

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GEORGE ALBERT and DEPARTMENT OF THE ARMY,
WINN ARMY COMMUNITY HOSPITAL, Fort Stewart, GA

*Docket No. 02-115; Submitted on the Record;
Issued May 23, 2002*

DECISION and ORDER

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

The issue is whether appellant established that his condition of tardy ulnar palsy is causally related to his accepted work injury of July 22, 1996.

On April 8, 1999 appellant, then a 55-year-old medical clerk, filed a notice of traumatic injury alleging that on July 22, 1996 he jammed his right elbow on a filing cabinet. He sought medical care at a local emergency room on July 22, 1996 for "palpable tenderness" and pain over the radial head, for which he was prescribed an arm sling. Appellant returned to work on July 23, 1996. The Office of Workers' Compensation Programs accepted his claim for a bucket-type radial head fracture of the right elbow. Appellant, however, maintains that he also sustained tardy ulnar palsy.

The record contains a July 22, 1996 x-ray, which shows degenerative elbow changes, a small spur at the base of the head of the radial bone and a bony spur above the olecranon fossa.

Appellant was seen on October 30, 1997 at the emergency room by Dr. Scott A. Ring, a Board-certified internist, for complaints of intermittent arm pain and weakness. He noted appellant's history of a prior work injury and diagnosed ulnar nerve entrapment with inflammation. This examination occurred over one year after the July 22, 1996 work injury.

Appellant was seen in the emergency room again on July 17, 1998 for edema or swelling of the right elbow.

In a treatment note dated April 2, 1999, Dr. Robert M. Paris, an internist, indicated that appellant was seen again for right arm and elbow pain. The provisional diagnosis was "[rule out] right ulnar nerve entrapment."

Appellant had an electromyogram (EMG) on April 21, 1999 that showed right ulnar neuropathy and mildly delayed right dorsal ulnar sensory response.

In a May 6, 1999 report, Dr. Joel A. Greenberg, a Board-certified neurologist, noted that appellant had tardy ulnar palsy of the right elbow and local muscle swelling following the flexor carpi ulnaris insertion, demonstrated by the EMG. Dr. Greenberg discussed appellant's symptoms and treatment. He stated:

"I feel that [appellant's] history of striking his elbow in 1996 is fully consistent with the EMG findings and his complaints relating to this. I reviewed the [emergency room] sheet that [appellant] had with him and I do feel that there is a causal relationship between the injury and the tardy ulnar palsy. I think that a statement that this event was not causative based on the fact that he was felt to stroke [sic] the radial versus the ulnar side of the elbow is a very tenuous position to take. Quite honestly, I am not sure how [appellant] would know which side of the elbow he struck and I think we are really splitting hairs here. As a result, I find myself in concurrence with [appellant] that his tardy ulnar palsy is related to this injury since he has no other injury to explain this."

The Office referred a copy of the case record to an Office medical adviser. In a report dated April 23, 1999, Dr. Andrew R. Wiesen, a Board-certified physician in internal medicine, noted appellant's history of injury. He stated:

"Direct trauma to the ulnar nerve can cause subsequent ulnar neuropathy, even years later. However, the [emergency room] records indicate the trauma was to the radial side of the elbow, not the ulnar area. Therefore, the likelihood of this particular injury causing ulnar neuropathy is very small. It is my medical opinion there is no relationship between the July 22, 1999 injury and [appellant's] current condition of ulnar neuropathy."

Appellant also submitted a statement dated April 29, 1999 in which he described his symptoms and treatment and a May 2, 1999 letter describing the July 22, 1996 employment incident and his symptoms.

On June 17, 1999 the Office referred a statement of accepted facts, a list of questions and the case record to Dr. Harry L. Collins, an Office medical adviser. He opined that there was no correlation between appellant's minor injury to the medial aspect of his right elbow and the development one year later of an ulnar neuropathy, particularly since the July 22, 1996 emergency room report indicated that appellant struck the radial aspect of his elbow and did not mention evidence of an ulnar injury on July 22, 1996.

On September 2, 1999 the Office accepted appellant's claim for a right elbow radial head fracture.

In a September 2, 1999 decision, the Office denied appellant's claim for tardy ulnar palsy on the grounds that the medical evidence of record was insufficient to establish that his condition was causally related to the July 22, 1996 employment incident.

By a second decision dated September 2, 1999, the Office denied appellant's claim for continuation of pay on the grounds that he did not file his claim within 30 days of July 22, 1996, the date of his alleged injury.

By letter dated October 4, 1999, appellant requested an oral hearing before an Office hearing representative.

In a decision dated November 15, 1999, the Office denied appellant's oral hearing request as untimely filed.

Appellant filed a request for reconsideration on December 14, 1999.

In a decision dated January 5, 2000, the Office denied modification of its September 2, 1999 decision.

