

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

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**L.D., Appellant**

**and**

**U.S. POSTAL SERVICE, BULK MAIL  
CENTER, Jersey City, NJ, Employer**

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**Docket No. 07-1337  
Issued: October 4, 2007**

*Appearances:*

*Thomas R. Uliase, Esq., for the appellant*

*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge

DAVID S. GERSON, Judge

JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On April 20, 2007 appellant filed a timely appeal from an October 13, 2006 decision of the Office of Workers' Compensation Programs, denying his request for reconsideration. The Board also has jurisdiction to review a June 8, 2006 decision denying his claim for bilateral carpal tunnel syndrome. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merit and nonmerit decisions.

**ISSUES**

The issues are: (1) whether appellant met his burden of proof in establishing that he sustained bilateral carpal tunnel syndrome in the performance of duty causally related to factors of his federal employment; and (2) whether the Office abused its discretion in denying his request for reconsideration.

**FACTUAL HISTORY**

On April 26, 2006 appellant, then a 61-year-old information systems coordinator/computer operator, filed an occupational disease claim alleging that he developed

bilateral carpal tunnel syndrome beginning in January 2006 because he used a computer keyboard and mouse constantly<sup>1</sup> in his job.

In a January 31, 2006 report, Dr. David Blady, an attending Board-certified neurologist, stated that appellant was experiencing numbness in both hands for approximately eight months, as well as longstanding discomfort in his neck. Appellant had been performing computer work for many years. Dr. Blady noted that appellant's medical history was significant for degenerative joint disease and hypertension. He provided findings on physical examination which included large bursae (sacs or sac-like cavities filled with fluid) at both elbows. There were notable deformities of appellant's digits. Dr. Blady stated:

“[Appellant's] complaints of a sense of numbness in the second and fourth digits of his hands bilaterally are raising a likelihood [of] carpal tunnel syndrome. He also complains of neck discomfort and [the] possibility of a double crush injury is a consideration as well. I note, however, that he has significant deformities of the hands secondary to degenerative disease and the possibility that his symptoms are related to this is raised.... [I] have arranged for ... EMG/NCV [electromyogram/nerve conduction velocity] studies in an effort to clarify the nature of his complaints.”

On April 14, 2006 Joseph Ross, a supervisor, stated that appellant's job required typing brief entries into the computer system to reroute mail flow or print reports when requested. Many functions were performed with just a few keystrokes. During a normal workday, 20 to 30 computer commands were entered. Appellant also read approximately 20 to 30 e-mail messages per week. Mr. Ross questioned whether such limited use of the computer could have caused appellant's bilateral carpal tunnel syndrome.

In a May 11, 2006 report, Dr. Mark A.P. Filippone, an attending Board-certified physiatrist, stated that appellant performed repetitive activities at work involving both upper extremities, especially his hands, during the past 30 years. Since January 2006, appellant had experienced numbness, tingling and pain in both hands, especially the volar aspect of his thumb, index, middle and ring fingers and atrophy of the thenar eminence. Dr. Filippone provided findings on physical examination and diagnosed repetitive stress disorder of both upper extremities, including bilateral carpal tunnel syndrome. He opined that these conditions were caused by 30 years of repetitive computer keyboarding.

On June 5, 2006 Ketan B. Modi, a supervisor, stated that appellant performed a maximum of 24 computer moves in an average day. A normal move required 25 to 50 keystrokes and a maximum of two minutes to complete. Mr. Modi provided samples of computer moves and photographs of appellant's work area.

By decision dated June 8, 2006, the Office denied appellant's claim on the grounds that the medical evidence did not establish a causal relationship between his bilateral carpal tunnel syndrome and his employment.

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<sup>1</sup> Appellant did not provide details as to the nature or frequency of his computer use.

Appellant requested reconsideration and submitted additional evidence. He stated that in 1978 he began working as a computer specialist. Appellant's duties included using a computer keyboard for directing mail testing programs and testing keyboards. In 1978 the computers were slower and more typing was required. Appellant also repaired computers and handled small parts. His duties were repetitive and involved overtime work. Appellant entered mail schemes into the computer system which was a slow, tedious process at that time. He performed these duties up to the present but the work proceeded at a faster pace over the course of time.

On August 1 and 23, 2006 Dr. Filippone indicated that appellant was experiencing numbness and pain in both hands, although he was performing limited-duty work with computers and answering the telephone. Phalen's and Tinel's signs were positive bilaterally. In a September 1, 2006 report, Dr. Filippone stated that appellant was experiencing numbness and tingling in both hands. EMG/NCV studies tests were abnormal and revealed severe bilateral carpal tunnel syndrome. There was no evidence of cervical radiculopathy, ulnar neuropathy or any systemic neuromuscular disease or polyneuropathy. Dr. Filippone stated that the electrical abnormalities revealed in the EMG/NCS were directly and solely the result of appellant's federal employment. On September 16, 2006 he stated that appellant's description of his duties included repetitive use of a keyboard for directing mail, testing programs and testing keyboards and required a lot of typing. Dr. Filippone was also in charge of repairing computers and handling small parts. The computers were slower when he began his job with a lot of typing. He stated:

"Given the history and the clinical presentation, it is my professional medical opinion that [appellant's] severe bilateral carpal tunnel syndrome is the direct and sole result of his occupational exposure for the last 30 years or so working for the [employing establishment], repetitively doing keying on computers."

