

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GENE R. BAON and U.S. POSTAL SERVICE,
POST OFFICE, Rocky River, OH

*Docket No. 03-2089; Submitted on the Record;
Issued December 2, 2003*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant established that the lateral epicondylitis and ulnar neuropathy in his right elbow were causally related to factors of his federal employment.

On May 21, 2001 appellant, then a 51-year-old letter carrier, filed an occupational disease claim for tendinitis of the right elbow. Appellant did not miss any work except for going to medical appointments and has been performing his full duties.

By letter dated May 31, 2001, the Office of Workers' Compensation Programs informed appellant that additional information was needed, including a description of the development of his condition and a comprehensive medical report from his treating physician addressing how exposure or incidents at his federal employment caused or contributed to his condition.

Appellant submitted progress reports from May 15, 2000 through May 31, 2001 from Dr. Victor B. Strimbu, a Board-certified orthopedic surgeon, documenting appellant's treatment for lateral epicondylitis in the right elbow and ulnar neuropathy of the left elbow. In a report dated June 14, 2001, Dr. Mehrun K. Elyaderani, an orthopedic surgeon, diagnosed ulnar nerve compression at the right elbow and right lateral epicondylitis. Dr. Elyaderani stated that, after discussing the prospect of surgery with appellant, appellant agreed to undergo an ulnar decompression and transposition and a right lateral epicondyle debridement.

By decision dated July 31, 2001, the Office denied appellant's claim, stating that appellant did not establish an injury, as alleged.

By letter dated August 28, 2001, appellant requested an oral hearing before an Office hearing representative, which was held on January 16, 2002. Appellant testified that he had worked for approximately 17 years as a letter carrier, that he was right handed and 90 percent of his work was "right handed." Appellant stated that he cased approximately 1,500 to 2,000 letters and about 400 to 500 magazines and flats before he left the street to deliver the mail in his daily work. Appellant explained that he carried a satchel on his left shoulder so he constantly reached

in his bag and constantly used his right arm and elbow. He stated that he repetitively bent his elbow and his wrist every time he put a piece of mail in the case. Appellant stated that he had therapy, cortisone injections and was planning on having surgery to correct his problem. Appellant stated that he did not have any hobbies, sports or other activity in his private life that involved repetitive motion.

In a report dated August 9, 2001, Dr. Elyaderani reiterated that appellant had ulnar nerve compression at the elbow documented by an electromyogram as well as right lateral epicondylitis. He stated that appellant was scheduled for surgery pending approval. Dr. Elyaderani noted that appellant's physical condition was unchanged, that he had sensory abnormalities in the ulnar nerve distribution and had significant tenderness over the lateral epicondyle, which was exacerbated with wrist extension against resistance. He considered that appellant had been a long time letter carrier and opined that his lateral epicondylitis and ulnar nerve neuropathy were directly related to his work activities. Dr. Elyaderani stated that appellant had failed physical therapy, repeated injections, a tennis brace and activity modifications at work.

By decision dated May 24, 2002, the Office hearing representative found that Dr. Elyaderani's August 9, 2001 opinion that appellant's right elbow conditions were caused by his employment raised a *prima facie* case of causal relationship. He remanded the case for the Office to refer appellant, with the case record and a statement of accepted facts, to an appropriate medical specialist to determine whether appellant's conditions were caused or aggravated by factors of his employment.

In a report dated July 3, 2002, Dr. Alan H. Wilde, a Board-certified orthopedic surgeon, examined appellant upon referral by the Office. He reviewed the medical records and noted that appellant was a letter carrier who stated that he began having pain in the lateral side of his right elbow and paresthesia in his right ring and small fingers around April 1, 2001. He stated that appellant could not remember any injury. Dr. Wilde performed a physical examination and diagnosed lateral epicondylitis of the right elbow and ulnar neuropathy of the right elbow. Dr. Wilde stated that appellant had no injury and he had no factors relating to his job or occupation that would produce these problems. Dr. Wilde stated that appellant did not have a preexisting condition, which was aggravated. In a supplemental report dated September 18, 2002, Dr. Wilde stated that there was no relationship between appellant's federal employment job or occupation that would produce his symptoms.

By decision dated September 27, 2002, the Office denied appellant's claim, stating that the medical evidence was not sufficient to establish that his condition was caused by his employment activities.

By letter dated October 3, 2002, appellant requested an oral hearing before an Office hearing representative, which was held on May 6, 2003. Appellant stated that he cased mail for three hours a day, which involved constant repetitious movement of his right arm. He stated that after casing mail, he had to carry the bag and deposit the mail on the route and was constantly using his right hand. Appellant described his medical treatment and stated that his only options at this point were cortisone and surgery. He stated that the cortisone became less effective and that a cortisone shot, he could hardly move his arm. Appellant continued to perform his usual

duties but when the cortisone wore off, he lost his grip and favored his left hand. Appellant stated that Dr. Elyaderani was concerned that, if he did not have surgery, the time might come when appellant would not be able to work at all. Appellant did not submit any additional evidence.

By decision dated July 23, 2003, the Office hearing representative affirmed the Office's September 27, 2002 decision. The Office hearing representative, therefore, found that appellant did not submit any evidence to establish that he sustained an injury causally related to his federal duties.

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

To establish that an injury was sustained in the performance of duty, an appellant must submit the following: (1) medical evidence establishing the presence or existence of the condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the 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 appellant. The medical evidence required to establish causal relationship, generally, is rationalized medical evidence. 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 appellant'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 appellant, 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 factors identified by appellant.¹

The mere fact that a disease manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two. Neither the fact that the disease became apparent during a period of employment, nor the belief of appellant that the disease was caused or aggravated by employment conditions, is sufficient to establish causal relation.²

In an August 9, 2001 report, appellant's treating physician, Dr. Elyaderani, considered that appellant had been a long time carrier and opined that the lateral epicondylitis and his ulnar nerve neuropathy in his right elbow were directly related to his work activities. In a July 3, 2002 report, the referral physician, Dr. Wilde, also diagnosed lateral epicondylitis and ulnar neuropathy of the right elbow, but stated that appellant had not sustained a specific traumatic injury and found "no factors relating to his job or occupation that would produce these problems." In a September 18, 2002 supplemental report, Dr. Wilde stated that there was no relationship between appellant's employment and his right elbow conditions. The Board finds that a conflict exists between the opinions of Dr. Elyaderani and Dr. Wilde regarding whether appellant's right elbow conditions are work related. Section 8123(a) of the Federal Employees'

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

² *Lucrecia M. Nielsen*, 42 ECAB 583, 593 (1991); *Joseph T. Gulla*, 36 ECAB 516, 519 (1985).

Compensation Act provides that, if there is a 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.³ In order to resolve the conflict between Dr. Elyaderani and Dr. Wilde, the case will be remanded for appellant to be referred to an impartial medical specialist to determine whether appellant's right elbow lateral epicondylitis and ulnar neuropathy are related to his work activities. After any further development it deems necessary, the Office should issue a *de novo* decision.

The July 23, 2003 and September 27, 2002 decisions of the Office of Workers' Compensation Programs are hereby set aside and the case remanded for further action consistent with this decision.

Dated, Washington, DC
December 2, 2003

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

³ *Henry W. Sheperd, III*, 48 ECAB 382, 385 n.6 (1997); *Wen Ling Chang*, 48 ECAB 272, 273-74 (1997).