

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of PATRICIA A. TERRY and U.S. POSTAL SERVICE,  
POST OFFICE, Birmingham, AL

*Docket No. 03-664; Submitted on the Record;  
Issued April 16, 2003*

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DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,  
WILLIE T.C. THOMAS

The issue is whether appellant met her burden of proof to establish that she sustained neck, shoulder or upper extremity conditions in the performance of duty.

In June 2002 appellant, then a 50-year-old postal clerk, filed an occupational injury claim alleging that she sustained neck, shoulder or upper extremity conditions due to the repetitive motion duties of her position which included typing and handling mail. By letter dated August 16, 2002, the Office of Workers' Compensation Programs requested that appellant submit additional factual and medical evidence in support of her claim. By decision dated September 18, 2002, the Office denied appellant's claim on the grounds that she did not submit sufficient medical evidence to establish that she sustained a neck, shoulder or upper extremity condition in the performance of duty.

The Board finds that appellant did not meet her burden of proof to establish that she sustained neck, shoulder or upper extremity conditions in the performance of duty.

An employee seeking benefits under the Federal Employees' Compensation Act<sup>1</sup> has the burden of establishing the essential elements of 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 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.<sup>2</sup> These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>3</sup>

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>3</sup> *See Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

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 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 a causal relationship is 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>4</sup>

In support of her claim, appellant submitted a January 5, 1999 report in which Dr. Gordon J. Kirschberg, an attending Board-certified neurologist, indicated that she reported experiencing pain in her shoulders and upper extremities. Dr. Kirschberg noted that appellant reported she engaged in typing and moving objects at work. He indicated that electromyogram (EMG) testing yielded normal results and indicated that appellant did not have carpal tunnel or myopathic processes which would explain her symptoms. Dr. Kirschberg stated that appellant asked him if her problems were work related and he responded that the "[Occupational Safety and Health Administration] has stated that repetitive movements of the arm and hand can cause this type of symptomatology and, therefore, I think if she wants to pursue that avenue, one would have to admit that it is a possibility." The submission of this report, however, is not sufficient to establish appellant's claim in that it contains an opinion on causal relationship which is speculative and equivocal in nature. The Board has held that an opinion which is equivocal or speculative is of limited probative value regarding the issue of causal relationship.<sup>5</sup> Appellant also submitted a number of reports which discussed her neck, shoulder or upper extremity conditions, including reports of EMG and nerve conduction studies. While these reports showed that appellant had medical problems in these areas, they did not contain any opinion that the problems were related to employment factors.<sup>6</sup>

For these reasons, appellant did not meet her burden of proof to establish that she sustained neck, shoulder or upper extremity conditions in the performance of duty.

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<sup>4</sup> *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

<sup>5</sup> *See Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962); *James P. Reed*, 9 ECAB 193, 195 (1956).

<sup>6</sup> *See Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (finding that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

The September 18, 2002 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC  
April 16, 2003

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member