

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter Of MARGARET M. RUDOLPH and U.S. POSTAL SERVICE,  
POST OFFICE, Philadelphia, PA

*Docket No. 03-912; Submitted on the Record;  
Issued August 4, 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 entitlement for medical treatment for her diagnosed left hand nodules.

On February 28, 1994 appellant, then a 51-year-old distribution clerk, filed a traumatic injury claim contending that she fell at work on January 26, 1994.<sup>1</sup> The Office of Workers' Compensation Programs accepted the claim for sprain of the right wrist, back and shoulder; hematoma of the right ankle; torn right rotator cuff; right carpal tunnel syndrome; and herniated cervical discs at C5-6, C6-7 with subsequent repair.

By letter dated August 8, 2001, appellant's treating Board-certified orthopedic surgeon, Dr. Don A. Kovalsky, requested authorization for surgical excision of a nodule in her left hand, which he advised possibly occurred during intraoperative positioning.

The medical evidence relevant to appellant's left hand nodules includes a September 13, 2000 report, in which Dr. A. Lee Osterman, a Board-certified orthopedic surgeon, noted her history of injury and treatment. On examination he noted a mass in the left palm consistent with early Dupuytren's nodules and ulnar nerve irritation and recommended a magnetic resonance imaging (MRI) scan to further evaluate the condition. Dr. Osterman noted that the nerve irritation might be due to positioning at the time of the surgery and that while he believed that irritation of the ulnar nerve could increase the growth of the Dupuytren's palm, he did not feel that the nodule was causing the paresthesias into the fingers.

In a November 2, 2000 report, Dr. Osterman reiterated his conclusion that the nodularity in the palm was related to the Dupuytren's nodules, which could lead to progressive contracture

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<sup>1</sup> The record reflects that appellant had several claims. She had a knee claim for date of injury January 23, 1989 #A03-140011, a wrist claim for date of injury March 17, 1994 #030196302 and a denied back claim for date of injury April 16, 1997 #A03-226550. The instant claim was adjudicated under #030193456.

in the finger over a course of time and were genetic in nature. He stated that he would not recommend any surgery at the present time.

In an August 8, 2001 report, Dr. Kovalsky noted that appellant had cervical disc surgery in 1998 and subsequently developed pain in the palm of her left hand. He indicated that there was a possibility that the palmar nodule occurred from intraoperative positioning and pressure phenomenon on the palm of the hand but that due to the small size of the nodule, he could not specifically identify the nodule and opined that it was difficult to say whether this was work related. Dr. Kovalsky, however, noted that prior to the surgery, appellant had no pain or symptoms in the palm of her hand and opined that since the cervical disc problem was covered under workers' compensation, then her hand should also be covered.

In an April 5, 2002 report, a medical adviser concurred with the opinion of Dr. Osterman. He opined that the palmar nodules would not be the result of the work-related surgery which was not at the anatomic site.

By decision dated April 5, 2002, the Office denied appellant's request for surgery, finding that the condition of her left hand was genetic in nature and not a consequence of the employment-related surgery.

In a letter dated April 19, 2002, appellant, through her representative, requested a hearing and submitted additional evidence. On November 26, 2002 her attorney advised that she had changed her request to a review of the written record.

In a May 2, 2002 report, Dr. Osterman noted that appellant was being seen in follow-up of a Dupuytren's nodule in her left palm and ulnar nerve irritation at the elbow that was secondary to positioning during previous neck surgery. He noted that her overall symptoms were improved in that she had less swelling, pain and numbness in her hands; however, the Dupuytren's nodules in her left hand were unchanged. Dr. Osterman diagnosed a right trigger thumb, resolving left ulnar nerve neuropathy and a Dupuytren's nodule in the left palm.

In a November 22, 2002 report, Dr. Osterman reiterated that his initial impression relative to the left hand was ulnar nerve irritation and mass in the left palm consistent with a Dupuytren's nodule. He explained that this was "a genetic condition requiring the gene for the nodule to develop." Dr. Osterman explained that clinically, appellant had an element of low-grade ulnar nerve irritation, a residua, at least by history, of positioning at the time of surgery. He added that he felt the irritation of the ulnar nerve could "potentiate the onset of the Dupuytren's nodularity, but that the nodularity itself was not the cause of the paresthesias." Dr. Osterman opined that appellant's nodule, was neither a cyst nor a bundled nerve, but it was a fibrous proliferation of the palmar fascia. He indicated it was a genetic condition that could be flared or brought on by injury, but it was not directly caused by the injury. Dr. Osterman stated

that in appellant's case, it was clear that following and related to the spinal surgery she had residual ulnar neuropathy present clinically.<sup>2</sup>

By decision dated February 20, 2003, the Office hearing representative affirmed the April 5, 2002 Office decision.

The Board finds that appellant has not met her burden of proof to establish entitlement for medical treatment for her diagnosed left hand nodules.

