

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CAROL J. BUCHTA and U.S. POSTAL SERVICE,
POST OFFICE, Antioch, IL

*Docket No. 98-1139; Submitted on the Record;
Issued December 2, 1999*

DECISION and ORDER

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

The issue is whether appellant has established that her bilateral osteoarthritis of the thumbs was aggravated by employment factors.

The Board has duly reviewed the case record and concludes that this case is not in posture for decision.

On August 29, 1995 appellant, then a 62-year-old clerk, filed an occupational disease claim, alleging that grasping and holding handfuls of mail aggravated the bilateral osteoarthritis of her thumbs.¹ By decision dated October 15, 1996, the Office of Workers' Compensation Programs denied the claim, finding that the evidence of record failed to demonstrate fact of injury.² Appellant timely requested a review of the written record, and in an April 14, 1997 decision, an Office hearing representative affirmed the prior decision. The instant appeal follows.

In support of her claim, appellant submitted treatment notes dated November 30 and December 28, 1990 in which Dr. Bruce A. Hamming, a Board-certified orthopedic surgeon, noted that both appellant's thumbs were developing swan-neck type deformities. She was provided with a gamekeeper's splint. An April 11, 1994 hand x-ray demonstrated bilateral moderate degenerative joint disease. In an October 29, 1996 report, Dr. Hamming advised that he treated

¹ The record in this case indicates that the entire case file was reconstructed.

² The copy of the October 15, 1996 decision in the record contains two claimant names and two Office file numbers. While it appears to be a decision on the instant claim, the medical evidence discussed in the decision is not contained in the case record.

appellant from February 1989 until June 1993 for arthritis of thumb carpometacarpal joints and stated:

“Apparently there is a question regarding the relationship of the arthritis and her work with the [employing establishment]. My opinion is that, while the use of her hands for grasping, lifting and manipulating mail did not cause the arthritis in her hands, it would be felt to be a contributing factor to the progression of the arthritis over the time that she was employed in that position.”

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 the factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the 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 factors identified by the claimant. The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon a complete and accurate factual and medical background, showing a causal relationship between the claimed conditions and the identified factors. Under the Federal Employees’ Compensation Act,³ when employment factors cause an aggravation of an underlying physical condition, the employee is entitled to compensation for the periods of disability related to the aggravation.⁴

In this case, the Board finds that the October 29, 1996 report from Dr. Hamming constitutes sufficient evidence in support of appellant’s claim to require further development of the record by the Office as he provides an explanation for the employment factors that he believes aggravated her arthritic condition. While this report lacks detailed medical rationale sufficient to discharge appellant’s burden of proof to establish by the weight of reliable, substantial and probative evidence that her arthritic thumb condition was aggravated by employment factors, this does not mean that this report may be completely disregarded by the Office. It merely means that its probative value is diminished.⁵ In the absence of medical evidence to the contrary, the report is sufficient to require further development of the record.⁶ It is well established that proceedings under the Act⁷ are not adversarial in nature,⁸ and while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility

³ 5 U.S.C. §§ 8101-8193.

⁴ *Gary R. Sieber*, 46 ECAB 215 (1994).

⁵ *See Delores C. Ellyett*, 41 ECAB 992 (1990).

⁶ *John J. Carlone*, 41 ECAB 354 (1989). The Board notes that the case record does not contain a medical opinion contrary to appellant’s claim and further notes that the Office did not seek advice from an Office medical adviser or refer the case for a second opinion evaluation.

⁷ 5 U.S.C. § 8101 *et seq.*

⁸ *See, e.g., Walter A. Fundinger, Jr.*, 37 ECAB 200 (1985).

in the development of the evidence.⁹ On remand the Office should compile a statement of accepted facts and refer appellant, together with the complete case record and questions to be answered, to a Board-certified specialist for a detailed opinion on the relationship of appellant's thumb condition and employment. After such development as the Office deems necessary, a *de novo* decision shall be issued.

The decision of the Office of Workers' Compensation Programs dated April 14, 1997 is hereby set aside and the case is remanded to the Office for further proceedings.

Dated, Washington, D.C.
December 2, 1999

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

⁹ See *Dorothy L. Sidwell*, 36 ECAB 699 (1985).