



appellant first reported his condition in September 1991 and was last exposed to the work factors alleged to have caused his condition on April 13, 2002.

By letter dated May 25, 2002, the Office requested that the employing establishment provide appellant's position description and discuss his specific work duties. In another letter of the same date, the Office requested additional factual and medical information from appellant, including a description of the employment factors which he believed caused or contributed to his condition and a detailed medical report explaining the relationship between these employment factors and any diagnosed condition.

The employing establishment did not respond to the Office's request.

Appellant submitted a progress note dated September 20, 1991, received by the Office on June 12, 2002, from a physician who diagnosed carpal tunnel syndrome.<sup>1</sup>

In a decision dated August 6, 2002, the Office denied appellant's claim on the grounds that he failed to establish fact of injury. The Office found that appellant had actually experienced the claimed employment factors but that he had not established a medical condition resulting from his employment duties.

In an electronically signed report dated August 28, 2002, Dr. Thomas R. Dennis, a Board-certified orthopedic surgeon, related:

“[Appellant] has been having a problem with both hands since 1991. He has worked at the [employing establishment] for a number of years, 35 years. He was doing keying, sorting and lifting. He has been treated in the past and he had had EMG [electromyogram] and nerve conduction studies proving his sensory problem. He has utilized all of the conservative modalities thus far but his symptoms are becoming more progressive and he is starting to develop a sensory deficit at rest.”

Dr. Dennis noted that appellant had no “concurrent risk factors for carpal tunnel syndrome except for his work.” He described findings of a positive Tinel's sign and positive Phalen's test in both hands with the right side worse than the left. Dr. Dennis recommended a median nerve decompression on the right side.<sup>2</sup>

By letter dated August 1, 2003, appellant requested reconsideration of his claim.<sup>3</sup> In a letter received by the Office on October 27, 2003, appellant noted that his physician had “requested permission in 1991 to operate on my CTS [carpal tunnel syndrome] with never as

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<sup>1</sup> The name of the physician is not legible.

<sup>2</sup> A nerve conduction study performed on September 11, 2002 revealed findings of severe right and left median neuropathy.

<sup>3</sup> In a letter dated October 23, 2002, the Office informed appellant that it had denied his request for right carpal tunnel surgery in File Number A25-0095069 after noting that it had only accepted his claim for cervical strain.

much as an answer.”<sup>4</sup> He attributed his condition to keying since 1972 on letter sorting machines as well as keying on various other machines from 1989 to 1992.

In a disability certificate dated October 15, 2003, a physician diagnosed carpal tunnel syndrome and found that appellant was unable to work from October 13 to 20, 2003.<sup>5</sup>

By decision dated December 29, 2003, the Office affirmed the August 6, 2002 decision denying appellant’s claim as modified to show that he had not established the factual aspect of his claim. The Office noted that appellant had previously filed a claim for carpal tunnel syndrome with a date of injury of May 2, 1991 which was denied on September 1, 1992.<sup>6</sup> The Office noted that he could follow his appeal rights in that claim.

### **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 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.<sup>7</sup> The medical evidence required to establish a 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.<sup>8</sup> 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>9</sup>

Proceedings under the Act are not adversarial in nature, nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation benefits, the

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<sup>4</sup> The record contains a September 17, 2002 notice of recurrence of disability of a September 23, 1991 employment injury. The employing establishment indicated that appellant worked in a limited-duty position following his injury.

<sup>5</sup> The name of the physician is not legible.

<sup>6</sup> The claim was assigned File Number A25-404392.

<sup>7</sup> *Jerry D. Osterman*, 46 ECAB 500 (1995).

<sup>8</sup> *Dennis M. Mascarenas*, 49 ECAB 215, 217 (1997).

