

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

PATRICIA L. OPIELSKI, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Levittown, PA, Employer**

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**Docket No. 04-1489
Issued: October 26, 2004**

Appearances:
Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

WILLIE T.C. THOMAS, Alternate Member
MICHAEL E. GROOM, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On May 17, 2004 appellant's counsel filed a timely appeal of an Office of Workers' Compensation Programs' hearing representative's January 12, 2004 decision which found that the evidence was insufficient to establish that appellant had carpal tunnel syndrome or any other upper extremity condition causally related to her federal employment. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of this claim.

ISSUE

The issue is whether appellant has established that her carpal tunnel condition or other upper extremity condition is causally related to factors of her federal employment.

FACTUAL HISTORY

On December 8, 1999 appellant, then a 44-year-old clerk, filed an occupational disease claim alleging that her carpal tunnel condition was causally related to factors of her employment. Appellant stated that, although she was aware of her wrist condition in February 1991, it was not until December 7, 1999 that she realized that it was caused or aggravated by her federal

employment. Appellant indicated that she was out of work from December 26, 1989 through June 1996, due to a work-related back injury. The employing establishment acknowledged that appellant's job had sorting and casing duties but indicated that those duties ceased very shortly upon her June 1996 return to work.

The record indicates that appellant worked as a distribution clerk from 1984 to 1989 and that she was off work from December 26, 1989 to June 1996, with a work-related back injury.¹ She first noticed pain and numbness in her hands in 1991 and sought medical treatment. While totally disabled from her back condition, appellant was involved in a nonwork-related motor vehicle accident on December 24, 1995.

Appellant returned to modified duties of casing mail and flats in June 1996. In January 1998 she filed a claim for a shoulder condition due to her modified duties, which the Office accepted for tendinitis and a torn rotator cuff of the right shoulder.² On May 28, 1998 appellant began working as a limited-duty clerk due to her accepted shoulder condition. Her duties involved answering the telephone, handling customer inquiries, claims, express reports, money order inquiries and other duties not requiring carrying, pushing, pulling, climbing, bending, twisting or reaching. On March 27, 1999 appellant accepted a limited-duty position in which she did mark-up on business reply mail, such as crossing off barcodes and limited stamping with the hand on her noninjured side, along with answering the telephone. She stopped working limited duty on July 13, 1999 because of a recurrence of disability under her back injury claim. She returned to limited duty on September 12, 2000 primarily answering telephones with occasional writing work on certified mail and second/return notices.

In a March 23, 1998 report, Dr. David E. Mino, a Board-certified orthopedic surgeon, noted that appellant experienced pain on December 24, 1997 in her right shoulder while casing mail. A prior history of bursitis of the right shoulder and carpal tunnel syndrome with paresthasias of the right hand were noted with no other specific trauma or injury. Appellant was noted to be out of work since December 24, 1997. Dr. Mino found a suprapinatus tendinitis with possibly an incomplete tear of the right shoulder, cervical spondylosis with no evidence of cervical radiculopathy and evidence of carpal tunnel syndrome on the right as indicated by a positive Tinel's sign. Dr. Mino noted that appellant reported a prior electromyogram (EMG) was positive for carpal tunnel syndrome. In a July 24, 1998 report, Dr. Mino noted that appellant was doing light-duty work and had dysesthasias of each hand at times. Examination of the wrists revealed positive Tinel's sign at the right and left wrists, negative Phalen's sign bilaterally, negative cubital Tinel's and no thenar atrophy. A bilateral carpal tunnel syndrome was diagnosed along with an improving impingement syndrome of the right shoulder.

In a March 26, 1999 medical note, Dr. Anthony Mannino, a Board-certified internist, advised that appellant would benefit from consecutive days off to rest her chronic overuse injuries. Other notes from Dr. Mannino indicated that appellant was unable to work for selected periods of time due to rheumatoid arthritis flare up.

¹ Case number 030148595.

² Case number 030232471.

By decision dated July 20, 2000, the Office denied appellant's claim on the basis that the evidence was insufficient to establish that a condition was diagnosed in connection with the claimed employment factor.

In a letter dated July 24, 2000, appellant's counsel requested a hearing before an Office hearing representative. A hearing was held on March 1, 2001 at which appellant provided testimony and submitted medical evidence.

In reports dated May 15 and August 28, 2000, Dr. Mannino advised that appellant has a L4-5/L5 disc herniation with bilateral lower extremity radiculopathy, right shoulder rotator cuff tear and bursitis and bilateral carpal tunnel syndrome. He stated that appellant's chronic back and right shoulder conditions make it impossible for her to resume any gainful employment with the exception of answering telephones. Dr. Mannino advised that appellant has been out of work since August 23, 1999, due to the cumulative effect of her conditions. He additionally noted that the EMG of appellant's upper extremities showed evidence of bilateral carpal tunnel syndrome.

