

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of IRENE B. LINDQUIST and DEPARTMENT OF AGRICULTURE,
FOREST SERVICE, Anchorage, Alas.

*Docket No. 96-2665; Submitted on the Record;
Issued September 18, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issues are: (1) whether appellant has met her burden of proof to establish that she sustained an occupational disease causally related to factors of her federal employment; and (2) whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's claim for a merit review on March 13, 1996.

On November 11, 1994 appellant, then a 35-year-old forest technician, filed a notice of occupational disease and claim for compensation, alleging that she suffered sore fingers and wrists, numbness from her fingers to her shoulders, and a loss of feeling in her fingers as a result of continuous manual labor and the use of power tools in her federal employment. Appellant indicated that she became aware of these conditions in November 1980 and that it was related to her federal employment on October 14, 1994. Appellant did not stop working. Appellant restated these assertions in a statement dated November 8, 1994.

On November 16, 1995 the Office requested additional information, including a comprehensive medical report describing the specific factors of employment that contributed to her conditions. Appellant was allowed 30 days to respond.

On September 5, 1995 Dr. Richard W. Gardener, a Board-certified orthopedic surgeon, treated appellant for wrist problems. He diagnosed bilateral carpal tunnel syndrome.

On September 14, 1995 Dr. Gardener indicated that he reviewed electrodiagnostic testing and that he could not find any objective evidence for anything other than carpal tunnel syndrome.

On September 14, 1995 Dr. Shawn Hadley, Board-certified in physical medicine and rehabilitation, interpreted both nerve conduction studies and electromyograms as normal. Dr. Hadley also examined appellant and indicated that appellant may have chronic low-level tendonitis giving her upper extremity pain. Dr. Hadley also stated that it was possible that

appellant had very early carpal tunnel syndrome, but that she presently had no evidence of nerve entrapment.

On September 18, 1995 Dr. Leslie P. Dean, a Board-certified orthopedic surgeon, examined appellant for bilateral wrist and forearm pain. Dr. Dean reviewed appellant's work history and noted that an electrodiagnostic study revealed no evidence of carpal tunnel syndrome or ulnar neuropathy. Dr. Dean diagnosed probable carpal tunnel syndrome.

On October 16, 1995 Dr. Dean examined appellant and ruled out bilateral carpal tunnel syndrome.

On October 24, 1995 Dr. Gardener diagnosed bilateral carpal tunnel syndrome and checked "yes" to indicate that he believed the condition was caused or aggravated by the employment activity described.

On November 8, 1995 Dr. Dean examined appellant and diagnosed left cubital syndrome. Dr. Dean recommended that appellant continue wearing a posterior elbow mold to treat the discomfort in her hands and arms.

On November 21, 1995 appellant provided a statement concerning her activities outside of work and her previous injuries.

On January 4, 1996 the Office requested that Dr. Gardner provide an explanation for his opinion that appellant's condition was casually related to her employment within 20 days.

By decision dated February 1, 1996, the Office denied appellant's claim because the evidence failed to establish that her federal employment caused or aggravated a wrist condition.

On February 9, 1996 appellant requested reconsideration. Appellant again asserted that she suffered pain in her hands and arms as a result of manual labor and tool usage in her federal employment.

In support of her reconsideration request, appellant submitted a report from Ramon Gonzalez, Jr., a licensed acupuncturist and massage therapist.

By decision dated March 13, 1996, the Office denied appellant's application for review because the evidence submitted in its support was irrelevant and immaterial, and was not sufficient to warrant a merit review.

The Board initially finds that appellant did not meet her burden of proof of establishing that she sustained an occupational disease causally related to factors of her federal employment.

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for

which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.¹ The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence.² Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant,³ must be one of reasonable medical certainty,⁴ and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁵

In this case, Dr. Gardner, a Board-certified orthopedic surgeon, provided the only medical opinion evidence addressing whether appellant's wrist condition was related to her federal employment.⁶ Dr. Gardner diagnosed bilateral carpal tunnel syndrome and checked "yes" to indicate that he believed the condition was caused or aggravated by the employment activity. An opinion, however, consisting only of checking "yes" to a form question, without supporting rationale, has little probative value and is insufficient to establish causal relationship.⁷ Moreover, the Office provided an opportunity for Dr. Gardner and appellant to cure the deficiency in his opinion, but no additional evidence was received.⁸ Consequently, because appellant failed to provide any rationalized medical opinion evidence establishing a causal relationship between her claimed medical condition and factors of her employment, she failed to meet her burden of proof.

The Board further finds that the Office did not abuse its discretion by refusing to reopen appellant's claim for a merit review on March 13, 1996.

Under section 8128(a) of the Federal Employees' Compensation Act,⁹ the Office has the discretion to reopen a case for review on the merits. The Office must exercise this discretion in

¹ See *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

² The Board held that, in certain cases, where the causal connection is obvious, expert testimony may not be necessary; see *Naomi A. Lilly*, 10 ECAB 560, 572-73 (1959). The instant case, however, is not one of obvious casual connection.

³ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

⁴ See *Morris Scanlon*, 11 ECAB 384, 385 (1960).

⁵ See *James D. Carter*, 43 ECAB 113 (1991); *George A. Ross*, 43 ECAB 346 (1991); *William E. Enright*, 31 ECAB 426, 430 (1980).

⁶ Drs. Hadley and Dean failed to address the issue of causal relationship in their reports.

⁷ *Ruth S. Johnson*, 46 ECAB 237 (1994).

⁸ On appeal, appellant submitted additional medical evidence from both Drs. Gardner and Dean. The Board, however, is precluded from reviewing

⁹ 5 U.S.C. § 8128(a).

accordance with the guidelines set forth in section 10.138(b)(1) of the implementing federal regulations,¹⁰ which provides that a claimant may obtain review of the merits of the claim by:

“(i) Showing that the Office erroneously applied or interpreted a point of law; or

“(ii) Advancing a point of law or a fact not previously considered by the Office;
or

“(iii) Submitting relevant and pertinent evidence not previously considered by the Office.”

Section 10.138(b)(2) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in paragraphs (b)(1)(i) through (iii) of this section will be denied by the Office without review of the merits of the claim.¹¹

In the instant case, appellant asserted on reconsideration that she suffered pain in her hands and arms as a result of manual labor and tool usage in her federal employment. Appellant’s statement, however, is not relevant in determining whether she submitted rationalized medical evidence supporting a causal relationship between her claimed condition and factors of her federal employment and is, therefore, insufficient to support modification.

Appellant also submitted the report of Ramon Gonzalez, a licensed acupuncturist and message therapist. Because licensed acupuncturists and massage therapists are not physicians under the Act, this opinion lacks probative value and is also insufficient to support modification.¹²

As appellant failed to submit any new relevant and pertinent evidence, the Office did not abuse its discretion by refusing to reopen appellant’s claim for a review of the merits.

¹⁰ 20 C.F.R. § 10.138(b)(1).

¹¹ 20 C.F.R. § 10.138(b)(2).

¹² 5 U.S.C. § 8101(2); *see also* *Sheila A. Johnson*, 46 ECAB 323 (1994)

The decisions of the Office of Workers' Compensation Programs dated March 13 and February 1, 1996 are affirmed.

Dated, Washington, D.C.
September 18, 1998

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member