U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MILES WALLACE RUSSO and DEPARTMENT OF LABOR,
OFFICE OF WORKERS' COMPENSATION PROGRAMS,
San Francisco, Calif.

Docket No. 96-1328; Submitted on the Record;
Issued April 9, 1998

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof in establishing that he sustained an injury in the performance of duty.

On November 3, 1994 appellant, then a 33-year-old claims examiner, filed a claim alleging that his right wrist and arm condition was caused by factors of his federal employment. Appellant stated that he first became aware of his condition and attributed it to his federal employment on October 10, 1994. He also stated:

> "I am right handed and was not experiencing any problems with my right wrist and arm prior to my employment with the DOL [Department of Labor]. I believe my injury to be largely related to picking up files with my right hand, which now causes quite noticeable pain. Being new to my department section, one facet of my job requires refiling a large cart load of case files."

He described his illness as soreness in right wrist extending to right elbow causing weakness and discomfort.

In a subsequent letter, appellant explained that, while he was in college back in 1991, he had a temporary wrist condition for which he is uncertain whether a diagnosis was ever made. He indicated that his wrist was treated with physical therapy in four or five visits and the problem cleared up in a few weeks. Moreover, since being treated, appellant stated that there has been no further problems with his wrist until the present time. Appellant started his employment with the employing establishment on September 4, 1994 as a trainee claims examiner and stated that he spent time filing cases, as well as being trained for four hours a day the first two weeks, and trained for eight hours a day the second two weeks, with extensive note taking and typing.

In a December 28, 1994 letter, the Office of Workers' Compensation Programs advised appellant of the type of factual and medical evidence needed to establish his claim and requested that he submit such evidence. The Office specifically requested that appellant submit a physician's reasoned opinion addressing the relationship of his claimed wrist condition and specific employment factors. The Office also attached a CA-57 form to be forwarded and filled out by the Northern Arizona University medical records department, where appellant was treated in 1991. Appellant was allotted 30 days to submit the requested evidence.

Appellant responded by stating that he stopped filing claim folders around December 1, 1994, but had previously been spending 15 to 20 minutes performing this task 3 to 5 days a week. He noted that these files weighed from two ounces to five or more pounds; that his hobbies including piano playing on and off since a child; that his piano playing of 8 to 10 hours a week has been reduced to 3 to 5 hours a week; and that his "minimal" piano playing does not seem to aggravate his wrist condition since he is careful not to play for more than 1 hour at a time. He also indicated that the medical records from the Northern Arizona University would be forthcoming. However, no additional evidence was received.

By decision dated May 18, 1995, the Office denied appellant's claim for compensation benefits for failure to demonstrate that he sustained a right wrist injury. In an accompanying memorandum, the Office noted that the record lacked specific details needed to adjudicate appellant's claim, and that there was no submission of a detailed narrative medical report of a physician's findings, diagnostic test results or an opinion on causal relationship.

By letter dated November 14, 1995, appellant requested reconsideration of the Office's May 18, 1995 decision contending that his condition had worsened. Appellant submitted a November 9, 1995 medical report from Dr. Hartwig Sonnenberg, a general practitioner, accompanied by a physical and occupational therapy evaluation; and medical reports from Dr. William H. Montgomery, a Board-certified orthopedic surgeon, dated October 12 and November 14, 1995.

Dr. Sonnenberg stated in his November 9, 1995 report that he first saw appellant on November 11, 1994 with epicondylitis. He reported that he treated appellant with an injection of Xylocaine and 20 milligrams of Kenalog and appellant experienced immediate relief. Dr. Sonnenberg stated that appellant's employment consisted of a considerable amount of filing; that repetitive injury caused an acute flare up of pain; that cold compresses, nonsteroidal anti-inflammatory drugs did not give a significant degree of relief; and that clinical findings consisted of swelling, redness and tenderness of the right elbow. He reported referring appellant to Dr. Montgomery, who concurred with his findings and treatment protocol. Dr. Sonnenberg opined that "a long-standing observation of [appellant's] medical condition noted no improvement. His work is such that lifting over 10 pounds and repetitive opening and closing of drawers causes recurrences of acute pain."

Dr. Montgomery indicated in his October 12 and November 14, 1995 reports that he examined appellant's knees and right elbow. He reported the history of injury as presented by appellant and indicated that appellant had lateral elbow pain for about a year. He also stated that appellant "does quite a bit of filing, typing and writing" on his job, which seemed to have caused his right elbow problem. Dr. Montgomery indicated that upon physical examination appellant

had a full pain-free range of motion of the neck; that his shoulder and wrist had full pain-free motion; that appellant had exquisite point tenderness of his lateral epicondyle of the elbow, with some tenderness going down his extensor tendons; that there was pain with maximal grip, and with active extension against resistance of his wrist and the long finder of his hand; that there was no medical symptoms; and that his elbow motion was full. He noted that the x-rays showed a small ossicle off the lateral epicondyle. His impression was chronic lateral epicondylitis recalcitrant. His treatment regimen consisted of cortisone injections, rest and occupational therapy. Dr. Montgomery recommended a lateral epicondylar revision, and opined that appellant probably had a partial tear in his extensor carpi radialis brevis. He also indicated that appellant's same day surgery procedure would require appellant to be in a splint for a week and/or up to 10 days and then he could start physical therapy. Dr. Montgomery further opined that appellant would possibly be getting back to work, at the earliest, in eight weeks.

By decision dated February 14, 1996, the Office vacated its prior May 18, 1995 decision to the extent that a diagnosis for appellant's condition had been established. The Office also found that the medical evidence submitted on reconsideration failed to provide a rationalized medical opinion supporting that appellant's diagnosed condition of lateral epicondylitis was causally related to any workplace factors.

The Board finds that appellant has not met his burden of proof in establishing that his claimed wrist condition or disability is causally related to his federal employment.

An employee seeking benefits under the Federal Employees' Compensation Act[1] 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 and/or specific condition for which compensation is claimed is causally related to the employment injury.[2]

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 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.[3] The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence.[4] Rationalized medical opinion evidence is medical evidence which

[1] 5 U.S.C. §§ 8101-8193.

[2] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

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

[4] The Board has held that in certain cases, where the causal connection is so obvious, expert medical testimony may be dispensed with to establish a claim; *see Naomi A. Lilly*, 10 ECAB 560, 572-73 (1959). The instant case, however, is not a case of obvious causal connection.

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,[5] must be one of reasonable medical certainty,[6] 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.[7]

In the instant case, it is not disputed that appellant has a lateral epicondylitis of the elbow. The medical reports submitted by Dr. Sonnenberg and Dr. Montgomery are insufficient to establish appellant's claim. Neither physician related appellant's right lateral epicondylitis to his limited employment activity such as filing, typing or other repetitive duties. Neither did either physician explain why appellant's conservative treatment regimen or occupational therapy did not result in a relief of symptoms. Nor did either physician address appellant's hobby of playing the piano and the impact this activity played in causing or aggravating his lateral epicondylitis.

Because the record lacks a rationalized medical opinion relating appellant's work activities to his lateral epicondylitis, the Board finds that appellant has failed to meet his burden of establishing that he sustained an injury in the performance of duty.

The decisions of the Office of Workers' Compensation Programs dated February 14, 1996 and May 18, 1995 are affirmed.

Dated, Washington, D.C.
April 9, 1998

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

[5] *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

[6] *See Morris Scanlon*, 11 ECAB 384-85 (1960).

[7] *See William E. Enright*, 31 ECAB 426, 430 (1980).

A. Peter Kanjorski
Alternate Member