In a February 7, 2001 medical report, Dr. Mino advised that he saw appellant on March 23 and July 24, 1998, for pain in her right shoulder and during the course of his evaluation, it was apparent that she also had carpal tunnel syndrome. He advised that the magnetic resonance imaging (MRI) scan of her cervical spine showed a small right C6-7 disc herniation and foraminal stenosis at C5-6 which he did not feel accounted for the carpal tunnel symptoms in her right hand. He stated that appellant reported that she had an EMG which was positive for carpal tunnel syndrome and that she had symptoms in both wrists when she was seen on July 24, 1998. Dr. Mino noted that appellant's job required casing mail for up to seven hours a day and that she had cased mail for many years. Dr. Mino opined that the action which was required with casing mail could have produced appellant's carpal tunnel syndrome.

By decision dated June 13, 2001, the Office's hearing representative remanded the case for further development of the evidence.

In an August 24, 2001 letter, the Office directed appellant to submit medical records of her treatment along with reports of EMG testing following the onset of her symptoms in 1991. In an August 28, 2001 letter, appellant's attorney advised that appellant was experiencing great difficulty in obtaining specific medical records.

By decision dated October 11, 2001, the Office denied appellant's claim on the basis that the medical evidence failed to establish that she sustained a condition causally related to her federal employment.

In a letter dated October 16, 2001, appellant's counsel requested a hearing before an Office hearing representative. A hearing was held on March 6, 2002 at which appellant was represented by counsel, provided testimony and submitted additional evidence.

In a February 22, 1996 report, Dr. Emil L. Matarese, a Board-certified neurologist, advised that appellant was seen in neurologic consultation and for the neuroelectrodiagnostic evaluation of her right upper extremity and both lower extremities. The physician noted the history of appellant's work injuries and her December 24, 1995 motor vehicle accident. With respect to the right upper extremity, nerve conduction studies (NCS) revealed normal terminal

latency, amplitude and conduction velocity on motor testing for the right median and ulnar nerve in the arm and for the tibial nerve bilaterally. Late responses (F waves) were within normal limits for the median and ulnar nerve in the right arm. EMG needle evaluation of the right upper extremity revealed normal motor unit configurations on testing the biceps, triceps and brachioradialis muscles. Dr. Matarese opined that appellant's right shoulder, neck and proximal arm/chest pain was the result of her bursitis and not a primary neurologic dysfunction.³

A copy of a February 4, 1999 EMG and NCS of the upper extremities was provided.

By decision dated June 6, 2002, the hearing representative remanded the case for further development. It was noted that Dr. Mino's medical opinions were sufficient to warrant further development of the medical evidence. The Office was directed to refer appellant for a second opinion evaluation.

On June 26, 2002 the Office referred appellant, together with a statement of accepted facts, lists of questions and the medical record, to Dr. Anthony Salem, a Board-certified orthopedic surgeon, for a second opinion examination. In a July 22, 2002 report, Dr. Salem noted that appellant last performed casing and sorting mail duties two years prior to filing her claim. He noted that appellant only performed those duties from 1996 until 1997 and that her current duties, as of September 12, 2000, involved answering the telephones with occasional writing work on certified mail and second return notices. Appellant was noted not to have worked from December 1989 until 1996; from April until May, 1998; and from August, 1999 until September, 2000. Physical examination findings revealed no clinical signs of carpal tunnel syndrome. Dr. Salem stated that after years of supposed carpal tunnel syndrome, he would have expected some thenar atrophy, but that the examination showed no thenar atrophy of either hand and no sign of any contracture or disuse. Dr. Salem noted his review of the objective studies and the record and opined that appellant had not developed carpal tunnel syndrome as a result of her federal employment. He stated that the diagnosis had not been established by his physical examination nor by Dr. Matarese's EMG studies of two and four years ago. Although Dr. Mino stated that appellant had carpal tunnel syndrome, Dr. Salem noted that was based on what appellant told him. He noted that appellant saw Dr. Mino for shoulder problems. Dr. Salem opined that there was no diagnosed carpal tunnel syndrome and that appellant's symptoms were not related to the factors of employment as described in the Statement of Accepted Facts. He further opined that appellant was not disabled from performing a more meaningful job as her limitations from work were minimal. In a separate Form OWCP-5c, Dr. Salem opined that appellant was capable of working eight hours a day with a six-hour limitation on repetitive movements concerning her wrists and elbows.

By decision dated August 13, 2002, the Office denied appellant's claim according determinative weight to Dr. Salem's opinion.

In a letter dated August 14, 2002, appellant's counsel requested a hearing before an Office hearing representative. A hearing was held on October 21, 2003 at which appellant's counsel presented argument.

³ Other reports from Dr. Matarese referred to appellant's lower extremity conditions.

