

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of DANIEL D. KAHLER, SR. and DEPARTMENT OF VETERANS AFFAIRS,  
VETERANS ADMINISTRATION MEDICAL CENTER, Lincoln, NE

*Docket No. 98-1314; Submitted on the Record;  
Issued December 28, 1999*

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DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,  
BRADLEY T. KNOTT

The issue is whether appellant has established that he sustained carpal tunnel syndrome in his left hand that was causally related to factors of his federal employment.

On May 28, 1997 appellant, then a 53-year-old housekeeper, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that he sustained carpal tunnel syndrome in his dominant left hand as a result of his employment, specifically mopping. In a statement that accompanied his claim form, appellant described the employment factor to which he attributed his condition.

By letters dated August 7, 1997, the Office of Workers' Compensation Programs requested that further information from both the employing establishment and appellant be submitted within 30 days. No timely response was received to these letters.

By decision dated September 8, 1997, the Office denied appellant's claim, noting that appellant had not met the requirements for establishing that he sustained an injury. The Office explained that, although he actually "experienced the claimed employment factor," he had not submitted evidence establishing a condition resulting therefrom.

On September 12, 1997 appellant sent the Office a statement wherein he noted that his left hand started hurting on around May 1, 1997, that his left hand is his dominant hand, and that he used his left hand many times a day to mop and "[w]ring out the mop."

Appellant submitted medical reports with this statement, including progress notes from Dr. Jackson Bence, a Board-certified orthopedic surgeon, dated May 20, 1997 through July 28, 1997. These show that on May 20, 1997 appellant saw him with complaints of left hand numbness and "tingling," and that at that time he found that the numbness in appellant's left hand was "sort of work related to his job." Dr. Bence added that appellant "kind of hits it when he is using it when mopping." He noted that appellant does have a mildly positive Tinel's sign

but a negative Phalen's test. Appellant also complained at that time of pain in his right knee. In his progress note dated July 8, 1997, Dr. Bence stated that his impression was that appellant had right knee effusion -- meniscus tear and mild-to-moderate carpal tunnel syndrome in his left hand. In a report dated July 28, 1997 of a postoperative arthroscopy on appellant's left knee, he found that the arthroscopy showed chondromalacia, medial femoral condyle and degenerative meniscus of the left knee. Dr. Bence also noted that appellant "does have carpal tunnel on the left and this has been proven by EMG [electromyogram] and he is symptomatic on that." Dr. Bence released appellant to return to work on August 4, 1997 with restrictions of no heavy lifting and no stairs.

By letter dated September 16, 1997, appellant officially requested reconsideration of the claim, noting that he had submitted additional medical information.

Appellant also submitted a report dated June 9, 1997 by Dr. James A. Bobenhouse, a Board-certified neurologist and psychiatrist, who determined that appellant had mild-to-moderate left carpal tunnel syndrome and possible underlying left wrist and arm tendinitis. He further noted that appellant's Tinel's sign in his left wrist was slightly positive, that the right Tinel's sign was negative, and that nerve conduction studies of the left arm showed evidence of a mild-to-moderate left carpal tunnel syndrome.

By letter dated September 11, 1997, appellant's supervisor noted that he had a conversation with appellant's sister in which she related that appellant's claim was probably due to his hobby of cross stitching or needlepoint and "some form of sewing or knitting."

On September 23, 1997 the employing establishment submitted appellant's employment record from September 5, 1975 through February 12, 1997. The record contains numerous claims for compensation filed by appellant in the past, a description of appellant's job with the employing establishment, and notes from the employing establishment's medical clinic for treatment of conditions other than carpal tunnel syndrome.

By decision dated December 18, 1997, the Office denied appellant's request to modify the September 8, 1997 decision, finding that causal relationship had not been established based on an accurate history and a rationalized medical opinion.

The Board finds that appellant has failed to meet his burden of proof in establishing that he sustained carpal tunnel syndrome in the performance of duty, causally related to factors of his federal employment.

An employee seeking benefits under the Federal Employees' Compensation Act<sup>1</sup> 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 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

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

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.<sup>4</sup> The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence.<sup>5</sup> 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,<sup>6</sup> 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.<sup>7</sup>

In the present case, the Office denied appellant's claim for compensation on the grounds that the medical evidence of record did not establish that he sustained an injury causally related to factors of his federal employment. Appellant submitted evidence including a June 9, 1997 medical report in which Dr. Bobenhouse opined that appellant had mild-to-moderate left carpal tunnel syndrome and possible underlying left wrist and arm tendinitis. However, Dr. Bobenhouse made no comment as to the cause of appellant's carpal tunnel syndrome. Appellant also submitted medical notes and reports from Dr. Bence, his treating physician, who did not address the issue of causal relationship in his medical notes. On May 20, 1997 Dr. Bence reported that appellant had complaints of left hand numbness and "tingling"; that on that same date Dr. Bence found that the complaints of numbness in his left hand was "sort of work related to his job"; and that an EMG proved that appellant was symptomatic of carpal tunnel syndrome

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<sup>2</sup> *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>3</sup> *Id.* The Office's regulations clarify that a traumatic injury refers to injury caused by a specific event or incident or series of events or incidents occurring within a single workday or work shift whereas occupational disease refers to injury produced by employment facts which occur or are present over a period longer than a single workday or shift; see 20 C.F.R §§ 10.5(a)(15)-(16).

<sup>4</sup> *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>5</sup> *Michael E. Smith*, 50 ECAB \_\_\_\_ (Docket No. 97-1562, issued March 26, 1999); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>6</sup> See *Kenneth J. Deerman*, 34 ECAB 641 (1983).

<sup>7</sup> *Philip J. Deroo*, 39 ECAB 1294, 1298 (1988).

in his left hand. Although the medical opinion of a physician supporting causal relationship need not reduce the cause of etiology of a disease or condition to an absolute medical certainty,<sup>8</sup> neither can such opinion be speculative or equivocal.<sup>9</sup> At best, Dr. Bence's statement that the carpal tunnel syndrome is "sort of work related to his job" admits the possibility of a causal relationship without drawing the conclusion to a reasonable medical certainty. Further, the opinion does not explain how the duties in appellant's job as a housekeeper could have caused carpal tunnel syndrome.<sup>10</sup> For these reasons, Dr. Bence's May 20, 1997 report is of diminished probative value.

Because he has not submitted the rationalized medical opinion evidence necessary to show causal relationship, the Board finds that appellant has not met his burden of proof to establish that he sustained an injury in the performance of duty.

The decisions of the Office of Workers' Compensation Programs dated December 18 and September 8, 1997 are affirmed.<sup>11</sup>

Dated, Washington, D.C.  
December 28, 1999

Michael J. Walsh  
Chairman

George E. Rivers  
Member

Bradley T. Knott

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<sup>8</sup> *Kenneth J. Deerman*, *supra* note 6.

<sup>9</sup> *Ern Reynolds*, 45 ECAB 690, 696 (1994); *see Jennifer Beville*, 33 ECAB 1970 (1982) (statement of a Board-certified internist that appellant's complaints "could have been" related to her work injury was speculative and of limited probative value).

<sup>10</sup> *Id.*; *George Randolph Taylor*, 6 ECAB 986 (1954) (holding that medical conclusions unsupported by rationale are of little probative value.)

<sup>11</sup> The Board notes that appellant presented new evidence on appeal. The Board is precluded from considering evidence for the first time on appeal which was not before the Office at the time of the final decision. 20 C.F.R. § 501.2(c); *see also Donald Jones-Booker*, 47 ECAB 785, 786 n.2 (1996).

Alternate Member