

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of COLLEEN P. HESTER and U.S. POSTAL SERVICE,  
POST OFFICE, Detroit, MI

*Docket No. 00-2364; Submitted on the Record;  
Issued July 20, 2001*

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DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,  
A. PETER KANJORSKI

The issue is whether appellant met her burden of proof in establishing that she had any disability beginning February 20 to April 27, 1998 and June 4 to December 31, 1998 causally related to the accepted injury.

On January 29, 1996 appellant, then a 31-year-old letter carrier filed a claim alleging that she was injured when she fell on ice and injured her elbow. The Office of Workers' Compensation Programs accepted appellant's claim for left elbow contusion and ulnar nerve entrapment and expanded this to include left cubital tunnel syndrome. Appellant did not stop work.

Accompanying appellant's claim was an employing establishment medical report dated January 29, 1996, physical therapy notes from January to March 1996 and several activity restriction forms. The employing establishment medical report indicated appellant slipped on ice and injured her elbow. The report noted appellant was to have limited use of her left upper extremity and to avoid constant lifting or carrying with her left arm. The activity restriction forms indicated appellant was undergoing physical therapy and recommended appellant use a cart for carrying and delivering mail.

On February 5, 1998 appellant filed a CA-2a, notice of recurrence of disability commencing January 26, 1998, noting that she was having problems with her left arm since the employment-related injury of January 29, 1996. The Office accepted appellant's claim for recurrence of disability for left cubital syndrome. Appellant worked intermittently from February 14 to April 16, 1998. She noted she used sick leave from April 17 to August 8, 1998 and annual leave from August 15 to September 12, 1998. Appellant indicated that she returned to limited duty on September 10, 1998 and was restricted from using her left arm.

Appellant submitted a medical report from Dr. Joyce Koram, Board-certified in preventative medicine, dated January 26, 1998, nerve conduction studies dated March 2, 1998, two consultation notes prepared by Dr. Albert Manlapit, an internist, dated March 17 and

April 28, 1998, a medical report dated June 15, 1998 prepared by Dr. Rama Thyagarajan, an internist; an attending physicians report prepared by Dr. Thyagarajan dated September 15, 1998 and a narrative statement. The medical report from Dr. Koram noted a history of appellant's injury and diagnosed appellant with left lateral epicondylitis. She recommended appellant work indoors with restrictions of no lifting, pulling or pushing greater than 10 pounds. The nerve conduction studies revealed no electrodiagnostic evidence of left ulnar neuropathy or cervical neuropathy. The consultation notes indicated a diagnosis of pain and dysesthesia in the left elbow, left forearm and left hand secondary to cubital tunnel syndrome. Dr. Koram noted the electrodiagnostic studies were negative. She prescribed a left arm splint. The medical report prepared by Dr. Thyagarajan noted appellant's history of injury and indicated that she had been treating appellant since March 1997. She noted appellant experienced persistent symptoms and indicated that this may possibly be related to ulnar nerve entrapment syndrome. The attending physicians report prepared by Dr. Thyagarajan dated September 15, 1998, indicated that appellant was diagnosed with left cubital tunnel syndrome. She noted, upon examination, the x-rays of the elbow were negative; the electromyogram (EMG) was negative; there was a mild decrease in grip strength of the left arm and positive Tinel's sign in the left elbow. Dr. Thyagarajan indicated with a checkmark "yes" that the condition was caused or aggravated by an employment activity and noted appellant was asymptomatic prior to injury. She indicated that appellant was totally disabled from April 28 to June 3, 1998; partially disabled from January 26 to April 27, 1998 and from June 4 to December 31, 1998, but could return to work with restrictions. Dr. Thyagarajan noted she did not anticipate improvement and suggested appellant find alternate employment. Appellant's narrative statement indicated that the employing establishment was not satisfied with her light-duty assignment and desired her to work at least four hours per day. Appellant noted that she attempted to work until her arm began to hurt and then she would leave work. Appellant indicated that the employing establishment was not satisfied with this arrangement so appellant continued to work under the limited-duty restriction agreement.

Subsequently, appellant submitted a request for light-duty assignment dated February 20, 1998, for the period of February 20 to March 5, 1998. The restrictions included no pulling, pushing, carrying; or lifting. The diagnosis was left elbow tendonitis with left arm sprain. In a letter dated February 25, 1998, the employing establishment offered appellant a light-duty assignment subject to the following conditions: appellant must be proficient with casing duties, appellant must stay within her medical restrictions and the total amount of hours may vary daily, depending on the needs of the service and on appellant's proficiency in her casing duties. The employing establishment further noted appellant may be scheduled to work less than 8 hours a day and less than 40 hours per week.

On September 10, 1998 the employing establishment made a limited-duty assignment offer to appellant. The job was to begin September 10, 1998 and was subject to various restrictions to suit appellant's medical condition.

