

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

CHRISTOPHER M. ROMERO, Appellant

and

**DEPARTMENT OF AGRICULTURE, FOOD
SAFETY INSPECTION SERVICE, Cactus, TX,
Employer**

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**Docket No. 04-617
Issued: May 24, 2004**

Appearances:
Christopher M. Romero, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On January 4, 2004 appellant filed a timely appeal of an Office of Workers' Compensation Programs' merit decision dated September 29, 2003, which found that he failed to establish that he sustained an injury causally related to his employment. 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 he sustained an injury causally related to factors of his federal employment.

FACTUAL HISTORY

On July 22, 2003 appellant, a 35-year-old food inspector, filed an occupational disease claim alleging that the pain and swelling in his right hand, wrist, elbow, forearm and shoulder was employment related. He attributed his condition to using knives in a repetitive fashion while inspecting meat while working over 50 hours a week since May 2003. Appellant did not stop

working. The employing establishment noted that a preemployment physical indicated appellant had finger/hand numbness.

In support of his claim, appellant submitted an August 17, 1999 report by Dr. Randy Herring, a treating Board-certified family practitioner, which noted occasional numbness in appellant's hands at night which was probably positional. He concluded that appellant did not have carpal tunnel syndrome as there was no muscle atrophy or paresthesias with repetitive motion, a negative Tinel's sign and a negative Phalen's sign.

By letter dated August 26, 2003, the Office requested detailed factual and medical evidence, noting that the information submitted was insufficient to establish his claim. The Office requested that appellant submit a physician's reasoned opinion addressing the causal relationship of his claimed condition and specific employment factors. The Office afforded appellant 30 days to submit the requested information.

In response to the Office's request, appellant submitted an August 14, 2003 report of medical evaluation by Dr. Herring and progress notes dated July 28 and August 14, 2003 from Bruce F. Schubert, a physician's assistant. Dr. Herring noted that appellant was treated on that date, that maximum medical improvement had not been reached and noted as a diagnosis the code of "3540." In progress notes dated July 18 and August 14, 2003, Mr. Schubert diagnosed probable carpal tunnel type syndrome. Physical findings included a negative Tinel's sign, pins and needles to hand with hand cocked back and some tenderness at the elbow flexor extensions.

By decision dated September 29, 2003, the Office denied appellant's claim on the basis that he failed to submit sufficient medical evidence establishing that his condition was causally related to his federal employment.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act¹ 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 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.² These are the essential elements of each 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

¹ 5 U.S.C. §§ 8101-8193.

² *Louis T. Blair, Jr.*, 54 ECAB ____ (Docket No. 02-2289, issued January 16, 2003); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

³ *Janice Guillemette*, 54 ECAB ____ (Docket No. 03-1124, issued August 25, 2003); *Delores C. Ellyett*, 41 ECAB 992 (1990); *Ruthie M. Evans*, 41 ECAB 416 (1990).

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.⁴

ANALYSIS

The issue in this case is whether appellant has established that his right upper extremity condition is causally related to his federal employment. The evidence generally required to establish causal relationship is rationalized medical opinion evidence. The claimant must submit a rationalized medical opinion that supports a causal connection between his current condition and the employment injury. The medical opinion must be based on a complete factual and medical background with an accurate history of the claimant's employment injury and must explain from a medical perspective how the current condition is related to the injury.⁵ In support of his claim, appellant submitted reports from Dr. Herring and Mr. Schubert, a physician's assistant. Dr. Herring's reports are insufficient to establish the claim as the physician did not provide a firm diagnosis of appellant's condition or provide medical rationale explaining how appellant's condition was caused or aggravated by his employment.⁶ Dr. Herring provided no specific diagnosis other than noting code number "3540" in his August 14, 2003 report. The August 19, 1999 report specifically ruled out carpal tunnel syndrome. Mr. Schubert diagnosed possible carpal tunnel syndrome in progress notes dated July 18 and August 13, 2003. However, the Board has consistently held that lay individuals such as physicians' assistants are not competent to render a medical opinion.⁷ The report by Mr. Schubert is entitled to no probative weight because a physician's assistant is not a "physician" as defined by section 8101(2).⁸ As appellant has not submitted any rationalized medical opinion evidence supporting a causal relationship between his medical condition and the employment factors he identified, the Office properly denied his claim.

CONCLUSION

The Board finds that appellant has not established that he sustained an injury causally related to factors of his federal employment.

⁴ *Luis M. Villanueva*, 54 ECAB ____ (Docket No. 03-977, issued July 1, 2003).

⁵ *Tomas Martinez*, 54 ECAB ____ (Docket No. 03-396, issued June 16, 2003).

⁶ *Conard Hightower*, 54 ECAB ____ (Docket No. 02-1568, issued September 9, 2003). (A medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship that is unsupported by medical rationale).

⁷ *Janet L. Terry*, 53 ECAB ____ (Docket No. 00-1673, issued June 5, 2002).

⁸ *Allen C. Hundley*, 53 ECAB ____ (Docket No. 02-107, issued May 17, 2002).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 29, 2003 is hereby affirmed.

Issued: May 24, 2004
Washington, DC

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member