

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ARTHUR D. HUNTER and DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE, Cleveland, OH

*Docket No. 98-1669; Submitted on the Record;
Issued December 23, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
MICHAEL E. GROOM

The issue is whether appellant has met his burden of proof to establish that his right elbow condition was caused by factors of his federal employment.

The Board has duly reviewed the case record and finds that appellant has failed to meet his burden of proof to establish that his right elbow condition was caused by factors of his federal employment.

On January 13, 1997 appellant, then a 39-year-old internal revenue agent, filed a claim for an occupational disease (Form CA-2) assigned number 09-042469 alleging that on June 13, 1995, he first became aware of his chronic tendinitis. Appellant also alleged that on July 23, 1996, he first realized that his chronic tendinitis was caused or aggravated by his employment. He stopped work on July 12, 1996 and returned to work on July 17, 1996.¹ On the reverse of the claim form, Shawn Kennedy, an employing establishment group manager, indicated that appellant was no longer auditing tax returns or using a computer to perform any work assignments. He further indicated that appellant was currently answering tax questions and communicating these answers to the public by telephone. Mr. Kennedy stated that if appellant was unable to reach the taxpayer by telephone, he was required to mail copies of pertinent publications, code sections and forms to help the taxpayer file a correct return. He further stated that appellant was not required to answer the question in writing and had been cautioned not to reduce his responses to writing. Appellant's claim was accompanied by medical and factual evidence regarding the instant claim, as well, as a previous claim.²

¹ Appellant retired from the employing establishment on disability effective January 14, 1997.

² Prior to filing the instant claim, appellant filed a claim assigned number A9-384336 for a wrist and elbow injury sustained on August 31, 1992. The Office of Workers' Compensation Programs accepted appellant's claim for bilateral carpal tunnel syndrome with bilateral surgical release and surgical decompression of the right Guyon's canal.

By letter dated February 20, 1997, the Office advised appellant that the evidence submitted was insufficient to establish his claim. The Office also advised appellant to submit additional factual and medical evidence supportive of his claim. By letter of the same date, the Office advised the employing establishment to submit factual evidence.

In response, appellant submitted factual evidence. He also resubmitted medical evidence previously of record and new medical evidence.

By decision dated April 25, 1997, the Office found the evidence of record insufficient to establish that appellant's chronic tendinitis was caused by factors of his employment. In an April 29, 1997 letter, appellant, through his counsel, requested an oral hearing before an Office hearing representative.

In a March 20, 1998 decision, the hearing representative affirmed the Office's April 25, 1997 decision.

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, 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, must be one of reasonable medical certainty 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.³

In the present case, there is insufficient medical evidence of record to establish that appellant's chronic tendinitis was caused by factors of his federal employment. In support of his claim, appellant submitted a June 13, 1995 nerve conduction study report of Dr. Shamsi Lashgari-Saegh, a Board-certified physiatrist, providing that it was very "possible" appellant had right ulnar nerve compression/tension and that this finding correlated with appellant's symptomatology. The study also revealed a normal electromyogram (EMG) nerve conduction study and no evidence of carpal tunnel syndrome. Dr. Lashgari's report is insufficient to establish appellant's burden because it failed to provide a specific diagnosis and to address a causal relationship between appellant's condition and factors of his employment.

³ *Victor J. Woodhams*, 41 ECAB 345 (1989).

Appellant submitted medical treatment notes dated June 27 and July 3, 1995 regarding his elbow and restrictions. He also submitted an incomplete June 30, 1995 medical report of Dr. Stanley H. Nahigian, a Board-certified orthopedic surgeon, revealing a history of appellant's medical treatment. The medical treatment notes and Dr. Nahigian's report do not indicate a diagnosis and fail to address a causal relationship between the diagnosed condition and factors of appellant's employment. Therefore, they are insufficient to establish appellant's burden.

Appellant submitted the July 31, 1995 medical treatment notes of a physician whose signature is illegible providing a diagnosis of "possible" right ulnar nerve decompression and no carpal tunnel syndrome. These medical treatment notes are insufficient to establish appellant's burden because they did not provide a specific diagnosis and do not address whether appellant's condition was caused by factors of his employment.

Dr. Nahigian's September 29, 1995 medical note indicating a diagnosis of cubital tunnel syndrome. His medical note, however, failed to address a causal relationship between appellant's diagnosed condition and factors of his employment. Therefore, it is insufficient to establish appellant's burden.

A November 10, 1995 medical report of Dr. Mitchell E. Nahra, an orthopedic surgeon, revealed appellant's medical treatment and work requirements. He indicated that appellant had been diagnosed as having bilateral carpal tunnel syndrome, right ulnar neuritis in the region of Guyon's canal and mild right cubital tunnel syndrome. Dr. Nahra opined that it was medically "probable" that these conditions were related to his work activity, but that appellant was not totally disabled for all work. He noted that appellant could work with certain restrictions. 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,⁴ neither can such an 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.⁵ Because Dr. Nahra's report regarding the causal relationship between appellant's condition and factors of his employment is speculative and he failed to provide any medical rationale to support his opinion, his report is insufficient to establish appellant's claim.

A 1996 Kaiser Permanente emergency discharge report revealed a diagnosis of pronator syndrome and medical treatment. This discharge report failed to address a causal relationship between appellant's diagnosed conditions and factors of his employment. Therefore, it is insufficient to establish appellant's burden.

A February 2, 1996 disability certificate of Dr. Steve Stanford, a Board-certified internist, revealed a diagnosis of right cubital tunnel syndrome and restrictions. A February 12, 1996

⁴ See *Kenneth J. Deerman*, 34 ECAB 641 (1983).