On September 30, 1998 appellant filed a CA-7 requesting wage-loss compensation for disability for the period of February 20 to December 31, 1998.<sup>1</sup> Appellant indicated that she

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<sup>1</sup> In a letter dated October 9, 1998, the Office notified appellant that compensation beyond the date that the CA-7 was certified by the employing establishment, in this case September 30, 1998, could not be considered because the

used sick leave from April 17 to August 8, 1998 and annual leave from August 15 to September 12, 1998. She indicated that she returned to limited duty on September 10, 1998 and was restricted from using her left arm. The absence analysis indicated that appellant worked intermittently from February 14 to April 16, 1998.

By letter dated October 5, 1998, the Office indicated that the medical evidence supported that appellant was totally disabled from April 28 to June 4, 1998. However, the Office requested additional factual evidence from appellant stating that the initial information submitted was insufficient to establish appellant was totally disabled for the other periods of time claimed. The Office specifically advised appellant to indicate the private employer she worked for during the period of April 28 to June 4, 1998.

In response to the Offices request appellant submitted two narrative statements, which indicated that appellant purchased a vending machine and attempted to lease the machine through an entity owned by her, Best Way Industries. However, appellant indicated that she had not been able to place the machine in a commercial location and, therefore, has not made any money from this venture.

The employing establishment submitted a statement dated September 30, 1998, indicating that work was made available to appellant for the claimed period. Appellant's supervisor indicated the decision to work appellant less hours than the doctor stated was based on appellant's continued complaints regarding her left elbow injury. The supervisor further noted that appellant indicated that she was drowsy due to her medication and requested to leave work on the following dates: February 21, 24, 26, March 23, 25, 28 and April 2, 14, 16 of 1998. The employing establishment instructed appellant to follow the restrictions more precisely, including no pulling down routes, no picking up flats and use the left arm for casing only.

On December 2, 1998 the Office referred appellant for a second opinion to Dr. Stephen P. DeSilva, a Board-certified orthopedic surgeon. The Office provided Dr. DeSilva with appellant's medical records, a statement of accepted facts as well as a detailed description of appellant's employment duties.

In a medical report dated December 3, 1998, Dr. DeSilva indicated that he reviewed the records provided and performed a physical examination of appellant. Dr. DeSilva indicated that appellant had chronic left elbow pain, which was exacerbated with activity. He noted upon examination that there was no atrophy; deformity or asymmetry in the appearance of the upper extremities; elbow range was symmetric with 5 degrees of recurvatum and 135 degrees of flexion bilaterally; there was full pronation and supination; no crepitus; no joint effusion and the ulnar nerve was not tender in the cubital tunnel. Dr. DeSilva recommended a bone scan of the elbow and a repeat EMG.

In a supplemental report dated January 7, 1999, Dr. DeSilva noted that the electrodiagnostic tests were essentially normal except for a mild degree of ulnar nerve conduction slowing and the bone scan revealed mild increased tracer uptake in the left elbow and

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Office cannot process a claim into the future.

right elbow. He noted that the ulnar nerve irregularity was insignificant and the bone scan suggest a mild underlying degenerative arthritis of both elbows. Dr. DeSilva indicated that there “was really nothing terribly serious that I could find, not anything really that was treatable.” He indicated that if appellant was to return to unrestricted work Dr. DeSiva would suggest a Functional Capacity Evaluation (FCE) otherwise, she could remain in her current limited-duty position.

The Office referred appellant for a FCE on May 20, 1999. The therapist indicated that there was some discrepancy in appellant’s performance on the various subtests which may indicate symptom magnification. The therapists further noted that a brief period of work conditioning would be recommended to further assess her functional ability.

In a decision dated July 22, 1999, the Office denied appellant’s claim, finding that the evidence was not sufficient to establish that the claimed period of disability was causally related to appellant’s accepted injury of January 29, 1996.

In a letter dated August 10, 1999, the Office requested Dr. DeSilva review the FCE and determine if appellant could return to employment without restrictions. The record does not indicate that he responded to this request.

By letter dated August 12, 1999, appellant requested a hearing before an Office hearing representative. The hearing was held on January 20, 2000. Appellant testified that she was available for work, however, the employing establishment did not provide work for her. She further noted that a written job offer was not made until September 20, 1998.

In a decision dated March 22, 2000, the hearing representative affirmed the decision of the Office dated July 22, 1999, on the grounds that the evidence was not sufficient to establish that the claimed period of disability was causally related to appellant’s accepted injuries of January 29, 1996.

The Board finds that appellant has failed to establish that she sustained a recurrence of disability as alleged.

