United States Department of Labor
Employees' Compensation Appeals Board

ROBERT H. GERNER, Appellant	)	
and	)	**Docket No. 04-599**
	)	**Issued: June 4, 2004**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, West Los Angeles, CA, Employer	)	

Appearances:
Robert H. Gerner, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On December 29, 2003 appellant filed a timely appeal of decisions of the Office of Workers' Compensation Programs dated October 21 and December 2, 2003 denying his claim for carpal tunnel syndrome. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim for carpal tunnel syndrome.

ISSUE

The issue on appeal is whether appellant has established that he sustained right carpal tunnel syndrome in the performance of duty.

FACTUAL HISTORY

On April 10, 2003 appellant, then a 56-year-old psychiatrist, filed a claim for traumatic injury (Form CA-1) alleging that he sustained right carpal tunnel syndrome in the performance of duty on March 4, 2003 due to repetitive use of a computer mouse. Dr. Leonard Katz, appellant's supervisor and a Board-certified psychiatrist, concurred that appellant "had carpal tunnel as a

result of repetitive trauma using computer mouse," but controverted the claim as there was "not enough information on work factors."

In an April 10, 2002 report, Dr. Arthur P. Kowell, an attending Board-certified psychiatrist and neurologist, noted that appellant had increased his computer keyboarding at work during the past 18 months and experienced a December 2001 onset of intermittent pain and numbness of the third, fourth and fifth fingers of the right hand. On examination, Dr. Kowell observed a positive Tinel's sign at the right cubital tunnel and diminished pinprick sensation and sensitivity to light touch over the medial right hand into the fourth and fifth digits.[1] Dr. Kowell diagnosed mild right ulnar and median neuropathy "associated with extensive usage of a computer keyboard." He restricted keyboarding to 20 minutes at a time with a 10-minute break. Appellant then sought treatment from Dr. Roy A. Meals, a Board-certified orthopedic surgeon specializing in hand surgery. As conservative treatment from September 2002 to February 2003 failed to produce significant improvement, Dr. Meals performed a right median nerve release on March 4, 2003.

In an August 11, 2003 letter, the Office advised appellant of the type of additional medical and factual evidence needed to establish his claim, including a detailed description of the implicated work factors and a rationalized statement from his physician explaining how and why those factors would cause the claimed carpal tunnel syndrome.[2] The Office did not associate any additional evidence with the case record prior to October 21, 2003.[3]

By decision dated October 21, 2003, the Office denied appellant's claim on the grounds that causal relationship was not established. Appellant then requested reconsideration by October 29, 2003 letter and submitted additional evidence. Dr. Meals opined in a September 5, 2003 report that appellant's "regular use of keyboard" work was "likely a causative factor for the development" of right carpal tunnel syndrome. In a September 10, 2003 letter, appellant stated that, from the summer of 1999 to May 2003, computerized recordkeeping for each of the 50 or more patients he treated each week entailed 61 to 93 clicks of a computer mouse. Adding approximately 100 mouse clicks for administrative emails resulted in a range of 2,890 to 4,750 mouse clicks each week.

By decision dated December 2, 2003, the Office denied modification of the prior decision as Dr. Meals' September 5, 2003 report was insufficiently rationalized to establish causal relationship.

[1] An April 10, 2002 nerve conduction velocity (NCV) study showed mild abnormalities in the right median nerve.

[2] The Office explained that, although appellant filed a claim for traumatic injury, the claim would be developed as an occupational disease claim as the evidence indicated that the carpal tunnel syndrome developed over more than one work shift.

[3] The record indicates that appellant submitted a September 10, 2003 response to the Office's August 11, 2003 letter which was not associated with the case record prior to October 21, 2003.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[4] 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 limitation; that an injury was sustained while 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.[5] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[6]

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 the 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 medial 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.[7]

ANALYSIS

Appellant alleged that he developed right carpal tunnel syndrome as a result of performing computerized recordkeeping duties. Appellant's supervisor confirmed that appellant's assigned duties involved repetitive motion using a computer mouse. The Office denied appellant's claim for compensation on the grounds that the medical evidence was not sufficient to establish that appellant's medical condition of right carpal tunnel syndrome was causally related to his employment.

[4] 5 U.S.C. §§ 8101-8193.

[5] *Joe D. Cameron*, 41 ECAB 153 (1989).

[6] *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

[7] *Solomon Polen*, 51 ECAB 341 (2000).

The Board notes, however, that the medical evidence submitted by appellant generally supports that he developed right carpal tunnel syndrome as a result of repetitive motion in the performance of his duties as a physician. Specifically, Dr. Kowell, an attending Board-certified psychiatrist and neurologist, diagnosed right ulnar and median neuropathy "associated with extensive usage of a computer keyboard." Dr. Meals, an attending Board-certified orthopedic surgeon, stated in a September 5, 2003 report that appellant's "regular use of keyboard" at work was "likely a causative factor for the development" of his carpal tunnel syndrome. Dr. Katz, appellant's supervisor and also a physician, stated that "repetitive trauma using computer mouse" caused appellant's carpal tunnel syndrome.

Although these physicians opinions are not sufficiently rationalized[8] to meet appellant's burden of proof in establishing his claim, they stand uncontroverted in the record and are, therefore, sufficient to require further development of the case by the Office.[9] However, the Office did not undertake further development of the medical record, such as referring the record to an Office medical adviser or referring appellant for a second opinion examination. In view of the above evidence, the Board finds that the Office should have referred the matter to an appropriate medical specialist to determine whether appellant may have developed right carpal tunnel syndrome as a result of his employment duties.

Proceedings under the Act are not adversarial in nature and the Office is not a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence. It has the obligation to see that justice is done.[10] Accordingly, once the Office undertakes to develop the medical evidence further, it has the responsibility to do so in a proper manner. Therefore, the Board finds that the case must be remanded to the Office for preparation of a statement of accepted facts concerning appellant's working conditions and referral of the matter to an appropriate medical specialist, consistent with Office procedures, to determine whether appellant may have developed right carpal tunnel syndrome as a result of performing his employment duties. Following this and any other development deemed necessary, the Office shall issue an appropriate decision in the case.

CONCLUSION

The Board finds that the case is not in posture for a decision and the case is remanded for further development.

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

[9] *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 280 (1978).

[10] *Jimmy A. Hammons*, 51 ECAB 219 (1999); *Marco A. Padilla*, 51 ECAB 202 (1999); *John W. Butler*, 39 ECAB 852 (1988).

ORDER

IT IS HEREBY ORDERED THAT the December 2 and October 21, 2003 decisions of the Office of Workers' Compensation Programs are set aside, and the case remanded for further development consistent with this opinion.

Issued: June 4, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member