

**United States Department of Labor
Employees' Compensation Appeals Board**

BRENDA L. SHOEN, Appellant

and

**DEPARTMENT OF HOMELAND SECURITY,
Grand Rapids, MI, Employer**

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**Docket No. 03-2126
Issued: November 26, 2003**

Brenda L. Shoen, *pro se*
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On September 29, 2003 appellant filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs merit decision dated August 11, 2003. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has *de novo* jurisdiction over the merits of this case.

ISSUE

The issue on appeal is whether appellant has established that she sustained bilateral epicondylitis causally related to factors of her federal employment.

FACTUAL HISTORY

On April 22, 2003 appellant, then a 40-year-old transportation security screener, filed a claim for a traumatic injury occurring on April 14, 2003 in the performance of duty. She alleged that she injured her left upper bicep and elbow unloading bags "over a period of time." Appellant did not stop work.

Appellant submitted reports dated May 1 and 6, 2003 from a physician's assistant, who indicated that he treated her on May 1, 2003 for bilateral upper extremity strain and on May 6, 2003 for bilateral/lateral epicondylitis. He listed work restrictions.

In a report dated June 17, 2003, Dr. Steven C. Naum, a Board-certified plastic surgeon, discussed appellant's work as a baggage screener and noted that she was working with restrictions. He listed findings on examination of tenderness over the right and left lateral epicondyle. Dr. Naum diagnosed bilateral/lateral epicondylitis and placed appellant on increased work restrictions.

By letter dated June 30, 2003, the Office of Workers' Compensation Programs requested additional factual and medical information from appellant. The Office further notified appellant that it was developing her claim as one for an occupational disease as she attributed her condition to work factors "over a period of time."¹

In an office visit note dated July 9, 2003, Dr. Naum diagnosed bilateral/lateral epicondylitis and noted findings of tenderness over the right and left lateral epicondyle. He found that appellant should remain on work restrictions.

Appellant submitted a statement dated July 23, 2003, received by the Office on July 28, 2003, in which she described in detail the work activities to which she attributed her diagnosed condition of tennis elbows or bilateral epicondylitis. Appellant indicated that she lifted bags weighing on average 40 to 50 pounds onto and off screening machines during the course of her workday. She stated that she moved several thousand pounds of luggage each day.

Appellant further submitted physical therapy notes dated May 6 to 20 and July 9 to 15, 2003 and reports from a physician's assistant dated April 22 to June 10, 2003. She also submitted work restriction forms dated June 17 and July 9, 2003 from Dr. Naum, who listed limitations on lifting, repetitive elbow or wrist motions and repetitive pushing and pulling.

LEGAL PRECEDENT

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 employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.² The medical opinion must be one of

¹ The regulations define an occupational disease or illness as "a condition produced by the work environment over a period longer than a single workday or shift." 20 C.F.R. § 10.5(q). A "traumatic injury" is defined as "a condition of the body caused by a specific event or incident, or a series of events or incidents, within a single workday or shift." 20 C.F.R. § 10.5(ee).

² *Jerry D. Osterman*, 46 ECAB 500 (1995); *see also Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

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.³

ANALYSIS

In this case, appellant submitted a detailed statement describing the employment factors to which she attributed her diagnosed condition of bilateral epicondylitis. She, however, has not submitted rationalized medical evidence sufficient to establish that she sustained the diagnosed condition due to the identified employment factors.

In a medical report dated June 17, 2003, Dr. Naum noted that appellant worked “lugging and lifting” luggage as a baggage screener. He diagnosed bilateral epicondylitis and placed her on additional work restrictions. Dr. Naum, however, did not specifically relate the diagnosed condition of bilateral epicondylitis to factors of appellant’s federal employment. Medical evidence that does not offer any opinion regarding the cause of an employee’s condition is of diminished probative value on the issue of causal relationship.⁴ Dr. Naum’s opinion, therefore, is insufficient to meet appellant’s burden of proof.

The remaining evidence from Dr. Naum consists of office visit notes and work restriction forms dated June 20 and July 9, 2003 in which he described continued findings of bilateral epicondylitis and listed physical limitations. Again, however, he did not address the cause of appellant’s bilateral epicondylitis and, therefore, his reports are of little probative value.⁵

Appellant further submitted physical therapy treatment notes dated May to July 2003 and reports from a physician’s assistant dated May 20 to June 10, 2003. However, the treatment notes of appellant’s physical therapist and reports from a physician’s assistant are of no probative value as neither a physical therapist nor a physician’s assistant are considered physicians under the Federal Employees’ Compensation Act and, therefore, are incompetent to give a medical opinion.⁶

An award of compensation may not be based on surmise, conjecture, speculation or upon appellant’s own belief that there is causal relationship between her claimed condition and her employment.⁷ To establish causal relationship, appellant must submit a physician’s report, in which the physician reviews the employment factors identified by appellant as causing her condition and, taking these factors into consideration as well as

³ See *Morris Scanlon*, 11 ECAB 384-85 (1960); *Williams E. Enright*, 31 ECAB 426, 430 (1980).

⁴ *Linda I. Sprague*, 48 ECAB 386 (1997).

⁵ *Id.*

⁶ 5 U.S.C. § 8101(2); *Vickey C. Randall*, 51 ECAB 357 (2000).

⁷ *Donald W. Long*, 41 ECAB 142 (1989).

findings upon examination of appellant, state whether the employment injury caused or aggravated appellant's diagnosed conditions and present medical rationale in support of his or her opinion. Appellant failed to submit such evidence in this case and, therefore, has failed to discharge her burden of proof.⁸

CONCLUSION

The Board finds that appellant has not established that she sustained bilateral epicondylitis causally related to factors of her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the August 11, 2003 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Issued: November 26, 2003
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member

⁸ Appellant submitted additional evidence subsequent to the Office's August 11, 2003 decision. As the Office did not review this evidence in reaching a final decision, the Board may not considered it for the first time on appeal. 20 C.F.R. § 501.2(c). Appellant may resubmit this evidence to the Office with a formal request for reconsideration; *see* 20 C.F.R. §§ 10.605-10.610.