

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RESTITUTO N. ESTACIO and U.S. POSTAL SERVICE,
ALLEGHENY AREA MEDICAL SERVICES, Philadelphia, PA

*Docket No. 00-1043; Submitted on the Record;
Issued March 6, 2001*

DECISION and ORDER

Before DAVID S. GERSON, A. PETER KANJORSKI,
PRISCILLA ANNE SCHWAB

The issue is whether appellant has met his burden of proof in establishing that he developed a hand condition in the performance of duty.

On July 23, 1997 appellant, then a 62-year-old medical officer, filed an occupational disease claim, alleging that his bilateral carpal tunnel syndrome was employment related. Appellant stated that he first became aware of his hand condition on January 9, 1997, while typing and writing reports. Appellant stopped work in March 1997 and was removed from federal employment on August 28, 1997.¹

Accompanying appellant's claim was a July 23, 1997 medical report from Dr. Eby L. Banas, a specialist in neurology, and a narrative statement dated July 24, 1997. The medical report documented appellant's complaints of bilateral hand and wrist pain with numbness beginning in February or March 1997. Dr. Banas noted that appellant was involved in a motor vehicle accident in 1995 and sustained herniated discs, bilateral cervical radiculopathy and bilateral carpal tunnel syndrome. Dr. Banas noted that upon examination Tinel's and Phalen's signs were absent. He diagnosed bilateral carpal tunnel syndrome and recommended nerve conduction studies.

The narrative statement noted appellant's employment duties, which included typing and writing of reports for approximately seven hours per day. Appellant indicated that his symptoms began in January or February 1997 and have progressively worsened. He noted that he sustained no previous injury to his hands, arms or wrists, that in 1989 he tripped and fell, in 1995 he was injured when lifting a patient who had a seizure and that both injuries had resolved.

¹ Appellant was terminated after a determination by the employing establishment that he was mentally unable to meet the functional requirements of his position as a physician.

In a letter dated October 20, 1997, the Office of Workers' Compensation Programs advised appellant of the type of factual and medical evidence needed to establish his claim and requested that he submit such evidence. The Office particularly requested that appellant submit a statement which addressed the 1995 motor vehicle accident. Appellant was asked to clarify his employment duties in view of a nurse's statement submitted by the employing establishment.

In a narrative statement dated October 25, 1997, appellant indicated that his carpal tunnel symptoms resolved after the 1995 motor vehicle accident. He noted that his employment responsibilities included typing and writing reports but that he could not address the issues raised in the nurse's statement because the document was not on official letterhead and was not signed.

On December 17, 1997 the Office denied appellant's claim under the Federal Employees' Compensation Act² on the grounds that the evidence failed to establish that appellant sustained an injury within the performance of duty.

Appellant, through his attorney, requested a hearing, which was held on July 16, 1998. Appellant testified that as part of his employment duties he was required to hand write forms, which were eight pages in length. He also indicated that he performed many of his typing and writing duties behind closed doors where a witness could not observe him. Appellant further testified that his prior injuries were to his back and neck and that he did not sustain injuries to his hands in the 1995 motor vehicle accident. He noted that he continued to have pain in his hands. The record remained open for 30 days for the submission of additional evidence.

Appellant submitted a position description, medical reports dated December 5, 1997 and July 20, 1998 from Dr. Charles W. Wilkins, Jr., a specialist in orthopedics, and a report dated July 14, 1998 from Dr. Banas.

On September 2, 1998 the hearing representative denied appellant's claim on the grounds that the medical evidence was not sufficient to establish that his medical condition was caused by employment factors.

Appellant, through his attorney, requested reconsideration of the September 2, 1998 decision. He submitted reports from Dr. Wilkins and Dr. Banas.

By decision dated December 31, 1998, the Office denied modification of the prior decision. The Office found that the medical evidence was not sufficient to establish that appellant's medical condition was caused by employment factors.

Appellant, through his attorney, requested reconsideration of the December 31, 1998 decision. He submitted an addendum report dated January 25, 1999 from Dr. Wilkins. By decision dated April 7, 1999, the Office again denied modification of the prior decision.

