

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DENISE A. MUSCH and U.S. POSTAL SERVICE,
POST OFFICE, Portage, IN

*Docket No. 03-51; Submitted on the Record;
Issued February 20, 2003*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issues are: (1) whether appellant has met her burden of proof in establishing that she developed carpal tunnel syndrome and a lumbar condition in the performance of duty; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for a hearing before an Office hearing representative.

On April 15, 2002 appellant, then a 50-year-old storekeeper of automobile parts, filed a notice of occupational disease and claim for compensation (Form CA-2), alleging that her bilateral hand condition was employment related. Appellant stated that she first became aware of her hand condition and back condition on April 12, 2002 while performing repetitive computer work.

Accompanying appellant's claim were reports from Dr. James W. Kozelka, a specialist in neurology, dated February 28 and April 11, 2002. Dr. Kozelka indicated that appellant had bilateral Tinel's and Phalen's signs. He noted neurological symptoms in the lower extremities, which suggested possible stenosis, polyradiculopathy or carpal tunnel syndrome. The physician's April 11, 2002 report indicated that the electromyograph (EMG) was positive for bilateral carpal tunnel syndrome.

In a letter dated May 9, 2002, the Office advised appellant of the type of factual and medical evidence needed to establish her claim and requested that she submit such evidence. The Office requested that appellant submit a physician's reasoned opinion addressing the relationship of her claimed condition and specific employment factors.

In response to the Office's request, appellant submitted a nerve conduction study and report from Dr. Kozelka dated May 2, 2002. The EMG revealed carpal tunnel syndrome on the left and the remainder of the study was normal. Dr. Kozelka indicated that an x-ray revealed degenerative changes in the lumbar spine. Appellant informed the physician that these symptoms were precipitated by her activities at work, which included sitting in a chair for long

periods of time at a computer. Appellant submitted a narrative statement detailing her work activities.

On June 27, 2002 the Office denied appellant's claim for compensation under the Federal Employees' Compensation Act.¹ The Office found that the medical evidence was not sufficient to establish that her medical condition was caused by employment factors.

In a letter postmarked July 30, 2002, appellant requested an oral hearing before an Office hearing representative and submitted a medical report.

By decision dated September 9, 2002, the Office denied appellant's request for a hearing. The Office found that the request was not timely filed. Appellant was informed that her case had been considered in relation to the issues involved and that the request was further denied for the reason that the issues in this case could be addressed by requesting reconsideration from the district office and submitting evidence not previously considered.

The Board finds that appellant has not met her burden of proof in establishing that she developed carpal tunnel syndrome or a back condition in the performance of duty.

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 timely filed within the applicable time limitation period of the Act, that the 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.² These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³

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 presence or existence of the disease or condition for which compensation is claimed; (2) factual statements identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; 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. The medical evidence required to establish causal relationship is generally 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, must be one of reasonable medical certainty and must be supported by medical rationale explaining the

¹ 5 U.S.C. §§ 8101-8193.

² *Joe Cameron*, 42 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *Victor J. Woodhams*, 41 ECAB 345 (1989).

nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁴

In the instant case, it is not disputed that appellant worked at a computer. However, she has not submitted sufficient medical evidence to support that any alleged hand or back condition is causally related to the accepted employment factors. In a letter dated May 9, 2002, the Office advised appellant of the type of factual and medical evidence needed to establish her claim. Appellant submitted reports from Dr. Kozelka dated February 28, April 11 and May 2, 2002 and an EMG report. Dr. Kozelka indicated that upon physical examination appellant had bilateral Tinel's and Phalen's signs. He only offered speculative support for causal relationship by opining that appellant had symptoms "suggestive of carpal tunnel syndrome." The Board has held that speculative and equivocal medical opinions regarding causal relationship have no probative value.⁵ Dr. Kozelka's April 11, 2002 report indicated that the EMG was positive for bilateral carpal tunnel syndrome and he recommended physical therapy; however, the EMG revealed carpal tunnel syndrome on the left with the remainder of the study revealing no abnormalities. Dr. Kozelka further indicated that an x-ray revealed degenerative changes in the lumbar spine. However, Dr. Kozelka's reports did not address a history of the injury or the employment factors believed to have caused or contributed to appellant's hand or back condition.⁶ Additionally, Dr. Kozelka did not provide a rationalized opinion regarding the causal relationship between appellant's hand or back conditions and the factors of employment believed to have caused or contributed to such conditions, he merely noted that appellant was employed as a computer operator.⁷ Therefore, these reports are insufficient to meet appellant's burden of proof. Dr. Kozelka indicated that appellant's symptoms of back pain and hand paresthesia precipitated by her activities at work. However, the physician appears merely to be repeating the history of injury as reported by appellant without providing his own opinion addressing how this or any other work factor caused appellant's hand or back condition. To the extent that the physician is providing his own opinion, the physician does not provide any reasoning or rationale explaining why sitting in a chair for long periods or working on a computer could cause appellant's hand or back condition.⁸

