

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of DIANE T. KOMORA and DEPARTMENT OF VETERANS AFFAIRS,  
VETERANS ADMINISTRATION MEDICAL CENTER, Cleveland, OH

*Docket No. 03-1490; Submitted on the Record;  
Issued November 19, 2003*

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DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,  
MICHAEL E. GROOM

The issues are: (1) whether appellant met her burden of proof in establishing that she sustained a right hand injury in the performance of duty on December 1, 2002; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration under 5 U.S.C. § 8128(a).

On February 20, 2003 appellant, then a 52-year-old health technician, filed a traumatic injury claim alleging that on December 1, 2002 she developed inflammation of the right hand. She submitted an accident report, in which she noted that she experienced right wrist pain on December 1, 2002, was treated in the personnel health clinic and diagnosed with inflammation of the right wrist. She later developed a cyst on her right wrist and fluid was drained from the cyst on February 11, 2002.

In a letter dated March 7, 2003, the Office of Workers' Compensation Programs advised appellant of the factual and medical evidence needed to establish her claim and requested that she submit such evidence.

Appellant submitted a report from Dr. John Lee, an internist, dated August 7, 2001, who noted that she was treated for numbness and pain of the right hand. Dr. Lee found a positive Phalen's sign and pain along the median nerve distribution. He diagnosed right hand pain suggestive of carpal tunnel syndrome. On August 18, 2001 appellant underwent x-rays of the right elbow, wrist and hand which revealed no abnormalities.

In a decision dated April 8, 2003, the Office denied appellant's claim as the evidence was insufficient to establish that the claimed medical condition was causally related to her employment duties.

In an undated letter received by the Office on April 20, 2003 appellant requested an appeal of the April 8, 2003 decision. She subsequently indicated that she requested reconsideration of the Office's decision. Appellant noted that all of the medical evidence to

support the claim was not included in the record before the Office due to the relocation of the personnel health office.

By decision dated May 5, 2003, the Office denied appellant's reconsideration request on the grounds that she has submitted no evidence or argument relevant to her claim to warrant review of the April 8, 2003 decision.

The Board finds that appellant failed to establish that she sustained an injury in the performance of duty on December 1, 2002.

An employee seeking benefits under the Federal Employees' Compensation Act has the burden of establishing the essential elements of his or her claim including the fact that the individual is an "employee of the United States within the meaning of the Act, that the claim was filed within the applicable time limitation of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed is causally related to the employment injury."<sup>1</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.<sup>2</sup>

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.<sup>3</sup> In some traumatic injury cases, this component can be established by an employee's uncontroverted statement on the Form CA-1.<sup>4</sup> An alleged work incident does not have to be confirmed by eyewitnesses in order to establish that an employee sustained an injury in the performance of duty, but the employee's statement must be consistent with the surrounding facts and circumstances and his subsequent course of action.<sup>5</sup> A consistent history of the injury as reported on medical reports, to the claimant's supervisor and on the notice of injury can also be evidence of the occurrence of the incident.<sup>6</sup> The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion

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<sup>1</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>2</sup> *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

<sup>3</sup> *Elaine Pendleton*, *supra* note 1.

<sup>4</sup> *John J. Carlone*, 41 ECAB 354 (1989).

<sup>5</sup> *Rex A. Lenk*, 35 ECAB 253, 255 (1983).

<sup>6</sup> *Id.* at 255-56.

evidence, based on a complete factual and medical background, supporting such a causal relationship.<sup>7</sup>

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. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.<sup>8</sup>

In the instant case, the Office denied appellant's claim for compensation on the grounds that the medical evidence was insufficient to establish that her right wrist condition was causally related to her federal employment. She did not submitted sufficient medical evidence to support that a condition has been diagnosed in connection with the employment factor and that any alleged right wrist condition was causally related to the employment factors or conditions.

The August 7, 2001 report from Dr. Lee noted that appellant was treated for numbness and pain of the right hand. He noted a positive Phalen's sign and pain along the median nerve distribution and diagnosed right hand pain "suggestive of" carpal tunnel syndrome. The Board finds that Dr. Lee's report is deficient in that he failed to provide a firm diagnosis of appellant's right upper extremity condition. Further, the physician failed to address the relationship between appellant's wrist condition and the factors of employment believed to have caused or contributed to such condition.<sup>9</sup> Moreover, this report is of reduced probative value since it predates the time of the claimed injury of December 1, 2002 by a year and a half. Therefore, this report is insufficient to meet appellant's burden of proof.

The remainder of the medical evidence, including x-ray reports, fail to provide a physician's rationalized opinion on the causal relationship between the December 1, 2002 incident and appellant's right upper extremity complaints. For this reason, the December 1, 2002 evidence is insufficient to meet appellant's burden of proof.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.<sup>10</sup> Causal relationships must be established by

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<sup>7</sup> See 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

<sup>8</sup> *James Mack*, 43 ECAB 321 (1991).

<sup>9</sup> *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

<sup>10</sup> See *Victor J. Woodhams*, 41 ECAB 345 (1989).

rationalized medical opinion evidence. Appellant failed to submit such evidence and the Office, therefore, properly denied her claim for compensation.

The Board further finds that the Office properly denied appellant's request for reconsideration.<sup>11</sup>

Section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by either: (1) showing that the Office erroneously applied or interpreted a specific point of law; (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent new evidence not previously considered by the Office.<sup>12</sup> Section 10.608(b) provides that, when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.<sup>13</sup>

Appellant's April 20, 2003 request for reconsideration did not allege that the Office erroneously applied or interpreted a specific point of law. She did not advance a relevant legal argument not previously considered by the Office. Consequently, appellant is not entitled to a review of the merits of her claim based on the first and second requirements under section 10.606(b)(2). With respect to the third requirement, appellant did not submit any relevant and pertinent new evidence with her April 20, 2003 request for reconsideration. Rather, she contended that all the necessary medical evidence to support her claim had not been of record due to the relocation of the personnel health office. This contention, however, is not directly relevant to her claim. Appellant did not submit any additional evidence to the Office for review. Accordingly, she is not entitled to a review of the merits of her claim based on the third requirement under section 10.606(b)(2).

As appellant is not entitled to a review of the merits of his claim pursuant to any of the three requirements under section 10.606(b)(2), the Board finds that the Office properly denied her request for reconsideration.

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<sup>11</sup> 20 C.F.R. § 10.606(b)(2)(i-iii).

<sup>12</sup> 20 C.F.R. § 10.606(b)(2) (1999).

<sup>13</sup> 20 C.F.R. § 10.608(b) (1999).

The decisions of the Office of Workers' Compensation Programs dated May 5 and April 8, 2003 are hereby affirmed.

Dated, Washington, DC  
November 19, 2003

Alec J. Koromilas  
Chairman

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member