

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOCELYN A. JONES and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Gulfport, MS

*Docket No. 00-2760; Submitted on the Record;
Issued July 10, 2001*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant's right upper extremity condition is causally related to factors of her federal employment.

On or about April 9, 1999 appellant, then a 45-year-old clerk, filed a claim asserting that she injured her right hand and arm on May 1, 1992 while lifting and pulling patients. Her supervisor reported that she had no knowledge of the circumstances because she was not appellant's supervisor at the time of the alleged injury.¹

On July 1, 1999 the Office of Workers' Compensation Programs requested that appellant submit additional information to support her claim, including an explanation for waiting seven years to file a claim and a statement from her supervisors indicating when they were first informed of the injury.

On July 12, 1999 appellant replied that she first noticed her condition about July 1995. She described how the duties she performed made her right index finger, wrist and arm hurt.

In a decision dated August 2, 1999, the Office denied appellant's claim on the grounds that the evidence failed to establish that she sustained an employment injury on May 1, 1992. The Office stated: "From the information provided in your statement, it appears that you may have sustained an occupational disease, for which the Form CA-2 should be filed." The Office noted that appellant's statement that she first noticed pain about July 1995 was inconsistent with her claim that she injured herself in 1992. In addition the Office noted that the medical evidence gave no history of any employment factor contributing to appellant's condition and, in fact, the medical evidence indicated that laboratory and other testing was normal and there was no secure diagnosis given.

¹ Appellant also filed a claim asserting that she sustained a recurrence of disability on January 19, 1999 as a result of her May 1, 1992 employment injury, though she did not stop work.

The Office thereafter received a copy of a claim that appellant filed on July 2, 1992. The claim indicated that appellant, then a nursing assistant, injured her right hand and fingers on May 1, 1992 as a result of lifting and pulling patients. Appellant's supervisor at the time indicated that appellant lost no time from work and incurred no medical expense. Appellant was examined on July 9, 1992. Findings included slight swelling at the base of the primary metacarpal. The diagnosis was "rule out degenerative joint disease, possible tendinitis or strain."

On August 11, 1999 appellant requested a "written appeal."

In a decision dated January 13, 2000, an Office hearing representative set aside the August 2, 1999 denial of appellant's claim. The hearing representative noted that appellant failed to submit any medical evidence demonstrating a definitive diagnosis or presenting a rationalized opinion on the issue of causal relationship. Of record, however, was a July 9, 1992 Election of Physician form, wherein appellant selected the employing establishment health unit as her primary care physician. As the medical evidence needed to perfect appellant's claim was in the possession of the employing establishment, the hearing representative remanded the case to the Office for further development of the evidence with instructions to solicit from the employing establishment the necessary medical information. If that was unsuccessful, the Office was then to refer appellant to a Board-certified orthopedist for a definitive diagnosis and an opinion as to the medical connection, if any, between factors of appellant's federal employment, as outlined in the statement of accepted facts and her right upper extremity condition.

After requesting that the employing establishment submit all medical records from the agency health unit, the Office referred appellant, together with medical questions and a statement of accepted facts, to Dr. Raymond R. Fletcher, a Board-certified orthopedist.

In a report dated July 5, 2000, Dr. Fletcher related appellant's complaints and history as follows:

"This patient complains of pain in the right hand at the base of the index finger on the dorsal radial aspect and also pain at the base of the thumb. The patient also has symptoms of numbness and weakness in the right hand with certain gripping and twisting maneuvers. Most of the pain and numbness is in the dorsal radial aspect of the index finger but sometimes the symptoms are into the thumb. She describes an injury on May 1, 1992 when she was working at the Gulfport VA Hospital as a Nurse Aide at that time. [Appellant] thinks she may have injured her hand when she was picking up and assisting a patient but she is really not sure. The actual mechanism of injury is rather vague. The patient has had vague symptoms of pain and numbness, mostly in the index finger since that time. The patient currently works for the pharmacy department at the VA Hospital in Biloxi. She describes another exacerbation of these symptoms in January 1999. [Appellant] does not recall the actual injury. She remembers 'going to the doctor around February of 1999.' I reviewed the medical records. She had nerve testing at Neuro Diagnostics in Biloxi, Mississippi on June 4, 1999. This was requested by Dr. Longnecker, an Orthopedist in Biloxi. The nerve testing was normal. Regarding treatment for the right index finger, there is an entry in the medical records of July 9, 1992 with a Velcro finger splint was issued.(sic) She is

operating at her full capacity at work. She works in the pharmacy and uses a computer on a daily basis. In February of 1999, she did have a short course of physical therapy to include 'warm packs and ultrasound.' She is right-handed."

