

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

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MICHAEL R. LEWIS, Appellant)	
and)	
DEPARTMENT OF THE NAVY, NAVAL AIR SYSTEMS COMMAND, San Diego, CA, Employer)	Docket No. 03-2129 Issued: February 3, 2004
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Appearances:
Michael R. Lewis, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chairman
DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On August 29, 2003 appellant filed a timely appeal from merit decisions of the Office of Workers' Compensation Programs dated May 8 and August 19, 2003. The May 8, 2003 decision denied appellant's claim finding that the evidence failed to establish that the event, incident or exposure occurred as alleged. The August 19, 2003 decision modified the May 8, 2003 decision to find that the medical evidence failed to establish a causal relationship between the diagnosed condition and appellant's work duties. Under 20 C.F.R. §§ 501.(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has established that he sustained an injury in the performance of duty.

FACTUAL HISTORY

On February 26, 2003 appellant, then a 51-year-old aircraft painter, filed a traumatic injury claim (Form CA-1) alleging that on February 14, 2003 he sustained an injury to his hands while performing repetitive motions when using a rotor sander and grinder. In controverting the claim, appellant's supervisor stated that he had reason to believe that appellant was being untruthful about his claim and was upset about another matter and was using the claim as an excuse to get off work. The employing establishment indicated on the reverse of the claim form that appellant was treated by Karen Berbandt, a registered nurse with the employing establishment dispensary.

Submitted with the claim were February 21 and 28, 2003 dispensary reports by Joseph Ryan, a physician's assistant. Also submitted was a dispensary report by Ms. Berbandt, who placed appellant on restricted duty with no operating of vibrating tools for one month.

By letter dated March 28, 2003, the Office advised appellant that the evidence he submitted was insufficient to establish his claim. The Office requested additional factual information from appellant, specifically, a detailed description of the work activities that he was engaged on February 14, 2003. The Office also requested that the employing establishment furnish a dispensary physician's report describing appellant's description of how the injury occurred, medical findings, a diagnosis, treatment plan and an opinion with supporting rationale on a causal relationship between the diagnosed conditions and the work incident.

On April 23, 2003 the employing establishment submitted a February 14, 2003 dispensary note from Dr. Juan C. Fals, a general surgeon, with the dispensary. He noted that appellant described using sanders and vibrating tools at work and complained of numbness in his fingers. Dr. Fals restricted him to no use of vibrating tools and recommended further evaluation of his hands. In a February 21, 2003 note, Dr. Fals noted complaints of pain in the hands that woke appellant up at night, that appellant participated in karate and that he used vibrating tools at work. He noted that the etiology of appellant's finger pain did not fit carpal tunnel syndrome and he could not rule out neuropathy. Dr. Fals placed appellant on light duty. In a February 28, 2003 note, he addressed appellant's complaints of hand and finger pain and again mentioned appellant's use of vibrating tools at work. A physical examination revealed a positive Phalen's test and negative Tinel's in the left hand. On March 12, 2003 Dr. Fals continued appellant on restricted duty with no straining and exertion and referred him to his primary physician. In a March 14, 2003 note, the physician referred appellant for testing for carpal tunnel syndrome and continued restricted duty.

By decision dated May 8, 2003, the Office denied appellant's claim, finding that he failed to establish that the event, incident or exposure occurred as alleged, as he failed to submit a description of the duties he believed caused his condition. The Office found that fact of injury was not established.

By letter dated August 3, 2003, appellant requested reconsideration of the Office's May 8, 2003 decision and he provided a description of the factors of his employment to which he attributed his condition, *i.e.*, repetitive motion, pounding and vibration while using a rotor sander. A July 21, 2003 nerve conduction study was interpreted as showing severe bilateral median nerve compression at the wrists (carpal tunnel syndrome and left ulnar compression at

the wrist. On a medical impairment sheet, by a physician whose signature is illegible, appellant was diagnosed with carpal tunnel syndrome and restricted for work with no use of vibrating tools.

