

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of TIMOTHY J. YEATES and U.S. POSTAL SERVICE,
POST OFFICE, Buffalo, N.Y.

*Docket No. 96-2495; Submitted on the Record;
Issued October 13, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
WILLIE T.C. THOMAS

The issue is whether appellant has met his burden of proof in establishing that he sustained an injury to his left hand in the performance of duty prior to March 8, 1995.

On March 10, 1995 appellant, then a 34-year-old letter sorting machine operator (clerk), filed a claim alleging that he sustained an employment-related left hand condition on March 8, 1995. Appellant stated that he has sharp pains in his pinky finger and wrist of the left hand and feels that this injury was caused or aggravated by his federal employment because of his keying on the "L.S.M.'s" (computer) for eight years. Appellant explained that the "pain is in the same area as it was in my right hand and I had unsuccessful surgery which was proven to be job related."¹ Appellant also indicated that he first became aware of his left hand condition, disease or illness; realized his injury was caused or aggravated by his federal employment; and reported the left hand condition to his supervisor, on March 8, 1995. The employing establishment has indicated that its knowledge of the claimed injury was in agreement with the statements made by appellant.

By letters dated April 25 and June 20, 1995, the Office advised appellant of the type of factual and medical evidence needed to establish his claim and requested that he submit such evidence. The Office specifically 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 was now being treated. Appellant was allotted 30 days within which to submit the requested evidence.

Appellant responded by letter dated May 15, 1995 and submitted a medical report from Dr. Michael S. Feinberg, a Board-certified orthopedic and hand surgeon dated May 24, 1995 and

¹ The Board notes that the Office of Workers' Compensation Programs had previously accepted appellant's occupational claim for an injury to appellant's right hand for which surgery was performed, under claim number A2-668249. This claim is not before the Board and will not be addressed.

addressed to Dr. Nicholas Aquino, Board-certified in internal medicine. Dr. Feinberg indicated that appellant was examined on May 15, 1995, approximately 20 months since his ulnar neurolysis of the right wrist and recalls that appellant had relief of his symptoms for several months following the surgery. Dr. Feinberg also stated that upon appellant's return to work appellant had a recurrence of symptoms and now symptoms were bilateral; that appellant stated that his left hand was worse than the postoperative right; that appellant was working on a restricted-duty job requiring no lifting; that appellant had also noted "the discomfort at the left wrist is similar to what he previously had experienced on the right. There is pain in the volar wrist and the little finger and it is worse after use. With rest [appellant] does return to normal." Dr. Feinberg went on to acknowledge that appellant's symptoms were mostly on the left and "find[s] an equivocal Tinel's sign over the median/ulnar nerve area at the wrist but negative compression and negative Phalen's test. There is no Tinel's at the cubital tunnel. Thenar function and ulnar intrinsic function are normal. Sensation in the hand is basically within normal limits." Dr. Feinberg opined that "considering all of this I feel [appellant] should continue with his restricted duty and as he [appellant] is symptomatic with an indefinite diagnosis he [appellant] should have electrodiagnostic studies on the left and I am requesting authorization for this." Appellant was to remain on restricted duty until his next appointment. On June 19, 1995 the Office received a restricted duty slip from Dr. Feinberg dated June 18, 1995, instructing appellant to do no keying or lifting for the next three months.

In a decision dated July 25, 1995, the Office denied appellant's claim for compensation on the grounds that fact of injury had not been established. In an accompanying memorandum, the Office found that there was insufficient evidence in file regarding whether or not the claimed events occurred at the time, place and in the manner alleged. The Office also found that a medical condition resulting from the alleged work incidents is not supported by the evidence of file.

By letter dated June 20, 1996, appellant requested reconsideration of the Office's July 25, 1994 decision and submitted additional medical evidence. Appellant submitted: a duty status report from Dr. Feinberg dated September 14, 1995, which noted the diagnosis of appellant's condition as indefinite -- possible -- recurrent carpal tunnel syndrome, prognosis was guarded, with work restriction of no lifting or keying for six months. Dr. Feinberg indicated that there was no appointment scheduled because appellant needed electromyography (EMG) testing and was awaiting authorization from the Office and appellant was to be reexamined after the tests were performed.

Additional medical reports from Dr. Feinberg dated August 14, 1995 and September 14, 1993 were submitted. In the August 14, 1995 report, Dr. Feinberg indicated that "previous reports have explained that [appellant] sustained a disability as a result of factors of [his] federal employment." He noted that all follow-up reports have indicated the work relationship. Dr. Feinberg opined that "he [appellant] is definitely symptomatic with use at work and less or asymptomatic when not working. Therefore this is thought to be repetitive use inflammatory condition and work related to a reasonable degree of medical certainty." In the report dated

September 14, 1993, Dr. Feinberg addressed appellant's previous right hand condition for which surgery was performed, and for which the Office had accepted under claim number A2-668249.²

