

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of LaTONYA DRIVER and U.S. POSTAL SERVICE,  
POST OFFICE, Hamtramck, MI

*Docket No. 01-2126; Submitted on the Record;  
Issued June 26, 2002*

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DECISION and ORDER

Before MICHAEL J. WALSH, COLLEEN DUFFY KIKO,  
A. PETER KANJORSKI

The issue is whether appellant has met her burden of proof in establishing that she developed a shoulder, wrist and elbow condition in the performance of duty.

On September 18, 2000 appellant, then a 36-year-old letter carrier, filed a claim for compensation alleging that her shoulder, elbow and wrist condition was employment related. She stated that she first became aware of her condition on March 31, 2000. Appellant stopped work on August 26, 2000 and did not return.<sup>1</sup>

Accompanying appellant's claim were, employing establishment medical records dated December 13, 1999 to August 4, 2000, an occupational evaluation dated June 5, 2000 and several medical clearance forms. The employing establishment medical records from July 15, 2000 noted that appellant worked as a letter carrier for seven years. The note indicated that she was treated for pain in her left shoulder and left wrist and underwent an electromyogram (EMG), which was negative for nerve damage. The physical examination revealed pain over the trapezius and right shoulder area; tingling along the left upper extremity from the shoulder; circulation in both hands was intact; and movement of the elbow and cervical spine was unrestricted. The August 4, 2000 note indicated that the EMG was normal. The occupational evaluation form dated June 5, 2000 noted appellant was treated for pain and swelling of the wrists and pain in the left forearm. There were no neurological symptoms present. Appellant noted using a splint on her left thumb and indicated that she was currently working under restrictions of limiting her mail casing duties to three hours a day and carrying mail two to three hours a day. Upon physical examination the neck range of motion was nontender and normal, the left shoulder was mildly tender, Neer's sign was negative, Hawkin's sign was negative, range of motion was normal, left elbow range of motion was normal, Tinel's sign was negative, there was no medial or lateral epicondyle tenderness, there was right wrist tenderness over the distal

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<sup>1</sup> The record reflects that appellant was terminated from the employing establishment on October 27, 2000 for excessive absenteeism.

ulnar area, the right wrist revealed normal range of motion and the Tinel's, Phalen's and Finkelstein's tests were negative. Appellant was diagnosed with mild left shoulder pain; bilateral wrist pain with soft tissue swelling, especially on the left; with probable tendinitis. The medical clearance forms indicate that appellant was treated for a back strain in 1999 and was on restricted duty at that time. The May and June notes indicate that appellant had right arm pain and was on restricted duty limited to carrying a mailbag two to three hours a day.

In a letter dated September 29, 2000, the Office of Workers' Compensation Programs advised appellant of the type of factual and medical evidence needed to establish her claim and requested that she submit such evidence. The Office particularly requested that appellant submit a physician's reasoned opinion addressing the relationship of her claimed condition and specific employment factors.

On November 6, 2000 the Office denied appellant's claim for compensation under the Federal Employees' Compensation Act.<sup>2</sup> The Office found that the medical evidence was not sufficient to establish that her medical condition was caused by employment factors.

On November 16, 2000 appellant requested an oral hearing before an Office hearing representative. She submitted a report from Dr. Sarah McDade, Board-certified in physical medicine and rehabilitation, dated October 18, 2000 and a narrative statement dated October 27, 2000. The hearing was held on May 24, 2001. Appellant testified that her employment duties included casing mail for three hours a day followed by carrying and delivering the mail. She noted that she placed the satchel of mail on her shoulder and delivered mail in such a fashion for seven years. Appellant stated that her symptoms of pain in her left shoulder, neck and arm began in March 2000 and gradually worsened. The report from Dr. McDade indicated that appellant was first evaluated in September 2000 for left shoulder pain. She noted that her shoulder x-rays were normal; the EMG was normal; the cervical spine x-rays revealed a narrowing of the C4-5 and C5-6 disc spaces; and the left shoulder ultrasound demonstrated a fraying distally of the bursal side of the supraspinatus tendon consistent with mild impingement. Dr. McDade noted findings upon examination of full range of motion of the shoulder and positive impingement sign. She diagnosed appellant with shoulder impingement. Dr. McDade indicated that she did not know whether appellant's injury was work related. She further noted appellant's condition would be aggravated by carrying a loaded bag on her shoulder.

