

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CAROLYN K. MARSH and DEPARTMENT OF THE AIR FORCE,
TINKER AIR FORCE BASE, Oklahoma City, Okla.

*Docket No. 97-1230; Submitted on the Record;
Issued May 18, 1998*

DECISION and ORDER

Before MICHAEL E. GROOM, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant has met her burden of proof to establish that she sustained an injury while in the performance of duty.

The Board has duly reviewed the case record in the present appeal and finds that appellant has failed to meet her burden of proof to establish that she sustained an injury while in the performance of duty.

On June 29, 1994 appellant, then a sheet metal mechanic, filed a claim for an occupational disease (Form CA-2) alleging that she sustained a left shoulder strain and carpal tunnel syndrome caused or aggravated by her employment. Appellant did not stop work. Appellant's claim was accompanied by medical records, employment records, and narrative statements from herself and Donny R. Choate, her supervisor.

By letter dated May 12, 1995, the Office of Workers' Compensation Programs advised appellant that the evidence submitted was insufficient to establish her claim. The Office further advised appellant to submit medical evidence supportive of her claim. Appellant did not respond to the Office's May 12, 1995 letter.

By decision dated September 20, 1995, the Office found the evidence of record insufficient to establish that an injury was sustained as alleged. In an accompanying memorandum, the Office found the evidence of record sufficient to establish that the incident occurred at the time, place and in the manner alleged, but insufficient to establish that appellant's conditions were caused by the employment incident.

In a December 9, 1996 letter, appellant requested reconsideration of the Office's decision.

By decision dated January 24, 1997, the Office denied appellant's request for modification based on a merit review of the claim.

An employee seeking benefits under the Federal Employees Compensation Act¹ 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 timely filed within the applicable time limitations 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.² 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.³

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.⁴ In this case, the Office accepted that the incident occurred at the time, place and in the manner alleged. The Board finds that the evidence of record supports that the incident occurred, as alleged.

The second component is whether the employment incident caused a personal injury and generally can be established by only medical evidence. To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.⁵ In the present case, appellant has submitted no rationalized medical evidence establishing that her left shoulder strain and carpal tunnel syndrome are causally related to the employment incident.

In support of her claim, appellant submitted the medical treatment notes of Dr. Warren G. Low, a Board-certified orthopedic surgeon, Dr. Miguel A. Ortiz, a physiatrist, Dr. V. Joseph Fiorazo, a Board-certified family practitioner, and Dr. Wesley R. Mote, Board-certified in preventive medicine, covering the period June 5, 1994 through February 1, 1995. These treatment notes are insufficient to establish appellant’s burden inasmuch as they failed to address a causal relationship between appellant’s conditions and the employment incident.

Appellant also submitted the August 19, 1994 medical treatment note of Lori J. Cranford, a medical instrument technician, revealing that the first part of appellant’s physical examination had been completed. Appellant submitted the medical treatment note of the same date of Glenda Cochran, an audiology technician, indicating that appellant was counseled on the hazards of noise and the proper use of hearing protection. The Board finds that these treatment notes are insufficient to establish appellant’s burden because the record does not establish that Ms.

¹ 5 U.S.C. §§ 8101-8193.

² *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *Daniel J. Overfield*, 42 ECAB 718 (1991).

⁴ *Elaine Pendleton*, *supra* note 2.

⁵ *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

Cranford and Ms. Cochran are physicians under the Act. Therefore, they are not competent to render medical opinions. Any medical evidence relied upon by the Office to resolve an issue must be in writing and signed by a physician.⁶

In addition, appellant submitted the December 21, 1994 medical treatment notes of Dr. Low indicating that appellant had a quasi-positive Tinel's sign and that there was no evidence of thenar muscle atrophy although appellant's symptoms were certainly compatible for carpal tunnel syndrome. Dr. Low opined that "[appellant] certainly does have the job activity that might precipitate this. This may well explain the pain and discomfort she has been having in her left shoulder." The Board has held that while the medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute certainty,⁷ neither can such opinion be speculative or equivocal. The opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to federal employment and such relationship must be supported with affirmative evidence, explained by medical rationale and be based upon a complete and accurate medical and factual background of the claimant.⁸ The Board finds that Dr. Low's opinion regarding the causal relationship between appellant's left shoulder strain and carpal tunnel syndrome, and the employment incident is equivocal and speculative. Therefore, it has little probative value and is insufficient to meet appellant's burden that her conditions were caused by the employment incident.

The Office received Dr. Low's December 18, 1995 medical report in response to its September 20, 1995 decision. In this report, Dr. Low stated that appellant's initial complaint of left shoulder pain was determined to be actually referred pain from the median nerve secondary to carpal tunnel syndrome "as a result of repetitive work activities as a sheet metal worker." Dr. Low further stated that "[f]or a definitive, *i.e.*, "firm" diagnosis, it is recommended that the [appellant] have an electromyography/nerve conduction study." The Board finds that Dr. Low failed to provide sufficient medical rationale for how or why appellant's conditions were caused by the employment incident. The Board further finds that Dr. Low's report is speculative and equivocal inasmuch as he stated that appellant should undergo additional objective testing to determine a "firm" diagnosis. Therefore, Dr. Low's report is insufficient to establish appellant's burden.

The Office also received the February 13, 1996 medical report of Dr. W. Dean Shipley, a Board-certified neurologist, which revealed normal results of a nerve conduction study and electromyography (EMG). Dr. Shipley's February 16, 1996 medical report revealed that the results of an EMG and nerve conduction study of the left upper extremity failed to demonstrate any convincing evidence of peripheral nervous system dysfunction to account for appellant's subjective symptoms. Further, the Office received Dr. Low's February 21, 1996 medical report indicating his findings on physical examination and that he was not forced to do anything based

⁶ *James A. Long*, 40 ECAB 538 (1989)

⁷ *See Kenneth J. Deerman*, 34 ECAB 641 (1983).

⁸ *Phillip J. Deroo*, 39 ECAB 1294 (1988); *Margaret A. Donnelly*, 15 ECAB 40 (1963); *Morris Scanlon*, 11 ECAB 384 (1960).

on these findings. Dr. Low noted that appellant could continue her current job activities and return to see him as required. Additionally, the Office received Dr. Low's June 3, 1996 medical report providing his findings on physical examination, and that appellant had some component of subacromial bursitis and impingement syndrome of the left shoulder, but that the majority of appellant's symptoms were secondary to carpal tunnel syndrome. Dr. Low recommended that appellant undergo carpal tunnel release. The medical reports of Drs. Shipley and Low are insufficient to establish appellant's burden inasmuch as they failed to address a causal relationship between appellant's conditions and the employment incident.

Because appellant has failed to submit a rationalized medical report based on a complete, and accurate factual and medical background explaining why her left shoulder strain and carpal tunnel syndrome were sustained in the performance of duty, she has failed to meet her burden.

The January 24, 1997 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, D.C.
May 18, 1998

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member