The basic rule respecting consequential injuries is that, when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury likewise arises out of the employment.<sup>3</sup> The subsequent injury is compensable if it is the direct and natural result of a compensable primary injury.<sup>4</sup> With regard to consequential injuries, the Board has stated that where an injury is sustained as a consequence of an impairment residual to an employment injury, the new or second injury is deemed, because of the chain of causation, to arise out of and be in the course of employment.<sup>5</sup>

Section 8103 of the Federal Employees' Compensation Act<sup>6</sup> provides that the United States shall furnish to an employee who is injured while in the performance of duty, the services, appliances and supplies prescribed or recommended by a qualified physician, which the Office considers likely to cure, give relief, reduce the degree or the period of disability or aid in lessening the amount of the monthly compensation.<sup>7</sup> In interpreting this section of the Act, the Board has recognized that the Office has broad discretion in approving services provided under the Act. The only limitation on the Office's authority is that of reasonableness. Abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment or actions taken which are contrary to both logic and probable deductions from established facts. It is not enough to merely show that the evidence could be construed so as to produce a contrary factual conclusion.<sup>8</sup> In order to be entitled to reimbursement for medical expenses, a claimant must establish that the expenditures were incurred for treatment of the effects of an employment-related injury.

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<sup>2</sup> Additionally, Dr. Osterman discussed appellant's trigger thumb, noting it was a sequelae partly due to her previous carpal tunnel release and her flexor tenosynovitis. He stated that following the release of a carpal tunnel syndrome, which releases the A-O pulley, there is an increased tendency for flexor tenosynovitis to occur distally at the A-1 pulley, be it in the thumb or the fingers. Dr. Osterman explained that there was a manifestation of that delayed occurrence relative to the trigger thumb.

<sup>3</sup> Larson, *The Law of Workers' Compensation* § 13.00; see *Raymond A. Nester*, 50 ECAB 173 (1998).

<sup>4</sup> *Id.* at § 13.11

<sup>5</sup> *Margarette B. Rogler*, 43 ECAB 1034, 1038 (1992).

<sup>6</sup> 5 U.S.C. §§ 8101-8193.

<sup>7</sup> 5 U.S.C. § 8103.

<sup>8</sup> *Daniel J. Perea*, 42 ECAB 214 (1990).

In the instant case, the Office accepted appellant's claim for a sprain of the left wrist, back and shoulder; hematoma of the right ankle; torn right rotator cuff; right carpal tunnel syndrome; and herniated cervical discs from C5-7.

Appellant subsequently alleged that the nodules in her hand arose as a consequence of the surgery that was necessitated by her accepted injury. However, she has failed to provide any substantive medical evidence supporting a causal relationship between the accepted employment injury and the subsequent condition following her authorized surgery.

In an August 8, 2001 report, Dr. Kovalsky stated that he felt the nodules were related to appellant's 1998 cervical surgery. He opined that it was difficult to say whether this was related to work but appellant had no symptoms prior to her cervical disc surgery and, therefore, since it appeared after the surgery, it was related to that and should be covered. However, the Board has found that because an employee is asymptomatic before an employment injury is insufficient without supporting medical rationale to establish causal relationship.<sup>9</sup>

Dr. Osterman opined, in his November 2, 2000 report, that appellant's nodules were genetic. The Office medical adviser concurred with him, noting the nodules would not be the result of the surgery as they were not at the anatomic site. Neither of these opinions support appellant's claim that her nodules were related to the employment injury. Dr. Osterman provided an updated opinion on November 22, 2002 and explained that an irritation of the ulnar nerve could have occurred due to positioning at the time of surgery.<sup>10</sup> He explained the nodules were genetic and could be flared or brought on by injury, but it was not directly caused by the injury. Dr. Osterman stated that in appellant's case, it was clear that following and related to the spinal surgery, she had residual ulnar neuropathy present clinically. He specifically stated that the nodule was neither a cyst nor a bundled nerve, but rather a fibrous proliferation of the palmar fascia and a genetic condition that could be flared or brought on by the injury, but it was not directly caused by the injury. Although his opinion states in part, that the nodules could be brought on by an injury, he states it was not directly caused by the injury. Without an explanation as to the nature of the relationship between the diagnosed condition and the January 26, 1994 accepted injury,<sup>11</sup> his report is entitled to little probative value and is insufficient to meet appellant's burden of proof.<sup>12</sup>

As noted above, a subsequent injury is compensable if it is the direct and natural result of a compensable primary injury.<sup>13</sup> However, the medical evidence fails to demonstrate that the nodules were a direct and natural result of the January 26, 1994 employment injury. As such appellant failed to establish a causal relationship between her accepted injury of January 26,

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<sup>9</sup> *Thomas Petrylak*, 39 ECAB 276 (1987).

<sup>10</sup> The Board has held that an opinion which is speculative in nature has limited probative value in determining the issue of causal relationship. *Arthur P. Vliet*, 31 ECAB 366 (1979).

<sup>11</sup> *Charles E. Burke*, 47 ECAB 185 (1995).

<sup>12</sup> *Carolyn F. Allen*, 47 ECAB 240 (1995).

<sup>13</sup> *Larson, The Law of Workers' Compensation* § 13.11.

1994 and her subsequent condition involving the left palm nodules.<sup>14</sup> Thus, appellant did not establish that the requested surgery was needed to treat the effects of an employment-related injury and the Office properly denied authorization.

The decisions of the Office of Workers' Compensation Programs dated February 20, 2003 and April 5, 2002 are hereby affirmed.

Dated, Washington, DC  
August 4, 2003

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

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<sup>14</sup> Dr. Osterman offered an opinion with respect to appellant's trigger finger condition; however, the Office has yet to issue a decision with respect to whether the trigger finger is part of appellant's employment-related condition. The Board, therefore, cannot address this issue at this time. The Board has no jurisdiction to review this evidence for the first time on appeal. 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35 (1952).