

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DIANA K. MATHIESON and U.S. POSTAL SERVICE,
POST OFFICE, Phoenix, AZ

*Docket No. 03-995; Submitted on the Record;
Issued August 8, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant met her burden of proof in establishing that she sustained elbow and wrist injuries in the performance of duty on January 24, 2001.

On April 13, 2001 appellant, then a 38-year-old automation clerk, filed a claim alleging that on January 24, 2001 she felt pain in her wrists and elbows while loading a machine with mail. She stopped work on March 5, 2001 and did not return.¹

In support of her claim, appellant submitted a report from Dr. Cary J. Dilla, a family practitioner, dated January 9, 2001 who diagnosed overuse syndrome, chronic musculotendinitis pain, bilateral de Quervain's tenosynovitis and a history of bilateral carpal tunnel syndrome releases. He indicated that appellant's physical examination was normal and noted that her subjective complaints were not verifiable objectively. Dr. Dilla advised that appellant's functional capacity evaluation indicated no objective findings and revealed self-limitations and inconsistencies in her symptoms. He discharged appellant from his care and opined that he did not believe that she required any ongoing active medical treatment.

The employing establishment submitted a statement of contravention dated March 20, 2001 indicating that appellant was released to full duty on January 9, 2001. The employing establishment noted that she had not submitted any rationalized medical evidence indicating that she sustained an injury on January 24, 2001 causally related to her work duties. It was further

¹ Appellant has filed two other claims for compensation as a result of work-related injuries: on April 27, 1990 appellant sustained a knee injury which was accepted by the Office of Workers' Compensation Programs in claim No. 13-0922341 and thereafter arthroscopic surgery was authorized by the Office; on September 2, 1999 appellant developed bilateral carpal tunnel syndrome and left cervicocranial syndrome which was accepted by the Office in claim No. 13-1198740 and she underwent surgical exploration and decompression of the left median nerve on May 3, 2000. The record indicates that appellant returned to work on May 26, 2000 to a limited-duty position and was released to full duty on January 9, 2001.

noted that appellant's treating physician, Dr. Dilla, returned appellant to full-time duty and did not recommend any follow-up treatment.

In a letter dated May 17, 2001, the Office advised appellant of the type of factual and medical evidence needed to establish her claim and requested that she submit such evidence, particularly requesting that appellant submit a physician's reasoned opinion addressing the relationship of her claimed condition and specific employment factors.

Thereafter, appellant submitted reports from Dr. Douglas A. Bobb, an internist, dated March 5 and 29, 2001. In the March 5, 2001 report, he noted that appellant underwent a right carpal tunnel release in March 2000. Dr. Bobb noted that her symptoms returned almost immediately and reached a crescendo in January 2001 when her symptoms became as severe as they were before her surgery in March 2000. He diagnosed recurrent medial neuropathy in both forearms. Dr. Bobb's report of March 29, 2001 indicated that appellant continued to complain of symptoms in her forearm and arm. He suggested that she should not work until her bilateral nerve entrapment condition was resolved.

On June 5, 2001 the Office referred appellant for a second opinion to Dr. Joseph Gimbel, a Board-certified orthopedic surgeon. The Office provided him with appellant's medical records, a statement of accepted facts as well as a detailed description of appellant's employment duties.

In a medical report dated July 12, 2001, Dr. Gimbel indicated that he had reviewed the medical records provided to him and performed a physical examination of appellant. He diagnosed appellant with bilateral carpal tunnel syndrome and post carpal tunnel decompression. Dr. Gimbel did not believe that appellant's condition was aggravated as a result of a subsequent injury and determined that she had recovered from her carpal tunnel surgery. He noted that appellant could return to the position she held prior to her carpal tunnel surgery. Dr. Gimbel indicated that appellant was permanent and stationary at the time of his examination and did not suffer from any permanent impairment or disability.

In a decision dated July 26, 2001, the Office denied appellant's claim on the grounds that the medical evidence was insufficient to establish that her condition was caused by the alleged injury on January 24, 2001 as required by the Federal Employees' Compensation Act.²

By letter dated October 22, 2001, appellant requested reconsideration and submitted a report from Dr. Ronald Joseph, a Board-certified orthopedist, dated September 19, 2001. He noted a history of appellant's injuries in September 1999 and January 24, 2001 and diagnosed bilateral carpal tunnel syndrome, right medial entrapment neuropathy, moderate to severe stenosing tenosynovitis, first dorsal compartment stenosing tenosynovitis, bilateral lateral epicondylitis, extensor supinator tendentious and bilateral thumb base instability. Dr. Joseph noted that appellant's complaints after the January 24, 2001 injury were pain and discomfort along the radial aspect of the thumb and elbow; with numbness and tingling in the median nerve distribution and opined that this was basically an aggravation of the preexisting paraesthesias and had most likely emanated from the initial injury. He advised that appellant had not reached maximum medical improvement, stating his belief that appellant had been released to work

² 5 U.S.C. §§ 8101-8193.

prematurely and that her treatment and therapy had been prematurely discontinued. Dr. Joseph concluded that appellant could not return to work at this time.

By decision dated July 18, 2002, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was insufficient to warrant modification of its prior decision.