The remainder of the medical evidence fails to provide an opinion on the causal relationship between this incident and appellant's diagnosed condition. For this reason, this evidence is not sufficient to meet appellant's burden of proof.

⁴ *Id.*

⁵ Speculative and equivocal medical opinions regarding causal relationship have no probative value; *see Alberta S. Williamson*, 47 ECAB 569 (1996); *Frederick H. Coward, Jr.*, 41 ECAB 843 (1990); *Paul E. Davis*, 30 ECAB 461 (1979).

⁶ *See Cowan Mullins*, 8 ECAB 155, 158 (1955) (where the Board held that a medical opinion based on an incomplete history was insufficient to establish causal relationship).

⁷ *See Theron J. Barham*, 34 ECAB 1070 (1983) (where the Board found that a vague and unrationalized medical opinion on causal relationship had little probative value).

⁸ *Id.*

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that her condition was caused, precipitated or aggravated by her employment is sufficient to establish causal relationship.⁹ Causal relationships must be established by rationalized medical opinion evidence. Appellant failed to submit such evidence and the Office, therefore, properly denied appellant's claim for compensation.¹⁰

The Board further finds that the Office properly denied appellant's request for a hearing.

Section 8124(b) of the Act,¹¹ concerning a claimant's entitlement to a hearing before an Office representative, states: "Before review under section 8128(a) of this title, a claimant for compensation not satisfied with a decision of the Secretary under subsection (a) of this title is entitled, on request made within 30 days after the date of issuance of the decision, to a hearing on his claim before a representative of the Secretary."¹²

The Board has held that section 8124(b)(1) is "unequivocal" in setting forth the time limitation for requesting hearings. A claimant is entitled to a hearing as a matter of right only if the request is filed within the requisite 30 days.¹³ Even where the hearing request is not timely filed, the Office may within its discretion, grant a hearing and must exercise this discretion.¹⁴

In the instant case, the Office properly determined appellant's request for a hearing, postmarked July 30, 2002, was not timely filed as it was made more than 30 days after the issuance of the Office's June 27, 2002 decision. The Office, therefore, properly denied appellant's hearing as a matter of right.

The Office then proceeded to exercise its discretion, in accordance with Board precedent, to determine whether to grant a hearing in this case. The Office determined that a hearing was not necessary as the issue in the case was medical and could be resolved through the submission of medical evidence in the reconsideration process. Therefore, the Office properly denied appellant's request for a hearing as untimely and properly exercised its discretion in determining to deny appellant's request for a hearing as she had other review options available.¹⁵

⁹ See *Victor J. Woodhams*, *supra* note 3.

¹⁰ With her appeal appellant submitted additional evidence. However, the Board may not consider new evidence on appeal; *see* 20 C.F.R. § 501.2(c). This decision does not preclude appellant from submitting new evidence to the Office and request reconsideration pursuant to 5 U.S.C. § 8128(a).

¹¹ 5 U.S.C. §§ 8101-8193.

¹² 5 U.S.C. § 8124(b)(1).

¹³ *Tammy J. Kenow*, 44 ECAB 619 (1993).

¹⁴ *Id.*

¹⁵ With her untimely request for a hearing and on appeal, appellant submitted additional evidence. However, the Board may not consider new evidence on appeal; *see* 20 C.F.R. § 501.2(c).

The September 9 and June 27, 2002 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
February 20, 2003

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member