

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARY AGO and U.S. POSTAL SERVICE,
POST OFFICE, Shrewsbury, MA

*Docket No. 03-1147; Submitted on the Record;
Issued October 20, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant has met her burden of proof in establishing that she sustained an injury in the performance of duty causally related to factors of her federal employment.

On January 4, 2002 appellant, then a 49-year-old clerk, filed an occupational disease claim (Form CA-2) alleging that she sustained bilateral carpal tunnel syndrome and left hand de Quervain's tenosynovitis while performing repetitive hand motions, specifically, keying, grasping and throwing mail. The employing establishment indicated on the reverse of the claim form that appellant was treated by Karen Fleming, a nurse practitioner at Fallon Clinic. Appellant did not stop work.

Appellant stated that she began working for the employing establishment in 1988 as a letter sorter machine operator which involved keying. Appellant noted that she worked in the manual letters area, which involved sorting and tossing mail with a wrist flicking motion. Appellant also worked on a flat sorter machine, which involved tossing mail into the machine. Appellant worked on a delivery bar code sorter, which involved loading mail into the machine and sweeping mail, both of which require repetitive wrist motions. Appellant submitted a December 13, 2001 report by Ms. Fleming, who stated that appellant had well-documented left carpal tunnel syndrome and de Quervain's tenosynovitis which was "likely" employment related.

By letter dated January 18, 2002, the Office of Workers' Compensation Programs requested additional factual and medical information from appellant. Appellant was requested to provide a comprehensive medical report from her treating physician, which described a history of her condition, symptoms, results of examinations and tests including Phalen's and Tinel's signs and results of any nerve conduction or electromyogram (EMG) studies, a diagnosis and treatment provided. Appellant was advised to submit a rationalized medical opinion explaining how the activities in her federal employment contributed to her condition.

Appellant submitted an August 14, 1998 report of an examination on August 11, 1998 by Dr. J. Hosey, a Board-certified internist with the Fallon Clinic, which diagnosed left carpal tunnel syndrome and treated with an injection. This report was unsigned. In a September 13, 1999 report of an August 25, 1999 examination Dr. William M. Gaines, a Board-certified internist with the Fallon Healthcare System, stated that appellant was seen for left wrist pain and discomfort. Dr. Gaines noted that appellant described twisting motions involved in her job at the employing establishment. He stated that appellant was positive for Finkelstein maneuver and assessed appellant with de Quervain's tenosynovitis treated with a thumb splint and recommended applying ice after a day at work. On September 21, 1999 Dr. Hosey treated appellant for left thumb pain and wrist pain. He noted that in August 1998, appellant had a left carpal tunnel injection. Dr. Hosey stated that appellant was markedly positive Finklestein's maneuver and diagnosed de Quervain's tenosynovitis, which was treated by an injection. This report was unsigned. On August 9, 2001 Dr. Gaines stated that appellant was seen for problems with recurrent left hand tingling and discomfort. He stated that, "It appears that [appellant] has had a problem in the past with carpal tunnel-like symptomatology." Dr. Gaines found on examination that appellant had a positive Tinel's sign, a positive Phalen's sign and tenderness to range of motion. Dr. Gaines assessed wrist pain and discomfort, likely carpal tunnel syndrome. This report was unsigned. On September 21, 2001 Dr. Gary Keilson, a Board-certified neurologist with the Fallon Healthcare System, treated appellant, stating "there is EMG evidence for a left-sided median neuropathy of the wrist (carpal tunnel syndrome), which is mild-to-moderate in degree." On October 16, 2001 Dr. Michael D. Thompson, a Board-certified surgeon with the Fallon Healthcare System, stated that examination of appellant revealed a positive Finkelstein's test, positive Phalen's test, negative Tinel's test and no thenar wasting. Dr. Thompson stated that an EMG showed left carpal tunnel syndrome mild-to-moderate in degree. The physician diagnosed left carpal tunnel syndrome and de Quervain's tenosynovitis and recommended a left carpal tunnel release and a release of the first dorsal extensor compartment. In a January 23, 2002 statement, Dr. Gaines noted that appellant had left carpal tunnel syndrome and de Quervain's tenosynovitis, which was "likely" related to her work activities. He noted that a carpal tunnel release with a release of the affected tendon in the first dorsal compartment was scheduled for January 27, 2002.

By decision dated April 3, 2002, the Office denied appellant's claim finding that the evidence of record failed to establish that she sustained an injury in the performance of duty causally related to factors of her federal employment.

By letter dated April 25, 2002, appellant requested an oral hearing before an Office hearing representative, which was held on October 24, 2002.

