

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ALISON F. BUSTAMANTE and U.S. POSTAL SERVICE,
POST OFFICE, Merrifield, VA

*Docket No. 98-1543; Submitted on the Record;
Issued March 3, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has met his burden of proof in establishing that he sustained an injury causally related to exposure to work factors prior to October 24, 1997, as alleged.

On November 3, 1997 appellant, then a 48-year-old letter clerk, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging "pain in both arms." In describing the employment activities to which he attributed his condition, appellant stated "everyday lifting, carrying of heavy loads of mail and sorting of letters and flats" were the causes of the pain he experienced in both arms.

On appellant's CA-2 form he alleged that he first became aware of his injury on October 24, 1997 and on the reverse of the form he indicated that he notified his supervisor on November 3, 1997 and received medical care from Dr. Phillip Kempf, Board-certified in rheumatology.

Ms. Barbara McKnight, appellant's supervisor, stated that she gave appellant a CA-2 form on November 3, 1997 when he told her both his arms were hurting and arranged for him to see Dr. Kempf the following day. Appellant returned the CA-2 form to his supervisor on November 6, 1997.

In support of his claim, appellant submitted qualifications of a letter carrier and a duty status report dated November 4, 1997 from Dr. Kempf who noted bilateral lateral epicondylitis and check marked "yes" indicating that the history of injury given by appellant corresponded with factors of his employment disability and that the diagnosis was due to injury. Dr. Kempf also noted that appellant "may only carry mail for three hours total a day" and referred appellant back to his office in two weeks.

By letter dated November 24, 1997, the Office of Workers' Compensation Programs advised appellant and the employing establishment that additional information was required in reference to appellant's claim for a condition in both arms under the Federal Employees' Compensation Act¹ and provided a detailed list of questions.

In response to the Office's request, appellant submitted a medical report dated November 4, 1997, received by the Office on November 28, 1997, from Dr. Kempf who gave his impression of "bilateral lateral epicondylitis, left greater than right." He also noted that he provided appellant with bilateral wrist splints to wear while carrying mail and referred him to physical therapy. Appellant was limited to carrying mail only three hours per day. She also submitted a duty status report and a medical report both dated November 18, 1997 from Dr. Kempf. He diagnosed, "bilateral epicondylitis, right resolved, left remains." Dr. Kempf also continued appellant's physical therapy and prescribed Motrin as needed. He indicated that appellant could return to work in two weeks on a limited basis. He noted he should return to his office in two weeks.

In a December 2, 1997 medical report, Dr. Kempf stated:

"[Appellant] notes a 70 percent improvement in his left elbow pain since last visit. He is no longer having any right elbow pain. He very rarely uses any Motrin and rarely using his left wrist splint. He is continually performing most of his job-related duties. Examination of both elbows reveals full range of motion. There is no synovitis. There is no further right lateral epicondyle tenderness. Examination of the left elbow continues to show tenderness noted over the lateral epicondyle that is worse with left wrist active extension."

Dr. Kempf noted that appellant did not want an injection at that time so he was referring him for continual physical therapy and returning to full duty in approximately two weeks.

By decision dated March 3, 1998, the Office issued a decision denying appellant's claim for failure to submit sufficient medical evidence necessary to support his claim. The Office stated:

"The initial evidence of file was insufficient to establish that you experienced the claimed employment factor, at the time, place and in the manner alleged because the specific factors of employment believed to have caused or aggravated the claimed condition has not been given. In addition, medical documentation establishing a condition and a connection between the condition and the employment was not submitted. Therefore, an injury within the meaning of the Act was not demonstrated."

The Board finds that appellant has not established that he sustained an injury.

¹ 5 U.S.C. §§ 8101-8193.

An employee seeking benefits under the Act 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 timely filed within the applicable time limitation period 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 is causally related to the employment injury. These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.²

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 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.³ The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence. Rationalized medical 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 Merely because a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two. Neither the fact that the disease or condition became apparent during the period of employment nor the belief of appellant that the disease was caused or aggravated by employment condition, is sufficient to establish causal relation.⁵

In the present case, appellant submitted medical evidence from Dr. Kempf diagnosing that he had bilateral epicondylitis of both arms. Appellant identified everyday lifting, carrying heavy loads of mail and sorting of letters as the employment factors which caused or aggravated his condition.

In his November 4, 1997 report, Dr. Kempf stated that, on examination of appellant’s forearms, the elbows revealed full range of motion, but with mild lateral epicondyle tenderness bilaterally that was worse with wrist extension. He noted that appellant had been carrying more mail, delivering longer hours and carrying heavier loads.

² *Ruthie M. Evans*, 41 ECAB 416 (1990); *Joe D. Cameron*, 41 ECAB 153 (1989).

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

⁴ *Id.*

⁵ *See Birger Areskog*, 30 ECAB 571 (1979).

In his November 18, December 2 and 12, 1997 reports, Dr. Kempf reiterated his findings of appellant's left arm, diagnosing bilateral epicondylitis but noted that his right arm condition had resolved.

The Board finds that the evidence submitted by appellant contains a history of the development of the condition provided by appellant and an opinion and a diagnosis of bilateral epicondylitis stated by Dr. Kempf. Dr. Kempf has not, however, provided a rationalized medical opinion causally relating the diagnosed condition to factors of appellant's employment.

The Board has held that an opinion regarding causal relationship which consists of checking "yes" to a form report question on whether the claimant's disability is causally related to the history given is of little probative value. Without explanation or rationale, such report has little probative value and is insufficient to establish causal relationship.⁶

In the present case, there is no medical explanation of how appellant's work activities caused the diagnosed condition of bilateral epicondylitis. Appellant, therefore, has not established that he sustained an injury in the performance of duty.

The decision of the Office of Workers' Compensation Programs dated March 3, 1998 is hereby affirmed.

Dated, Washington, D.C.
March 3, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

⁶ *Betty J. Parker*, 46 ECAB 920 (1995).