

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

JOBYNA M. BASTIN, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Cincinnati, OH, Employer**

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**Docket No. 04-157
Issued: February 17, 2004**

Appearances:

Alan J. Shapiro, Esq., for the appellant

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman

COLLEEN DUFFY KIKO, Member

DAVID S. GERSON, Alternate Member

JURISDICTION

On October 22, 2003 appellant, through her attorney, filed a timely appeal from the January 22 and September 29, 2003 decisions of the Office of Workers' Compensation Programs denying her claim for compensation on the grounds that she failed to establish that she sustained an injury in the performance of duty. Under 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 has established that she sustained an injury in the performance of duty.

FACTUAL HISTORY

On July 31, 2002 appellant, then a 27-year-old keyer clerk, filed an occupational disease claim (Form CA-2) alleging that on May 7, 2000 she first realized that her carpal tunnel syndrome and ulnar neuritis in the right wrist and elbow were caused by factors of her employment. Appellant did not stop work.

Appellant's claim was accompanied by correspondence from the employing establishment requesting updated medical information from appellant's treating physician because she was on limited-duty work status and indicating that her claim had been forwarded to the Office for processing. In an August 1, 2002 narrative statement, appellant noted her work history with the employing establishment and her job duties as a keyer clerk. She described the right wrist and elbow injury she sustained on May 7, 2000. Appellant stated that the Office had approved her claim for carpal tunnel syndrome and the claim was assigned number 09-2001830. Further, she stated that she did not know that her case file had been closed on November 1, 2000 as she had been seeing her physician for the same pain in her wrist at least a couple times a year. Appellant noted that her condition had not improved since she was first diagnosed and her claim had been approved. She also noted that her treating physician had referred her to an orthopedic specialist who requested an electromyogram, which was denied because she was advised to file a new claim. Appellant stated that she was submitting a new Form CA-2 for her injury and listed May 7, 2000 as the date of injury because she had not stopped receiving medical treatment for this injury. She submitted correspondence from her union regarding problems she experienced with the processing of her claim. Appellant also submitted an August 1, 2002 duty status report from a physician whose signature is illegible providing a date of injury as May 7, 2000 and her physical restrictions. Lastly, she submitted documents from the Office indicating that her previous claim was closed on November 1, 2000 and she was filing a new occupational disease claim.

By letter dated December 19, 2002, the Office advised appellant that the evidence submitted was insufficient to establish her claim. The Office further advised appellant about the type of factual and medical evidence she needed to submit to establish her claim. Appellant did not submit any additional evidence.

In a January 22, 2003 decision, the Office found no medical evidence of record to support a diagnosis that could be connected to the accepted May 7, 2000 employment incident. Accordingly, the Office denied appellant's claim.

By letter dated February 20, 2003, appellant requested an oral hearing before an Office hearing representative. Appellant stated that she received the Office's January 22, 2003 decision from her supervisor at work and that the address on the decision was incorrect. She noted that she had advised the Office of an address change, but it was not reflected in her records. Appellant requested a complete copy of her case record.¹

The hearing was held on August 13, 2003 and appellant was represented by her attorney, Alan J. Shapiro. It was agreed at the hearing that, since right carpal tunnel syndrome had already been accepted in the case assigned number 09-2001830, the issue was whether appellant's ulnar neuritis of the right wrist and elbow were causally related to her employment. Appellant testified that she injured her right upper extremity at work on May 7, 2000 and she subsequently aggravated this injury due to her day-to-day employment duties which included, using her right fingers to key mail and her right upper extremity to lift mail. Appellant also testified about the

¹ The record indicates that appellant submitted a change of address to the Office on May 6, 2003.

medical treatment she received for her injury.² The hearing representative gave appellant 30 days in which to submit a medical report explaining how and why her right ulnar neuritis of the wrist and elbow was causally related to her employment. Appellant did not submit any such evidence.

By decision dated September 29, 2003, the hearing representative affirmed the Office's January 22, 2003 decision. The hearing representative found that there was no medical evidence of record explaining how and why appellant's right ulnar neuritis was caused by factors of her employment.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act³ has the burden of establishing the essential elements of 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 timely filed within the applicable time limitation period 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 are causally related to the employment injury.⁴ These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁵

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 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. 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

² At the hearing, the hearing representative stated that there were no medical records in appellant's case file. Mr. Shapiro responded that he had a big stack of records that were associated with appellant's other case. He advised the hearing representative that he would send copies of the medical records to the Office.

³ 5 U.S.C. §§ 8101-8193.

⁴ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁵ *See Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁶

ANALYSIS

In this case, appellant did not submit rationalized medical evidence establishing that her ulnar neuritis of the right wrist and elbow was caused by factors of her federal employment. The sole medical evidence of record is the August 1, 2002 duty status report from a physician whose signature is illegible. This report merely provided a date of injury as May 7, 2000 and appellant's physical restrictions. It neither contained a diagnosis nor addressed whether the diagnosed condition was caused by factors of appellant's employment. Thus, this report is insufficient to establish appellant's burden.

CONCLUSION

As there is no other medical evidence in the record, appellant did not provide the necessary medical evidence to establish that she sustained an injury caused by factors of her federal employment. Thus, the Board finds that she has failed to satisfy her burden of proof in this case.

⁶ *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

ORDER

IT IS HEREBY ORDERED THAT the September 29 and January 22, 2003 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: February 17, 2004
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member