

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of MINNIE COOK and U.S. POSTAL SERVICE,  
POST OFFICE, Hackensack, NJ

*Docket No. 99-1848; Submitted on the Record;  
Issued December 20, 2000*

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DECISION and ORDER

Before WILLIE T.C. THOMAS, PRISCILLA ANNE SCHWAB,  
VALERIE D. EVANS-HARRELL

The issues are: (1) whether appellant's carpal tunnel syndrome was causally related to factors of her federal employment; and (2) whether the Office of Workers' Compensation Programs abused its discretion in denying her request for merit review, on January 12, 1999.

The Board has given careful consideration to the issues involved, the contentions of the parties on appeal and the entire case record. The Board finds that the decision of the Office hearing representative, dated July 13, 1998 and finalized July 15, 1998, is in accordance with the facts and the law in this case and hereby adopts the findings and conclusions of the Office hearing representative.<sup>1</sup>

By letter dated September 23, 1998, appellant requested reconsideration of the denial of her claim and submitted additional evidence. By decision dated December 9, 1998, the Office denied modification of its July 15, 1998 decision.

The Board finds that the medical evidence submitted subsequent to the Office's July 15, 1998 decision is not sufficient to establish that appellant's carpal tunnel syndrome was causally related to factors of her employment.

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 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

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<sup>1</sup> On June 20, 1997 appellant, then a 63-year-old flat sorter operator, filed an occupational disease claim alleging that she sustained carpal tunnel syndrome in her right hand, which she attributed to her flat sorter position. By decision dated September 24, 1997, the Office denied appellant's claim on the grounds that the evidence of record failed to establish that she sustained carpal tunnel syndrome causally related to factors of her employment.

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>2</sup>

The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence.<sup>3</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,<sup>4</sup> must be one of reasonable medical certainty,<sup>5</sup> 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>6</sup>

In a report dated September 10, 1998, Dr. Peter H. Schmaus, a Board-certified physiatrist, stated that appellant had carpal tunnel syndrome which was confirmed by an electromyogram (EMG). Dr. Schmaus stated:

"In my opinion, the EMG testing is related to the repetitive nature of the work that [appellant] performs at the [employing establishment], hence my recommendation for modified duty. This recommendation was also predicated on the fact that [appellant] had persistent symptoms of radiculopathy."

However, Dr. Schmaus failed to describe appellant's specific job duties or explain the causal relationship between her carpal tunnel syndrome and her job duties. Therefore, his conclusory opinion is not sufficient to establish that appellant's carpal tunnel syndrome was causally related to factors of her employment.

In a report dated September 18, 1998, Dr. Joseph H. Willner, a Board-certified neurologist of professorial rank, related that appellant had described her various duties at the employing establishment as repetitive hand motion including labels and removing tapes from packages. Dr. Willner stated that on examination appellant had no muscle atrophy or weakness, a negative Tinel's sign and no sensory loss to pinprick in median-nerve innervated skin. He diagnosed chronic carpal tunnel syndrome, "which plausibly would be exacerbated by repetitive motion and activities at work."

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<sup>2</sup> See *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>3</sup> The Board has held that in certain cases, where the causal connection is so obvious, expert medical testimony may not be necessary; see *Naomi A. Lilly*, 10 ECAB 560, 572-73 (1959). The instant case, however, is not a case of obvious causal connection.

<sup>4</sup> *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

<sup>5</sup> See *Morris Scanlon*, 11 ECAB 384, 385 (1960).

<sup>6</sup> See *James D. Carter*, 43 ECAB 113, 123 (1991); *George A. Ross*, 43 ECAB 346, 351 (1991).

Dr. Willner's opinion on causal relationship is couched in speculative terms. Also, he failed to provide any medical rationale explaining how appellant's carpal tunnel syndrome was causally related to her activities at work. Additionally, Dr. Willner did not explain his diagnosis of carpal tunnel syndrome in light of the negative objective findings. Due to these deficiencies, this report is not sufficient to discharge appellant's burden of proof.

As appellant failed to provide sufficient rationalized medical evidence establishing a causal relationship between her carpal tunnel syndrome and her employment, the Office, in its December 9, 1998 decision, properly denied modification of its July 15, 1998 decision.

Subsequently, by letter dated December 30, 1998, appellant requested reconsideration and submitted additional evidence. By decision dated January 12, 1999, the Office denied appellant's request for reconsideration.

The Board finds that the Office acted within its discretion in denying appellant's request for merit review.

The Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim if the application: (1) shows that the Office erroneously applied or interpreted a specific point of law; or (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.<sup>7</sup> When an application for review of the merits of a claim does not meet at least one of these requirements, the Office will deny the application for review without reviewing the merits of the claim.<sup>8</sup>

In her request for reconsideration, appellant submitted evidence previously submitted and considered by the Office. As this evidence was already of record, it does not constitute relevant and pertinent evidence not previously considered by the Office.

Appellant also submitted a statement dated December 22, 1998 in which she described her job duties and expressed her opinion that her condition was causally related to her employment. However, lay persons are not competent to render a medical opinion.<sup>9</sup> Therefore, her statement does not constitute relevant and pertinent evidence not previously considered by the Office.

As appellant failed to show that the Office erroneously applied or interpreted a specific point of law, did not advance a relevant legal argument not previously considered by the Office, and did not submit relevant and pertinent evidence not previously considered by the Office, the Office did not abuse its discretion in denying her request for reconsideration.

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<sup>7</sup> 20 C.F.R. § 10.606(b)(2) (1999).

<sup>8</sup> 20 C.F.R. § 10.608(b) (1999).

<sup>9</sup> See *James A. Long*, 40 ECAB 538, 542 (1989).

The decisions of the Office of Workers' Compensation Programs dated January 12, 1999, December 9, 1998 and dated July 13, 1998 and finalized July 15, 1998 are hereby affirmed.

Dated, Washington, DC  
December 20, 2000

Willie T.C. Thomas  
Member

Priscilla Anne Schwab  
Alternate Member

Valerie D. Evans-Harrell  
Alternate Member