⁵ *Phillip J. Deroo*, 39 ECAB 1294 (1988); *Margaret A. Donnelly*, 15 ECAB 40 (1963); *Morris Scanlon*, 11 ECAB 384 (1960).

disability certificate of a physician whose signature is illegible provided a diagnosis of right ulnar neuropathy and restrictions. These disability certificates are insufficient to establish appellant's burden because they failed to discuss whether or how the diagnosed condition was caused by factors of appellant's employment.⁶

A March 6, 1996 EMG report of Dr. Roger Weiss, an orthopedist, indicated a very mildly abnormal study. Specifically, his report provided a slight distal median nerve dysfunction on the right that was similar to a 1993 report, no definite evidence of ulnar nerve dysfunction and minimal findings of C5-6 radiculopathy on the right with very mild irritability in the right deltoid biceps and flexor digitorum sublimis. His report further revealed that the last finding may or may not be relative to appellant's present complaints which seemed to be restricted to the elbow, forearm and wrist. Dr. Weiss' EMG report fails to establish appellant's burden because it did not address a causal relationship between appellant's conditions and factors of his employment.

Dr. Sanford's March 15, 1996 disability certificate indicated a diagnosis of right ulnar nerve irritation. It indicated that appellant was able to perform light-duty work which included no field work and no computer work during the period March 15 through April 14, 1996. Dr. Sanford's disability certificate is insufficient to establish appellant's burden because it failed to discuss whether or how the diagnosed condition was caused by factors of his employment.⁷

A May 9, 1996 Kaiser Permanente emergency discharge report, indicated a diagnosis of carpal tunnel syndrome and appellant's medical treatment. This report failed to address a causal relationship between appellant's condition and employment factors. Thus, it does not establish appellant's burden.

In a May 17, 1996 hospital discharge report, Erika Stiasny, a registered occupational therapist, revealed a diagnosis of right wrist status post carpal tunnel syndrome surgery and right elbow cubital tunnel syndrome. Ms. Stiasny's report is insufficient to establish appellant's burden inasmuch as an occupational therapist is not considered to be a physician under the Federal Employees' Compensation Act and therefore, is not competent to give a medical opinion.⁸

A July 12, 1996 disability certificate of a physician whose signature is illegible, revealed a diagnosis of entrapment neuropathy and that appellant was to avoid repetitive motions beginning July 17, 1996 through an indefinite period. As with the above disability certificates, this disability certificate is insufficient to establish appellant's burden because it failed to discuss whether or how the diagnosed condition was caused by factors of appellant's employment.⁹

⁶ *Daniel Deparini*, 44 ECAB 657, 659 (1993).

⁷ *Id.*

⁸ 5 U.S.C. § 8101(2); *Jerre R. Rinehart*, 45 ECAB 518 (1994).

⁹ *Daniel Deparini*, *supra* note 6.

Dr. Sanford's July 15, 1996 treatment notes revealed a diagnosis of bilateral carpal tunnel syndrome and cubital tunnel syndrome. He, however, failed to address a causal relationship between the diagnosed condition and factors of appellant's employment. Therefore, they are insufficient to establish appellant's burden.

In his July 23, 1996 medical report, Dr. Sanford indicated a history of appellant's injury and medical treatment. He stated that appellant's examination suggested some chronic tendinitis at the medial right elbow. Dr. Sanford further stated that there were not enough objective findings on examination or EMG to confirm a diagnosis of cubital syndrome on the right. He then stated that the symptoms were "more likely chronic tendentious" at the right elbow which clearly had been the result of the repetitive computer entry work over the years and most recently the excessive writing work which will cause overuse at the elbow and direct compression over the proximal forearm. Dr. Sanford concluded that the claim should reflect chronic tendentious at the right elbow and noted appellant's restrictions. He failed to provide a specific diagnosis and any medical rationale explaining how or why appellant's condition was caused by the identified employment factors. Therefore, his medical report is insufficient to establish appellant's burden.

Dr. Sanford's August 27, 1996 medical report revealed a history of appellant's injury and medical treatment. He noted his findings on physical examination. Dr. Sanford opined that appellant had some residual decreased right hand grip, symptoms and physical findings based on a reasonable degree of medical "probability" of right cubital tunnel syndrome. He noted that the May 1994 and December 1995 EMG studies were negative for ulnar abnormality at the elbow, but that a June 1995 EMG apparently showed some slowing in ulnar nerve conduction across the elbow. Dr. Sanford opined that the symptoms of pain at the right elbow were well documented to have occurred in proximity to the January 1992 claim date and were causally related to appellant's computer entry work and to repetitive elbow flexion which narrowed the cubital tunnel and lead to cubital syndrome. His medical report failed to provide a specific diagnosis and to explain how or why appellant's condition was caused by the identified employment factors.

In a September 13, 1996 medical note, Dr. Stanford revealed that appellant's prognosis was good if he avoided repetitive and prolonged writing or repetitive prolonged computer entry. He noted that the above restrictions would apply indefinitely and that appellant would benefit from an upper extremity rehabilitation evaluation and job analysis. Dr. Stanford's note failed to provide a diagnosis and to address whether the diagnosed condition was caused by the identified employment factors.

Although the Office advised appellant of the type of medical evidence needed to establish his claim, appellant failed to submit medical evidence responsive to the request. Consequently, appellant has not established that his chronic tendinitis was caused by factors of his federal employment.

The March 20, 1998 and April 25, 1997 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, D.C.
December 23, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

Michael E. Groom
Alternate Member