

**United States Department of Labor
Employee's Compensation Appeals Board**

JANE H. THOMAS, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Knoxville, TN, Employer**

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**Docket No. 04-924
Issued: September 2, 2004**

Appearances:
Jane H. Thomas, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Member
WILLIE T.C. THOMAS, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On February 24, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated October 21, 2003, finding that appellant did not meet her burden of proof to establish that her bilateral hand conditions were causally related to her federal 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's bilateral hand conditions were causally related to her federal employment.

FACTUAL HISTORY

On May 19, 2002 appellant, then a 44-year-old rural letter carrier, filed an occupational disease claim alleging that her employment activities caused extreme pain in her thumbs and

weakness in her wrists and hands. Appellant indicated that she worked for the employing establishment for 19 years without symptoms. She first noticed the symptoms on May 10, 2002 when she experienced pain and tingling in her wrists and thumbs.

In a May 29, 2002 report, Dr. Paul Gorman, an orthopedist, stated that appellant presented with left nondominant hand pain that developed into thumb pain, tingling and numbness. She had significant loss of strength and dexterity, mainly in the thumb, index and middle finger that was getting worse. On examination he found positive provocative signs of carpal tunnel syndrome including positive tests for Tinel's, Phalen's and median nerve compression, right significantly greater than left. Dr. Gorman noted that appellant displayed a minimal amount of cubital signs and symptoms consisting of positive Tinel's on the left with negative subluxation and negative elbow flexion. He added that she had full range of motion of both upper extremities and no signs of thenar or intrinsic atrophy with a 4/5+ right thumb tenderness with a negative grind test. Dr. Gorman found negative radial styloid tenderness and negative Finkelstein's and scaphoid shift test with normal two-point discrimination with an intact and Allen's test, normal color, temperature and seating status. He noted that x-rays revealed early stage three mild spurring of the thumb carpometacarpal (CMC) joints. Dr. Gorman diagnosed bilateral carpal tunnel syndrome, bilateral thumb CMC joint osteoarthritis, early stage three and chronic tobaccoism. In a May 29, 2002 note, Chris Hendrix, a physicians' assistant in Dr. Gorman's office stated: "Dr. Gorman agreed at this time the patient's symptoms were not due to work."

In a June 3, 2002 progress note, Dr. Thomas Huddleston, an orthopedic surgeon, stated that appellant presented with complaints of pain and tingling in both hands, left worse than right. According to Dr. Huddleston, appellant stated that she repeatedly dropped objects and her condition bothers her when she drives and at night. He also noted that appellant stated that she had been out of work for three weeks and wished to return and came to him because Dr. Gorman could not see her for testing for three more weeks. On examination Dr. Huddleston found Tinel's sign positive on the left, negative on the right. Phalen's test was positive into her thumb tips at 10 seconds bilaterally, negative Tinel's over pronator, cubital tunnel, infraclavicular and supraclavicular areas with good radial pulses. He stated that nerve conduction tests showed borderline abnormal conduction on the right and normal conduction on the left. He performed carpal tunnel injections bilaterally and returned appellant to light-duty work with no repetitive tasks. In a June 14, 2002 note, Dr. Huddleston stated that appellant presented about 50 percent better. He recommended that she have surgical release and the surgery was performed on her left wrist on June 20, 2002. In a July 1, 2002 report, he noted that appellant's left wrist was significantly better and that she wished to have the same procedure on her right hand. The right hand release was done on July 12, 2002.

In a July 15, 2002 chart note, Dr. Gorman stated that with a reasonable degree of medical certainty he did not think that appellant's condition was *significantly* (emphasis in the original) aggravated by work, but were conditions or diseases of life. He added that it was more probable than not that she would have experienced these conditions irrespective of her job with the employing establishment.

In a July 25, 2002 letter, the Office requested more information. On a July 29, 2002 appellant responded that she dumped, sorted and folded mail using her hands and wrists up to three hours a day and drove her car to deliver mail up to three hours. Appellant added that she does not play sports or a musical instrument and she used her computer once a month. On May 20, 2002 she could not put her vehicle in reverse due to pain and weakness. She stated that she switched to Dr. Huddleston because she wanted to return to work and Dr. Gorman could not perform tests for three weeks.