In a letter dated September 26, 2002, appellant requested reconsideration and submitted additional medical evidence. In a report dated April 8, 2002, Dr. Joseph advised that appellant underwent an electromyography (EMG) test on March 18, 2002 which revealed carpal tunnel syndrome and denervation. He reiterated his opinion that appellant had not reached maximum medical improvement and should not have been released from treatment. Dr. Joseph opined that this was a failed surgery with an improper diagnosis and a failure in managing appellant's condition from the onset. He continued to advise that appellant was not to return to work. In a medical certificate dated April 16, 2002, Dr. Joseph diagnosed appellant with bilateral carpal tunnel syndrome, right median nerve neuropathy and bilateral lateral epicondylitis and recommended surgical intervention.

In a May 16, 2002 fitness-for-duty report, Dr. Lawrence Green, an orthopedist, noted a history of appellant's injury beginning in September 1999 with pain and swelling in the wrists and hands which ultimately resulted in a right carpal tunnel release and that she returned to work in January 2001 as a mail processor but continued to have symptoms of her condition. He diagnosed bilateral carpal tunnel syndrome, postoperative with symptoms of medial and lateral epicondylitis of the right elbow, possible median nerve compression of the mid-forearm and possible tenosynovitis or de Quervain's disease of the right wrist. Dr. Green advised that appellant could not perform any of the job duties of a part-time regular mail processor.

In a decision dated February 21, 2003, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was insufficient to warrant modification of its prior decision. However, the Office determined that appellant provided sufficient evidence to warrant the reopening her prior claim No. 13-1198740. The Office accepted that appellant sustained a recurrence of disability causally related to her work-related carpal tunnel syndrome.³

The Board finds that appellant has failed to establish that she sustained an injury in the performance of duty as alleged.

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 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 is causally related to the employment injury."⁴ These are the essential elements of each and every compensation

³ *Supra* note 1. The Office further indicated that the evidence supported disability beginning September 19, 2001 and requested that she submit a Form CA-7 claim for compensation under file number 13-1198740.

⁴ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.⁵

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.⁶ In some traumatic injury cases this component can be established by an employee's uncontroverted statement on the Form CA-1.⁷ An alleged work incident does not have to be confirmed by eyewitnesses in order to establish that an employee sustained an injury in the performance of duty, but the employee's statement must be consistent with the surrounding facts and circumstances and his subsequent course of action.⁸ A consistent history of the injury as reported on medical reports, to the claimant's supervisor and on the notice of injury can also be evidence of the occurrence of the incident.⁹ The second component is whether the employment incident caused a personal injury and that generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability, claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.¹⁰

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. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.¹¹

In this case, it is not disputed that appellant was performing duties as an automation clerk on January 24, 2001. However, the medical evidence is insufficient to establish that the incident on January 24, 2001 caused an injury.

⁵ *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

⁶ *Elaine Pendleton*, *supra* note 4.

⁷ *John J. Carlone*, 41 ECAB 354 (1989).

⁸ *Rex A. Lenk*, 35 ECAB 253, 255 (1983).

⁹ *Id.* at 255-56.

¹⁰ *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

¹¹ *James Mack*, 43 ECAB 321 (1991).

The Office referred appellant to a second opinion physician, Dr. Gimbel, who in a report dated July 12, 2001, advised that he did not believe there was an aggravation of appellant's condition as a result of a subsequent injury on January 24, 2001. He determined that appellant had recovered from her carpal tunnel surgery and that there were no injury related factors of disability. Dr. Gimbel had no additional recommendations for treatment and concluded that she was not disabled due to a work-related injury.

Appellant submitted medical evidence in support of her claim that she sustained a new injury on January 24, 2001. The Board, however, finds that the medical evidence is insufficient to establish that the incident on January 24, 2001 caused an injury. Rather, the medical evidence submitted links appellant's current condition to the initial claim of September 1999. In reports dated March 5 and 29, 2001, Dr. Bobb noted that appellant's symptoms returned almost immediately after the surgery of March 2000 and diagnosed recurrent median neuropathy in both forearms. Rather, he advised that her condition was continuing from the original injury of September 1999. Therefore, Dr. Bobb's opinion is insufficient to establish that she sustained an employment-related injury on January 24, 2001.

Appellant also submitted reports from Dr. Joseph dated September 19, 2001 and April 9, 2002 which he noted that appellant's complaints of pain and discomfort along the radial aspect of the thumb and elbow and numbness and tingling in the median nerve distribution. He attributed appellant's condition to the September 1999 injury, noting that this was "basically an aggravation of the preexisting paraesthesias she had previously." Dr. Joseph's report, too, does not establish that appellant sustained a new injury on January 24, 2001.

Likewise, in his May 16, 2002 report, Dr. Green failed to even mention an injury occurring in January 2001 and merely noted that appellant returned to work as a mail processor and was treated for symptoms of her condition.

The Board therefore finds that, as none of the medical reports provided an opinion that appellant sustained an employment-related injury on January 24, 2001, appellant failed to meet her burden of proof.¹²

¹² See *Calvin E. King*, 51 ECAB 394 (2000).

The decisions of the Office of Workers' Compensation Programs dated February 21, 2003 and July 18, 2002 are hereby affirmed.

Dated, Washington, DC
August 8, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member