

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of REYNA M. GONZALEZ and DEPARTMENT OF THE TREASURY,
IMMIGRATION & NATURALIZATION SERVICE, Los Angeles, CA

*Docket No. 03-1981; Submitted on the Record;
Issued November 20, 2003*

DECISION and ORDER

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

The issue is whether appellant has met her burden of proof to establish that she sustained a medical condition in the course of her federal employment.

On November 23, 2002 appellant, then a 46-year-old immigration inspector, filed a claim alleging that on November 2, 2002 she sustained tendinitis of the right arm, hand, wrist and forearm which she attributed to using firearms in the course of her federal employment. Appellant stopped work on November 27, 2002. In a statement accompanying her claim, appellant related:

“On November 2, 2002 after firing my gun at the range, my hand began to hurt and [swell]. After that date I was scheduled to practice sh[oot]ing my gun every other day preparing for qualification date.

“On November 23, 2002 the pain and tenderness on my hand had escalated to the point [that] I had to seek medical attention.”¹

The record indicates that the employing establishment terminated appellant effective November 27, 2002 because she did not pass the firearms requirement. The employing establishment noted that on November 16, 2002 appellant was counseled by a firearms instructor of the requirement to pass firearms training.

In a letter dated January 15, 2003, the Office of Workers' Compensation Programs requested additional factual and medical information from appellant. By decision dated February 14, 2003, the Office denied appellant's claim, finding that she did not establish fact of

¹ In a note dated November 23, 2002, a nurse with the employing establishment's health clinic diagnosed tendinitis of the right wrist and found that appellant should not perform strenuous activities for one week. The nurse opined that appellant could continue firearms training.

injury. The Office noted that appellant had not established that the claimed incident occurred on November 2, 2002 at the time, place and in the manner alleged.²

In a statement received by the Office on March 26, 2003, appellant related that she began training as an immigration inspector in September 2002. She stated:

“On or about November 2, 2002, I began to notice discomfort in my right hand when I would fire the weapon in [a] practice session.

“A few weeks later, between the thumb and index finger, a visible lump occurred. The pain was severe at this point. I sought medical treatment on November 23, 2002.”

Appellant stated that she went to the employing establishment clinic and was diagnosed with tendinitis of the right wrist and told to limit strenuous activity for one week, but was allowed to continue firearms training. Appellant related, “Well, the more I fired the weapon, the worse my hand got and, of course, I did not pass the firearms portion of my training. For this reason, I was terminated from my job.”

Appellant submitted a report dated January 22, 2003 from Dr. I. Grant Orlin, a general practitioner, who discussed appellant’s history of firing a gun during an eight-week training program. He listed findings on physical examination of a positive Finkelstein’s test of the right thumb and negative Tinel’s and Phalen’s tests. Dr. Orlin diagnosed right major de Quervain’s syndrome and Canal of Guyon’s syndrome of the right hand. Dr. Orlin noted that he was evaluating appellant for a “traumatic injury to her right hand” which she “reported on November 23, 2002.” He related:

“While completing eight weeks of training, she sustained an injury to the right hand on the firing range with weapons training, in which the handgun recoiled and [appellant] notic[ed] pain in the right thumb and palm of the right hand.

“She was seen by a nurse at the facility and was told to continue the firearms training without any limitation.”

Dr. Orlin concluded:

“Injury sustained by [appellant] to the right thumb was caused by cumulative trauma as the result of the weapon firearms [training] over an eight-week period. [Appellant] was required every other day to train in firearms between 115 [to] 130 rounds for a two-hour period. She was using a 50-caliber Baretta firearm with a large recoil, in which after firing the weapon, the gun recoils causing repetitive stress to the hand with impact of the recoiling against the palm and thumb. This is obviously repeated stress with repetitive firing of the weapon for a two-hour

² Appellant appealed to the Board; however, in a letter dated April 7, 2003, she requested that her appeal be dismissed so that she could submit additional evidence and request reconsideration before the Office. The Board dismissed appellant’s appeal on April 30, 2003. Order Dismissing Appeal, Docket No. 03-1022 (issued April 30, 2003).

