

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of PATRICIA TONEY and DEPARTMENT OF VETERANS AFFAIRS,  
VETERANS ADMINISTRATION MEDICAL CENTER, Cleveland, OH

*Docket No. 02-1600; Submitted on the Record;  
Issued February 21, 2003*

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DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,  
DAVID S. GERSON

The issue is whether appellant established that she sustained right carpal tunnel syndrome in the performance of duty, causally related to factors of her federal employment.

On April 3, 2001 appellant, then a 38-year-old medical clerk, filed an occupational disease claim alleging that on March 30, 2001 she realized that she had developed right carpal tunnel syndrome, causally related to her federal employment.

In support of her claim, appellant submitted a prescription from Dr. Norton A. Winer, a Board-certified neurologist, dated March 30, 2001 which stated: “[s]evere CTS [carpal tunnel syndrome] on right side. Needs to see orthopedics.”

On April 6, 2001 the employing establishment controverted appellant’s claim indicating that she had only been in her current position since March 5, 2001 and that she did not perform continuous or repetitive typing.

By letter dated April 27, 2001, the Office of Workers’ Compensation Programs requested further information including a list of all activities performed for what length of time and a comprehensive report from her treating physician explaining the causal relationship with her identified employment factors.

On May 8, 2001 the Office received an April 12, 2001 statement from appellant which claimed that she started work as a telephone operator in 1997, worked three years as such, that after two years she experienced tingling in her right wrist and hand that would come and go and that the job entailed connecting calls and key pressing all numbers, which she performed seven hours per day, sometimes with overtime. She stated that in January 2000 she became a medical clerk involved with data entry and making appointments on a computer, two to three hours per day without breaks, that she began experiencing increased tingling and pain and that she sought treatment through University Mednet where she was diagnosed as having carpal tunnel syndrome and was given cortisone injections every two months. Appellant claimed that in February 2001

her fingers started numbing and the shots no longer relieved the pain and that an electromyogram (EMG) revealed the need for surgery, as her condition was severe. She stated that her current position involved computer data input, answering telephones for all clinics, acting as a receptionist, delivering mail to the clinics, time keeping and purchase ordering.

On May 14, 2001 the Office received a December 15, 1998 report from appellant's treating chiropractic physician, Dr. Suzanna Massey, who had been treating appellant for injuries received in a motor vehicle accident on November 10, 1998. She noted appellant's right arm symptoms of numbness and tingling and pain and reported her spinal problems and their sequelae. Dr. Massey diagnosed cervical radiculitis, complicated cervical sprain/strain, paresthesia and thoracic and lumbar sprains/strains. Subluxations were not diagnosed. Dr. Massey opined that appellant could not perform her regular duties.

On May 14, 2001 the Office also received an unsigned medical report from University Mednet dated August 24, 1999 which indicated appellant's complaints of neck pain, bilateral arm pain and tingling in the right arm, in addition to other complaints. The report noted that appellant's pain was worse with range of neck motion, that she had been involved in a motor vehicle accident where she struck her head, that she had pain in her elbow areas bilaterally in the lateral epicondylar region and that the pain was made worse by any activity including driving. The report noted that appellant's whole right arm felt numb, but that this was intermittent and existed before the accident.

Also on May 14, 2001 the Office received a June 30, 2000 report from Dr. Frederic C. Bishko, a Board-certified rheumatologist, who opined that there was clinically little evidence to support a diagnosis of rheumatoid arthritis, that appellant stated that her arms would numb up at no special time and these symptoms are worse when she lifts charts on her job as a clerk. Dr. Bishko noted that appellant was tender at the interphalangeal joints of her right hand but was tender throughout all of the fingers of the right hand. He noted positive Tinel's sign in both elbows and both wrists and opined that appellant did have ulnar and median nerve compression.

A March 6, 2001 statement from the Cleveland Sight Center, received on May 14, 2001, discussed appellant's visual impairments due to retinitis pigmentosa, noted her required accommodations and stated that, due to appellant's visual impairment, her driving posed a threat to both herself and to pedestrians and other drivers.

On May 14, 2001 the Office received a March 30, 2001 report from Dr. John N. Posch, a Board-certified orthopedic surgeon, which noted that appellant had been referred to him by Dr. Winer for evaluation of severe right CTS as demonstrated on EMG and nerve conduction studies (NCS). Dr. Posch noted that appellant had a two-year history of complaints of intermittent numbness in the right hand and forearm which had worsened a lot in the preceding three weeks with chronic and persistent numbness, weakness of the hand, inability to hold onto things and increased pain. Dr. Posch found a markedly positive Tinel's and Phalen's test over the median nerve at the right wrist with diminished sensation in the median nerve distribution of the right hand, without motor deficit demonstrated. He diagnosed severe right CTS and scheduled appellant for outpatient carpal tunnel release surgery on April 4, 2001.

