

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PATSY D. WILLIAMS and DEPARTMENT OF DEFENSE,
DEFENSE COMMISSARY AGENCY, Long Beach, Calif.

*Docket No. 97-2065; Submitted on the Record;
Issued May 4, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant met her burden of proof to establish that she sustained an occupational disease causally related to factors of her federal employment.

On July 21, 1996 appellant, then a 40-year-old cash clerk/cashier, filed a notice of occupational disease alleging that she developed bilateral pain in her arms, elbows, fingers and thumbs as a result of her federal employment. Appellant stated that she first became aware of the disease or illness and that it was caused or aggravated by her employment on June 21, 1996. Appellant stated that on that date she was scanning on a cash register when she felt pain in her elbow joints. Appellant also reported that she experienced pain in both arms and in her fingers while doing her job on June 9, 1996. Appellant stopped working on June 26, 1996.

In a statement dated June 26, 1996, appellant stated that she experienced pain in both arms and in her fingers on June 9, 1996 while scanning groceries. She stated that the pain worsened as she continued to scan. Appellant stated that the symptoms continued for 16 days without relief. She indicated that on June 26, 1996 her family doctor diagnosed polyarthralgia, a swelling of her joints caused by repetitive motion.

Appellant supplied an additional statement indicating that she reported her condition to her supervisor on July 9 and 21, 1996. She stated her injury was due to the scanning motion she performed in her employment and that sometimes she scanned items weighing up to 50 pounds.

On June 26, 1996 Dr. Burdette Thorbus, appellant's treating physician and a family practitioner, examined appellant and diagnosed polyarthralgia. Dr. Thorbus checked "yes" to indicate that this condition was caused or aggravated by an employment activity, specifically from the scanning motion. On June 27, 1996 Dr. Thorbus examined appellant and diagnosed arthritis and polyarthralgia. He further stated that appellant should discontinue scanning and that she was disabled pending further examination. On July 1, 1996 Dr. Thorbus examined appellant and diagnosed pain in the upper extremities. He indicated that he was treating appellant for

polyarthralgia and that the condition would be aggravated by repetitive motion. He stated that he initially saw appellant on June 26, 1996 and that it was recommended that she remain out of work for approximately three weeks. On July 9, 1996 Dr. Thorbus diagnosed olecranon bursitis. On July 10, 1996 Dr. Thorbus diagnosed bursitis, right shoulder. On July 15, 1996 Dr. Thorbus diagnosed arthritis/polyarthralgia. On July 17, 1996 he diagnosed olecranon bursitis. On July 19, 1996 Dr. Thorbus diagnosed paresthesia, hands.

On July 17, 1996 Dr. Ardeshir Rahmati, an orthopedic surgeon, diagnosed lateral epicondylitis. On July 24, 1996 he indicated that appellant was totally disabled until August 16, 1996. In an undated report, Dr. Rahmati examined appellant and diagnosed lateral epicondylitis, bilateral. On July 29, 1996 he noted that appellant's left elbow was very painful and that appellant should remain off work until August 16, 1996.

On September 23, 1996 the Office of Workers' Compensation Programs requested additional information, including a comprehensive medical report explaining how exposures or incidents of federal employment contributed to appellant's condition.

Appellant responded indicating that she did not perform any activities at home that required lifting, pushing, pulling, stooping, bending, or anything strenuous. She indicated that she did not have previous orthopedic injuries.

On October 16, 1996 Dr. Thorbus diagnosed polyarthralgia and olecranon bursitis. He indicated that appellant was totally disabled and that she should not perform the scanning motion. On October 29, 1996 Dr. Thorbus indicated that appellant was treated for polyarthralgia/arthritis with pain in upper extremities with right olecranon bursitis as well as her right shoulder. He indicated that appellant's condition deteriorated into paresthesia with numbness and tingling in the right hand. He stated that any repetitive motion can cause and aggravate this condition. He stated that it was highly recommended that appellant not engage in any activities such as scanning. On November 13, 1996 Dr. Thorbus diagnosed synovitis of the wrist and stated appellant was disabled from work from November 18 through December 29, 1996.

On November 19, 1996 the Office referred appellant and the case record, along with a statement of accepted facts, to Dr. Marvin Frieder, a Board-certified orthopedic surgeon, for a second opinion examination.

