

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of NUBIA A. CASTRO and DEPARTMENT OF LABOR, OFFICE OF  
WORKERS' COMPENSATION PROGRAMS, SAN FRANCISCO  
DISTRICT OFFICE, San Francisco, CA

*Docket No. 02-1432; Submitted on the Record;  
Issued February 26, 2003*

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DECISION and ORDER

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

The issue is whether appellant has established that she sustained cervical and lumbar conditions causally related to accepted carpal tunnel syndrome.

The Office of Workers' Compensation Programs accepted that, on or before January 12, 2000, appellant, then a 60-year-old bill paying clerk, sustained bilateral carpal tunnel syndrome requiring bilateral surgical release. Dr. Michael Palomino, an attending specialist in occupational medicine, attributed appellant's bilateral carpal tunnel syndrome to performing approximately seven hours per day of data entry or keyboarding work.<sup>1</sup>

Appellant was assigned to light duty as a medical data entry clerk beginning on February 8, 2000, with limited keyboarding and repetitive hand motions.

In a June 26, 2000 report, Esther Ovadia, a registered nurse assigned by the Office to assist appellant in returning to work, noted that appellant complained of "bilateral numbness and tingling and neck and lower back pain. Her lower back is not involved as industrial at this time." Ms. Ovadia recommended a "light touch" keyboard, adjustable keyboard tray and ergonomic adjustments to her chair.<sup>2</sup>

In a June 27, 2000 report, Dr. Palomino noted appellant's complaints of neck pain, decreased range of cervical motion. He diagnosed a "cervical strain related to posture changes then CTS [carpal tunnel syndrome] to pain." On August 2, 2000 Dr. Palomino prescribed a cervical support pillow.

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<sup>1</sup> An April 3, 2000 electromyogram (EMG) showed "moderately severe bilateral median nerve entrapment."

<sup>2</sup> The record contains physical therapy notes dated from June to November 2000 relating to treatment of both wrists, the cervical spine and right scapula. These notes were not signed by a physician.

In a March 27, 2001 report, Dr. Aubrey Swartz, an attending Board-certified orthopedic surgeon, provided a history of injury and treatment for carpal tunnel syndrome, noting that appellant “has had neck pain for the past three months. This is a recurrence and she has had the problem since the onset of carpal tunnel syndrome.” On examination, Dr. Swartz noted objective indicators of bilateral carpal tunnel syndrome, and “mildly restricted motion of the cervical spine” without spasm. He diagnosed a “chronic recurrence cervical myofascial strain secondary to the repetitive work she does,” requiring physical therapy. Dr. Swartz found appellant totally disabled for work from March 27 to June 25, 2001.

Appellant stopped work on March 28, 2001 and filed a claim for wage-loss compensation through June 2001. She alleged that she was disabled for work due to bilateral carpal tunnel syndrome, as well as cervical and lumbar spine conditions. Appellant also requested that the Office authorize physical therapy for neck pain and stiffness.

In an April 24, 2001 report, Dr. Swartz noted continued bilateral carpal tunnel symptoms and neck pain. He continued to hold appellant off work pending carpal tunnel release.

In a May 21, 2001 report, Dr. Swartz stated that appellant’s light-duty job “continued to aggravate her problems, particularly her hands.”

Dr. Swartz performed a left carpal tunnel release on June 15, 2001. He submitted periodic notes through August 2001 detailing her recovery. Dr. Swartz held appellant off work through September 24, 2001.

By decision dated July 13, 2001, the Office accepted a recurrence of total disability beginning March 27, 2001 due to carpal tunnel syndrome.<sup>3</sup> Appellant received wage-loss compensation for temporary total disability on the periodic rolls.

In a July 17, 2001 report, Dr. Swartz related that, on July 16, 2001, appellant “slipped and fell” at a bus station, landing on “her outstretched hands and injured ... both knees, left forearm and left shoulder, and she states she had just come from her chiropractor’s office for treatment of her neck and back for a different industrial claim.” On examination, he found “swelling over the incisional scar” on the left wrist, “an abrasion of the left forearm,” and tenderness “over the left deltoid region of the left shoulder.” Dr. Swartz stated that on “a nonindustrial basis, from July 16, 2001, [he] found that [appellant] has sustained contusing and straining injuries to the left shoulder, both knees, both forearms and both hands,” and referred appellant for treatment.

In an August 14, 2001 report, Dr. Swartz noted that appellant was recovering slowly from the left carpal tunnel release and remained disabled for work due to carpal tunnel syndrome. He also noted that appellant had “residual pain in the neck and low back,” filed a claim against the municipality where she fell, and had sought treatment from Dr. Latch, a chiropractor. On examination, Dr. Swartz found “no tenderness or spasm” in the cervical or lumbar spine or the left shoulder.

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<sup>3</sup> Appellant’s claim for recurrence of disability was initially denied by decision dated May 14, 2001 on the grounds of insufficient evidence. The Office’s July 13, 2001 decision formally vacated the May 14, 2001 decision.

In a September 25, 2001 report, Dr. Swartz noted that appellant's left hand and wrist were improving. He performed a right carpal tunnel release on November 16, 2001. Dr. Swartz submitted periodic progress reports holding appellant off work through March 25, 2002 and prescribing physical therapy.

By decision dated February 8, 2002, the Office denied appellant's claim for neck and back conditions on the grounds that she submitted insufficient medical evidence to establish causal relationship.

Appellant disagreed with this decision and in an April 23, 2002 letter requested reconsideration. She submitted additional evidence.