<sup>9</sup> *Id.*

Office shares responsibility in the development of the evidence.<sup>10</sup> It has the obligation to see that justice is done.<sup>11</sup>

Office regulations provide that an employer who has reason to disagree with any aspect of the claimant's report shall submit a statement to the Office that specifically describes the factual allegation or argument with which it disagrees and provide evidence or argument to support its position.<sup>12</sup> The applicable regulation further provides that the employer may include supporting documents such as witness statements, medical reports or records, or any other relevant information.<sup>13</sup> If the employer does not submit a written explanation to support the disagreement, the Office may accept the claimant's report of injury as established.<sup>14</sup>

### ANALYSIS

In this case, the Office requested information from the employing establishment regarding appellant's work duties. The employing establishment did not respond to the Office's request. Appellant, however, submitted a statement attributing his condition to his work at the employing establishment beginning in 1972 keying on letter sorting machines and on various other machines from 1985 to 1992. The Office initially accepted that appellant was exposed to the employment factors to which he attributed his condition but subsequently modified its finding on reconsideration and determined that appellant had not established the factual aspect of his claim. The Office provided as a reason the fact that he had previously filed a claim for carpal tunnel syndrome in 1991 and could follow his appeal rights from the denial of that claim. However, as appellant has cited exposure to work factors beyond 1991 as a cause of his condition, his claim is properly adjudicated as a new occupational disease claim.<sup>15</sup> As noted above, the Office may accept as factual appellant's report of injury if the employer fails to submit a written explanation of its disagreement with any factual allegation or argument of appellant.<sup>16</sup> In view of the employing establishment's failure to respond to the Office's request for information, the Board finds that appellant has established that he worked keying on various machines at the employing establishment beginning in 1972.

The remaining issue is whether the medical evidence establishes that appellant sustained a medical condition causally related to the identified employment factors. In order to establish a

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<sup>10</sup> *William J. Cantrell*, 34 ECAB 1223 (1983).

<sup>11</sup> *Id.*

<sup>12</sup> 20 C.F.R. § 10.117(a).

<sup>13</sup> *Id.*

<sup>14</sup> See 20 C.F.R. § 10.117(b); see also Federal (FECA) Procedure Manual, Part 2 -- Claims, *Occupational Illness*, Chapter 2.806.4(d)(1) (October 1995).

<sup>15</sup> See 20 C.F.R. § 10.5(q); see also Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, 2.1500.3(2)(e) (May 1997). On the claim form, the employing establishment indicated that appellant was exposed to the factors alleged to have caused his condition until April 13, 2002.

<sup>16</sup> See *supra* note 14.

causal relationship between the diagnosed condition and any disability therefrom and the factors of his federal employment, appellant must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such causal relationship.<sup>17</sup>

In support of his claim, appellant submitted a report dated August 28, 2002 from Dr. Dennis, who noted that appellant experienced problems with his hands beginning in 1991. He discussed appellant's work at the employing establishment for 35 years doing "keying, sorting and lifting." Dr. Dennis found that an electromyogram and nerve conduction studies supported that appellant had a "sensory problem" and listed findings of a positive Tinel's sign and a positive Phalen's test in both hands, right worse than left. He concluded that appellant had no "concurrent risk factors for carpal tunnel syndrome except for his work."

The Board notes that Dr. Dennis discussed the employment factors to which appellant attributed his condition and related his condition of carpal tunnel syndrome to his employment. He cited objective studies and findings on physical examination in support of his determination that appellant had sensory problems in his hands. As discussed above, while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.<sup>18</sup> Although Dr. Dennis' report does not contain sufficient rationale to discharge appellant's burden of proving by the weight of the reliable, substantial and probative evidence that appellant sustained bilateral carpal tunnel syndrome due to factors of his federal employment, it raises an inference of causal relationship sufficient to require further development by the Office.<sup>19</sup> Additionally, there is no opposing medical evidence in the record. The case will therefore be remanded to the Office for further development of the medical evidence to determine whether appellant sustained carpal tunnel syndrome casually related to factors of his federal employment.

### **CONCLUSION**

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

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<sup>17</sup> See *Solomon Polen*, 51 ECAB 341 (2000).

<sup>18</sup> See *William J. Cantrell*, *supra* note 10.

<sup>19</sup> *John J. Carlone*, 41 ECAB 354 (1989).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated December 29, 2003 is set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: July 26, 2004  
Washington, DC

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
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