

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JEAN M. ECHEVARRIA and U.S. POSTAL SERVICE,
POST OFFICE, San Jose, Calif.

*Docket No. 97-602; Submitted on the Record;
Issued September 24, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has met her burden of proof in establishing that she sustained carpal tunnel syndrome that was causally related to factors of her federal employment.

On May 19, 1994 appellant, then a 36-year-old letter carrier, filed an occupational disease claim, alleging that she developed carpal tunnel syndrome due to factors of her federal employment. Appellant had an unrelated prior claim which the Office of Workers' Compensation Programs accepted for a back injury. She was temporarily totally disabled in relation to that claim from September 8, 1993 to April 30, 1994. When appellant filed the occupational disease claim at issue herein, she was working a light-duty position for four hours a day. On October 7, 1994 the Office denied appellant's claim on the grounds that the medical evidence was not sufficient to establish that appellant's claimed condition was causally related to factors of her federal employment. In a decision dated September 14, 1995, an Office hearing representative set aside the October 7, 1994 decision of the Office and remanded the case for further development of the medical evidence. The Office hearing representative found that the uncontradicted medical report by Dr. James Saadi, a Board-certified neurosurgeon and appellant's treating physician, was sufficient to establish an inference that there was a causal connection between appellant's diagnosed condition and her employment. By decision dated November 17, 1995, the Office denied appellant's claim on the grounds that the evidence was not sufficient to establish any disability causally related to appellant's federal employment.

The Board has carefully reviewed the entire case record on appeal and finds that this case is not in posture for decision.

A person who claims benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his claim, including that he sustained an injury

¹ 5 U.S.C. §§ 8101-8193.

while in the performance of duty and that he had disability as a result.² In accordance with the Federal (FECA) Procedure Manual, in order to determine whether an employee actually sustained an injury in the performance of his duty, the Office begins with the analysis of whether “fact of injury” has been established. Generally, “fact of injury” consists of two components which must be considered one in conjunction with the other. The first component to be established is that the employee actually experienced the employment incident or exposure which is alleged to have occurred.³ In order to meet her burden of proof to establish the fact that she sustained an injury in the performance of duty, an employee must submit sufficient evidence to establish that she actually experienced the employment injury or exposure at the time, place and in the manner alleged. The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.⁴ The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon a complete factual and medical background, showing a causal relationship between the claimed condition and the identified factors.⁵ The belief of claimant that a condition was caused or aggravated by the employment is not sufficient to establish a causal relationship.⁶

In the present case, the Office hearing representative remanded the case for further development, finding that the July 13, 1995 report by Dr. Saadi was sufficient to establish an inference that appellant’s diagnosed condition of bilateral carpal tunnel syndrome was causally related to factors of her federal employment. In this report, Dr. Saadi provided a history of appellant’s claimed condition and reported that nerve conduction studies were positive for the condition. He indicated that appellant’s employment activities, including grabbing letters and envelopes and placing them into slots required constant and repetitive use of her hands which activities were consistent with her development of carpal tunnel syndrome. When the case was remanded to the Office for further development of the evidence, appellant was referred, together with her case file and a statement of accepted facts, to Dr. Arthur Louis Messinger, a Board-certified orthopedic surgeon, for a second opinion examination and report. In a report dated October 31, 1995, Dr. Messinger provided a history of injury, the results of his physical examination and a review of the pertinent medical evidence. He found bilateral nonspecific upper extremity complaints, no evidence of neurological involvement of the volar carpal tunnel area, no evidence of any median nerve involvement at the volar carpal tunnel area, multiple complaints in the cervical and thoracic area but no involvement of the disc level, neuroforamen level, peripheral nerve level or cervical spine and noted a history of back problems. Dr. Messinger diagnosed a psychosomatic musculoskeletal reaction. He indicated that nerve conduction studies and electromyography studies were not accurate in reaching a diagnosis of carpal tunnel syndrome and concluded that appellant did not have this condition.

² *Daniel R. Hickman*, 34 ECAB 1220 (1983); see 20 C.F.R. § 10.110(a)

³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 3.803.2(a) (September 1980).

⁴ *John C. Carlone*, 41 ECAB 354 (1989); see 5 U.S.C. § 8101(5) (“injury” defined); 20 C.F.R. §§ 10.5(a)(15), 10.5(a)(16) (“traumatic injury” and “occupational disease” defined).

⁵ *Lourdes Harris*, 45 ECAB 545 (1994); see *Walter D. Morehead*, 31 ECAB 188 (1979).

⁶ *Manuel Garcia*, 37 ECAB 767 (1986).

There is a conflict in the medical opinion evidence between the reports of Drs. Saadi and Messinger concerning whether appellant has carpal tunnel syndrome, the validity of the objective testing that was performed in diagnosing appellant's condition and whether she has any impairment from her claimed condition. Section 8123(a) of the Act⁷ states that if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination. As there is an unresolved conflict in the medical evidence, this case must be remanded for further development of the evidence. On remand the Office should refer appellant, together with a statement of accepted facts and the medical evidence of record to an appropriate Board-certified specialist for an examination, a diagnosis and a rationalized opinion. After such further development as is deemed necessary, the Office shall issue a *de novo* decision.

The decision of the Office of Workers' Compensation Programs dated November 17, 1995 is set aside and the case is remanded for further proceedings consistent with this decision.

Dated, Washington, D.C.
September 24, 1998

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

⁷ 5 U.S.C. § 8123(a).