

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CARLA G. STROUD and DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE, Austin, TX

*Docket No. 02-996; Submitted on the Record;
Issued August 26, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant has met her burden of proof in establishing disability from October 22 to November 2, 2001, causally related to her August 7, 1998, employment injury.

Appellant, a 41-year-old tax examiner clerk, filed a claim for occupational disease on September 10, 1998 alleging that on August 7, 1998 she became aware of a right wrist and elbow condition, which appellant attributed to her employment duties. On the reverse of the form, appellant's supervisor noted that she continued to work and that the employing establishment was attempting to eliminate the tasks that caused appellant pain. The Office of Workers' Compensation Programs accepted appellant's claim for tendinitis right wrist on December 28, 1998.

Appellant filed a claim for compensation on October 25, 2001 requesting compensation for total disability from October 22 to November 2, 2001. By decision dated February 19, 2002, the Office denied appellant's claim finding that she had not established total disability from October 22 to November 2, 2001, causally related to her August 7, 1998 employment injury.¹

The Board finds that appellant has failed to meet her burden of proof in establishing disability from October 22 to November 2, 2001, due to her accepted employment condition of tendinitis right wrist.

An employee seeking benefits under the Federal Employee's Compensation Act² has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence, including the fact that the individual is an "employee of the

¹ Following the Office's February 19, 2002 decision, appellant submitted additional new evidence. As the Office did not consider this evidence in reaching a final decision, the Board will not review it for the first time on appeal. 20 C.F.R. § 501.2(c).

² 5 U.S.C. §§ 8101-8193.

United States” within the meaning of the Act and 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 or specific condition for which compensation is claimed is causally related to the employment injury.³ The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon a complete factual and medical background, showing a causal relationship between the claimed condition and identified factors. The belief of a claimant that a condition was caused or aggravated by the employment is not sufficient to establish causal relation.⁴

Appellant began working in the notice review section of the employing establishment on January 2, 2000. Her supervisor indicated that appellant’s position required computer and calculator use which entailed repetitive motion. She indicated that appellant was required to write two hours a day intermittently. However, appellant’s supervisor indicated that appellant could use her left hand only to complete her work and that appellant received a programmable keyboard and a typewriter to avoid handwriting.⁵

Dr. Michael F. Malizzo, a Board-certified anesthesiologist, began treating appellant for her right wrist condition on August 8, 2000. Dr. Malizzo initially diagnosed pain of unknown etiology and indicated that appellant’s condition had aspects of psychosomatization.

Dr. Laura Prewitt-Buchanan, a Board-certified physiatrist, completed a report on October 17, 2000 reviewing appellant’s history of injury and providing findings on physical examination. Dr. Prewitt-Buchanan reviewed electrodiagnostic testing, which she found to be normal. Dr. Prewitt-Buchanan stated that appellant complained of a dull ache in the posterior aspect of the right elbow and that it was possible that she had a mild ulnar compression neuropathy, which was not detectable by testing. Appellant diagnosed possible subclinical right ulnar compression neuropathy at the level of the elbow, not detectable by electromyogram, history of cumulative trauma syndrome of the right upper extremity and regional myofascial pain syndrome affecting the right upper back and shoulder.

On October 19, 2001 Dr. Malizzo noted appellant’s complaints of right arm pain and reviewed diagnostic studies. He noted that the test revealed a very mild right ulnar neuropathy at the elbow. Dr. Malizzo reported, “Right ulnar neuropathy at the elbow, which is very mild. She does feel that this interferes with her ability to work and is thereby requesting some time off to

³ *Kathryn Haggerty*, 45 ECAB 383, 388 (1994).

⁴ *Lourdes Harris*, 45 ECAB 545, 547 (1994).

⁵ This form was completed by Dr. David Alvarado, a chiropractor. Dr. Alvarado did not diagnose a subluxation of the spine as demonstrated by x-ray. Section 8101(2) of the Act provides that the term “physician” includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation demonstrated by x-ray to exist. 5 U.S.C. § 8101(2). Therefore, Dr. Alvarado is not a physician for the purposes of the Act and his report does not constitute medical evidence in support of appellant’s claim.

overcome this....” He removed appellant from work for two weeks and recommended physical therapy and psychological evaluation.⁶

In a report dated December 7, 2001, Dr. Malizzo noted that appellant did not work for two weeks and that she did have some improvement with her pain. He reported his findings on physical examination and diagnosed right arm pain. Dr. Malizzo stated that appellant had not responded to any treatment modalities and that she did have evidence of a mild right ulnar neuropathy at the elbow, however, he stated that this condition did not explain all of her pain complaints.

Dr. Malizzo reported on December 17, 2001 that appellant had experienced a flare-up of her pain and that on October 19, 2001 he recommended time off work to allow for recovery. Dr. Malizzo stated, “[S]he was prescribed two to three weeks off work to allow for recovery from her increased pain in her right arm secondary to overuse.”

Dr. Malizzo initially supported appellant’s disability for work due to the condition on right ulnar neuropathy in the elbow. He later indicated that appellant had increased pain in her right arm secondary to overuse. These reports are not sufficient to meet appellant’s burden of proof as Dr. Malizzo did not provide any medical reasoning explaining why he believed that her current diagnosed conditions of right arm pain and right ulnar neuropathy in the elbow were related to her accepted condition of right wrist tendinitis. Dr. Malizzo appears to attribute appellant’s disability to conditions not yet accepted by the Office as employment related. He did not provide an explanation of how wrist tendinitis could result in the currently diagnosed conditions nor did Dr. Malizzo explain how the current conditions resulted from appellant’s employment duties. Without a detailed report providing a history of injury, a clear diagnosis and an opinion that this condition is related to appellant’s accepted employment injury of right wrist tendinitis, appellant has failed to submit the necessary medical evidence to meet her burden of proof.

⁶ On appeal to the Board, appellant requested reconsideration of the Office’s decision, to deny her request for physical therapy. The Board’s jurisdiction on appeal is limited to final decisions of the Office. 20 C.F.R. § 501.2(c). The Office has not issued a final decision with appeal rights on the issue of appellant’s right to further physical therapy, therefore, the Board will not address this issue on appeal.

The February 19, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
August 26, 2002

Michael J. Walsh
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member