854. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

### **CONCLUSION**

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

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<sup>13</sup> *R.A.*, Docket No. 19-0650 (issued January 15, 2020); *B.M.*, Docket No. 18-0448 (issued January 2, 2020); *E.G.*, Docket No. 19-1296 (issued December 18, 2019).

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 1, 2022 decision of the Office of Workers' Compensation Programs is set aside and this case is remanded for further proceedings consistent with this decision of the Board.

Issued: May 25, 2023  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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