

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of STEPHEN R. THOMPSON and DEPARTMENT OF THE NAVY  
PUGET SOUND NAVAL SHIPYARD, Bremerton, WA

*Docket No. 02-2376; Submitted on the Record;  
Issued May 1, 2003*

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DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,  
A. PETER KANJORSKI

The issues are: (1) whether appellant has established that he sustained an injury in the performance of duty; and (2) whether the Office of Workers' Compensation Programs abused its discretion in refusing to reopen his case for further consideration of the merits of his claim under 5 U.S.C. § 8128(a).

On April 15, 2002 appellant, then a 36-year-old data control clerk, filed a claim alleging that the pain in his hands was due to typing.<sup>1</sup>

In a progress note dated April 15, 2002, James A. Stewart, a physician's assistant, diagnosed carpal tunnel syndrome.<sup>2</sup> Mr. Stewart opined that "this is clearly work-related overuse syndrome, either tendinitis and/or cubital tunnel or carpal tunnel."

In a report dated April 29, 2002, Mary E. Harris-Tucker, a physician's assistant, diagnosed bilateral hand pain and ruled out carpal tunnel syndrome. Appellant related the date of injury as April 1, 2002 and requested that this be appended to his previous claim under claim number A14-288620.

In a May 22, 2002 electromyography (EMG) and nerve conduction velocities (NVC) report dated May 22, 2002, Dr. Enayat Niakan diagnosed a normal EMG and NCV.

In a letter dated May 23, 2002, the Office advised appellant that additional factual and medical evidence was needed in order to establish the claim.

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<sup>1</sup> Appellant filed this as a recurrence claim which the Office determined to be a new injury and thus treated it as a new claim by assigning it claim number 14-2011661.

<sup>2</sup> Dr. Stewart noted the claim number as 14-288620 with a date of injury as April 1, 2002.

In a June 27, 2002 decision, the Office denied appellant's claim on the basis that he failed to establish fact of injury. The Office found that the evidence established that he experienced the claimed work factor, but found the medical evidence insufficient to establish that appellant had sustained an injury in connection to the employment factor.

Appellant requested reconsideration in a letter dated July 2, 2002 and submitted a June 13, 2002 report by Dr. Christopher C. Rankin, a physician specializing in orthopedics, a copy of the June 27, 2002 decision and statements by coworkers. In their statements, appellant's coworkers related appellant's pain in his wrist and hands.

In the June 13, 2002 report, Dr. Rankin noted that appellant underwent bilateral carpal tunnel surgery in 1996. Physical examination revealed mild tenderness over the lateral epicondyle with more significant tenderness over the proximal dorsal forearm at the level of the radial head, both Phalen's and Tinel's signs were negative at the wrist and there was no thenar or intrinsic atrophy. Dr. Rankin noted that the May 22, 2002 EMG/NCV studies revealed "no abnormalities in either medial or ulnar nerves in either upper extremity with normal EMG and NCV reported." He diagnosed bilateral forearm and wrist pain "with symptoms suspicious for bilateral radial tunnel syndrome."

By decision dated July 15, 2002, the Office denied appellant's application for review. The Office found that the evidence submitted was insufficient to warrant a merit review of its prior decision as it was neither relevant nor pertinent to the issue of whether there had been a definitive diagnosis of an injury.<sup>3</sup>

The Board finds that the Office failed to establish that appellant sustained an injury in the performance of duty.

A person who claims benefits under the Federal Employees' Compensation Act<sup>4</sup> has the burden of establishing the essential elements of his claim, including that he sustained an injury while in the performance of duty and that he had disability as a result.<sup>5</sup> In accordance with the Federal (FECA) Procedure Manual, 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 in conjunction with the other.<sup>6</sup>

To establish that an injury was sustained in the performance of duty, 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

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<sup>3</sup> The Board notes that appellant submitted additional medical evidence following the Office's June 20, 2001 decision. However, the Board's jurisdiction is limited to evidence that was before the Office at the time of its decision. 20 C.F.R. § 501.2(c).

<sup>4</sup> 5 U.S.C. §§ 8101-8193.

<sup>5</sup> See *Charles E. Evans*, 48 ECAB 692 (1997); see 20 C.F.R. § 10.110(a).

<sup>6</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803(2)(a) (June 1995).

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 the claimant.<sup>7</sup> The medical evidence required to establish a causal relationship is rationalized medical opinion 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 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, 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 the claimant.<sup>8</sup>

The medical evidence appellant submitted lacked a rationalized explanation of the relationship between the diagnosed condition and appellant's employment factors.

Initially, the Board notes that the reports of Mr. Stewart and Ms. Harris-Tucker, both physician's assistants, are entitled to no weight in a claim under the Act because physician's assistants are not "physicians" as defined by section 8101(2) of the Act.<sup>9</sup>

The report by Dr. Niakan is insufficient to support appellant's burden as the results of the objective testing were normal and thus fail to support a diagnosis of bilateral carpal tunnel syndrome. Because the record was devoid of sufficient medical evidence at the time of the June 27, 2002 decision to establish that appellant's federal employment contributed to or aggravated his condition, appellant failed to meet his burden of proof.

The Board further finds that the Office properly exercised its discretion in refusing to reopen appellant's case for consideration of the merits.

Under section 8128(a) of the Act, the Office has the discretion to reopen a case for review on the merits. The Office must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations,<sup>10</sup> which provides that a claimant may obtain review of the merits if his written application for reconsideration, including all supporting documents, set forth arguments and contain evidence that:

“(i) Shows that [the Office] erroneously applied or interpreted a specific point of law; or

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<sup>7</sup> *Donna L. Mims*, 53 ECAB \_\_\_\_ (Docket No. 01-1835, issued August 13, 2002).

<sup>8</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>9</sup> *Allen C. Hundley*, 53 ECAB \_\_\_\_ (Docket No. 02-107, issued May 17, 2002); *Lyle E. Dayberry*, 49 ECAB 369 (1998).

<sup>10</sup> 20 C.F.R. § 10.606(b)(2).

“(ii) Advances a relevant legal argument not previously considered by [the Office]; or

“(iii) Constitutes relevant and pertinent new evidence not previously considered by the [Office].”

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by the Office without review of the merits of the claim.<sup>11</sup>

In support of his request for reconsideration of the Office’s June 27, 2002 decision, appellant submitted a June 13, 2002 report by Dr. Rankin, who diagnosed bilateral forearm and wrist pain and stated appellant’s symptoms were “suspicious for bilateral radial tunnel syndrome.” The Board finds this report insufficient to warrant reopening the record for a merit review as the physician failed to provide a definitive diagnosis of a condition causally related to appellant’s employment.

Appellant also submitted witness statements regarding the pain he was having in his arms and wrists subsequent to the denial of his claim. The Board finds that the statements of appellant’s coworkers are irrelevant to the medical issue at hand and insufficient to require the Office to reopen appellant’s case for review.

In the instant case, appellant submitted no new relevant and pertinent evidence in support of his July 2, 2002 request for reconsideration, nor did he show that the Office erroneously applied or interpreted a specific point of law. Accordingly, the Office properly denied appellant’s request for review on the merits.

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<sup>11</sup> 20 C.F.R. § 10.608(b).

The decisions of the Office of Workers' Compensation Programs dated July 15 and June 27, 2002 are hereby affirmed.

Dated, Washington, DC  
May 1, 2003

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

A. Peter Kanjorski  
Alternate Member