On December 3, 1996 Dr. Frieder examined appellant. He noted that about six months prior appellant began feeling pain in all of the joints of her hands, wrists, the entire forearm, bilaterally; the lateral aspects of her elbow and the right shoulder and brachium. He indicated that appellant ascribed these symptoms to her work and that appellant's symptoms remained despite her ceasing of work. Dr. Frieder then noted that appellant only scanned items as a checker less than 30 minutes a day. He also reviewed the medical opinions of record. From his physical examination, Dr. Frieder reported no apparent acute distress. He found a full and equal range of motion in flexion and extension of both elbows, of both wrists in all planes and of the small joints of the digits. He stated that the left forearm was fixed at 10 to 15 degrees of pronation and no rotary motion was possible. Dr. Frieder reported a normal range of motion in the shoulders, but that appellant complained of pain at the extreme motions of the shoulder. He

reported tenderness diffusely about the shoulder. Dr. Frieder found no heat or swelling about either elbow. He found exquisite tenderness reported over the lateral epicondyle and an area of the extensor aponeurosis adjacent, reported with barely enough pressure to contact the skin. Dr. Frieder stated that same was true of the triceps tendon above the olecranon. He found no tenderness, heat, or swelling in the olecranon, but minimal tenderness over the medial epicondyle. Dr. Frieder stated that appellant was evasive regarding tenderness. He stated that appellant reported tenderness in all of the joints of the digits to minimal pressure. He found no heat or swelling in the digits. Dr. Frieder's x-ray findings were normal except for a synostosis between the proximal radius and proximal ulnar on the left side which was apparently congenital. Dr. Frieder opined that appellant demonstrated multiple inappropriate physical findings, which failed to correspond to physical or organic disease and indicated a lack of cooperation. He stated that there were no reliable physical findings to accompany the subjective complaints. Dr. Frieder stated that the work history failed to support any causal relation between her symptoms and her work activity. He stated that this opinion was reinforced by the failure of appellant's symptoms to improve after she ceased working for six months. Dr. Frieder indicated that appellant magnified and fabricated her symptoms. He found no physical or organic disease except for the congenital synostosis on the left side. He concluded that appellant suffered no residual factors from her work activity and required no medical treatment as a consequence of her employment. On January 14, 1997 Dr. Frieder indicated that his opinion remained unchanged despite additional objective testing for nonindustrial illnesses.

On January 21, 1997 appellant wrote indicating that she disagreed with Dr. Frieder's opinion and stating that her physicians diagnosed an employment-related condition.

By decision dated January 31, 1997, the Office denied appellant's claim because the weight of the medical evidence failed to establish that she sustained an injury causally related to factors of her employment. In an accompanying memorandum, the Office indicated that the weight of the medical evidence rested with the opinion of Dr. Frieder who offered a reasoned opinion establishing that appellant did not have a medical condition causally related to factors of her employment. The Office noted that the opinions of Drs. Thorbus and Rahmati lacked probative value because they were unclear, vague and speculative.

The Board finds that appellant did not meet her burden of proof to establish that she sustained an occupational disease causally related to factors of her federal employment.

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.¹ The medical evidence required to establish a causal relationship, generally, is rationalized

¹ See *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

medical opinion evidence.² 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,³ must be one of reasonable medical certainty,⁴ 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.⁵

In this case, Dr. Thorbus, appellant's treating physician and a family practitioner, provided only one medical opinion addressing whether there was a causal relationship between appellant's claimed medical conditions and factors of her employment. In his June 26, 1996 report, Dr. Thorbus checked "yes" to indicate that appellant's condition was caused or aggravated by an employment activity, specifically from scanning motion. Nevertheless, a physician's opinion on causal relationship consisting only of checking "yes" to a form question has little probative value and is insufficient to establish causal relationship.⁶ Dr. Thorbus failed to address causal relationship in his numerous other medical reports. Similarly, Dr. Rahmati, an orthopedic surgeon, failed to discuss causal relationship in his reports dated July 17, 24 and 29, 1996. Appellant, therefore, failed to provide any rationalized medical opinion establishing a causal relationship between her claimed condition and factors of her employment. Consequently, she failed to meet her burden of proof.

Moreover, Dr. Frieder, a Board-certified orthopedic surgeon, submitted a rationalized medical opinion explaining that appellant's inappropriate physical findings and the fact that her symptoms did not improve following her absence from work indicated that she failed to establish a medical condition causally related to factors of her employment. Dr. Frieder's opinion, as the only rationalized opinion of record, is entitled to the weight of the evidence.

² The Board held that, in certain cases, where the causal connection is obvious, expert testimony may not be necessary; see *Naomi A. Lilly*, 10 ECAB 560, 572-73 (1959). The instant case, however, is not one of obvious causal connection.

³ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

⁴ See *Morris Scanlon*, 11 ECAB 384-85 (1960).

⁵ See *James D. Carter*, 43 ECAB 113 (1991); *George A. Ross*, 43 ECAB 346 (1991); *William E. Enright*, 31 ECAB 426, 430 (1980).

⁶ *Ruth S. Johnson*, 46 ECAB 237 (1994).

The decision of the Office of Workers' Compensation Programs dated January 31, 1997 is affirmed.

Dated, Washington, D.C.
May 4, 1999

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member