Appellant also submitted an EMG report from Dr. George C. Kalonaros, an attending physician, dated April 24, 1996. In the April 24, 1996 report, Dr. Kalonaros indicated that appellant was examined for pain, weakness, and tingling involving the left hand. Dr. Kalonaros stated that appellant had explained, that his pain was going from his palm, to his wrist, and occasionally into his small finger. Appellant also described sharp twinges of pain as well as tingling in the same distribution. Dr. Kalonaros went on to say that appellant's "symptoms were aggravated by repetitive grasp," and indicated that appellant had similar symptoms in the right hand which he associated with constant use of a computer keyboard at work. Dr. Kalonaros also noted that after appellant's surgery on the right side he was switched to a job that did not involve as much keyboarding, but appellant's symptoms persisted. He indicated that appellant has explained to him "that his [appellant's] right hand is actually worse than the left even though that is the side he had surgery on," and that he began experiencing symptoms on the left side some time in March 1994.³ Dr. Kalonaros added that appellant's medical and family history was unremarkable, that appellant was fully cooperative, and that on examination appellant had:

"No swelling, discoloration or deformity was noted in either upper extremity. Muscle bulk and strength were normal in both upper extremities and the sensory examination was also normal. Reflexes were equal and active throughout. There was a well-healed surgical scar along the ulnar side of the volar aspect of the right wrist that was nontender to palpation. Nerve conduction studies consisted of examination of the left median and ulnar motor distal latencies and conduction velocities, left median sensory and left and right ulnar sensory conduction studies were normal. Needle examination consisted of evaluation of abductor pollicies brevis, first dorsal interosseous, and abductor digiti quinti, all on the left side. Insertional activity was normal in all muscles tested and no abnormal spontaneous activity was seen. Motor unit configuration and recruitment were normal throughout.

"CONCLUSION: Normal nerve conduction studies and EMG of the left upper extremity with specifically no evidence of ulnar neuropathy at the wrist or the elbow."

In a merit decision dated July 29, 1996, the Office denied appellant's request for reconsideration on the grounds the medical evidence submitted in support of the request for reconsideration failed to provide a history of injury, identify a firm diagnosis or provide an opinion on causal relationship based on medical rationale that was both nonspecific as to the activities at work which caused or contributed to appellant's alleged condition, and which also

² *Id.*

³ Appellant in his Form CA-2 dated March 10, 1995 indicated that he first became aware of his left hand condition, disease or illness on March 8, 1995; that he first realized his injury was caused or aggravated by his federal employment on March 8, 1995; and that he first reported his left hand condition to his supervisor on March 8, 1995; a year subsequent to March 1994.

indicated that the opinions were not based on any objective testing done or an accurate factual background. The Office found that the evidence submitted in support of the request for reconsideration was not sufficient to warrant modification of the prior decision.

An employee seeking benefits under the Federal Employees' Compensation Act⁴ has the burden of establishing the essential elements of his or her claim, including the fact 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 is causally related to the employment injury.⁵ 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.⁶ The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion 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,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, it is not disputed that appellant has a left hand condition, but the Office found that there was insufficient evidence in the file regarding whether or not the claimed events occurred at the time, place and in the manner alleged. The Board notes, though, that while the Office noted that subsequent to appellant's September 7, 1993 right hand surgery appellant had been provided with a job that did not involve as much keyboarding, it is not disputed that appellant's job required him to do some type of keyboarding in performing his duties. Appellant has also consistently stated that there was a left hand condition which was caused or aggravated by his federal employment because of repetitive typing on a computer keyboard. The Board, therefore, finds that the claimed exposure occurred at the time, place and

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁶ *Jerry D. Osterman*, 46 ECAB 500 (1995); *see also Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

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).

in the manner alleged by appellant as he was required to do some type of keyboarding in the performance of his duties.¹⁰

Appellant, however, has submitted no medical evidence establishing that his left hand condition is a result of the accepted employment exposure, or that his left hand condition is causally related to any employment factors or conditions. None of the medical evidence submitted presented a detail description of appellant's employment duties; provided a history of injury, a diagnosis, or a physician's reasoned medical opinion attributing appellant's complaints to a left hand condition sustained at work because of repetitive typing on a computer keyboard. All nerve conduction studies and EMG of the left upper extremity were either negative or normal. Consequently, the evidence of record failed to establish fact of injury, and is, therefore, insufficient to establish that appellant sustained a left hand condition in the performance of duty prior to March 8, 1995.¹¹

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 employment or that work activities produce symptoms revelatory of an underlying condition¹² 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.¹³ As appellant has not submitted rationalized medical evidence explaining how and why his left hand condition was caused or aggravated by his federal employment, the Office properly denied appellant's claim for compensation.

The decisions of the Office of Workers' Compensation Programs dated July 29, 1996 and July 25, 1995 are affirmed.

Dated, Washington, D.C.
October 13, 1998

Michael J. Walsh
Chairman

¹⁰ See *Robert A. Gregory*, 40 ECAB 478 (1989); *Thelma S. Buffington*, 34 ECAB 104 (1982).

¹¹ See *Robert J. Krstyan*, 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).

¹² *Richard B. Cissel*, 32 ECAB 1910, 1917 (1981).

¹³ *Victor J. Woodhams*, *supra* note 6.

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member