By decision dated August 19, 2003, the Office modified the May 8, 2003 decision to treat appellant's claim as one for occupational disease claim. The Office found that appellant's implicated employment factors of using a sander and grinder occurred as alleged, but that the medical evidence of record was insufficient to establish a causal relationship between the diagnosed condition of carpal tunnel syndrome and the accepted work factors.

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 the individual is an "employee of the United States within the meaning of the Act, that the claim was filed within the applicable time limitations 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."¹ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.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 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 claimant.

The medical evidence required to establish causal relationship, generally, 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 nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.³

¹ *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

² *David J. Overfield*, 42 ECAB 718, 721 (1991).

³ *Id.*

ANALYSIS

Appellant submitted February 14, 2003 dispensary notes by Dr. Fals, a general surgeon, who noted appellant's description of his work duties required the use of sanders and vibrating tools and complaints of numbness in his fingers. Dr. Fals failed to address the causal relationship between a diagnosed condition and the factors of employment identified by appellant. A February 21, 2003 note included complaints of pain in the hands that woke appellant up at night and indicated that he participated in karate and used vibrating tools at work. Dr. Fals noted that the etiology of appellant's finger pain did not fit carpal tunnel syndrome and that he could not rule out neuropathy. He failed to provide a medical opinion addressing how appellant's work duties caused or contributed to any diagnosed condition of the wrists or hands. A February 28, 2003 note addressed appellant's complaints of hand and finger pain and the use of vibrating tools at work. It was noted that testing revealed a positive Phalen's test and negative Tinel's in the left hand. The physician listed a diagnosis of hyperlipidemia and doubtful carpal tunnel syndrome. The issue of causal relationship was not addressed. On March 14, 2003 Dr. Fals referred appellant for testing for carpal tunnel syndrome. None of the dispensary notes from Dr. Fals included a rationalized opinion causally relating any diagnosed condition to the factors of employment identified by appellant or to the work incident on February 14, 2003 initially claimed by appellant. Therefore, the medical evidence of record is insufficient to establish appellant's claim.⁴

On reconsideration appellant submitted a nerve conduction study interpreted from Dr. Timothy Armstrong as revealing severe bilateral median nerve compression at the wrists (carpal tunnel syndrome and left ulnar compression at the wrist. However, this medical evidence did not address the causal relationship between the diagnosed carpal tunnel syndrome and any factors of employment identified by appellant. Therefore, the nerve conduction study is insufficient to establish appellant's claim.

Appellant failed to provide sufficient medical evidence to establish that he sustained an injury causally related to factors of his federal employment. Therefore, the Office properly denied appellant's claim.

CONCLUSION

Appellant failed to meet his burden of proof in establishing that he sustained an injury in the performance of duty and, therefore the Office properly denied appellant's claim.

⁴ Also submitted were February 21 and 28, 2003 dispensary reports by Joseph Ryan a physician's assistant. A physician's assistant is not a physician under the Act and his reports are not considered medical evidence. 5 U.S.C. § 8101(2); *Bertha L. Arnold*, 28 ECAB 282 (1986). A February 14, 2003 dispensary report by Ms. Berbandt which is not considered medical evidence as a nurse is not a physician under the Act. *Merton J. Sills*, 39 ECAB 572 (1988).

ORDER

IT IS HEREBY ORDERED THAT the August 19 and May 8, 2003 decisions of the Office of Workers' Compensation Programs are hereby affirmed.⁵

Issued: February 3, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

⁵ The Board notes that appellant submitted medical evidence with his appeal. As this evidence was not previously considered by the Office prior to its decisions of May 8 and August 19, 2003, the evidence represents new evidence which cannot be considered by the Board. The Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision. 20 C.F.R. § 501.2(a). Appellant may resubmit this evidence to the Office, together with a formal written request for reconsideration pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606(b).