By decision dated January 12, 2004, the hearing representative found that there was insufficient evidence to establish that appellant had carpal tunnel syndrome or any other upper extremity condition related to the identified factors of her employment. The hearing representative affirmed the August 13, 2002 decision denying the claim.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act has the burden of establishing that 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 essential elements of each and every 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;⁶ (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;⁷ 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.⁸ The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon a complete factual and medical background, showing a causal relationship between the claimed condition and identified factors. The belief of a claimant that a condition was caused or aggravated by the employment is not sufficient to establish causal relation.⁹

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.¹⁰ The

⁴ *Derrick C. Miller*, 54 ECAB ____ (Docket No. 02-140, issued December 23, 2002).

⁵ *Janice Guillemette*, 54 ECAB ____ (Docket No. 03-1124, issued August 25, 2003); *Kathryn A. Tuel-Gillem*, 52 ECAB 451 (2001).

⁶ *Solomon Polen*, 51 ECAB 341 (2000).

⁷ *Marlon Vera*, 54 ECAB ____ (Docket No. 03-907, issued September 29, 2003); *Janet L. Terry*, 53 ECAB ____ (Docket No. 00-1673, issued June 5, 2002); *Roger Williams*, 52 ECAB (2001).

⁸ *Ernest St. Pierre*, 51 ECAB 623 (2000).

⁹ *Luis M. Villanueva*, 54 ECAB ____ (Docket No. 03-977, issued July 1, 2003).

¹⁰ *Conard Hightower*, 54 ECAB ____ (Docket No. 02-1568, issued September 9, 2003).

opinion of the physician must be based on a complete factual and medical background of the claimant,¹¹ must be one of reasonable medical certainty¹² 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.¹³

ANALYSIS

In the present case, appellant has submitted insufficient medical evidence to establish that her diagnosed bilateral carpal tunnel syndrome was caused or aggravated by factors of her federal employment. The evaluation reports which revealed carpal tunnel syndrome are not supported by the objective evidence of record or are based on an incomplete and inaccurate factual background. Although Dr. Mino, in his reports of March 23 and July 24, 1998 and February 7, 2001, diagnosed carpal tunnel syndrome, this diagnosis was noted to be based on appellant's statement that a prior EMG was positive for carpal tunnel syndrome. It is noted, however, that Dr. Matarese, in his February 22, 1996 report, had advised the EMG and nerve conduction velocity studies for the right upper extremity were normal. Other than noting positive Tinel's signs on examination, Dr. Mino provides no diagnostic or further clinical evidence to support the diagnosis of carpal tunnel syndrome. Also, Dr. Mino's support for causal relationship is speculative insofar as he indicated that appellant's employment "could have" caused her claimed condition.¹⁴ Moreover, Dr. Mino's reports fail to indicate an awareness of the time periods during which appellant had not carried mail or that the onset of her symptoms did not occur until after she had been off work for two years.

Although Dr. Mannino, in his May 15 and August 28, 2000 reports, indicated that the EMG studies showed evidence of first a right and then a bilateral carpal tunnel syndrome, he failed to indicate the date of such EMG studies or provide any further diagnostic studies to support his finding. Dr. Mannino further fails to provide medical rationale explaining how any particular condition was caused or aggravated by the employment nor did he indicate an awareness of appellant's current work duties.

Dr. Salem, the second opinion physician, was provided with a Statement of Accepted Facts concerning appellant's employment duties and medical conditions which he based his opinion on. Dr. Salem noted that, at the time of his examination, appellant was doing minimal work, primarily answering telephones with occasional writing work involving mail and second return notices. He performed a comprehensive examination and related that the examination showed no clinical signs of carpal tunnel present in the form of thenar atrophy, contracture or disuse, which he stated that he would have expected to see after years of supposed carpal tunnel syndrome. Dr. Salem further noted that he reviewed the records, including EMG reports by Dr. Matarese of two and four years ago, which did not demonstrate that appellant had carpal

¹¹ *Tomas Martinez*, 54 ECAB ____ (Docket No. 03-396, issued June 16, 2003).

¹² *John W. Montoya*, 54 ECAB ____ (Docket No. 02-2249, issued January 3, 2003).

¹³ *Judy C. Rogers*, 54 ECAB ____ (Docket No. 03-565, issued July 9, 2003).

¹⁴ See *Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962) (where the Board held that medical opinions based upon an incomplete history or which are speculative or equivocal in character have little probative value).

tunnel syndrome. Dr. Salem reasoned that there was no clinical or diagnostic evidence which supported a diagnosis of carpal tunnel syndrome and thus, her symptoms were not related to the identified factors of employment. As Dr. Salem's opinion that appellant does not have carpal tunnel syndrome is based on an accurate factual and medical history, his examination findings and his review of the medical record, the Board finds that Dr. Salem's opinion constitutes the weight of the medical evidence.

CONCLUSION

The Board finds that appellant has not established that she has carpal tunnel syndrome or an upper extremity condition causally related to factors of her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs' hearing representative dated January 12, 2004 is affirmed.

Issued: October 26, 2004
Washington, DC

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member