Appellant subsequently filed an appeal with the Board.¹ On March 26, 2001 the Board found that a conflict existed between Dr. Greenberg, appellant's treating physician, and an Office medical adviser as to whether appellant's tardy ulnar palsy was causally related to the accepted work injury.²

On remand the Office referred appellant along with a copy of the medical record and a statement of accepted facts to Dr. Douglas P. Hein, a Board-certified orthopedic surgeon, for an impartial medical evaluation. In a report dated June 18, 2001, he discussed appellant's history of injury and noted physical findings. Dr. Hein's impression was that appellant suffered from an ulnar neuropathy with evidence of an intra-articular abnormality in the right elbow with mild decreased motion in the right elbow. He stated:

"Relative to the tardy ulnar palsy, it is my impression that this was not caused or contributed to by the stated injury of July 1996. This is based on the anatomic separation between the lateral aspect of the elbow and the ulnar nerve at the [cubital] tunnel. Also based on the evidence of preexisting degenerative changes in the elbow and our examination which is compatible with degenerative problems of the elbow, not of a deformity that would contribute to a tardy ulnar palsy."

Dr. Hein concluded that there was no evidence clinically of tardy ulnar palsy and that appellant's complaints did not support ongoing symptoms relative to his ulnar nerve.

In a decision dated July 11, 2001, the Office denied appellant's claim for compensation based on the condition of tardy ulnar palsy of the right arm.

The Board finds that appellant failed to establish that his condition of tardy ulnar palsy of the right arm is causally related to his accepted work injury.

¹ See Docket No. 2000-922, issued March 26, 2001.

² The Board affirmed the Office's determination that appellant was not entitled to receive continuation of pay. The Board also found that the Office acted properly in denying appellant's request for a hearing as untimely filed. *George M. Albert*, Docket No. 00-922 (March 26, 2001).

An employee seeking benefits under the Federal Employees' Compensation Act³ 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 of the Act, that an 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.⁴ These are essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁵

In order to determine whether an employee has sustained a traumatic injury in the performance of duty, the Office begins with an analysis of whether a "fact of injury" has been established. There are two components involved in establishing fact of injury which must be considered. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place and in the manner alleged.⁶ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused personal injury.⁷ The medical evidence required to establish causal relationship, generally, is rationalized medical opinion evidence.⁸

An award of compensation may not be based on surmise, conjecture or speculation or upon appellant's belief that there is a causal relationship between his condition and his employment.⁹ To establish causal relationship, appellant must submit a physician's report in which the physician reviews the factors of employment identified by appellant as causing his injury and, taking these into consideration as well as findings upon examination of appellant and appellant's medical history, state whether these employment factors caused or aggravated appellant's diagnosed conditions and present medical rationale in support of his opinion.¹⁰

In this case, the issue presented for consideration is whether there is a causal relationship between appellant's work injury and the diagnosed condition of tardy ulnar palsy.

Section 8123(a) of the Act provides that: "[i]f there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."¹¹ Where a case is

³ 5 U.S.C. §§ 8101-8193.

⁴ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton* 40 ECAB 1143 (1989).

⁵ *Delores C. Ellyett*, 41 ECAB 992 (1990); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁶ *Elaine Pendleton*, *supra* note 4.

⁷ *Id.*

⁸ *See Duane B. Harris*, 49 ECAB 170 (1997); *Earl David Seal*, 49 ECAB 152 (1997).

⁹ *See Woodhams*, *supra* note 5.

¹⁰ *Id.*

¹¹ 5 U.S.C. § 8123(a).

referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.¹²

The Board has carefully considered the report of Dr. Hein and finds that it is well rationalized and based on a proper factual background. After a thorough discussion of appellant's work injury and his history of medical treatment, Dr. Hein opined that appellant's condition of tardy ulnar palsy was not causally related to the accepted work injury. He noted that at the time of the work injury on July 22, 1996, appellant's complaints and treatment concerned pain and tenderness along the medial aspect of the right arm and elbow and did not involve the ulnar nerve. Dr. Hein stressed the anatomical separation between the lateral aspect of the elbow, which was involved in appellant's work injury and his complaints of pain along the ulnar nerve path. He further explained that appellant's symptoms of ulnar discomfort, which developed over one year after the work injury, were better explained by his history of degenerative changes in the right elbow. Because Dr. Hein has provided a reasoned medical opinion, the Office correctly assigned his impartial medical report special weight. The Board therefore, finds that the Office properly denied appellant's claim for compensation.

The decision of the Office of Workers' Compensation Programs dated July 11, 2001 is hereby affirmed.

Dated, Washington, DC
May 23, 2002

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

¹² *Sherry A. Hunt*, 49 ECAB 467 (1998); *Wiley Richey*, 49 ECAB 166 (1997).