

**United States Department of Labor  
Employees' Compensation Appeals Board**

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EVELYN J. VAUGHAN, Appellant )  
and ) Docket No. 03-1037  
DEPARTMENT OF THE ARMY, ) Issued: January 9, 2004  
INSTALLATION SAFETY OFFICE, )  
Fort Lee, VA, Employer )  
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)

*Appearances:*  
*Evelyn J. Vaughan, pro se*  
*Office of Solicitor, for the Director,*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
COLLEEN DUFFY KIKO, Member  
DAVID S. GERSON, Alternate Member  
WILLIE T.C. THOMAS, Alternate Member

**JURISDICTION**

On March 12, 2003 appellant filed a timely appeal from a decision of the Office of Workers' Compensation Programs dated January 7, 2003. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case. The Board's jurisdiction is limited to review of the evidence that was before the Office at the time it issued its final decision. The Board may not consider new evidence on appeal.<sup>1</sup>

**ISSUE**

The issue is whether appellant established that she sustained a bilateral wrist condition due to factors of her federal employment.

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<sup>1</sup> See 20 C.F.R. § 501.2(c); *Ricky S. Storms*, 52 ECAB 349 (2001).

## **FACTUAL HISTORY**

On December 9, 2002 appellant, then a 62-year-old medical clerk, filed a notice of occupational disease alleging that she suffered from bilateral carpal tunnel syndrome as the result of using a keyboard at work in the performance of duty. She indicated that she first received medical care for her condition and realized that it was work related in April 2001. Appellant stopped work on December 10, 2002 but returned to limited duty on December 11, 2002.

In a report dated December 13, 2003 (sic),<sup>2</sup> Dr. Hall-Finney stated that appellant suffered from tendinitis of the thumbs and bilateral carpal tunnel syndrome, with the right wrist being worse than the left. She indicated that appellant's condition was first diagnosed on April 17, 2001, and that the symptoms had worsened. Dr. Hall-Finney noted that appellant was being placed on light duty for one month with no typing, lifting, excessive writing or other activities requiring repetitive use of the hands. Appellant was told that she could do light filing and answer the telephone.

In a January 7, 2003 letter, the Office advised appellant of the factual and medical evidence required to establish her claim for compensation. Appellant was informed that the report from Dr. Hall-Finney was insufficient to establish her entitlement to benefits since the doctor had not performed necessary tests for the diagnosis of bilateral carpal tunnel syndrome to include the Phalen's test, the Tinel's signs test and either nerve conduction or electromyography (EMG) studies. Appellant was given 30 days to submit the additional objective evidence, along with a comprehensive and reasoned medical opinion from her treating physician, addressing how the diagnosed condition was causally related to the alleged work factors.

On February 11, 2003 the Office received a December 16, 2002 report from Dr. Baljit S. Sanhu, a neurologist, along with nerve conduction and EMG studies dated January 2, 2003, from which the physician diagnosed severe carpal tunnel syndrome. He specifically noted on physical examination that appellant also had a positive Tinel's sign. On that date, the Office also received a February 5, 2003 report in which Dr. Hall-Finney reiterated her diagnosis of bilateral carpal tunnel syndrome which, she advised, resulted from "long hours of typing and inputting data in the computer at work." She further opined that appellant was unable to perform her regular job duties due to the condition.

In a decision dated February 11, 2003, the Office denied compensation on the grounds that the medical evidence was insufficient to establish that appellant sustained a bilateral wrist condition due to work factors. The Office specifically noted that appellant failed to comply with the Office's request that she submit objective evidence to establish that she suffered from bilateral carpal tunnel syndrome.

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<sup>2</sup> Dr. Annette Hall-Finney, a Board-certified internist, hand dated the report "December 13, 2003." As it was received by the Office on January 3, 2003, it is deemed that the date is a recording error, and the Board assumes the report was actually dated December 3, 2002.

## **LEGAL PRECEDENT**

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 diagnosed condition is causally related to the identified 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.<sup>3</sup>

The Federal Employees' Compensation Act<sup>4</sup> provides that the Office shall determine and make findings of fact in making an award for or against payment of compensation after considering the claim presented by the employee and after completing such investigation as the Office considers necessary with respect to the claim. Since the Board's jurisdiction of a case is limited to reviewing that evidence which was before the Office at the time of its final decision, it is necessary that the Office review all evidence submitted by a claimant and received by the Office prior to issuance of its final decision. As the decisions of the Board are final as to the subject matter appealed, it is crucial that all evidence relevant to that subject matter which was properly submitted to the Office prior to the time of issuance of its final decision be addressed by the Office.<sup>5</sup>

## **ANALYSIS**

In this case the Office denied appellant's claim for compensation, finding that she failed to submit sufficient medical evidence to *prima facie* establish that she suffered from bilateral carpal tunnel syndrome. The Office specifically noted that appellant had not responded to its request that she submit further medical evidence regarding her carpal tunnel syndrome. The Board, however, notes that the Office received additional, relevant medical opinion evidence and objective test results for bilateral carpal tunnel syndrome on the same day that it issued its decision denying appellant's claim. The Board has held that when adjudicating a claim, the Office is obligated to consider all relevant evidence properly submitted by a claimant and received by the Office before the final decision is issued,<sup>6</sup> including evidence received on the day a decision is issued.<sup>7</sup> Here it is clear that the Office did not consider the newly submitted evidence in reaching its decision.

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<sup>3</sup> *Solomon Polen*, 51 ECAB 341 (2000); *James D. Carter*, 43 ECAB 113 (1991).

<sup>4</sup> 5 U.S.C. §§ 8101-8193.

<sup>5</sup> *William A. Couch*, 41 ECAB 548 (1990).

<sup>6</sup> *Id.*

<sup>7</sup> *Linda Johnson*, 45 ECAB 439 (1994).

**CONCLUSION**

The Board finds that this case is not in posture for a decision as the Office failed to consider relevant medical evidence properly submitted by appellant.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further consideration consistent with this opinion.

Issued: January 9, 2004  
Washington, DC

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member