



that he had not sought medical treatment. Appellant did not stop work and there is no contemporaneous medical evidence in the file. On February 11, 2003 he filed a recurrence claim alleging that on November 25, 2002 he sustained a recurrence of his July 16, 2002 injury. Appellant related that he was awakened at night with pain in his right shoulder that radiated into his fingertips. He noted that all new symptoms were occurring in his right shoulder and right upper appendage and that he believed it was due to a pinched nerve.

The record contains an April 18, 2003 treatment note from Elizabeth M. Barnaby, an occupational therapist, who stated that appellant complained of numbness in his right hand and digits for the past five months and that while driving his hand goes cold and loses its pulse in the wrist area. She added that he was being treated for thoracic outlet syndrome.

The record also contains a May 12, 2003 report from Dr. William D. Kossow, a radiologist, who stated, “[E]lectrodiagnostic study reveals evidence of a moderately severe carpal tunnel syndrome (median nerve entrapment at wrist) affecting sensory and motor nerve fibers.” He added that there was “no evidence of cubital tunnel syndrome, cervical radiculopathy or any other peripheral nerve abnormality in the right upper extremity.... [N]o evidence of neurogenic thoracic outlet syndrome.” Dr. Kossow also noted that appellant’s symptoms maybe the result of nerve irritation without nerve damage. He offered no opinion as to whether appellant’s employment or any other event caused the carpal tunnel syndrome.

In a letter dated December 17, 2003, the Office informed appellant that he needed to submit additional medical evidence. The Office included a detailed list of information needed and requested that he provide medical evidence which included a firm diagnosis of his condition and a rationalized medical opinion explaining the cause of the condition. No further evidence was submitted. By decision dated January 23, 2004, the Office denied appellant’s claim finding that he had not established fact of injury.

### **LEGAL PRECEDENT**

To determine whether an employee sustained a traumatic injury in the performance of duty, the Office must determine whether “fact of injury” is established. First, the employee has the burden of demonstrating the occurrence of an injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence. Second, the employee must submit sufficient evidence, generally in the form of medical evidence, to establish a causal relationship between the employment incident and the alleged disability and/or condition for which compensation is claimed. An employee may establish that the employment incident occurred as alleged, but fail to show that his or her disability and/or condition relate to the employment incident.<sup>1</sup>

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<sup>1</sup> Gary J. Watling, 52 ECAB 278 (2001).

## ANALYSIS

The Office denied appellant's claim on the grounds that he had not established that the incident occurred as alleged and because he had not established with medical evidence that he sustained an injury caused by the alleged incident. He attributed his shoulder injury and recurrence of pain in the right upper extremity to "pulling on a hose" on July 16, 2002. The Board has long held that an employee's uncontroverted statement on the Form CA-1 can establish a work incident. The incident does not have to be confirmed by eyewitnesses in order to establish that an employee sustained an injury in the performance of duty, but the employee's statement must be consistent with the surrounding facts and circumstances.<sup>2</sup> Although appellant did not submit witness statements documenting the incident, his supervisor did note on the claim form that appellant had sustained "injury" at work and did not dispute the occurrence of the incident. The Board, therefore, concludes that he has established that he pulled a hose at work on July 16, 2002.

Appellant, however, has not established that his right upper extremity condition was causally related to pulling a hose at work on July 16, 2002. The medical evidence of record lacks a rationalized statement causally relating any upper extremity condition to the July 16, 2002 employment incident. The only medical evidence in the file is a May 12, 2003 report from Dr. Kossow, who diagnosed carpal tunnel syndrome, but he offers no explanation as to the cause of this condition. Dr. Kossow report does not medically explain that the diagnosed carpal tunnel syndrome was caused by appellant's job. His burden of proof to establish causal relationship between the diagnosed condition and an employment incident cannot be met by a medical report which does not even discuss the cause of the condition.

Furthermore, the April 18, 2003 treatment note from Ms. Barnaby is not medical evidence as she is an occupational therapist and not a physician under the Federal Employees' Compensation Act.<sup>3</sup> Absent an explanation how appellant's condition is related to his work, he has not established that his condition was caused by his employment and, therefore, he has not met his burden of proof.<sup>4</sup>

## CONCLUSION

The Board finds that appellant has not established that he sustained an injury in the performance of his federal employment.

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<sup>2</sup> *John J. Carlone*, 41 ECAB 354 (1989).

<sup>3</sup> *Jerre R. Rinehart*, 45 ECAB 518 (1994).

<sup>4</sup> The Board notes that appellant submitted additional evidence to the record following the Office's January 23, 2004 decision. The Board's review is however limited to review of evidence which was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c).

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 23, 2004 decision by the Office of Workers' Compensation Programs is affirmed.

Issued: October 4, 2004  
Washington, DC

Alec J. Koromilas  
Chairman

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member