

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LINH H. YAN and U.S. POSTAL SERVICE,
POST OFFICE, Peachtree City, GA

*Docket No. 03-1873; Submitted on the Record;
Issued December 30, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant met her burden of proof to establish that her right elbow tendinitis was caused by factors of her federal employment.

On January 1, 2003 appellant, a 45-year-old distribution clerk, filed an occupational disease claim alleging that her elbow tendinitis was due to repetitive machine operation, sorting mail and heavy lifting. In support of her claim, appellant submitted a disability slip dated January 10, 2003 signed by Dr. Barry Hull, an attending physician. He indicated that appellant was unable to perform her usual duties for two weeks due to her right arm condition.

In a letter dated January 29, 2003, the Office of Workers' Compensation Programs requested detailed factual and medical evidence, advising that the information submitted was insufficient to establish a work-related injury. The Office afforded appellant 30 days to submit the requested information.

Appellant submitted a copy of a January 22, 2003 limited-duty assignment; a January 24, 2003 disability note by Jan Peterson, FNP-C; physical therapy notes; reports dated from January 27 to February 5, 2003 from Dr. Steven M. Wanderman, a Board-certified orthopedic surgeon; clinical notes for the period January 29 to February 12, 2003 by Pam Wellons, a physical therapy assistant; and a February 4, 2003 duty status report.

In a January 27, 2003 report, Dr. Wanderman noted that appellant had been having right elbow pain for the past year and one-half. He reported that appellant performed "a lot of repetitive lifting and fine motor activities" as part of her duties for the employing establishment. A physical examination revealed appellant to be "acutely tender to palpation over the right lateral epicondyle," a positive Tinel's sign, "subluxation of the ulnar nerve," normal range of motion of the right elbow and no right elbow instability was noted. Dr. Wanderman diagnosed right lateral epicondylitis and right ulnar nerve neuropathy.

In reports dated February 4 and 5, 2003, Dr. Wanderman reported physical findings similar to those in his January 27, 2003 report and diagnosed right lateral epicondylitis and right ulnar nerve neuropathy.

By decision dated March 5, 2003, the Office denied appellant's claim on the grounds that she did not establish fact of injury. The Office found that appellant failed to submit the factual evidence requested by the Office to assist in the adjudication of her claim.¹

The Board finds that appellant has not met her burden of proof to establish that her right elbow tendinitis was caused by factors of her federal employment.

An employee seeking benefits under the Federal Employees' Compensation Act² 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.³ These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

In the instant case, appellant did not submit any factual evidence to meet one of the requirements to establish that she sustained an injury in the performance of duty. She did not submit a factual statement identifying the employment factors, which allegedly caused or contributed to her condition. Appellant did submit medical evidence diagnosing right elbow tendinitis, but none of the medical evidence provided a physician's opinion as to the cause of her condition. The Office notified appellant on January 29, 2003 that the materials submitted were not sufficient to determine whether she was eligible for benefits under the Act and afforded her 30 days to submit additional evidence. Appellant submitted additional medical evidence, but failed to submit a statement describing the employment factors she believed caused or contributed to her condition. At the time that the Office denied appellant's claim on March 5, 2003, the record did not contain any factual evidence to support her claim for compensation.

Therefore, since appellant did not submit any factual information identifying employment factors which allegedly caused or contributed to her condition or medical evidence identifying a diagnosis and relating her condition to employment factors, the Board finds that appellant did not meet her burden of proof and the Office properly denied her claim.

¹ Subsequent to the Office's March 5, 2003 decision, the Office received additional evidence. Appellant also submitted new evidence with her appeal. The Board, however, cannot consider evidence that was not before the Office at the time of the final decision; *see Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35 (1952); 20 C.F.R. § 501.2(c)(1). Appellant may resubmit this evidence and legal contentions to the Office accompanied by a request for reconsideration pursuant to 5 U.S.C. § 8128(a). 20 C.F.R. § 501.2(c).

² 5 U.S.C. §§ 8101-8193.

³ *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *Delores C. Ellyett*, 41 ECAB 992 (1990); *Ruthie M. Evans*, 41 ECAB 416 (1990).

The decision of the Office of Workers' Compensation Programs dated March 5, 2003 is hereby affirmed.

Dated, Washington, DC
December 30, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member