

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

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**R.S., Appellant**

**and**

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

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**Docket No. 07-2132  
Issued: January 28, 2008**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On July 30, 2007 appellant filed a timely appeal from an Office of Workers' Compensation Programs' March 7, 2007 merit decision. Under 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 met her burden of proof to establish that she sustained bilateral epicondylitis condition in the performance of duty.

**FACTUAL HISTORY**

On December 13, 2006 appellant, a 47-year-old distribution and sales clerk, filed an occupational disease claim for benefits. She alleged that she developed pain in both arms causally related to employment factors. Appellant submitted a December 13, 2006 return to work slip which was not signed by a physician.

In a December 19, 2006 report, Dr. Raymond M. Wolf, a specialist in orthopedic surgery, advised that she had been experiencing bilateral elbow pain. He stated:

“[Appellant] is here for follow-up of her bilateral elbow pain. She reports her elbows have been particularly painful over the past month and have been worsening. [Appellant] states the pain is along her lateral elbow, which is worse with picking up objects. She does note some numbness and tingling of her left long and ring finger, but only transiently and a couple times weekly. [Appellant] does note that the lateral elbow pain does wake her up at night, not the numbness or tingling. She has been using ice and a home exercise program from physical therapy.

“On examination of the bilateral elbows, [appellant] is extremely tender to palpation along the lateral epicondyle region. She is mildly tender to palpation along the medial epicondyle region. [Appellant] has near full range of motion of bilateral elbows. Resisted wrist flexion and digital extension do reproduce significant pain on the left and moderate pain on the right. [Appellant’s] light touch sensation is intact along the radial, median and ulnar nerve distributions.”

Dr. Wolf diagnosed bilateral, lateral epicondylitis.

By letter dated January 16, 2007, the Office advised appellant that it required additional factual and medical evidence to determine whether she was eligible for compensation benefits. The Office asked her to submit a comprehensive medical report from her treating physician describing her symptoms, the medical reasons for her condition, and an opinion as to whether her diagnosed condition of bilateral elbow epicondylitis was causally related to her federal employment. The Office requested that appellant submit the additional evidence within 30 days.

Appellant submitted physical therapy reports from January and February 2007; a January 4, 2007 treatment slip from Dr. Wolf stating that appellant had bilateral, lateral epicondylitis; a January 19, 2007 Form CA-17 duty status report stating that appellant had bilateral epicondylitis and bilateral pain and tenderness in both elbows; and a December 19, 2006 treatment note from Dr. Wolf.

On February 13, 2007 Dr. Wolf advised that he had seen appellant for a follow-up examination regarding her bilateral epicondylitis condition. He stated that appellant experienced more pain in the left elbow than in the right, which was worse with picking up objects. Appellant had no swelling or redness. Dr. Wolf stated:

“[Appellant] does note a general decreased sensation feeling around the left lateral elbow. She has no numbness or tingling in her hands. [Appellant] states the physical therapy had helped minimally and she is trying to continue with her home exercise program, although it is painful. She denies any new injury.... [Appellant] continues light-duty work status.

“[Appellant’s] general, skin, vascular, neurologic and musculoskeletal systems for the upper extremities were reviewed and are essentially normal except for the following. On examination of the bilateral elbows, she has tenderness to palpation

along the lateral epicondyle, left greater than right. [Appellant] has no erythema, edema or ecchymosis noted. She has full range of motion of her elbow, wrist and digits. [Appellant] does have pain with full extension of her elbow. She does have pain with resisted wrist extension. [Appellant] has 2 + pulses distally and she is otherwise neurovascularly intact. Her light touch sensation is intact along the radial median and ulnar nerve distribution.”

Dr. Wolf reiterated the diagnosis of bilateral, lateral epicondylitis and recommended that appellant undergo a magnetic resonance imaging (MRI) scan.

By decision dated March 7, 2007, the Office denied appellant’s claim, finding that appellant failed to submit sufficient medical evidence to establish that she sustained bilateral epicondylitis condition in the performance of duty.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees’ Compensation Act<sup>1</sup> has the burden of establishing that 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 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 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 is usually rationalized medical 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

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

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

nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>4</sup>

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between her claimed cervical condition and her federal employment. This burden includes providing medical evidence from a physician who concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.<sup>5</sup>

### ANALYSIS

The Board finds that appellant has failed to submit adequate medical evidence containing to establish that her bilateral epicondylitis condition was caused or aggravated by her employment as a distribution and sales clerk. For this reason, she has not discharged her burden of proof to establish her claim that this condition was sustained in the performance of duty.

The December 19, 2006 and February 13, 2007 reports from Dr. Wolf provided findings on examination and a diagnosis of bilateral epicondylitis. However, he did not address how her bilateral epicondylitis condition was causally related to her employment factors. Dr. Wolf noted that appellant's left elbow pain was generally worse than the pain in her right elbow, although the right-sided pain was worse when picking up objects. Appellant related that her elbow pain occasionally awakened her at night. Dr. Wolf noted that she had some pain upon motion and extension although she had near full range of motion in both elbows. The February 13, 2007 report essentially reiterated his previous findings, although he noted some decreased sensation around the left lateral elbow. Appellant had a mostly normal examination, with full range of motion of her elbow, wrist and digits. Dr. Wolf did note some pain with full extension of her left elbow and recommended that appellant undergo an MRI scan. However, he did not explain how her duties as a mail clerk would cause or aggravate her bilateral elbow condition. The mere fact that appellant was asymptomatic of prior elbow problems or that the condition manifested itself during a period of employment does not raise an inference of causal relation.<sup>6</sup> Dr. Wolf's opinion is therefore of limited probative value as it does not contain medical rationale explaining how or why appellant's bilateral elbow condition was currently affected by or related to her employment duties.<sup>7</sup> The reports from the physical therapist are not relevant and do not constitute medical evidence, as a physical therapist is not a physician pursuant to section 8101(2).<sup>8</sup>

The weight of medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts of the case, the medical history provided, the care of analysis manifested and the medical rationale

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<sup>4</sup> *Id.*

<sup>5</sup> See *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

<sup>6</sup> See *Ernest St. Pierce*, 51 ECAB 623 (2000).

<sup>7</sup> *William C. Thomas*, 45 ECAB 591 (1994).

<sup>8</sup> 5 U.S.C. § 8101(2).

expressed in support of stated conclusions.<sup>9</sup> Dr. Wolf's opinion is of diminished probative value for the further reason that it is generalized in nature and equivocal in that he was not able to state conclusively that appellant's bilateral elbow condition was causally related to her employment. The Office therefore properly found that appellant did not sustain a bilateral epicondylitis condition in the performance of duty.

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 the belief that her condition was caused, precipitated or aggravated by her employment is sufficient to establish causal relationship.<sup>10</sup> Causal relationship must be established by rationalized medical opinion evidence. The Office advised appellant of the type of medical evidence required to establish her claim; however, appellant failed to submit such evidence.

Accordingly, the Office properly denied appellant's claim for compensation based on a bilateral epicondylitis condition.<sup>11</sup>

### **CONCLUSION**

The Board finds that appellant has failed to meet her burden of proof in establish that her bilateral epicondylitis condition was sustained in the performance of duty.

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<sup>9</sup> See *Anna C. Leanza*, 48 ECAB 115 (1996).

<sup>10</sup> See *Id.*

<sup>11</sup> The Board notes that appellant submitted additional evidence to the record following the March 7, 2007 Office decision. The Board's jurisdiction is limited to a review of evidence which was before the Office at the time of its final review. 20 C.F.R. § 501.2(c).

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 7, 2007 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: January 28, 2008  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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

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