Appellant, through his attorney, requested a hearing before an Office hearing representative. The hearing request was later withdrawn and appellant appealed to the Board.

² 5 U.S.C. §§ 8101-8193.

The Board finds that appellant has not met his burden of proof in establishing that he developed a hand condition while in the performance of duty.

An employee seeking benefits under the Act has the burden of establishing the essential elements of his or his 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 the injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.³ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

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) 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 casually related to the employment factors identified by claimant. The medical evidence required to establish casual relationship is generally rationalized medical opinion evidence.

Rationalized medical opinion evidence is medical evidence which includes a physician’s rationalized opinion on the issue of whether there is a casual 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.⁵

In this case, it is not disputed that appellant completed forms, typed correspondence and wrote patient notes. However, he has not submitted sufficient medical evidence to establish that any hand injury is causally related to these employment factors or conditions. The medical evidence most contemporaneous with the alleged onset of appellant’s wrist condition is a July 23, 1997 report by Dr. Banas who diagnosed bilateral carpal tunnel syndrome. However, Dr. Banas did not provide objective or subjective tests results to support his opinion. Upon examination, he indicated that Tinel’s and Phalen’s signs were absent and that there was no current electromyogram (EMG) or nerve conduction velocity (NCV) and tests available to correlate with his opinion.

³ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁵ *Id.*

In his July 20, 1998 report, Dr. Wilkins related appellant's carpal tunnel syndrome to his employment on the basis that he had a "general medical predisposition" to the condition and had had no injuries that would lead to its development. Dr. Wilkins also stated that appellant was involved in repetitive use of his hands and wrists with frequent typing and use of a computer. He failed to explain how appellant's specific duties of completing paperwork concerned with his physical examinations resulted in carpal tunnel syndrome. He also did not consider the 1998 motor vehicle accident, which was an intervening nonwork-related incident.

In his September 16, 1998 report, Dr. Wilkins reiterated his conclusion, adding that the most common cause of carpal tunnel syndrome is repetitive use of the hands and wrists. He admitted that his diagnosis was not confirmed by objective testing, but stated that appellant's clinical symptomatology was "strongly suggestive" of the diagnosis. Dr. Wilkins offers a conclusory opinion, unsupported by rationale specific to appellant. He also appears to be questioning his own diagnosis.

Finally, in his January 25, 1999 letter, Dr. Wilkins stated that appellant's repetitive clerical "chores, both by virtue of ordinary handwriting" and by virtue of typewriting" have led to his condition. He added that, "eventually," nerve conduction studies should correlate his diagnosis. Again, Dr. Wilkins fails to explain how completing reports on his physical examinations of patients caused appellant's carpal tunnel syndrome.

In his report dated July 14, 1998, nearly one year after appellant stopped working, Dr. Banas indicated that appellant's condition had worsened and appellant was now experiencing numbness of the hands with tremors. Additionally, he noted Tinel's sign was now positive in both hands and Phalen's sign was absent. In his report dated September 15, 1998, Dr. Banas found Tinel's and Phalen's signs positive in both hands. He failed to explain how, in the absence of EMG or NCV findings showing nerve damage or other positive findings consistent with carpal tunnel syndrome at the time appellant left federal employment, appellant could have a work-related carpal tunnel syndrome that continued to worsen after appellant was no longer performing his work duties. Dr. Banas also did not explain how appellant's condition may have been affected by his 1995 automobile accident, which was not employment related.⁶ Appellant submitted a number of medical reports from Dr. Wilkins which document appellant's continued carpal tunnel symptomatology. However, Dr. Wilkins provided no objective or subjective test results to support his diagnosis of carpal tunnel syndrome.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.⁷ Causal relationships must be established by

⁶ 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).

⁷ See *Victor J. Woodhams*, *supra* note 4.

rationalized medical opinion evidence. Appellant failed to submit such evidence and the Office, therefore, properly denied appellant's claim for compensation.⁸

The April 7, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
March 6, 2001

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member

⁸ With his appeal appellant submitted additional evidence. However, the Board may not consider new evidence on appeal; *see* 20 C.F.R. § 501.2(c). This decision does not preclude appellant from submitting new evidence to the Office and request reconsideration pursuant to 5 U.S.C. § 8128(a).