

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

M.W., Appellant)

and)

**DEPARTMENT OF THE ARMY, EISENHOWER)
ARMY MEDICAL CENTER, Fort Gordon, GA,)
Employer)**

Docket No. 07-1163

Issued: September 6, 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
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 27, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated March 12, 2007 which denied her occupational disease claim. 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 sustained an occupational disease in the performance of duty.

FACTUAL HISTORY

On January 31, 2007 appellant, then a 53-year-old file clerk filed an occupational disease claim alleging that she sustained back pain, pain in the hands, carpal tunnel, and tendinitis of the right thumb and wrist and sinus infections as a result of her employment.

On February 5, 2007 the Office requested additional factual and medical information from appellant. She responded by submitting a description of her conditions and her own statement relating her conditions to her employment duties. The Office thereafter received unsigned medical reports from Orthopedic Associates of Augusta, P.A. and other unidentifiable medical notes pertaining to appellant's office visits on November 2, 9, 13 and 30, and December 15, 2006, as well as January 2 and 30, and February 2, 2007. In a November 2, 2006 report, appellant was diagnosed with multiple joint arthritis and right carpal tunnel syndrome by Dr. Paul J. Herzum, a treating physician. The December 15, 2006 report diagnosed synovitis right thumb.¹

The Office also received an allergy work-up dated September 22, 2006. In a November 10, 2006 magnetic resonance imaging (MRI) scan report, Dr. Jose Bauza, Board-certified in diagnostic radiology, diagnosed minimal degenerative disc disease at L4-5 towards the right side. On October 10, 2006 an electromyography was performed by Dr. Ranjit Sethi, Board-certified in neurology, who diagnosed carpal tunnel syndrome of Grade 3.

On March 12, 2007 the Office denied appellant's claim on the grounds that the medical evidence failed to demonstrate that the claimed medical condition resulted from 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 by the weight of the reliable, probative and substantial evidence, including the fact that the individual is an "employee of the United States" within the meaning of the Act and 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 or specific condition for which compensation is claimed is causally related to the employment injury.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 the factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the 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 factors identified by the claimant.³

¹ The author of this report cannot be identified.

² *Anthony P. Silva*, 55 ECAB 179 (2003).

³ *Elizabeth H. Cram (Leonard O. Cram)*, 57 ECAB ____ (Docket No. 05-715, issued October 6, 2005).

ANALYSIS

Appellant alleged that her back, hand and sinus conditions were causally related to factors of her federal employment. The Board finds that she has submitted insufficient medical evidence to establish that any of her conditions were caused or aggravated by her federal employment.

The medical evidence demonstrates only that appellant has degenerative disc disease at the L4-5 and carpal tunnel syndrome. The allergy work-up does not contain a diagnosis. None of the reports for office visits from November 2, 2006 to February 2, 2007 identify the person(s) who examined appellant or who authored the reports. Absent any evidence to the contrary it cannot be assumed that the author of these reports was a physician. The Board notes that such reports are not considered medical evidence as an unknown person cannot be considered a physician under the Act.⁴ Reports that are not from physicians are of no probative medical value to the claim.⁵ In order to qualify a medical opinion, the opinions must be from a physician under the Act.⁶ While appellant was diagnosed with degenerative disc disease and carpal tunnel there is no evidence that these conditions are causally related to her employment factors. To establish 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 examination, state whether the employment injury caused or aggravated the diagnosed conditions and present medical rationale in support of his or her opinion.⁷ No such physician's report was submitted. Dr. Bauza's MRI scan report merely diagnosed degenerative disc disease and failed to offer any opinion as to the cause. Dr. Sethi's report diagnosed carpal tunnel but did not opine as to the cause of appellant's condition. Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.⁸ A medical opinion on causal relation is required to establish that an injury was sustained in the performance of duty.

Neither the mere fact that a disease or condition manifests itself during a period of employment, nor appellant's own belief that the disease or condition was caused or aggravated by employment factors is sufficient to establish causal relationship.⁹

⁴ See 5 U.S.C. § 8101(2) (this subsection defines a "physician as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law."); see also *Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (where the Board has held that a medical opinion, in general, can only be given by a qualified physician).

⁵ See *Jack B. Wood*, 40 ECAB 95, 109 (1988).

⁶ See 5 U.S.C. § 8101(2). Nurses are not physicians under the Act and are not competent to render a medical opinion. See *Vincent Holmes*, 53 ECAB 468 (2002).

⁷ *Calvin E. King*, 51 ECAB 394 (2000).

⁸ *Michael E. Smith*, 50 ECAB 313 (1999).

⁹ *Richard L. Barnes*, 55 ECAB 426 (2004).

Appellant has failed to submit medical evidence to establish causal relationship and, therefore, has failed to discharge her burden of proof to establish that she sustained a condition due to factors of her federal employment.

CONCLUSION

Appellant has not met her burden of proof to establish that she sustained an occupational disease in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the March 12, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 6, 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