duration of every other day, which caused a mechanical stress to the thumb and the surface of the hand causing a stretch and tearing of the fibers of the pollicis brevis attachment to the wrist from the thumb in the direct area from the impact of the weapon on each firing. Thus, this caused a cumulative trauma to this ligament and [appellant] to develop an inflammatory response pain on repetitive firing every other day, with the impact on the hand as described above which caused the stress to be radiated into the wrist joint. [Appellant] subsequently noted intermittent tingling and numbness in the right fifth digit, as in grasping items such as a doorknob, Windex bottle and a coffee cup. Compression of the ulnar nerve passing through the tunnel causes the dermatomal distribution of neuropathy of the ulnar nerve into the fifth digit. It is not uncommon for patients to demonstrate neurological signs with this type of injury. It does appear, based on the information provided by [appellant] that her conditions are caused by, due to, and arising out of the work activities as described above. Based on the nature of [appellant's] injury, it is medically reasonable to infer a causal relationship."

In a form report dated April 15, 2003, Dr. Orlin diagnosed right major de Quervain's syndrome and checked "yes" that the condition was caused or aggravated by employment, proving as a rationale that her condition "occurred while in training." Dr. Orlin found that appellant was partially disabled from December 8, 2002 to the present.³

In a decision dated June 18, 2003, the Office denied modification of its February 14, 2003 decision. The Office found that appellant had not "provided adequate factual evidence to support her claim."

The Board finds that the case is not in posture for decision.

It is well settled that proceedings under the Federal Employees' Compensation Act are not adversarial and while appellant has the burden of proof in establishing entitlement to compensation, the Office shares responsibility in the development of the evidence.⁴

In this case, appellant filed a claim for a traumatic injury alleging that firing her gun on November 2, 2002 caused an injury to her hand. Although the medical evidence may be insufficient to establish that a medical condition occurred as a result of the alleged employment incidents of firearms training, there is evidence in the record indicating that this claim would be better adjudicated as a claim for an occupational disease. Specifically, appellant has submitted uncontroverted medical evidence from Dr. Orlin indicating that she sustained de Quervain's syndrome and Canal of Guyon's syndrome of the right hand due to repetitive trauma from using firearms during training exercises in the course of her federal employment. Additionally, appellant alleged that she experienced increased pain in her hand subsequent to November 2,

³ Appellant further submitted physical therapy reports dated December 2002 to January 2003, however, these are of little probative value as a physical therapist is not considered a physician under the Act. *Thomas R. Horsfall*, 48 ECAB 180 (1996).

⁴ *John J. Carlone*, 41 ECAB 354, 359-60 (1989).

2002 due to her continuing firearms training.⁵ As indicated in the Office's procedure manual, it is the duty of the claims examiner to develop a claim based on the facts at hand and not on the basis of the type of claim filed. For example, it is not proper to deny a claim merely because a claimant submitted an improper form.⁶

The Board finds that the January 22, 2003 medical report from Dr. Orlin, which is detailed and uncontroverted, is sufficient to require further development of the evidence.⁷ On remand, the Office should request information from the employing establishment regarding appellant's work duties, including the accuracy of the information she provided about the nature and extent of her firearms training. After such further development as is deemed necessary, the Office should issue a *de novo* decision.

The decisions of the Office of Workers' Compensation Programs dated June 18 and February 14, 2003 are set aside and the case is remanded for further proceedings consistent with this opinion by the Board.

Dated, Washington, DC
November 20, 2003

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁵ Traumatic injury means a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected; *see* 20 C.F.R. § 10.5(ee). Occupational disease or illness is defined by 20 C.F.R. § 10.5(q) as "a condition produced by the work environment over a period longer than a single workday or shift."

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Development of Claims*, Chapter 2.800.4(b) (January 2003).

⁷ *John J. Carlone, supra* note 4.