

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of DELORIS M. McAFEE and U.S. POSTAL SERVICE,  
POST OFFICE, Houston, Tex.

*Docket No. 96-1166; Submitted on the Record;  
Issued July 20, 1998*

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DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,  
A. PETER KANJORSKI

The issue is whether appellant has met her burden of proof in establishing that she sustained an injury in the performance of duty prior to August 5, 1994.

On August 10, 1994 appellant, then a 40-year-old bulk mail clerk, filed a claim for an employment-related carpal tunnel syndrome. Appellant attributed this condition to her repetitive motion of data input on her computer and continuous writing and use of a calculator at work on a daily basis. The record shows that appellant was placed on intermittent restrictions following the alleged injury, had surgery on July 14, 1995 and was immediately placed on school/work release for the periods of July 14, to 27, 1995, and thereafter returned to light duty on August 21, 1995. In a decision dated April 6, 1995, the Office of Workers' Compensation Programs found that the incident occurred at the time, place and in the manner alleged; however, a medical condition resulting from the accepted trauma or exposure was not supported by the medical evidence of file. The decision pointed out that the Office required that certain tests be performed in cases concerning carpal tunnel syndrome. These test included: Phalen's and Tinel's signs and results of any nerve conduction or electromyogram (EMG) studies, including the doctor's opinion with medical reasons on the cause of the diagnosed condition. The Office also noted that appellant had failed to provide such required evidence. Appellant requested reconsideration on two separate occasion's and submitted evidence previously considered by the Office, as well as a school/work release for the periods beginning July 14, 1995 through July 27, 1995; a disability claim form completed by Deanna Toups, a disability representative and countersigned by Dr. John Burns, a Board-certified orthopedic surgeon on September 7, 1995. In merit decisions dated July 18 and October 13, 1995, the Office denied appellant's requests for reconsideration on the grounds that the evidence submitted was insufficient to warrant modification of the prior decisions.

The Board has fully reviewed the case record and finds that this case is not in posture for decision and must be remanded for further evidentiary development.

An employee seeking benefits under the Federal Employees' Compensation Act<sup>1</sup> 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.<sup>2</sup>

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.<sup>3</sup> The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence.<sup>4</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>5</sup> must be one of reasonable medical certainty,<sup>6</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>7</sup>

In the present case, the Office found that the claimed event, incident or exposure occurred at the time, place and in the manner alleged; however, the medical evidence submitted by appellant, does not support a diagnosis of carpal tunnel syndrome since the required testing as described above was not received by the Office.

Appellant submitted various medical reports from Dr. Stella Fitzgibbons, a Board-certified internist, who diagnosed carpal tunnel syndrome; advised that she may need surgery in the future but would recover completely; advised that she needed rest from her keyboard; advised to wear a custom made cock up splint on the right wrist; and prescribed anti-inflammatory medication. Dr. Fitzgibbons then referred appellant to Dr. John Burns, a Board-certified orthopedic surgeon, on August 31, 1994.

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>3</sup> *Jerry D. Osterman*, 46 ECAB 500 (1995); *see also Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>4</sup> 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.

<sup>5</sup> *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

<sup>6</sup> *See Morris Scanlon*, 11 ECAB 384-85 (1960).

<sup>7</sup> *See William E. Enright*, 31 ECAB 426, 430 (1980).

In a medical report dated January 19, 1995, Dr. Burns noted that appellant was treated for complaints related to her right hand frequently from August 1994 through November 1994, and from January 1995 through August 1995. In the January 19, 1995 medical report Dr. Burns diagnosed appellant as having flexor tenosynovitis of the right long digit and more recently involving the right index digit. He then opined that “the inflammatory changes present in the tendons of these digits was attributed to the repetitive activity performed in her work related duties as a federal postal employee.” Dr. Burns also stated that if appellant’s symptoms persisted and failed to respond to the prescribed treatment, operative intervention would be necessary.

Thereafter, in a disability form dated September 7, 1995, Dr. Burns reported that appellant underwent right carpal decompression and was totally disabled from July 14, through August 20, 1995 and partially disabled from August 21, through September 10, 1995. This form was countersigned by Dr. Burns, but completed by Ms. Toups, a disability representative who listed unknown as to whether appellant’s condition was due to her employment. Dr. Burns had earlier related appellant’s diagnosed condition to her employment and noted that surgery may be required, therefore, there is a discrepancy which Dr. Burns may not have noticed since he did not complete the September 7, 1995 form but only countersigned it.

Appellant has submitted sufficient evidence to establish a *prima facie* case that she sustained an employment-related hand condition flexor tenosynovitis of the right long digit and right index digit due to factors of her employment.<sup>8</sup> There is no opposing or contrary evidence aside from the September 7, 1995 disability form completed by Ms. Toups and countersigned by Dr. Burns. This form report required clarification. Therefore, the Office is obligated to request further information from appellant’s treating physician concerning the diagnosed hand condition of flexor tenosynovitis of the right long digit and the right index finger. The Office may undertake to develop either factual or medical evidence for determination of the claim.<sup>9</sup> It is well established that proceedings under the Act are not adversarial in nature,<sup>10</sup> and while the claimant has the burden to establish entitlement to compensation, the Office shares the responsibility in the development of the evidence.<sup>11</sup> The Office has the obligation to see that justice is done.<sup>12</sup> The evidence on appeal shows that the above questions have not been adjudicated and that further development of the case by the Office is required.

The Board will set aside the Office’s October 31, July 18, and April 6, 1995 decisions and remand the case for further development of the medical evidence and a *de novo* decision. On remand, the Office should further develop the evidence to include, if the Office deems necessary,

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<sup>8</sup> See *Rebel L. Cantrell*, 44 ECAB 660 (1993); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>9</sup> See Federal (FECA) Procedure Manual, Part 2, Chapters 2-803.4, Fact of Injury (September 1980).

<sup>10</sup> See, e.g., *Waster A. Fundinger, Jr.*, 37 ECAB 200 (1985); *Michael Gallo*, 29 ECAB 159 (1978).

<sup>11</sup> *Dorothy L. Sidwell*, 36 ECAB 699 (1985).

<sup>12</sup> *William J. Cantrell*, 34 ECAB 1233 (1983).

a second opinion as to whether the appellant's diagnosed condition and approximate one year of continuous treatment, including hand surgery was causally related to factors of her employment.

The decisions of the Office of Workers' Compensation Programs dated October 31, July 18, and April 6, 1995 are hereby set aside and the case is remanded to the Office for further proceedings consistent with this opinion.

Dated, Washington, D.C.  
July 20, 1998

Willie T.C. Thomas  
Alternate Member

Bradley T. Knott  
Alternate Member

A. Peter Kanjorski  
Alternate Member