On June 25, 2001 appellant submitted a report from Dr. Robert T. Hasbany, a Board-certified family practitioner, dated June 4, 2001. He noted upon physical examination discomfort with spasm over the left paravertebral musculature of C6-7; flexion was restricted; there was limited rotation on the left; the left upper extremity revealed tenderness over the anterior deltoid group; there was discomfort on abduction of the left arm; there was significant crepitation; and localized discomfort over the lateral epicondyle of the elbow consistent with epicondylitis. Dr. Hasbany diagnosed appellant with chronic cervical spine pain with radicular symptoms and chronic left shoulder tendonopathy and epicondylitis of the left elbow. He noted

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

that from the job description given by appellant, his findings were the result of her employment and determined that she could not return to this type of work.

The employing establishment submitted the results of the fitness-for-duty examination appellant underwent on July 11, 2000. The letter indicated that appellant was fit for full duty.

By decision dated July 26, 2001 and finalized July 27, 2001 the hearing representative affirmed the decision of the Office dated November 6, 2000 on the basis that the medical evidence was not sufficient to establish that appellant's medical condition was caused by employment factors.

The Board finds that appellant has not met her burden of proof in establishing that she developed a shoulder, elbow or wrist condition in the performance of duty.

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 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.<sup>3</sup> 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.<sup>4</sup>

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 causally related to the employment factors identified by the claimant. The medical evidence required to establish causal 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 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.<sup>5</sup>

In the instant case, it is not disputed that appellant was a letter carrier. However, she has not submitted sufficient medical evidence to support that a condition has been diagnosed in

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

<sup>4</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>5</sup> *Id.*

connection with the employment factor and that any alleged shoulder, elbow or wrist injury was causally related to the employment factors or conditions. In a letter dated September 29, 2000, the Office advised appellant of the type of factual and medical evidence needed to establish her claim.

Appellant submitted a report from Dr. McDade dated October 18, 2000, which noted appellant's shoulder x-rays were normal; the EMG was normal; the cervical spine x-rays revealed a narrowing of the C4-5 and C5-6 disc spaces; and the left shoulder ultrasound revealed results consistent with mild impingement. She diagnosed appellant with shoulder impingement. However, she did not indicate that appellant's condition was caused by employment factors, rather she stated that "in regards to whether this injury was work related or caused by work I cannot say." Dr. McDade's opinion on causal relationship was equivocal. The Board has held that speculative and equivocal medical opinions regarding causal relationship have no probative value.<sup>6</sup> Dr. McDade's report neither noted a history of the injury or the employment factors believed to have caused or contributed to appellant's condition,<sup>7</sup> nor did it include a rationalized opinion regarding the causal relationship between appellant's condition and the factors of employment believed to have caused or contributed to such condition, rather she indicated that she could not make such a determination.<sup>8</sup> Therefore, this report is insufficient to meet appellant's burden of proof.

Appellant also submitted a report from Dr. Hasbany dated June 4, 2001. He diagnosed appellant with chronic cervical spine pain with radicular symptoms and chronic left shoulder tendonopathy and epicondylitis of the left elbow. Dr. Hasbany noted that "from the job description given by [appellant] it is my feeling that my findings were the result of her employment and that she can not return to that type of employment at this time." Although, her opinion somewhat supports causal relationship in a conclusory statement she provided no medical reasoning or rationale to support such statement. The Board has found that vague and unrationalized medical opinions on causal relationship have little probative value.<sup>9</sup> Therefore, this report is insufficient to meet appellant's burden of proof.

The remainder of the medical evidence fails to provide an opinion on the causal relationship between this incident and appellant's diagnosed condition. For this reason, this evidence is not sufficient to meet appellant's burden of proof.

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 her condition was caused, precipitated or aggravated by her employment is

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<sup>6</sup> See *Alberta S. Williamson*, 47 ECAB 569 (1996); *Frederick H. Coward, Jr.*, 41 ECAB 843 (1990); *Paul E. Davis*, 30 ECAB 461 (1979).

<sup>7</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).

<sup>8</sup> See *Theron J. Barham*, 34 ECAB 1070 (1983) (where the Board found that a vague and unrationalized medical opinion on causal relationship had little probative value).

<sup>9</sup> *Id.*

sufficient to establish causal relationship.<sup>10</sup> Causal relationships must be established by rationalized medical opinion evidence. Appellant failed to submit such evidence and the Office, therefore, properly denied her claim for compensation.<sup>11</sup>

The decisions of the Office of Workers' Compensation Programs dated July 26, 2001 and finalized on July 27, 2001 and November 6, 2000 are affirmed.

Dated, Washington, DC  
June 26, 2002

Michael J. Walsh  
Chairman

Colleen Duffy Kiko  
Member

A. Peter Kanjorski  
Alternate Member

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<sup>10</sup> See *Victor J. Woodhams*, *supra* note 4.

<sup>11</sup> With her 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). Although appellant allegedly mailed material to the hearing representative, it was not in the record at the time the decision was issued.