On October 25, 2002 the hearing representative received an October 3, 2002 medical report from Dr. Gaines, who noted stated that appellant had a well-documented history of carpal tunnel syndrome and de Quervain's tenosynovitis and that these conditions are known to be associated with repetitive motion activities of the hand and wrist. Dr. Gaines stated:

"To clarify, [appellant] reports her duties require that she perform repetitive motion. She does not describe trauma or repeated activities at home that could cause such conditions. Based on my knowledge of this patient, her work duties

and her injuries, I assess there is a causal relationship between her employment as a postal worker and her injuries.”

By decision dated January 16, 2003, the hearing representative affirmed the Office’s April 3, 2002 decision. The hearing representative found that the medical evidence of record failed to identify the specific factors of employment to which appellant attributed her condition or to provide an unequivocal opinion with supporting rationale causally relating appellant’s conditions to the identified employment factors.

The Board finds that appellant has failed to meet her burden of proof in establishing that she sustained an injury in the performance of duty causally related to factors of her federal employment.

An employee seeking benefits under the Federal Employees’ Compensation Act¹ 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 limitations 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 is 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) a 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.

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, must be one of reasonable medical certainty 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.⁴

¹ 5 U.S.C. § 8101.

² *Joe Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

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

⁴ *Id.*

In the instant case, the evidence reflects that appellant has been diagnosed with left carpal tunnel syndrome and de Quervain's tenosynovitis. However, the medical evidence fails to provide a rationalized medical opinion causally relating appellant's conditions to factors of her federal employment as a mail clerk. In an October 22, 2001 report, Dr. Thompson, a Board-certified surgeon, noted that appellant had a positive Phalen's test.⁵ However, he failed to address any employment activities or to causally relate any employment activities to her diagnosed conditions. Therefore, Dr. Thompson's report is insufficient to establish appellant's claim.

Dr. Keilson, a Board-certified neurologist, diagnosed carpal tunnel syndrome based on EMG evidence. However, he failed to identify any factors of her federal employment or to address a causal relationship between any employment factors and appellant's diagnosed conditions. Dr. Keilson's report is insufficient to establish appellant's claim.

Dr. Hosey, a Board-certified internist, noted that when appellant changed jobs she was subjected to "more repetitive pinching and picking up heavy magazines." Dr. Hosey failed to address the causal relationship between these activities and appellant's diagnosed conditions as the physician failed to explain how performing these activities caused or contributed to appellant's medical conditions. In an August 14, 1998 report, Dr. Hosey failed to identify any factor of employment to which appellant attributed her conditions or to address a causal relationship between the two. Dr. Hosey's reports are insufficient to establish appellant's claim.

Dr. Gaines, a Board-certified internist, assessed de Quervain's tenosynovitis and noted that appellant described twisting motions in her job. Dr. Gaines failed to address the causal relationship between the described activity and the development of appellant's de Quervain's tenosynovitis. Dr. Gaines assessed wrist pain and discomfort, noted that appellant worked at the employing establishment, but failed to address how factors of her federal employment caused or contributed to the diagnosed conditions. On January 23, 2002 Dr. Gaines stated that appellant had well-documented left carpal tunnel syndrome and de Quervain's tenosynovitis, which is "likely" related to her work activities. This opinion is speculative⁶ and fails to provide any explanation as to how her work activities caused the diagnosed condition. In an October 3, 2002 report, Dr. Gaines again stated that appellant had a history of carpal tunnel syndrome and de Quervain's tenosynovitis, which were well documented and known to be associated with repetitive motion activities of the hand and wrist. Dr. Gaines further noted that appellant's duties require that she perform repetitive motion. Dr. Gaines failed to provide other than a generalized comment or causal relationship without addressing the basis for his stated conclusion. His reports are insufficient to establish appellant's claim. As appellant has provided

⁵ The Board notes that the Office Procedure Manual provides that for carpal tunnel syndrome claims, among the clinical findings are positive Phalen's sign. *See* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirement for Medical Reports*, Chapter 3.600.8c.(1) (September 1994).

⁶ *See Philip J. Deroo*, 39 ECAB 1294 (1988) (although the medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute medical certainty, neither can such opinion be speculative or equivocal); *Jennifer Beville*, 33 ECAB 1070 (1982) (statement of a Board-certified internist that the employee's complaints "could have been" related to her work injury was speculative and of diminished probative value).

insufficient rationalized medical opinion based on a complete and factual background establishing a causal relationship between the identified employment factors as a postal clerk and her diagnosed conditions, she has failed to meet her burden of proof.

The January 16, 2003 and April 3, 2002 decisions of the Office of Workers' Compensation Programs are hereby affirmed.⁷

Dated, Washington, DC
October 20, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

⁷ The Board notes that appellant submitted medical evidence with his appeal. As this evidence was not previously considered by the Office prior to its decision of January 16, 2003, the evidence represents new evidence which cannot be considered by the Board. The Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision. 20 C.F.R. § 501.2(a). Appellant may resubmit this evidence to the Office, together with a formal request for reconsideration pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606(b).