

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAMES PINKSTON and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Brecksville, OH

*Docket No. 03-566; Submitted on the Record;
Issued June 11, 200*

DECISION and ORDER

Before ALEC J. KOROMILAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof to establish that he sustained an injury in the performance of duty.

On November 23, 2001 appellant, then a 53-year-old clerk, filed a notice of occupational disease (Form CA-2), alleging that repetitive use of his hands during the assembly, filing, retrieving and transporting of medical records had caused him to develop problems in both wrists. He did not stop work. The employing establishment controverted the claim.

In a report dated November 30, 2001, Dr. Stanley Nahigian, a Board-certified orthopedic surgeon, indicated that appellant had complaints related to the right upper extremity. He noted possible ulnar nerve impairment or possibly a triggering phenomenon. Dr. Nahigian indicated that appellant gave a circuitous history and felt that his condition was aggravated while working. Appellant related that at times he had "triggering while ironing;" however, it was worse when performing his clerical work. Dr. Nahigian indicated that the examination showed tenderness over the A-1 pulley and a suggestion of a nodule but there was no frank triggering present. Dr. Nahigian noted that appellant was adamant that he was experiencing the same symptoms on the ring finger, but the physician noted that it was not demonstrated clinically on either hand.

On January 10, 2002 the Office of Workers' Compensation Programs advised appellant of the additional factual and medical evidence needed to establish his claim. He was advised to submit a rationalized statement from his physician addressing any causal relationship between his claimed injury and factors of his federal employment. Appellant was allotted 30 days to submit additional evidence.

In a February 13, 2002 letter, the injury compensation nurse indicated that appellant's job description allowed him to exercise his wrists and hands as necessary. She stated that appellant was not required to perform repetitive activity. The nurse also noted that appellant had a history of remote scapholunate disassociation with subsequent rotary subluxation of the right scaphoid,

severe degenerative arthritis at the radioscapoid joint and the SLCA (scapholunate advanced collapse) wrist deformity, left wrist.

In a February 19, 2002 decision, the Office denied appellant's claim for compensation, finding that he did not establish the fact of injury.

By letter dated March 11, 2002, appellant, through his representative, requested a hearing, which was held on October 22, 2002.¹

In a report dated November 12, 2002, Dr. Nahigian indicated that appellant was having trouble with his right hand fingers, particularly the fingertips of the fourth and fifth digits. He indicated that this was "[w]orse when sorting mail at his job at the employing establishment." Dr. Nahigian provided a tentative diagnosis of triggering of the right ring finger. In response to a form question requesting an opinion as to whether the diagnosis was the result of an injury, he offered no final diagnosis and no opinion as to causal relationship. He inserted that "[n]o definite diagnosis made on evaluation on November 30, 2001."

By decision dated December 6, 2002, an Office hearing representative affirmed the February 19, 2002 decision. The hearing representative noted that the medical evidence did not provide a firm diagnosis or opinion on causal relationship.

The Board finds that appellant has not met his burden of proof to establish that he sustained an injury in the performance of duty.

An employee seeking benefits under the Federal Employees' Compensation 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 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 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) a

¹ In his testimony, appellant testified that he had a prior claim which was accepted and for which several surgeries to his hands were authorized and performed by Dr. Nahigian. Appellant received a schedule award and was ultimately able to return to work as a file clerk. He had previously been a truck driver. Appellant indicated that his current problems arose after he had been a file clerk for two or three years. He stated that his job as a file clerk required a good deal of repetitive motion, computer work and pushing and pulling with his hands. He also had to lift and carry medical charts, some of which were quite thick and heavy and he also had to drive sometimes as much as 200 miles a day to transport charts to different facilities.

² *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

³ *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

factual statement 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.⁴ The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence.⁵ Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized medical 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 upon a complete factual and medical background of the claimant⁶, must be one of reasonable medical certainty⁷ 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.

In the present case, the Office accepted that appellant used his hands in his employment as alleged but found that the medical evidence was insufficient to establish an injury.

The only medical documentation submitted from appellant came in the form of two reports from Dr. Nahigian. Neither report contained a firm diagnosis. Without a definite diagnosis, the reports are of diminished probative value in establishing the presence of an injury. Further, the reports do not contain any discussion or opinion on causal relationship. Appellant has not submitted any rationalized medical evidence to establish that he sustained a condition causally related to factors of his employment. As appellant has not submitted the requisite medical evidence needed to establish his claim, he has failed to meet his burden of proof.

The record also contained a report from the injury compensation nurse. The Board has held that health care providers such as nurses, acupuncturists, physician's assistants and physical therapists are not physicians under the Act. Thus, their opinions on causal relationship do not constitute rationalized medical opinions and have no weight or probative value.⁸

⁴ See *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁵ The Board has held that, in certain cases, where the causal connection is so obvious, expert medical testimony may be dispensed; see *Naomi A. Lilly*, 10 ECAB 560, 572-73 (1959). The instant case, however, is not a case of obvious causal connection.

⁶ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

⁷ See *Morris Scanlon*, 11 ECAB 384, 385 (1960).

⁸ *Jan A. White*, 34 ECAB 515, 518 (1983).

Appellant was advised by the Office's January 10, 2002 letter of the deficiencies in the medical evidence and of the additional evidence needed to adjudicate his claim. The Office requested that appellant submit a rationalized statement from his attending physician, addressing any causal relationship between his claimed injury and factors of his federal employment. Appellant, however, failed to submit such evidence. He has failed to establish that he sustained an occupational injury to his wrists while in the performance of duty.

The December 6, 2002 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
June 11, 2003

Alec J. Koromilas
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member