U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DELORES M. CASPER and DEPARTMENT OF VETERANS AFFAIRS, SEPULVEDA VETERANS ADMINISTRATION MEDICAL CENTER, Sepulveda, CA

Docket No. 02-777; Submitted on the Record;
Issued November 22, 2002

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant has met her burden of proof in establishing that she developed carpal tunnel syndrome in the performance of duty.

On September 27, 2001 appellant, then a 58-year-old patient services assistant, filed a claim alleging that her hand condition was employment related. Appellant stated that she first became aware of her condition on March 5, 2001.

Accompanying appellant's claim were physical therapy notes from March 16 to May 30, 2001. The physical therapy notes indicated that appellant was treated for right wrist tendinitis and was given a splint to use while typing at her workstation.[1]

In a letter dated November 5, 2001, 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.

In response to the Office's request, appellant submitted duplicate copies of physical therapy notes dated March 16 to May 30, 2001 and several narrative statements dated June 24 and November 21, 2001, and an undated statement.[2] Appellant's statements indicated that the injury to her wrist occurred on May 15, 2000. She noted that her workstation was not

[1] On June 8, 2001 appellant filed a notice of traumatic injury indicating that on May 15, 2000 she sustained a traumatic injury to her hand due to excessive computer typing. The Board does not have jurisdiction over this claim in the present appeal as the Office has not rendered a decision on this matter; *see* 20 C.F.R. § 501.2(c).

[2] Appellant filed a Form CA-2a, notice of recurrence of disability, dated June 24, 2001 indicating that she experienced a recurrence of disability on May 15, 2001. However, the Office had not accepted appellant's hand condition as work related and therefore the notice of recurrence was filed prematurely.

ergonomically correct and informed the employing establishment about this issue for seven years before any attempt was made to rectify the situation. Appellant noted that she sat at an angle when performing her typing duties and her wrist would hit the edge of the table. She noted that the repetitive hitting motion on the table caused her to develop a right hand and wrist condition. Appellant noted that she was provided with physical therapy; a splint; iontophoresis treatment; a wrist guard; and cortisone shots; all these remedies provided only temporary relief since she was still working at an ergonomically incorrect workstation. She noted that the employing establishment provided her with a footstool and a cushion; however, these changes did not relieve her symptoms.

On December 28, 2001 the Office issued a decision and denied appellant's claim for compensation under the Federal Employees' Compensation Act.[3] The Office found that the medical evidence was insufficient to establish that her medical condition was caused by employment factors.

In a letter dated January 8, 2002, appellant requested an oral hearing before an Office hearing representative and submitted a personal statement as well as various medical records.

On February 14, 2002 appellant appealed her case to the Employees' Compensation Appeals Board.[4]

The Board finds that appellant has not met her burden of proof in establishing that she developed a hand 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.[5] 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.[6]

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) a 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

[3] 5 U.S.C. §§ 8101-8193.

[4] In a letter dated July 11, 2002, the Office informed appellant that a hearing was set before an Office hearing representative on August 15, 2002. However, the Board acquired jurisdiction over the appeal on February 14, 2002. The Board and the Office may not have concurrent jurisdiction over the same issue in a case; *see Russell E. Lerman,* 43 ECAB 770 (1992) and *Douglas E. Billings,* 41 ECAB 880 (1990).

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

[6] *Victor J. Woodhams,* 41 ECAB 345 (1989).

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 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.[7]

In the instant case, it is not disputed that appellant typed at a computer. However, she has not submitted sufficient medical evidence to support that a condition has been diagnosed in connection with the employment factor and that any alleged hand injury is causally related to the employment factors or conditions. On November 5, 2001 the Office advised appellant of the type of medical evidence needed to establish her claim. Appellant did not submit any medical report from an attending physician addressing how specific employment factors may have caused or aggravated her hand condition.

The only evidence submitted in support of her claim was physical therapy notes from March 16 to May 30, 2001. The physical therapy notes indicated that appellant was treated for right wrist tendinitis and was given a splint to use while typing at her workstation. However, such reports are not considered medical evidence as a physical therapist is not considered a physician under the Act.[8] Appellant also submitted several narrative statements indicating that the injury to her wrist occurred on May 15, 2000 because her workstation was not ergonomically correct. However, appellant's statement, without sufficient rationalized medical evidence establishing a causal relationship between appellant's condition and factors of employment, is insufficient to establish her claim.

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.[9] Causal relationship must be established by

[7] *Id.*

[8] *See* 5 U.S.C. § 8101(2) (this subsection defines a "physician" as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. 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 as demonstrated by x-ray to exist, and subject to regulation by the Secretary); *see also Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (where the Board has held that a medical opinion, in general, can only be given by a qualified physician).

[9] *See Victor J. Woodhams, supra* note 6.

rationalized medical opinion evidence. Appellant failed to submit such evidence, and the Office therefore properly denied appellant's claim for compensation.[10]

The decision of the Office of Workers' Compensation Programs dated December 28, 2001 is affirmed.

Dated, Washington, DC
November 22, 2002

Alec J. Koromilas
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member

[10] 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).