

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOE VALERO and U.S. POSTAL SERVICE,
POST OFFICE, Fort Worth, Tex.

*Docket No. 96-2168; Submitted on the Record;
Issued August 10, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof in establishing that he sustained a ulnar neuritis of the left elbow condition in the performance of duty.

On November 21, 1995 appellant, then a 45-year-old mail handler, filed a notice of occupational disease and claim for compensation, Form CA-2, alleging that his ulnar neuritis of the left elbow condition is employment related. Appellant first realized his condition was caused or aggravated by his employment on June 5, 1995, and first reported the condition to his supervisor on November 22, 1995. Appellant stated:

"I have been treated for CTS [carpal tunnel syndrome] of the left hand, claim # [A]16-0214811 since 7/5/92.¹ I work as a jitney driver which entails pushing and pulling on a continuous and repetitive basis. I was on Dr. Robert Ranelle's light duty restrictions on 7/13/95 when my supervisor ordered me a full duty assignment. I re-injured myself and had surgery of the left shoulder on 8/25/95. Every facet of my job, including my present light duty, involves repetitive motion of both upper extremities. There is no other occupation involved nor do I indulge in sports that could cause this illness."²

The record shows that appellant lost no time from work, but was placed on intermittently limited and restricted work duties such as: working 4 hours a day, with no driving, pulling/pushing or operating machinery.

¹ The record shows that appellant had a prior claim under claim number, A16-214811. This claim is not before the Board and will not be addressed.

² Appellant stated that he did not file this claim until November 22, 1995, because his doctor had led him to believe that his current condition of ulnar neuritis of the left elbow was related to his CTS under claim number A16-214811, and because Claims Examiner Melanie Bolden rendered a finalized decision on November 16, 1995, advising appellant that his ulnar neuritis of the left elbow was not related to his CTS.

In a letter dated December 29, 1995, the Office of Workers' Compensation Programs advised appellant of the type of factual and medical evidence needed to establish his claim and requested that he submit such evidence. The Office particularly requested that appellant submit a physician's reasoned opinion addressing the causal relationship, if any, between the alleged work injury and the condition(s) for which he has now been treated. Appellant was allotted 30 days within which to submit the requested evidence.

Appellant did not respond to the Office's December 29, 1995 letter, or submit evidence to support his claim.

By decision dated February 7, 1996, the Office denied appellant's claim for compensation on the grounds that the evidence of record failed to support the fact of an injury in this case. In an accompanying memorandum, the Office found that the claimed events, incidents or exposures occurred at the time, place and in the manner alleged; however, a medical condition resulting from the accepted trauma or exposure was not supported by the medical evidence of file.

In a letter dated March 12, 1996, appellant requested reconsideration of the Office's February 7, 1996 decision. Appellant submits that Dr. Robert Ranelle, an osteopath, verbally diagnosed him with ulnar neuritis of the left elbow; that this diagnosis was verified by Dr. Thomas Trese, an osteopath; and was related to the left carpal tunnel injury of 1992. Appellant also argued:

"[I]t is clear that I do have ulnar neuritis of the left elbow, and by job consists of repetitive pushing and pulling, and since I don't do anything else with my left extremity except my mail handler job, it is my belief that it is caused by employment. This an occupational disease, not a traumatic injury, therefore the date of injury is purely a D.O.I. [date of injury] OWCP [Office of Workers' Compensation Programs] requirement and is technically not accurate. I had been having this problem for months before I saw Dr. Ranelle."

Appellant moreover submits that he has requested reconsideration based on a legal argument not previously made.

In a decision dated March 28, 1996, the Office denied modification of its prior decision finding that the arguments advanced by appellant on reconsideration failed to constitute a legal argument, but were more medically based than based upon legal contentions. The Office also found that appellant had failed to submit relevant evidence, or advance legal arguments not previously considered.

The Board finds that appellant has failed to establish that he sustained a ulnar neuritis of the left elbow condition in the performance of duty.

An employee seeking benefits under the Federal Employees' Compensation Act³ has the burden of establishing the essential elements of his or her claim, including the fact that an injury

³ 5 U.S.C. §§ 8101-8193.

was sustained in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed is causally related to the employment injury.⁴

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 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.⁵ The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence.⁶ 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,⁷ must be one of reasonable medical certainty,⁸ 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.⁹

In the present case, there is no rationalized medical opinion evidence to support that appellant sustained an injury or condition in the performance of duty. Appellant did not submit any medical evidence, with the exception of his own belief of what caused his alleged ulnar neuritis of the left elbow condition. In addition, although appellant indicated that he was seen and treated by both, Dr. Ranelle and Dr. Trese, both osteopaths, no medical evidence of any kind was submitted by either physician.¹⁰ Consequently, the evidence of record is not sufficient to establish that appellant sustained an injury or ulnar neuritis of the left elbow condition while in the performance of duty as he has not submitted any medical evidence establishing an injury.¹¹

⁴ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁵ *Jerry D. Osterman*, 46 ECAB 500 (1995); see also *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁶ The Board has held that in certain cases, where the causal connection is so obvious, expert medical testimony may be dispensed with to establish a claim; see *Naomi A. Lilly*, 10 ECAB 560, 572-73 (1959). The instant case, however, is not a case of obvious causal connection.

⁷ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

⁸ See *Morris Scanlon*, 11 ECAB 384-85 (1960).

⁹ See *William E. Enright*, 31 ECAB 426, 430 (1980).

¹⁰ See *Robert J. Krstyen*, 44 ECAB 227 (1992) (finding that appellant failed to submit sufficient medical evidence to establish that specific work factors caused or aggravated his back condition).

¹¹ *Charles H. Tomaszewski*, 39 ECAB 461 (1988) (finding that medical evidence which does no offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship); see also *George Randolph Taylor*, 6 ECAB 986 (1954) (where the Board found that a medical opinion not fortified by

An award of compensation may not be based on surmise, conjecture or speculation, or appellant's belief of causal relationship. The mere fact that a disease or condition manifests itself or worsens during a period of employment¹² or that work activities produce symptoms revelatory of an underlying condition¹³ does not raise an inference of causal relationship between the condition and the employment factors. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship. Causal relationship must be established by rationalized medical opinion evidence.¹⁴ As appellant has not submitted rationalized medical evidence explaining how and why the alleged condition was caused or aggravated by appellant's federal employment, the Office properly denied appellant's claim for compensation.

The decisions of the Office of Workers' Compensation Programs dated March 28 and February 7, 1996 are affirmed.

Dated, Washington, D.C.
August 10, 1998

Michael J. Walsh
Chairman

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

medical rationale is of little probative value).

¹² *William Nimitz, Jr.*, *supra* note 7.

¹³ *Richard B. Cissel*, 32 ECAB 1910, 1917 (1981).

¹⁴ *Victor J. Woodhams*, *supra* note 5.