Dr. Fletcher described his findings on examination and gave the following diagnoses: (1) Job injury, VA Hospital, Gulfport, Mississippi, May 1, 1992; (2) Right wrist, index metacarpophalangeal (MCP) joint and 1st carpometacarpal (CMC) joint sprain, mild; (3) Extensor tendinitis of right index finger; (4) Equivocal carpal tunnel syndrome, right wrist; (5) Equivocal de Quervain's tendinitis, right wrist; (6) nerve testing, Neuro Diagnostics, Biloxi, Mississippi, June 4, 1999 (normal, upper extremities); and (7) history of gastritis, prior lower back surgery, bladder surgery and kidney stone surgery. Dr. Fletcher discussed the issue of causal relationship as follows:

"This is a 46-year-old lady with an injury to the right wrist when she worked as a Nurse Aide at Gulfport VA Hospital in May of 1992. The patient gives a vague mechanism of injury in that she was lifting and assisting a patient and starting having symptoms about the same time. She also recalls exacerbation of the same symptoms in January of 1999. In February of 1999, she had a short course of physical therapy, which provided only minimal relief of subjective symptoms. The patient had nerve testing of the upper extremities in June of 1999, which was normal. This patient has vague symptoms of a history of injury and vague findings on physical examination. There is no specific injury, which can be attached to a specific exam[ination] or any objective findings. In this regard, the patient primarily has 'symptoms' of carpal tunnel involvement and tendinitis of the right index finger and thumb. This does not represent a specific job injury. These symptoms of carpal tunnel and tendinitis can occur with activities of daily living both at home and at work. This patient is working full duty at her current job in the pharmacy at the VA Hospital in Biloxi. There is no permanent physical impairment assigned to this injury and there is no permanent restrictions assigned to this injury discussed above. Treatment at this time would include periodic use of moist heat packs on a p.r.n. [as circumstances may require] basis at home. This is not a disabling condition and this patient will be able to fully perform all of her duties at her present job. I do not feel that any further diagnostic treatment or any surgical intervention is needed at this time."

In a decision dated August 2, 2000, the Office denied appellant's claim for a traumatic injury on May 1, 1992 on the grounds that there was no evidence of causal relationship between her condition and employment factors. The Office noted that Dr. Fletcher had reported that no injury could be related to any specific incident.

The Board finds that this case is not in posture for decision.

As Dr. Fletcher made clear, appellant was vague about any particular mechanism of injury occurring on May 1, 1992 or in January 1999. The Office thereafter denied appellant's claim in part because appellant's condition could not be related to any specific incident. An

employee seeking benefits under the Federal Employees' Compensation Act² 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.³

The Board has reviewed the record, including appellant's claim forms and narrative statements and finds that the evidence is insufficient to establish any specific incident occurring on May 1, 1992 or in January 1999. Appellant has not met her burden of proof to establish that she sustained a traumatic injury at either time.

As the Office noted in its August 2, 1999 decision, however, from the information appellant provided it appeared that she was alleging an occupational disease or illness, that is, a medical condition produced by the work environment over a period longer than a single workday or shift.⁴ Appellant attributed her condition to lifting and pulling patients, opening and closing doors for the patients and using the computer. In his January 13, 2000 decision, the hearing representative instructed the Office to obtain an opinion "as to the medical connection, if any, between factors of the claimant's federal employment, as outlined in the statement of accepted facts and the claimant's right upper extremity condition." The Office asked Dr. Fletcher to state his opinion "as to the medical connection, if any, "between factors of [appellant's] federal employment (as a clerk) and her right upper extremity condition." The statement of accepted facts, however, failed to describe the duties that appellant performed in or about May 1992 and January 1999. Dated June 22, 2000, the statement of accepted facts noted only: "At this time, [appellant] works on a computer four hours per day due to a back injury." The Board finds that the statement of accepted facts fails to provide an adequate factual background for an opinion on the issue of occupational disease or illness. Further, the Board notes that Dr. Fletcher did not address the issue of occupational disease or illness in his July 5, 2000 report. Instead, he focused on whether appellant's condition could be attached to an actual mechanism of injury or specific injury. Dr. Fletcher reported that appellant's symptoms of carpal tunnel and tendinitis could occur with activities of daily living both at home and at work, leaving open the question of whether appellant's activities at work caused or contributed to her right upper extremity condition.

The Board also finds that Dr. Fletcher's opinion requires clarification on the issue of definitive diagnosis. He diagnosed mild sprains of the right wrist, index MCP joint and 1st CMC joints, as well as extensor tendinitis of the right index finger -- all seemingly definitive compared to his diagnoses of "equivocal" carpal tunnel syndrome, right wrist and "equivocal" de Quervain's tendinitis, right wrist. Dr. Fletcher, however, also noted vague symptoms and vague findings, raising some question about how definitive the diagnosed sprains and tendinitis were.

² 5 U.S.C. §§ 8101-8193.

³ See generally *John J. Carlone*, 41 ECAB 354 (1989); *Abe E. Scott*, 45 ECAB 164 (1993).

⁴ 20 C.F.R. § 10.5(q) (1999) (defining "occupational disease or illness").

Because the Office has not fully complied with the instructions given by the hearing representative to obtain a definitive diagnosis and an opinion as to the medical connection, if any, between factors of appellant's federal employment, as outlined in the statement of accepted facts and her right upper extremity condition, the Board will set aside the Office's August 2, 2000 decision and remand the case for further development of the evidence. The Office shall prepare a proper statement of accepted facts, one that adequately describes appellant's duties during the periods in question and shall request a supplemental report from Dr. Fletcher on whether these duties caused or contributed to any diagnosable medical condition of appellant's right upper extremity. After such further development as might be necessary, the Office shall issue an appropriate final decision on appellant's claim.

The August 2, 2000 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this opinion.

Dated, Washington, DC
July 10, 2001

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member