In a September 25, 2002 decision, the Office denied the claim finding the medical evidence insufficient. In an October 15, 2002 letter, appellant requested a hearing and submitted an October 15, 2002 progress report from Dr. Huddleston which stated that appellant presented considerably improved and he was releasing her to return to unrestricted work. He added that the symptoms appeared when her work duties changed to include increased sorting of flats and were directly related to these work duties. Dr. Huddleston stated that he disagreed with Dr. Gorman's opinion that appellant's work did not significantly aggravate her condition.

At the July 29, 2002 hearing appellant testified that she worked 19 years as rural letter carrier and had no symptoms until the recent work changes that included lifting, folding and sorting more flats. Appellant also noted that the flats had to be lifted out a tub rather than delivered to her work shelf. She also stated that her hands were so painful she could not button her shirt, push a door handle or put her car in gear.

In an August 28, 2003 report, Dr. Huddleston reviewed appellant's medical history and stated that she still has some mild to moderate carpal tunnel symptoms that are definitely aggravated by the increased use of her hands at work. He added that appellant also has some symptoms of pain in her hands that are related to degenerative arthritis in the CMC joints of both hands and is not related to carpal tunnel syndrome.

The hearing representative affirmed the denial of appellant's claim by decision dated October 21, 2003.

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

¹ 5 U.S.C. § 8101 *et seq.*

² *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

³ *See Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

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. The medical evidence required to establish a causal relationship 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. 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

ANALYSIS

In the present case, the evidence of record that discusses causal relationship, supports that appellant's bilateral carpal tunnel condition was causally related to her employment factors; and is based on demonstrated knowledge of appellant's job duties and changed working conditions. In his October 15, 2002 report, Dr. Huddleston stated that appellant's condition was directly related to work conditions such as increased use of her hands to dump, fold and sort flats and he discussed the fact that changes in her work conditions were the precipitating factor of her symptoms. In his August 28, 2003 report, he stated that appellant's changed employment conditions definitely aggravated her condition.

Although the Office interpreted it to the contrary, Dr. Gorman's July 15, 2002 report also supports that appellant's employment activities contributed to her condition. He stated that with a reasonable degree of medical certainty he did not think that appellant's condition was *significantly* (emphasis in the original) aggravated by work. While Dr. Gorman is not attributing her condition entirely to work, he is suggesting that her work made some contribution. It is well established that appellants do not have to show a significant contribution from work factors to establish causal relationship. Workers' compensation law draws a clear distinction between "little" and "no" contribution.⁴ In his report, Dr. Gorman suggested, by emphasizing the word "significant," that appellant's working conditions made "some" contribution, which is sufficient for entitlement to benefits under the Act.

The May 29, 2002 statement from the physicians' assistant, that Dr. Gorman said that appellant's condition is not work related is not medical evidence under the Act as a physician's

⁴ See *Beth P. Chaput*, 37 ECAB 158 (1985); A. Larson, *The Law of Workers' Compensation* § 90.04 (2000).

assistant is not a physician.⁵ The rest of the medical evidence of record is silent on the issue of causal relationship.

Proceedings under the Act are not adversarial in nature nor is the Office a disinterested arbiter. While appellant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.⁶ In the present case, the preponderance of the medical evidence supports appellant's claim as alleged. The fact that the reports contain deficiencies preventing appellant from discharging her burden of proving by the weight of the reliable, probative and substantive evidence that she sustained an occupational disease in the performance of duty does not mean that they may be completely disregarded by the Office; it merely means that their probative value is diminished.⁷ The Board finds the reports are sufficient to require further development of the record.⁸

On remand, the Office shall request that Dr. Huddleston provide a rationalized medical opinion that explains the relationship, if any between, appellant's diagnosed condition and her employment factors. After this and whatever additional development the Office deems necessary the Office should issue a *de novo* decision.

CONCLUSION

The Board finds the case is not in posture for decision. The medical evidence of record, while insufficient to meet appellant's burden of proving a causal relationship between her bilateral carpal tunnel syndrome and her employment, is sufficient to require the Office to undertake further development of the record.

⁵ Section 8102(2) of the Act provides, in relevant part, "physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law." 5 U.S.C. § 8101(2).

⁶ *Elaine K. Kreymborg*, 41 ECAB 256 (1989).

⁷ *See Joseph R. Guay*, 35 ECAB 455, 460 (1983).

⁸ *See Horace Langhorne*, 29 ECAB 820 (1978).

ORDER

IT IS HEREBY ORDERED THAT the decision by the Office of Workers' Compensation Programs dated October 21, 2003 is set aside and the case is remanded for further development consistent with this decision.

Issued: September 2, 2004
Washington, DC

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member