

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

ARTHUR J. BROOKS, Appellant

and

**DEPARTMENT OF JUSTICE, FEDERAL
BUREAU OF CORRECTIONS,
Terminal Island, CA, Employer**

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**Docket No. 04-932
Issued: July 16, 2004**

Appearances:
Arthur J. Brooks, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
COLLEEN DUFFY KIKO, Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On February 25, 2004 appellant filed a timely appeal from an Office of Workers' Compensation Programs' merit dated decision January 26, 2004 which denied his occupational disease claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue on appeal is whether appellant has met his burden of proof in establishing that he developed a right median nerve condition, right carpal tunnel syndrome and slowing of the right peroneal and posterior tibial nerves while in the performance of duty.

FACTUAL HISTORY

On March 24, 2003 appellant, then a 44-year-old correctional officer, filed an occupational disease claim alleging that he developed a right median nerve condition, right carpal tunnel syndrome and slowing of the right peroneal and posterior tibial nerves while in the

performance of duty. Appellant became aware of his condition on September 17, 2002. He retired on October 19, 1999.¹

In support of his claim, appellant submitted two reports from Dr. Jay Jurkowitz, a Board-certified neurologist, dated May 29 and August 19, 2002. Dr. Jurkowitz was a second opinion physician in appellant's prior claim, No. 13-1183180² and diagnosed status post left cerebral stroke in October 1998, with fairly good resolution, numbness and discomfort in the right upper and lower extremities, diabetic polyneuropathy, neuralgia in the feet secondary to diabetic polyneuropathy, possible left carpal tunnel syndrome and ulnar nerve dysfunction at the elbow. Nerve conduction studies suggested mild generalized polyneuropathy in the lower extremities, right carpal tunnel syndrome and moderate to severe decompression of the right ulnar nerve at the elbow. He noted appellant's complaints of intermittent dysesthesias of the right upper extremity and right lower extremity; however, he was unable to explain the origin of these symptoms and surmised that appellant may have been indulging the situation. The physician further noted that appellant's diabetic polyneuropathy was causing him pain and difficulty in ambulating; however, appellant was not disabled from a sedentary position. In his report of August 19, 2002, Dr. Jurkowitz opined that appellant sustained an aggravation of his stroke on March 22, 2001 which was temporary and resolved within one week of onset. He commented that the diabetic neuropathy was related to his diabetic condition and not the stroke of October 4, 1998.

The employing establishment submitted a statement of contravention dated April 23, 2003 which noted that appellant had not been employed for nearly five years and disputed that the alleged carpal tunnel syndrome was work related.

In a letter dated June 16, 2003, the Office advised appellant of the type of factual and medical evidence needed to establish his claim and requested that he submit such evidence, particularly requesting that appellant submit a physician's reasoned opinion addressing the relationship of his claimed condition and specific employment factors.

In a statement dated April 26, 2003, appellant noted that he performed repetitive hand and body motions while in the performance of duty which caused his carpal tunnel syndrome including typing on a computer, completing forms, filing documents, handling radios, operating electronic prison doors, pushing buttons, working the main switchboard and issuing passes as a correctional officer. He further noted that his work load was heavy and required additional typing, filing and handling of inmate files. Appellant indicated that the nerve conduction studies performed by Dr. Jurkowitz were conclusive of right carpal tunnel syndrome. In a subsequent statement dated May 16, 2003, appellant indicated that his carpal tunnel syndrome was work related and developed during the period that he experienced a work-related stroke in October 1998. Employing establishment medical records from October 4, 1985 and August 12, 1998, noted that appellant was assaulted by inmates on two occasions sustaining injuries to his left forearm and right thigh.

¹ Appellant filed another claim for compensation as a result of a work-related cerebral vascular accident occurring on October 4, 1998 which was accepted by the Office in claim No. 13-1183180).

² This case is not before the Board at this time.

In a decision dated August 14, 2003, the Office denied appellant's claim on the grounds that the medical evidence did not establish that his condition was caused by his federal employment duties.

On August 18, 2003 appellant requested a review of the written record. He submitted a statement summarizing the results of Dr. Jurkowitz's reports which found right carpal tunnel syndrome and moderate to severe decompression of the right ulnar nerve at the elbow. Appellant also described his previous claim before the Office for a cerebral vascular accident.

By decision dated January 26, 2004, the hearing representative affirmed the August 14, 2003 decision.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act 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 timely filed within the applicable time limitation period of the Act, that the 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. 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) 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 claimant. The medical evidence required to establish causal relationship is generally 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

³ Gary J. Watling, 52 ECAB 357 (2001).

⁴ Solomon Polen, 51 ECAB 341 (2000).

ANALYSIS

It is not disputed that appellant's duties as a correctional officer included performing repetitive activities using his arms. However, he has not submitted sufficient medical evidence to support that this employment factor caused his right median nerve condition, right carpal tunnel syndrome, and slowing of the right peroneal and posterior tibial nerves. On June 16, 2003 the Office advised appellant of the type of medical evidence needed to establish his claim. Appellant did not submit any medical report from an attending physician addressing how specific employment factors may have caused or aggravated his claimed conditions.

Dr. Jurkowitz's reports of May 29 and August 19, 2002, diagnosed status post left cerebral stroke in October 1998, numbness and discomfort in the right upper and lower extremities, diabetic polyneuropathy, neuralgia in his feet secondary to diabetic polyneuropathy, possible left carpal tunnel syndrome and ulnar nerve dysfunction at the elbow. He performed nerve conduction studies which suggested mild generalized polyneuropathy in the lower extremities, right carpal tunnel syndrome and moderate to severe decompression of the right ulnar nerve at the elbow. However, the Dr. Jurkowitz did not indicate that appellant's claimed conditions were causally related to his employment and did not provide a rationalized medical opinion addressing how specific employment factors caused or aggravated any right upper extremity condition. Dr. Jurkowitz's opined in a May 29, 2002 report, that appellant's complaints of intermittent dysesthesias of the right upper extremity and right lower extremity were vaguely described and surmised that appellant may have been "indulging the situation a bit." Dr. Jurkowitz's reports did not provide a full history of the injury or the employment factors believed to have caused or contributed to the appellant's condition.⁵ He did not provide a rationalized opinion regarding the causal relationship between appellant's condition and the factors of employment believed to have caused or contributed to such condition.⁶ Therefore, these reports are insufficient to meet appellant's burden of proof.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.⁷ Causal relationships must be established by rationalized medical opinion evidence. Appellant failed to submit such evidence and the Office therefore properly denied appellant's claim for compensation.

⁵ *Id.*

⁶ See *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

⁷ See *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

CONCLUSION

The Board therefore finds that, as none of the medical reports provided an opinion that appellant developed an employment-related injury in the performance of duty, appellant failed to meet his burden of proof.⁸

ORDER

IT IS HEREBY ORDERED THAT the January 26, 2004 and decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 16, 2004
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member

⁸ See *Calvin E. King*, 51 ECAB 394 (2000).