

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

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**EVIA P. HODGE, Appellant**

**and**

**U.S. POSTAL SERVICE, MAIN POST OFFICE,  
Lake Charles, LA, Employer**

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**Docket No. 04-716  
Issued: July 7, 2004**

*Appearances:*  
*Evia P. Hodge, 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 January 21, 2004 appellant filed a timely appeal from the November 21, 2003 decision of the Office of Workers' Compensation Programs, finding that she failed to establish that she sustained an injury in the performance of duty. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant has established that she sustained an injury in the performance of duty.

**FACTUAL HISTORY**

On June 20, 2003 appellant, then a 49-year-old clerk, filed an occupational disease claim alleging that on May 14, 2003 she first realized that her hand condition was caused by factors of her federal employment. She stated that her condition was due to repetitive motion such as, typing and computer use. Appellant's claim was accompanied by a May 14, 2003

electromyogram/nerve conduction velocity study (EMG/NCV) report of Dr. Frank W. Lopez, a Board-certified physiatrist, demonstrating bilateral carpal tunnel syndrome.

By letter dated June 30, 2003, the Office advised appellant that the evidence submitted was insufficient to establish her claim. The Office further advised her about the type of factual and medical evidence she needed to submit to establish her claim.

In response, the Office received correspondence between the employing establishment and appellant regarding its leave buy back policy and the evidence she needed to submit to establish her occupational disease claim and her employment records. Appellant submitted a statement, which included her hobbies and previous injuries. In 1993 she sustained a right arm injury and in 1986 she was diagnosed as having traumatic thoracic outlet syndrome and she sustained a neck injury that was assigned claim number A16-114008. Appellant stated that, beginning in approximately January 2003, both of her hands and arms were numb when she awoke from sleep and that, when she attempted to move her arms, hands and fingers they would hurt and tingle. She further stated that she could not lie on her side to sleep because her hands and arms hurt. Appellant indicated that on several occasions she dropped items because of a loss of grip in both hands and suffered from pain in her wrists, hands, arms, shoulders and neck. She stated that on March 14, 2003 Doug Russell, an employing establishment human resources manager, advised her to obtain an updated medical report from her physician regarding her medical restrictions. Appellant noted that on April 29, 2003 she was examined by Dr. Lopez, who opined that there was a possibility she had carpal tunnel syndrome in both wrists and he scheduled her for an EMG study on May 14, 2003 the results of which accompanied her statement. She noted her medical treatment and stated that it had not improved her condition or eliminated the pain.

In a July 24, 2003 medical report, Dr. Lopez noted that he had evaluated appellant on April 29, 2003 concerning complaints of paresthesia of the hands of a progressive nature in the past six or eight months and that an EMG/NCV study was performed on May 14, 2003. He reported his clinical findings, diagnosed bilateral carpal tunnel syndrome and noted appellant's medical treatment. Dr. Lopez opined: "This condition has developed as a result of repetitive motion disorder encountered in the repeated use of the hands in the conduction of work activities within her duties at the [employing establishment]."

In an August 14, 2003 decision, the Office found the evidence of record insufficient to establish that the claimed medical condition was caused by factors of appellant's employment. The Office stated that the EMG/NCV studies did not establish that the claimed medical condition resulted from factors of her employment and no further evidence was received.

By letter dated September 10, 2003, appellant requested reconsideration. On October 27, 2003 she submitted a September 22, 2003 medical report of Dr. Dean Moore, a neurosurgeon. In this report, he noted appellant's symptoms in her hands and wrists. Dr. Moore noted that the EMG study showed bilateral carpal tunnel syndrome. He stated that the only thing that tied this condition to a work-related injury was the history not the findings, nor the test. Dr. Moore indicated that carpal tunnel syndrome is most commonly caused by repetitive movement of the wrists and appellant stated that she did this most of the day in using her computer. He stated: "It is for this reason that I feel her carpal tunnel syndrome is most likely due to that."

By decision dated November 21, 2003, the Office denied appellant's request for modification based on a merit review of her claim. The Office found that Dr. Moore's report was speculative as to the causal relationship between appellant's bilateral carpal tunnel syndrome and factors of her employment.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation Act<sup>1</sup> has the burden of establishing the essential elements of 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 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.<sup>2</sup> These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>3</sup>

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 a causal relationship 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.<sup>4</sup>

### **ANALYSIS**

In support of her claim, appellant submitted Dr. Lopez's May 14, 2003 EMG/NCV study, finding that she had bilateral carpal tunnel syndrome. This report is insufficient to establish her burden because it failed to address the issue of whether the diagnosed condition was caused by factors of her employment.

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>3</sup> *See Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

<sup>4</sup> *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

Dr. Lopez's July 24, 2003 report, finding that appellant's bilateral carpal tunnel syndrome "developed as a result of repetitive motion disorder encountered in the repeated use of the hands in the conduction of work activities within her duties at the [employing establishment]," fails to provide any medical rationale explaining how or why the diagnosed condition was caused by factors of her employment. Therefore, his report is insufficient to meet her burden of proof.

Similarly, Dr. Moore's September 10, 2003 report is insufficient to meet appellant's burden of proof. He stated that carpal tunnel syndrome is caused by repetitive movement of the wrists and that she had a history of engaging in such activity most of the day. Dr. Moore opined that based on this reason, her carpal tunnel syndrome was "most likely" due to this activity. His report is of limited probative value because it is speculative and equivocal in nature as to the causal relationship between the diagnosed condition and factors of appellant's employment.<sup>5</sup>

As appellant has failed to submit rationalized medical evidence establishing that her bilateral carpal tunnel syndrome was causally related to factors of her federal employment, she did not meet her burden of proof in this case.

### **CONCLUSION**

The Board finds that appellant has failed to establish that she sustained an injury in the performance of duty.

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<sup>5</sup> *Ricky S. Storms*, 52 ECAB 349 (2001) (while the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty).

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 21 and August 14, 2003 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: July 7, 2004  
Washington, DC

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member