Appellant has the burden of establishing by the weight of reliable, probative and substantial evidence that the period of claimed disability was caused or adversely affected by the employment injury. As part of this burden, she must submit rationalized medical opinion evidence based on a complete factual and medical background showing a causal relationship between her disability and the federal employment. The fact that the condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.<sup>2</sup>

The Office accepted appellant’s claims for left elbow contusion, ulnar nerve entrapment and left cubital tunnel syndrome. However, the medical evidence submitted in support of the wage-loss compensation claim for disability for the period beginning February 20 to April 27,

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<sup>2</sup> See *Nicolea Bruso*, 33 ECAB 1138 (1982).

1998 and June 4 to December 31, 1998,<sup>3</sup> is insufficient to establish an aggravation of appellant's medical condition. Appellant's treating physician Dr. Thyagarajan, in a medical report dated June 15, 1998, noted appellant was experiencing persistent pain and worsening of symptoms in the left elbow from March 1997 to February 1998, which was possibly related to the ulnar nerve entrapment syndrome. She recommended appellant change jobs from that of a mail carrier because it involved significant lifting of the left upper extremity. She further indicated, in an attending physicians report dated September 15, 1998, that appellant was totally disabled from April 28 to June 3, 1998, partially disabled from January 26 to April 27, 1998 and from June 4 to December 31, 1998 and advised that appellant could return to work with no use of the left arm. Dr. Thyagarajan noted appellant's symptoms were aggravated as a result of her job. Even though she noted that appellant's condition was aggravated by her job, Dr. Thyagarajan specifically indicated appellant was not totally disabled during the period of from January 26 to April 27, 1998 and from June to December 31, 1998 and could return to work under restrictions. Additionally, the employing establishment offered appellant a light-duty assignment on February 25, 1998, which complied with appellant's medical restrictions and subsequently offered appellant a limited-duty assignment on September 10, 1999, which was also in compliance with appellant's medical restrictions. There is no credible evidence that appellant was denied appropriate light-duty work during periods, in which the medical evidence showed that she could perform light duty.<sup>4</sup> Additionally, she indicated that appellant was asymptomatic prior to her January 29, 1996 injury, the Board has held that an opinion that a condition is causally related to an employment injury because the employee was asymptomatic before the injury but symptomatic after it, is insufficient, without supporting rationale, to establish causal relation.<sup>5</sup> She did not provide any further explanation or rationale for the conclusion reached. Additionally, the doctor indicated with a checkmark "yes" that appellant's condition was caused or aggravated by an employment activity. The Board has held that an opinion on causal relationship which consists only of a physician checking "yes" to a medical form report question on whether the claimant's condition was related to the history given is of little probative value. Without any explanation or rationale for the conclusion reached, such report is insufficient to establish causal relationship.<sup>6</sup> Therefore, these reports are insufficient to establish a causal relationship and to meet appellant's burden of proof.<sup>7</sup>

The report from Dr. Koram indicated appellant's disability status but they did not attempt to explain the relationship between the claimed period of disability and the January 29, 1996 work injury. Further, she did not indicate knowledge of appellant's injury noting "she injured her elbow in 1995." The Board notes that Dr. Koram's report did not indicate that she was

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<sup>3</sup> The Board notes that by letter dated October 5, 1998, the Office indicated the medical evidence supported that appellant was totally disabled from April 28 to June 4, 1998, therefore, this period of time is not in dispute.

<sup>4</sup> See *Terry R. Hedman*, 38 ECAB 222 (1986).

<sup>5</sup> See *Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996); *Thomas D. Petrylak*, 39 ECAB 276 (1987).

<sup>6</sup> *Lucrecia M. Nielson*, 41 ECAB 583, 594 (1991).

<sup>7</sup> *Id.*

familiar with the history of appellant's injury.<sup>8</sup> Therefore, this report is insufficient to meet appellant's burden of proof.

Dr. DeSilva's report of December 3, 1998, indicated that appellant had chronic left elbow pain, which was exacerbated with activity. He noted an essentially normal physical examination. Dr. DeSiva noted that the most common causes of appellant's pain are medial epicondylitis and cubital tunnel syndrome, however, appellant's symptoms were not classic for either one of these conditions.

In a supplemental report dated January 7, 1999, Dr. DeSilva noted that the electrodiagnostic tests and bone scan were essentially normal. He indicated that there "was really nothing terribly serious that I could find, not anything really that was treatable." The Board notes that Dr. DeSilva had specific knowledge of appellant's employment factors and provided medical rationale for his opinion that appellant's period of disability was not causally related to appellant's employment-related injuries of January 29, 1996. The Board finds that Dr. DeSilva's reports represent the weight of the evidence.

The remainder of the medical evidence fails to provide a specific opinion on causal relationship between the claimed period of disability and the accepted employment injury of January 29, 1996. Consequently, the medical evidence did not establish that the claimed periods of disability were due to appellant's employment injury.

The March 22, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC  
July 20, 2001

David S. Gerson  
Member

Bradley T. Knott  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>8</sup> See *Cowan Mullins*, 8 ECAB 155, 158 (1955) (where the Board held that a medical opinion based on an incomplete history was insufficient to establish causal relationship).