In a March 5, 2002 report, Dr. Swartz stated that appellant first experienced neck and back symptoms in 1985 due to "repetitive stress syndrome" while working for the Department of the Army, with upper extremity symptoms beginning in 2000 while at the employing establishment. He reviewed medical records from 1983 to 1987 prescribing physical therapy for neck and low back symptoms. Dr. Swartz noted a slight restriction of cervical range of motion, a normal lumbar lordosis, limited lumbar range of motion. He diagnosed chronic degenerative disc disease of the cervical spine and a "chronic mechanical strain with degenerative disc disease at the L5-S1 level," "permanent and stationary." Dr. Swartz opined that, "[w]ith respect to her cervical spine, [appellant] would have a preclusion from repetitive motions" with the upper extremities, and "from upward gazing or downward gazing with her head in a fixed position over prolonged periods of time. He opined that, both problems were "work related, as she continued her work activities sitting at a desk and using a keyboard until March 2001."

By decision dated March 29, 2002, the Office denied appellant's request for modification on the grounds that the evidence submitted was insufficient to warrant such modification. The Office found that Dr. Swartz's March 5, 2002 report was insufficiently rationalized to establish causal relationship between appellant's duties and the claimed cervical and lumbar conditions.

The Board finds that appellant has not established that she sustained neck or back conditions in the performance of duty, related to accepted bilateral carpal tunnel syndrome.

When an employee claims a new injury or condition causally related to an accepted employment injury, he or she has the burden of establishing by the weight of the reliable, probative and substantial medical evidence that the newly alleged condition, and any related period of disability, are causally related to the accepted injury. It is not sufficient merely to establish the presence of a condition. In order to establish his or her claim, appellant must also submit rationalized medical evidence, based on a complete and accurate factual and medical background, showing a causal relationship between the employment injury and the claimed conditions.<sup>4</sup>

As applied to this case, appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between her claimed cervical and lumbar spinal conditions and the accepted bilateral carpal tunnel syndrome or other factors

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<sup>4</sup> See *Armando Colon*, 41 ECAB 563 (1990).

of her federal employment.<sup>5</sup> Causal relationship is a medical issue.<sup>6</sup> The medical evidence required to establish a causal relationship, generally, is medical opinion evidence,<sup>7</sup> of reasonable medical certainty,<sup>8</sup> supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>9</sup> An award of compensation may not be made on the basis of surmise, conjecture, speculation or on appellant's belief of causal relation unsupported by the medical record.<sup>10</sup>

In support of her claim, appellant submitted several reports mentioning neck and back pain.

Dr. Michael Palomino, an attending specialist in occupational medicine, submitted a June 27, 2000 report diagnosing a "cervical strain related to posture change then" carpal tunnel syndrome "to pain." However, Dr. Palomino did not provide medical rationale explaining how and why the diagnosed cervical strain was related to any factor of appellant's federal employment, including the accepted bilateral carpal tunnel syndrome. Without such rationale, Dr. Palomino's opinion on causal relationship is of very little probative value.<sup>11</sup>

Dr. Swartz, an attending Board-certified orthopedic surgeon, noted on March 27, 2001 that appellant had experienced neck pain due to a "chronic recurrence cervical myofascial strain secondary to the repetitive work she does." However, he did not discuss specific work factors, such as keyboarding and how those duties would cause or aggravate the diagnosed cervical strain. Dr. Swartz also mentioned neck pain in an April 24, 2001 report, but again did not attribute it to any work factor. In a March 25, 2002 report, he diagnosed degenerative arthritis of the cervical and lumbar spine, and a chronic mechanical lumbar strain. Dr. Swartz attributed these conditions to a "repetitive strain syndrome" due to unspecified work factors, beginning in 1985 or 1986. However, Dr. Swartz did not explain how or why any of appellant's duties would cause the diagnosed strains or aggravate the degenerative cervical and lumbar arthritis. Without such rationale, his opinion on causal relationship is of greatly diminished probative value.<sup>12</sup>

An additional complicating factor is the July 16, 2001 fall, which appellant asserted precipitated cervical and lumbar symptoms. In a July 17, 2001 report, Dr. Swartz noted that appellant sustained strains and contusions to all extremities and experienced pain in the left shoulder. In an August 14, 2001 report, Dr. Swartz stated that appellant had "residual pain in the

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<sup>5</sup> *Dominic M. DeScala*, 37 ECAB 369, 372 (1986); *Bobby Melton*, 33 ECAB 1305, 1308-09 (1982).

<sup>6</sup> *Mary J. Briggs*, 37 ECAB 578 (1986).

<sup>7</sup> *See Naomi Lilly*, 10 ECAB 560, 572-73 (1959).

<sup>8</sup> *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

<sup>9</sup> *See William E. Enright*, 31 ECAB 426, 430 (1980).

<sup>10</sup> *Ausberto Guzman*, 25 ECAB 362 (1974).

<sup>11</sup> *Lucrecia M. Nielsen*, 42 ECAB 583 (1991).

<sup>12</sup> *Id.*

neck and low back” for which she sought chiropractic treatment. However, Dr. Swartz did not differentiate between occupational and nonoccupational causes of neck and back pain.

Consequently, appellant failed to establish that she sustained cervical or lumbar spine conditions in the performance of duty as he submitted insufficient rationalized medical evidence to establish causal relationship.

The decisions of the Office of Workers’ Compensation Programs dated March 29 and February 8, 2002 are hereby affirmed.

Dated, Washington, DC  
February 26, 2003

Alec J. Koromilas  
Chairman

David S. Gerson  
Alternate Member

A. Peter Kanjorski  
Alternate Member