Also that date the Office received an attending physician's report, Form CA-20, from Dr. Posch which noted as history of injury that appellant had "pain, numbness right arm, hand [and] forearm for two years," diagnosed right CTS and checked "yes" to the question of whether the condition found was caused or aggravated by an employment activity. Dr. Posch added "typist -- right hand repetitive motion," as an explanation of his opinion as to causal relation and he noted that findings included positive EMG studies and NCV studies which revealed severe right CTS.

A May 14, 2001 message from the employing establishment noted that appellant was a medical clerk but requested lighter duty because of her back and eyesight problems, that in late November she was put in the scheduling office by her request and that there was not a clerk in that office that did computer work continuously for more than a few minutes at a time. The employing establishment noted that most of appellant's duties consisted of answering telephones, looking up appointments and stapling paper and that she sometimes wore a wrist guard for her problems with "arthritis."

In a May 10, 2001 controversion statement from the employing establishment, received by the Office on May 14, 2001, it claimed that there were inconsistencies in appellant's claim. The employing establishment stated that appellant was hired with the knowledge that she had a physical disability, retinitis pigmentosa, leading to eventual blindness, for which she was accommodated with a 21-inch monitor due to her severely restricted visual fields and back problems and that she never complained to anyone that she had CTS until April 2, 2001. It noted that appellant presented an inaccurate history of her computer usage, that the forms she had to complete required very few keystrokes, that she had been pregnant seven times with two live births and that pregnancy had been known to cause CTS and that appellant had been previously treated for vehicle accident-related cervical radiculitis, complicated cervical sprain/strain and paresthesias. The employing establishment noted that a second vehicular accident on August 18, 1999 resulted in neck and back injury, where post-accident x-rays revealed anterior marginal osteophytes adjacent to the C2-3 intervertebral disc space and that she complained of neck pain, bilateral arm pain and tingling in the right arm. It indicated that appellant had a previous 1991 assault which caused a fracture at C2-3, that a rheumatologist indicated that she had a positive ANA screen and positive latex fixation tests, but that he did not diagnose rheumatoid arthritis. The employing establishment claimed that appellant's condition was likely due to hereditary rheumatoid arthritis predisposition, her pregnancies, her automobile accidents and other injuries to her cervical spine.

On May 8, 2001 appellant filed another Form CA-2 claim for occupational disease following her carpal tunnel release surgery. In an addendum to her occupational claim, appellant indicated that on April 5, 2001 she underwent right carpal tunnel release surgery and she reexplained her work-related exposures that she implicated in the causation of her condition.

By letter dated May 18, 2001, the Office advised appellant that the employing establishment disputed her exposure history.

By decision dated August 16, 2001, the Office denied appellant's claim finding that the evidence of record failed to establish fact of injury. The Office found that there was no medical

evidence of record which provided a rationalized opinion supporting causal relation of appellant's right CTS to factors of her federal employment.

On September 7, 2001 appellant requested an oral hearing before an Office hearing representative.

A hearing was held on January 14, 2002 at which appellant testified. At and following the hearing, appellant resubmitted much of the previously submitted medical evidence. Also submitted was a February 11, 2002 letter of controversion from the employing establishment which stated that appellant had six vehicular accidents since 1998, that in 1998 she had complaints of pain from her neck down into her right arm, that appellant had multiple nonwork-related problems including her sight and her rheumatoid problems, that she had seven pregnancies, that she smoked and that appellant had misrepresented her computer usage and telephone operator duties. The employing establishment argued that there were many outside causes of CTS, including pregnancy, trauma, possible rheumatoid arthritis and degenerative cervical conditions with radiculopathy, which were all implicated in appellant's case.

By decision dated May 6, 2002, the hearing representative affirmed the Office's August 16, 2001 decision finding that appellant had not submitted a rationalized medical opinion, based upon a complete and accurate factual and medical background, to support her claim of employment-related CTS. The hearing representative found that neither Dr. Massey nor Dr. Posch cited particular employment factors as causing appellant's condition, nor did they explain how preexisting factors might have influenced her condition.<sup>1</sup>

The Board finds that appellant has failed to establish that she sustained right CTS in the performance of duty, causally related to factors of her federal employment.

An employee seeking benefits under the Federal Employees' Compensation Act<sup>2</sup> has the burden of establishing the essential elements of his or her claim, including the fact that he or she 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>3</sup>

In the instant case, appellant has established that she is an employee of the United States and that her claim was timely filed. However, she has not established that she sustained CTS in the performance of duty as alleged.

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

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<sup>1</sup> The Board notes that Dr. Massey, a chiropractor, did not address appellant's CTS, but that Drs. Bishko, Posch and Winer did.

<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

presence or existence of the disease or condition for which compensation is claimed;<sup>4</sup> (2) a factual statement identifying the employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;<sup>5</sup> 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.<sup>6</sup> The medical evidence required to establish causal relationship, generally, 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,<sup>7</sup> must be one of reasonable medical certainty<sup>8</sup> 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>9</sup>

In the instant case, appellant has not met this burden of proof.

