

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CLARENCE L. COPELAND and DEPARTMENT OF THE AIR FORCE,
ROBINS AIR FORCE BASE, Ga.

*Docket No. 96-1331; Submitted on the Record;
Issued May 26, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant established that he sustained an injury causally related to factors of his employment.

On February 23, 1992 appellant, then a 45-year-old aircraft sheet metal mechanic, filed an occupational disease claim, alleging that factors of his employment caused numbness in his left hand. In an attached statement, he indicated that heavy lifting and the use of power tools caused the intermittent numbness which he first noticed in October 1992. By letter dated June 15, 1993, the Office of Workers' Compensation Programs informed appellant of the type of evidence needed to support his claim and, in a July 29, 1993 decision, denied the claim on the grounds that the medical evidence was insufficient to establish entitlement as it contained no definitive diagnosis or objective medical findings. Following appellant's timely request for reconsideration, by decision dated December 19 and finalized December 20, 1994, the Office denied modification of the prior decision, finding that appellant had submitted no new medical evidence in support of his reconsideration request. Appellant again requested reconsideration and submitted additional medical evidence. By decision dated August 26, 1995, the Office denied modification of the prior decision on the grounds that the record did not contain rationalized medical evidence to establish that appellant's condition was employment related. The instant appeal follows.

The relevant medical evidence includes a February 23, 1993 clinic note in which Dr. J.R. Arnall, who is Board-certified in occupational medicine, advised that appellant had no arm weakness. Tinel's and Phalen's signs were negative but he exhibited numbness to light touch on the left down the ulnar nerve distribution. In a March 1, 1993 clinic note, Dr. Robert Nelson, a Board-certified orthopedic surgeon, noted findings on examination and diagnosed possible ulnar nerve entrapment at the elbow. Electrodiagnostic studies performed on March 2, 1993 were normal in both upper extremities. A March 8, 1993 magnetic resonance imaging scan of the cervical spine demonstrated mild degenerative changes at C4-5 with no evidence of disc herniation or cord pathology. In an April 23, 1993 report, Dr. H. Gary Lebow, an employing

establishment physician who is Board-certified in occupational medicine, advised that appellant had no definitive diagnosis and, therefore, his condition was probably not employment related. Dr. Nelson continued to submit reports and, in a June 29, 1993 report, provided a history that appellant used vibrating instruments such as air drills, motors and sanders at work. He noted appellant's negative test results but advised that he had clinical signs consistent with ulnar nerve entrapment, stating:

“I feel [appellant] does have compression [of the] ulnar nerve in spite of the tests. It is known that workers exposed to constant vibrating impact are predisposed to injury to ulnar and median nerves. I feel that the injury is job related.”

Dr. John W. Sapp provided clinic notes dating from July 6, 1993 to March 22, 1995. In a March 15, 1995 report, Dr. Sapp advised that, upon examination, Tinel's sign was negative at the wrist but positive over the ulnar nerve at the cubital tunnel bilaterally. Phalen's sign was negative on the right but produced symptoms in the ring and little finger on the left, and there was some tendency for the ulnar nerve to sublux over the medial epicondyle on the right. He diagnosed bilateral cubital tunnel syndrome and recommended surgery. Dr. Sapp advised that he felt appellant's condition was work related. In an August 10, 1995 report, Dr. Harry L. Collins, Jr., an Office medical adviser who is Board-certified in orthopedic surgery, opined that appellant had no secure diagnosis, noting that everything that was abnormal was subjective, stating that appellant's ulnar nerve was not impaired since he had no loss of sensation and no weakness of the muscles enervated by it.

The Board finds that this case is not in posture for 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 the factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the 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 factors identified by the claimant. The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon a complete and accurate factual and medical background, showing a causal relationship between the claimed conditions and the identified factors. The belief of appellant that the condition was caused or aggravated by the identified factors is not sufficient to establish causal relation.¹

In the instant case, appellant submitted reports from Drs. Nelson and Sapp, both of whom are Board-certified orthopedic surgeons and both of whom opined that appellant suffered from an employment-related ulnar nerve condition of the upper extremities. While these reports are insufficient to establish entitlement, the fact that they contain deficiencies preventing appellant from discharging his burden does not mean that they may be completely disregarded by the Office. It merely means that their probative value is diminished. The opinions of Drs. Sapp and

¹ *Lourdes Harris*, 45 ECAB 545 (1994).

Nelson are sufficient, therefore, to require further development of the record.² It is well established that proceedings under the Federal Employees' Compensation Act³ are not adversarial in nature,⁴ and while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.⁵ On remand the Office should refer appellant to an appropriate Board-certified specialist for a rationalized medical opinion to determine if appellant's upper extremity condition was caused or aggravated by employment. After such development of the case record as the Office deems necessary, a *de novo* decision shall be issued.

The decision of the Office of Workers' Compensation Programs dated August 26, 1995 is hereby set aside and the case is remanded to the Office for proceedings consistent with this opinion.

Dated, Washington, D.C.
May 26, 1999

George E. Rivers
Member

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

² See *John J. Carbone*, 41 ECAB 354 (1989).

³ 5 U.S.C. §§ 8101-8193.

⁴ See, e.g., *Walter A. Fundinger, Jr.*, 37 ECAB 200 (1985).

⁵ See *Dorothy L. Sidwell*, 36 ECAB 699 (1985).