

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

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**B.D., Appellant**

**and**

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

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**Docket No. 07-106  
Issued: March 12, 2007**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On October 17, 2006 appellant filed a timely appeal from the decisions of the Office of Workers' Compensation Programs dated February 16 and September 22, 2006 denying her claim for benefits. Pursuant to 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 met her burden of proof to establish that she sustained an injury to her right index finger causally related to factors of her federal employment.

**FACTUAL HISTORY**

On November 21, 2005 appellant, then a 55-year-old visitor registration clerk, filed an occupational disease claim alleging injury to her right index finger as a result of typing with two fingers, writing and stapling in her federal employment. The employing establishment controverted the claim. In support of her claim, she submitted a November 18, 2005 discharge instruction sheet from the University of Pennsylvania Hospital. Appellant was instructed to wear

a right second finger splint at work. She was also seen on November 4, 2005 for a physical therapy appointment and she submitted prescriptions from that date. In a November 25, 2005 note, appellant was instructed to do no pushing, pulling, lifting or tugging with her right hand greater than three pounds.

In a December 21, 2005 report, Dr. Armando A. Mendez, a Board-certified orthopedic surgeon, examined appellant. He noted that she worked as a clerk for the employing establishment. Appellant related that, for the prior two months, she experienced some swelling and pain over the dorsum of the hand, especially involving the metacarpophalangeal area of the right index finger. Dr. Mendez also noted that appellant had a mass on the finger. He noted that appellant had recently been transferred from a job that required repetitive use of the right hand and especially the right index finger by punching a keyboard. Dr. Mendez examined appellant and noted that she had an area of swelling over the dorsum of the metacarpophalangeal joint on the radial side consistent with possibly a small cyst, given the normal appearing x-ray.

On December 21, 2005 Dr. Robert B. Carrigan, a Board-certified orthopedic surgeon, indicated that appellant had a mildly painful mass on the right finger. He noted appellant's employment with the employing establishment and that her complaint over the prior two months of some swelling and pain over the dorsal aspect of her right metacarpophalangeal joint of the index finger. Dr. Carrigan told appellant that, if the mass was bothering her, he would recommend excision.

By letter dated January 11, 2006, the Office requested that appellant submit further evidence. In response, appellant submitted physical therapy notes, a statement from Dr. David Allan, a Board-certified internist, who noted that appellant had right index finger tenosynovitis and illegible notes from her visit to the emergency room on November 25, 2005. Appellant also submitted an x-ray report of December 12, 2005 that was interpreted as showing no evidence of fracture or dislocation. Appellant stated that in October she noticed the lump on the knuckle of her right index finger, with pain, and that she could not bend the finger. She was transferred on December 7, 2005 to a new facility where she was not doing repetitive motions with her hand and her finger had improved.

In a decision dated February 16, 2006, the Office denied appellant's claim finding that the medical evidence did not establish that her right index finger condition was causally related to the established employment factors.

On February 28, 2006 appellant requested an oral hearing which was held on July 11, 2006. In a decision dated September 22, 2006, the Office hearing representative affirmed the February 16, 2006 decision.

### **LEGAL PRECEDENT**

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 the individual is an employee of the United States" within the meaning of the Act, that the claim was

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

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.<sup>2</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>3</sup>

To establish that the 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 diagnosed condition is causally related to the employment factors identified by the claimant.<sup>4</sup>

### **ANALYSIS**

Appellant has the burden of establishing the essential elements of her claim.<sup>5</sup> Appellant has not provided evidence that her right index finger condition was caused or contributed to by the employment duties she identified. None of the medical reports provide a rationalized medical report relating appellant's finger condition to her federal employment. Both Dr. Mendez and Dr. Carrigan noted that appellant told them that she worked for the employing establishment. However, neither physician addressed the causation of the swelling and pain in appellant's right index finger. Dr. Allan diagnosed appellant's condition as right index finger tenosynovitis, but he did not address the cause of this condition. The illegible emergency room notes do not constitute probative medical evidence as the author cannot be readily identified as a physician.<sup>6</sup>

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment, nor her belief that her condition was caused, precipitated or aggravated by her employment is sufficient to establish causal relationship.<sup>7</sup> The medical evidence of record is not sufficient to establish appellant's claim.

### **CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish that she sustained an injury to her right index finger causally related to the duties of her federal employment.

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<sup>2</sup> *Joe D. Cameron*, 41 ECAB 150 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>3</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>4</sup> *Solomen Polen*, 51 ECAB 441 (2000); *see also Michael E. Smith*, 50 ECAB 313 (1999).

<sup>5</sup> *Id.*

<sup>6</sup> *See Merton J. Sills*, 39 ECAB 572 (1988).

<sup>7</sup> *See Dennis M. Mascarenas*, 49 ECAB 215 (1997).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated September 22 and February 16, 2006 are affirmed.

Issued: March 12, 2007  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board