In this case, multiple physicians diagnosed right CTS but none of them delineated the specific employment factors implicated in causing such a syndrome and none of them provided a rationalized medical opinion explaining how appellant's right CTS developed from exposure to those specific employment factors.

Dr. Winer merely diagnosed severe CTS on the right side and opined that appellant needed an orthopedic referral. No discussion of causal relation was included. This opinion, therefore, does not establish that the CTS was employment related.

Dr. Massey, a chiropractor, noted appellant's right arm symptoms of numbness, tingling and pain and she related them to appellant's cervical spinal problems rather than to her employment. This opinion does not support occupationally-related CTS, nor is it probative as no subluxation was diagnosed and, therefore, Dr. Massey is not considered to be a physician under the Act.<sup>10</sup>

An unsigned medical report from University Mednet noted appellant's right arm symptomatology, including right arm numbness, but indicated that it predated an implicated

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<sup>4</sup> See *Ronald K. White*, 37 ECAB 176, 178 (1985).

<sup>5</sup> See *Walter D. Morehead*, 31 ECAB 188, 194 (1979).

<sup>6</sup> See generally *Lloyd C. Wiggs*, 32 ECAB 1023, 1029 (1981).

<sup>7</sup> *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

<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> See section 8101(2) of the Act provides that the term "physician" ... includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist...."

automobile accident. This report did not relate any right arm symptomatology to factors of her employment and, therefore, is not probative regarding appellant's allegations.

Dr. Bishko discussed appellant's possible rheumatoid arthritis, noted that both of her arms numbed up at no special time and noted that lifting charts at work made them worse. He found positive Tinel's signs in both elbows and both wrists, opined that appellant, therefore, did have ulnar and median nerve compression, but did not discuss causal relation or indicate in any way that these symptoms were employment related. Consequently, this opinion does not establish appellant's claim.

Dr. Posch diagnosed CTS as demonstrated by EMG and NCSs, indicated that she had a two-year history of right arm complaints and noted that Tinel's and Phalen's tests were positive over the median nerve at the right wrist; however, she failed to provide any opinion on causal relation with any factors of her employment. On a subsequent CA-20 form Dr. Posch diagnosed severe right CTS, checked "yes" to the question of whether the condition found was caused or aggravated by an employment factor and added that appellant was a typist performing right hand repetitive motion; however, this history of appellant's repetitive typing was inconsistent with the facts of record. As this opinion was not based on a complete and accurate factual history, it is of diminished probative value and is insufficient to establish appellant's claim.

The employing establishment controverted appellant's claim noting that appellant had only been in her position since March 5, 2001, a month before she filed her occupational disease claim. Although appellant claimed that her right arm condition began in 1999 while she performed telephone operator duties, the employing establishment noted that she did not mention her condition until April 2, 2001. It noted that there were inconsistencies in appellant's claim, that she was hired with the knowledge that she had a physical disability, retinitis pigmentosa and was accommodated with a special monitor. The employing establishment contradicted appellant's allegations of repetitive telephone and computer work, noting that there was not a clerk in her office that did computer work continuously for more than a few minutes at a time, that appellant's main duties were answering telephones, looking up appointments and stapling paper. It claimed that appellant's history of computer usage was inaccurate in that the forms she had to complete required very few keystrokes and it indicated that there were multiple causes for her right arm condition, among which were multiple pregnancies, multiple vehicle accidents in which appellant sustained cervical injuries which left her with upper extremity paresthesias, a 1991 assault causing a C2-3 fracture, a positive ANA titer and positive latex tests and hereditary rheumatoid arthritis predisposition. The employing establishment noted that, contrary to appellant's assertion of 1999 onset, in 1998 she had complaints of pain from her neck down into her right arm, related to her motor vehicle accidents.

Although much of the medical evidence submitted tends to support that appellant had symptoms consistent with right upper extremity CTS, the causes remain obscure and an employment relationship remains unproven. Appellant has failed to establish that she was exposed to significant repetitive employment factors, either working with as a "telephone operator" or with a computer and her alleged exposures are controverted by the employing establishment which characterizes her exposure to claimed repetitive duties as slight and minimal. Further, none of the medical evidence submitted contains a rationalized medical explanation which links her limited occupational exposures to the development of her right arm

condition and, in fact, the evidence of record relates appellant's right arm symptomatology in 1998 to radiating cervical radiculopathy from a motor vehicle accident.

Consequently, appellant has failed to meet her burden of proof to establish her occupational claim.

Accordingly, the decisions of the Office of Workers' Compensation Programs dated May 6, 2002 and August 16, 2001 are hereby affirmed.

Dated, Washington, DC  
February 21, 2003

Alec J. Koromilas  
Chairman

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member