

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SHERI D. SNELL and U.S. POSTAL SERVICE,
POST OFFICE, Coppell, Tex.

*Docket No. 97-1579; Submitted on the Record;
Issued June 7, 1999*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issues are: (1) whether appellant has met her burden of proof in establishing that she sustained an injury in the performance of duty causally related to factors of her federal employment; and (2) whether the Office of Workers' Compensation Programs, by its October 24, 1996 decision, abused its discretion by refusing to reopen appellant's case for further consideration of the merits of her claim under 5 U.S.C. § 8128(a).

The Board has duly reviewed the case record in the present appeal and finds that the case is not in posture for decision and must be remanded for further development of the evidence.

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 filed within the applicable time limitations 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 occupational disease.³

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

¹ 5 U.S.C. § 8101.

² *Joe Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

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

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 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.⁴

In this case, appellant, a letter sorting machine clerk, filed an occupational disease claim, alleging that activities at work of depressing keys, loading and unloading mail, lifting trays of mail weighing 10 to 20 pounds, pushing and pulling heavy equipment, and reaching high and low caused her bilateral carpal tunnel syndrome. The Office denied appellant's claim on November 6, 1995, finding that the evidence of record failed to establish that an occupational disease was sustained in the manner alleged. On November 21, 1995 appellant requested reconsideration of the November 6, 1995 decision. By decision dated December 19, 1995, after a merit review, the Office denied appellant's request for reconsideration finding that the evidence submitted was insufficient to warrant modification of the prior decision. On January 5, 1996 appellant requested reconsideration of the December 19, 1995 decision. By decision dated April 4, 1996, after a merit review, the Office denied appellant's request for reconsideration finding that the evidence submitted was insufficient to warrant modification of the prior decision. On April 16, 1996 appellant requested reconsideration of the April 4, 1996 decision. By decision dated July 5, 1996, after a merit review, the Office denied appellant request for reconsideration on the grounds that the evidence submitted was insufficient to warrant modification of the prior decision. On July 19, 1996 appellant requested reconsideration of the July 5, 1996 decision. By decision dated July 22, 1996 the Office, after a merit review, denied appellant's request for reconsideration on the grounds that the evidence submitted was insufficient to warrant modification of the prior decision. On September 10, 1996 appellant requested reconsideration of the July 22, 1996 decision. By decision dated September 25, 1996, after a merit review, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was insufficient to warrant modification of the prior decision. On October 3, 1996 appellant's representative requested reconsideration of the September 25, 1996 decision. By decision dated October 24, 1996, the Office denied appellant's request for reconsideration finding that the evidence submitted was repetitious and cumulative in nature and insufficient to warrant review of the prior decision.

The medical evidence submitted in support of appellant's claim for carpal tunnel syndrome consists of an October 26, 1994 initial neurological evaluation -- second opinion -- report by Dr. Kevin E. Cowens. Dr. Cowens stated that appellant was referred by Dr. Smithey for chief complaint of low back and right leg pain. He related appellant's prior medical history.

⁴ *Id.*

Dr. Cowens noted that, “[Appellant] comes in today after having been referred on October 11, 1994 for EMG (electromyograph) and nerve conduction studies of the upper and lower extremities. The upper extremity study revealed a right-sided motor and sensory carpal tunnel syndrome, but cervical paraspinal needle EMG was suboptimal due to spasm.” “Tinsel’s is positive at the right wrist, negative at the left wrist and negative at both elbows;” an October 11, 1994 report of an electromyography (EMG) taken that day; an October 11, 1994 nerve conduction study of the upper extremities; an undated report by Dr. Cowens which was received by the Office on August 28, 1995. Dr. Cowens restated that at the time of her first visit appellant was referred for an EMG and nerve conduction study which revealed a right-sided motor and sensory carpal tunnel syndrome as well as a left-side sensory carpal tunnel syndrome. He went on to say that he saw appellant several times since the initial visit and she has had persistent hand numbness, pain and swelling bilaterally more pronounced on the right to the left. Dr. Cowen related the condition to a nonwork-related injury on February 4, 1993; a January 4, 1996 report by Dr. Bruce S. Hinkley, a Board-certified orthopedic surgeon. Dr. Hinkley stated that appellant has carpal tunnel syndrome documented by EMG. He went on to describe appellant’s job duties as keying on a letter sorting machine, loading, using a sweeping machine and letter casing mail. Dr. Hinkley stated that the repetitive lifting, keying etc. is a common cause of carpal tunnel syndrome. “The literature is replete with this type of relationship and it is intuitively obvious”; and a July 17, 1996 report by Dr. Hinkley. He stated that appellant has been under his care since March 1994 for various conditions including chronic carpal tunnel symptoms. Dr. Hinkley further stated, “[Appellant] has carpal tunnel syndrome which has been documented by EMG. Given the fact that the patient’s carpal tunnel symptoms have remained untreated for several years, it is my professional opinion and medically feasible that the carpal tunnel syndrome has never resolved.” He went to say, “I have read [appellant’s] job description for the time she was employed in January of 1990 until February of 1993. Her work involved loading, sweeping, and keying on a letter sorting machine at the rate of 60 letters a minute for 45 minutes of the hour for an 8 hours period. This work also occurred at time for up to 10 hours but never more than 12 hours at a time 5 or 6 days a week. The consistent repetitive-type duties involved in [appellant’s] job are a common cause of carpal tunnel syndrome.”

The Board finds that appellant has submitted evidence sufficient to establish a prima facie case and to require further development of the evidence. In the instant case, appellant submitted an October 26, 1994 report of Dr. Cowen who diagnosed carpal tunnel syndrome based on positive test result from October 11, 1994 EMG and nerve conduction studies. In an undated report received by the Office on August 28, 1995, Dr. Cowen also diagnosed carpal tunnel syndrome based on the above-mentioned tests. In a January 4, 1996 report Dr. Hinkley, a Board-certified orthopedic surgeon, diagnosed carpal tunnel syndrome based on test results, identified the employment factors appellant alleged caused or contributed to her condition and gave his opinion that the employment factors were the cause of her condition. In a July 17, 1996 report Dr. Hinkley stated that appellant has been his patient since March 1994. He again stated that she was familiar with appellant’s job duties from January 1990 to February 1993, identified her factors of employment and stated that “The consistent repetitive-type duties involved in [appellant’s] job are a common cause of carpal tunnel syndrome.”

The Board finds that given the absence of any opposing medical evidence, that the total evidence of record, and in particular Dr. Hinkley’s January 4, 1996 report, which contains a

diagnosis, identifies the factor of employment alleged to have caused appellant's carpal tunnel syndrome, and causally relates the identified factors to appellant condition, although lacking sufficient rationale, is sufficient to require further development of the record by the Office.⁵

On remand, the Office should prepare a statement of accepted facts, which includes the date of appellant's last exposure to the factors of employment and the medical evidence of record and refer appellant for a second opinion evaluation and a rationalized medical opinion as to whether she has developed bilateral carpal tunnel syndrome or any medical condition identified in the statement of accepted facts. After such development of the case record as the Office deems necessary, a *de novo* decision shall be issued.

The decisions of the Office of Workers' Compensation Programs dated October 24, September 25, July 22 and July 5, 1996 are hereby set aside and the case remanded her further development consistent with this decision of the Board.⁶

Dated, Washington, D.C.
June 7, 1999

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

⁵ *Rebel L. Cantrell*, 44 ECAB 660 (1993); *John J. Carlone*, 41 ECAB 354 (1989).

⁶ In view of the Board's decision on the first issue, it is unnecessary for the Board to address the second issue in this case.