

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

MARLENE A. QUIOCHO, Appellant

and

**DEPARTMENT OF THE ARMY, DECA
MANNHEIM COMMISSARY, APO, AE,
Employer**

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**Docket No. 03-316
Issued: March 17, 2004**

Appearances:
Marlene A. Quiocho, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
WILLIE T.C. THOMAS, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On April 21, 2003 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated August 26, 2002 denying wage-loss compensation. Pursuant to 20 C.F.R. § 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met her burden of proof to establish entitlement to wage-loss compensation for the period March 24 to May 5, 2002.

FACTUAL HISTORY

On January 24, 2002 appellant, then a 37-year-old store worker, filed a traumatic injury claim (Form CA-1) alleging that on May 25, 2001 she injured the small finger on her left hand when it was stuck in a stocking cart. The record contains a November 1, 2001 note from Rafael

Vargas, a physician's assistant, who stated that appellant injured her finger at work and it has remained swollen and painful. He added that x-rays were negative and on physical examination he found a lump and limited motion in her finger.

In a March 4, 2002 report, Dr. Sigmund Polzer, a specialist in hand surgery, stated that appellant sustained a crush injury on the fifth finger on her left hand and that January 17, 2001 surgery was performed with a diagnosis of body granuloma, pathology apparently revealed a neuroma. He noted that appellant stated that several days post surgery the finger showed swelling and redness in the area of the medial interphalangeal which appeared to be an almost round subcutaneous mass. Dr. Polzer diagnosed recurrent mass on the fifth digit of the left hand. In a March 22, 2002 report, Dr. Polzer stated that on March 8, 2002 he performed an operative revision after appellant presented with a diffuse inflammatory change that seemed to originate in the synovia of the tendon. Dr. Polzer added that extensive debridement and synovialectomy was performed. He noted that on physical examination appellant's finger was markedly thinner without inflammation. The pain had decreased and the finger was indurated but with clearly limited mobility. Dr. Polzer diagnosed inflammatory mass, fifth digit, left hand, status post previous crush injury and surgery.

In an April 2, 2002 letter, the Office informed appellant that she needed to submit additional information before her claim could be adjudicated. In an April 4, 2002 Form CA-20 report, Dr. Polzer stated that appellant should not go back to work until further notice. He checked a box "no" as to whether he believed the condition found was caused or aggravated by an employment activity. In a Form CA-20 dated April 26, 2002, Dr. Hartmuth Frobenius indicated that more therapy was necessary prior to a return to work. He also checked a box "no" on causal relationship between the condition found and employment activity.

In an April 19, 2002 letter, appellant stated that she was stocking produce items on the sale floor when the pinkie finger on her left hand got stuck in the webbing and a five-pound crate of clementines fell on her hand causing a sharp pain. Appellant added that her finger became red but did not swell. She stated that she told her supervisor, but he did not think it was a severe injury. Appellant added that after a month she noticed a lump around the knuckle and by the holidays the lump was bigger and she had limited motion of the finger.

In an April 24, 2002 letter, the Office accepted appellant's claim for left hand pinkie abrasion and informed her that she should file CA-7 forms and supporting documentation for time lost. Appellant submitted forms for time lost for the period March 24 through May 6, 2002. In a June 12, 2002 letter, the Office informed appellant that she needed to submit medical documentation establishing that she was disabled from working during the period claimed. The Office provided appellant 30 days to submit the documentation. No further information was received.

In an August 26, 2002 decision, the Office denied the claim finding appellant failed to submit medical evidence establishing that she had wage-loss disability for the periods claimed.

LEGAL PRECEDENT

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 an injury was sustained in the performance of duty as alleged and that any disability for which compensation is claimed is causally related to the employment injury.¹

The evidence required to establish causal relationship is rationalized medical evidence, based on complete factual and medical background, showing a causal relationship between the claimed medical condition and the identified factors.²

An award of compensation may not be based on surmise, conjecture, speculation or the claimant's belief of causal relationship.³ The claimant must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relationship.⁴ The mere manifestation of a condition during a period of employment does not raise an inference of causal relationship between the condition and the employment.⁵ Neither the fact that the condition became apparent during a period of employment nor the claimant's belief that the employment caused or aggravated her condition is sufficient to establish causal relationship.⁶

ANALYSIS

In the present case, appellant has not submitted rationalized medical evidence that establishes she was disabled for work between March 24 and May 6, 2002. The record contains two March 2002 reports from Dr. Polzer that explain the surgical procedure he performed and provided status updates. But neither report states that appellant was not able to work due to the accepted injury. On the April 4, 2002 Form CA-20 Dr. Polzer wrote that appellant was not to go back to work until further notice. Dr. Polzer did not provide a history or diagnosis, other than to state "s[ee] before," and he checked a box "no" as to causal relationship with employment. Similarly, on an April 26, 2002 Form CA-20, Dr. Frobenius did not provide a complete history or diagnosis, and he did not support causal relationship with employment. The form reports are therefore of little probative value.

The record also contains a November 1, 2001 report from a physician's assistant. But this report is not considered medical evidence as a physician's assistant is not a physician as

¹ *Duane B. Harris*, 49 ECAB 170 (1997).

² *Id.*; *Dennis Mascarenas*, 49 ECAB 215 (1997).

³ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1970); *Miriam L. Jackson Gholikely*, 5 ECAB 537, 538-39 (1953).

⁴ *Mary J. Briggs*, 37 ECAB 578, 581 (1986).

⁵ *Edward E. Olson*, 35 ECAB 1099, 1103 (1984).

⁶ *Bruce Martin*, 35 ECAB 1090, 1093 (1984); *Dorothy R. Goad*, 5 ECAB 192, 193 (1952).

defined by the Act.⁷ In a June 12, 2002 letter, the Office notified appellant of the deficiencies and allowed 30 days to submit additional evidence, but none was received.⁸

CONCLUSION

Appellant has not met her burden of proof to establish that she is entitled to wage-loss compensation for the periods claimed.

ORDER

IT IS HEREBY ORDERED THAT the August 26, 2002 decision by the Office of Workers' Compensation Programs is affirmed.

Issued: March 17, 2004
Washington, DC

Alec J. Koromilas
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

⁷ Section 8102(2) of the Act provides, in relevant part, “‘physician’ includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law.” 5 U.S.C. § 8101(2).

⁸ Appellant submitted additional evidence after the Office’s last merit decision of August 1, 2003. However, the Board cannot consider such evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c). Appellant may wish to resubmit such evidence to the Office through the reconsideration process. *See* 5 U.S.C. § 8128; 20 C.F.R. § 10.138.