By decision dated October 13, 2006, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted did not warrant further merit review of the claim.<sup>2</sup>

### **LEGAL PRECEDENT -- ISSUE 1**

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 the claimant. The medical evidence required to establish causal relationship, generally, is rationalized medical opinion evidence.<sup>3</sup> Rationalized medical opinion evidence is medical evidence which includes a

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<sup>2</sup> Subsequent to the October 13, 2006 Office decision, appellant submitted additional evidence. The Board's jurisdiction is limited to the evidence that was before the Office at the time it issued its final decision. See 20 C.F.R. § 501.2(c). The Board may not consider this evidence for the first time on appeal.

<sup>3</sup> *Michael S. Mina*, 57 ECAB \_\_\_\_ (Docket No. 05-1763, issued February 7, 2006).

physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's 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.<sup>4</sup>

An award of compensation may not be based on surmise, conjecture, speculation or upon appellant's own belief that there is a causal relationship between his claimed injury and his employment.<sup>5</sup> To establish a causal relationship, appellant must submit a physician's report in which the physician reviews the employment factors identified by appellant as causing his condition and, taking these factors into consideration, as well as findings upon physical examination of appellant and his medical history, state whether the employment factors caused or aggravated appellant's diagnosed conditions and present medical rationale in support of his opinion.<sup>6</sup>

### **ANALYSIS -- ISSUE 1**

Appellant alleged that he developed bilateral carpal tunnel syndrome because he used a computer keyboard and mouse constantly in his job beginning in 1978. His duties included using a computer keyboard for directing mail testing programs and testing keyboards. In 1978 the computers were slower and more typing was required. Appellant also repaired computers and handled small parts and entered mail schemes into the computer system which was a slow, tedious process.

Dr. Blady did not provide a definite diagnosis for appellant's hand problems. He indicated the possibility of carpal tunnel syndrome or a double crush injury. However, Dr. Blady also noted significant deformities of appellant's hands secondary to degenerative joint disease and the possibility that his symptoms were related to this degenerative condition. Because he did not make a positive diagnosis of carpal tunnel syndrome and did not opine that appellant's hand condition was causally related to his employment, his report is not sufficient to establish a work-related bilateral carpal tunnel syndrome.

Dr. Filippone stated that appellant had performed repetitive work activities involving both upper extremities during the past 30 years. Since January 2006 he had experienced numbness, tingling and pain in both hands and atrophy of the thenar eminence. Dr. Filippone provided findings on physical examination and diagnosed repetitive stress disorder of both upper extremities, including bilateral carpal tunnel syndrome. He opined that these conditions were caused by 30 years of repetitive computer keyboarding. However, his opinion on causal relationship is not based on a complete and accurate factual background of appellant's physical job requirements. Appellant's supervisors stated that his job required typing only brief entries

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<sup>4</sup> Gary J. Watling, 52 ECAB 278 (2001); Gloria J. McPherson, 51 ECAB 441 (2000).

<sup>5</sup> Donald W. Long, 41 ECAB 142 (1989).

<sup>6</sup> *Id.*

into the computer system and many functions were performed with just a few keystrokes. During a normal workday a maximum of 24 computer moves were performed. A normal move required 25 to 50 keystrokes and a maximum of two minutes to complete. The description of appellant's computer use by his supervisors is not consistent with his description of repetitive computer keyboarding. His supervisors' description is specific as to the nature and frequency of his duties whereas appellant provided only a general description of repetitive keyboarding with no details as to time or frequency. Consequently, Dr. Filippone's report is of limited probative value and is insufficient to establish that appellant's bilateral carpal tunnel syndrome is causally related to factors of his employment.

### **LEGAL PRECEDENT -- ISSUE 2**

Section 8128(a) of the Federal Employees' Compensation Act<sup>7</sup> vests the Office with discretionary authority to determine whether it will review an award for or against compensation. The Act states:

“The Secretary of Labor may review an award for or against payment of compensation at any time on [his] own motion or on application. The Secretary, in accordance with the facts found on review may--

(1) end, decrease, or increase the compensation awarded; or

(2) award compensation previously refused or discontinued.”

The Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a specific point of law; or (2) advancing a relevant legal argument not previously considered by the Office; when an application for review of the merits of a claim does not meet at least one of these requirements, the Office will deny the application for review without reviewing the merits of the claim.<sup>8</sup>

### **ANALYSIS -- ISSUE 2**

In reports dated September 1 and 16, 2006, Dr. Filippone stated that appellant was experiencing numbness and tingling in both hands. EMG/NCV studies were abnormal and revealed severe bilateral carpal tunnel syndrome. He noted that appellant's description of his duties included repetitive use of a keyboard for directing mail, testing programs and testing keyboards. Appellant performed a lot of typing. Dr. Filippone stated his opinion that appellant's bilateral carpal tunnel syndrome was the direct and sole result of his 30 years of repetitive computer keyboarding. Like Dr. Filippone's earlier reports, these reports are based solely on the description of work duties provided by appellant. As noted, appellant's description of his computer keyboarding differs from that of his supervisors who described his keyboarding as limited in time and scope, not repetitive. As Dr. Filippone's reports are not based on a complete

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<sup>7</sup> 5 U.S.C. § 8128(a).

<sup>8</sup> 20 C.F.R. § 10.608(b).

and accurate factual background, they do not constitute relevant and pertinent evidence not previously considered by the Office.

Appellant did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument or submit relevant and pertinent evidence not considered previously by the Office. Therefore, the Office properly denied his request for reconsideration.

### **CONCLUSION**

The Board finds that appellant failed to meet his burden of proof in establishing that he sustained bilateral carpal tunnel syndrome in the performance of duty. The Board further finds that the Office did not abuse its discretion in denying his request for reconsideration.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated October 13 and June 8, 2006 are affirmed.

Issued: October 4, 2007  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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