

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of YOLANDA G. NG and U.S. POSTAL SERVICE,  
POST OFFICE, Los Angeles, CA

*Docket No. 99-1655; Submitted on the Record;  
Issued July 19, 2000*

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DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issues are: (1) whether appellant sustained a cervical disc disease and ulnar nerve entrapment injury while in the performance of her duties; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's untimely request for a hearing.

On September 15, 1998 appellant, a flat sorting machine operator, filed a claim asserting that her cervical disc disease and the pain in her right elbow and forearm were causally related to her federal duties. To support her claim, she submitted an October 14, 1998 report from Dr. Ahmad A. Hajj, a Board-certified orthopedic surgeon, who reported that appellant had developed a cyst on the dorsal aspect of her right wrist related to the repetitive bending and gripping in her work. Appellant had surgery and was stabilized, but during the treatment of her wrist she started complaining of symptoms of peripheral radiculopathy in her right upper extremity suggestive of cervical disc disease and ulnar nerve entrapment at the right elbow. Diagnostic testing confirmed these findings. He noted that appellant had no interval history of trauma to her neck or right arm. After relating appellant's history, job description and complaints, Dr. Hajj reported his findings and diagnosed recurrent ganglion cyst, right wrist; cervical disc disease at C6-7 and ulnar nerve entrapment at the right elbow. He addressed the issue of causal relationship as follows:

"The ganglion cyst was previously determined as work related and from that point, apportionment is not an issue. This has been surgically treated and now resolved.

"As far as her cervical spine disc disease and related symptomatology, it is my opinion that this is also work related considering the fact that she had no interval history of trauma. She has been working with the type of work that can cause such a problem and the fact that she did complain of pain in her right hand and arm all along, but that was always thought to be secondary to her ganglion cyst. It is possible that she might have had these symptoms at the time, but they were

not pronounced and they were all thought to be secondary to the cyst, but now since the cyst was excised and her symptoms became more clarified, her attention has shifted to that part.”

In a decision dated November 6, 1998, the Office denied appellant’s claim on the grounds that the medical evidence was insufficient to establish that her condition was caused by employment factors. In an attached statement of review rights, the Office advised appellant that she must postmark any request for a hearing within 30 days of the date of the decision.

In a letter postmarked January 7, 1999, appellant requested a hearing before an Office hearing representative. In a decision dated January 26, 1999, the Office found that appellant’s request was untimely. The Office considered the matter and denied her request on the grounds that she could equally well address the issue in her case by requesting reconsideration and submitting evidence not previously submitted establishing that her claimed medical conditions were causally related to her employment.

The Board finds that the medical evidence is insufficient to establish that appellant sustained cervical disc disease and ulnar nerve entrapment injury while in the performance of her duties.

An employee seeking benefits under the Federal Employees’ Compensation Act<sup>1</sup> has the burden of proof to establish the essential elements of her claim. When an employee claims that she sustained an injury in the performance of duty, she must submit sufficient evidence to establish that she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. She must also establish that such event, incident or exposure caused an injury.<sup>2</sup>

The Office does not dispute the duties that appellant performed as a flat sorting machine operator. It is, therefore, accepted as a general matter that she performed such duties in the manner alleged. The question for determination is whether these duties caused her diagnosed cervical disc disease and ulnar nerve entrapment.

Causal relationship is a medical issue,<sup>3</sup> and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician’s rationalized opinion on whether there is a causal relationship between the claimant’s diagnosed condition and the established incident or factor of employment. The opinion of Dr. Hajj must be based on a complete factual and medical background of the claimant,<sup>4</sup> must be of reasonable medical certainty<sup>5</sup> and must be

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> See generally *John J. Carlone*, 41 ECAB 354 (1989); *Abe E. Scott*, 45 ECAB 164 (1993); see also 5 U.S.C. § 8101(5) (“injury” defined); 20 C.F.R. §§ 10.5(a)(15)-.5(a)(16) (“traumatic injury” and “occupational disease or illness” defined).

<sup>3</sup> *Mary J. Briggs*, 37 ECAB 578 (1986).

<sup>4</sup> *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.<sup>6</sup>

Appellant's attending physician, Dr. Hajj, provided an opinion on causal relationship misleading on an accurate understanding of appellant's duties as a flat sorting machine operator. Dr. Hajj's conclusion that these duties caused or contributed to her diagnosed conditions is not sufficiently reasoned to establish the element of causal relationship. He asserted that the duties appellant performed were competent to cause her cervical spine disc disease and related symptomatology, but Dr. Hajj did not provide a full explanation of how appellant's duties caused or contributed to her diagnosed conditions.<sup>7</sup> In addition, his statement that it was possible that appellant might have had right hand and arm symptoms at the time of her ganglion cyst adds speculation to an important part of his reasoning.<sup>8</sup> Dr. Hajj's opinion is not sufficiently rationalized to establish a causal relationship between her duties as flat sorting machine operator and her diagnosed conditions. The Board will affirm the Office's November 6, 1998 decision.

The Board also finds that the Office properly denied appellant's untimely request for a hearing.

Section 8124(b)(1) of the Act provides:

"Before review under section 8128(a) of this title, a claimant for compensation not satisfied with a decision of the Secretary under subsection (a) of this section is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his claim before a representative of the Secretary."<sup>9</sup>

The hearing request must be sent within 30 days. As determined by postmark or other carrier's date marking, of the date of the decision for which a hearing is sought.<sup>10</sup> The Office has discretion, however, to grant or deny a request that is made after this 30-day period.<sup>11</sup> In such a

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<sup>5</sup> See *Morris Scanlon*, 11 ECAB 384-85 (1960).

<sup>6</sup> See *William E. Enright*, 31 ECAB 426, 430 (1980).

<sup>7</sup> See *Ceferino L. Gonzales*, 32 ECAB 1591 (1981); *George Randolph Taylor*, 6 ECAB 968 (1954) (medical conclusions unsupported by rationale are of little probative value).

<sup>8</sup> See *Philip J. Deroo*, 39 ECAB 1294 (1988) (although 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 medical certainty, neither can such opinion be speculative or equivocal).

<sup>9</sup> 5 U.S.C. § 8124(b)(1).

<sup>10</sup> 20 C.F.R. § 10.616(a) (1999).

<sup>11</sup> *Herbert C. Holley*, 33 ECAB 140 (1981).

case, the Office will determine whether a discretionary hearing should be granted or, if not, will so advise the claimant with reasons.<sup>12</sup>

Because appellant made her January 7, 1999 request for a hearing more than 30 days after the Office's November 6, 1998 decision, she is not entitled to a hearing as a matter of right. The Office nonetheless considered the matter and correctly advised appellant that she could equally well pursue the issue in her claim through the reconsideration process. As appellant may address the issue of causal relationship by requesting reconsideration and submitting to the Office new and relevant medical opinion evidence correcting the deficiencies previously found, the Board finds that the Office did not abuse its discretion in denying a discretionary hearing.<sup>13</sup> The Board will affirm the Office's February 26, 1999 decision.

The February 26, 1999 and November 6, 1998 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, D.C.  
July 19, 2000

David S. Gerson  
Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>12</sup> *Rudolph Bermann*, 26 ECAB 354 (1975).

<sup>13</sup> The Board has held that the denial of a hearing on these grounds is a proper exercise of the Office's discretion. *E.g.*, *Jeff Micono*, 39 ECAB 617 (1988).