

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

MICHELE D. RAGGINS, Appellant

and

**DEPARTMENT OF DEFENSE, DEFENSE
COMMISSARY AGENCY, Fort Hamilton
Army Base, NY, Employer**

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**Docket No. 04-1271
Issued: September 23, 2004**

Appearances:

*Michele D. Raggins, 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 April 13, 2004 appellant filed a timely appeal of the Office of Workers' Compensation Programs' merit decision dated April 10, 2003, finding that she failed to establish an injury while in the performance of duty. 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 she sustained an injury while in the performance of duty.

FACTUAL HISTORY

On December 20, 2002 appellant, then a 36-year-old cashier, filed an occupational disease claim alleging that on November 20, 2002 she first realized that her bilateral carpal tunnel syndrome was caused or aggravated by factors of her federal employment. She stated that the cold weather aggravated her condition, which had worsened and caused her joints to hurt.

Appellant noted that it was hard for her to lift her arms due to the pain and weather. She stood at work while checking customers' identification cards as they came into the store. Appellant also stood while working as a cashier. She experienced swelling in her hands since she put store coupon books on the racks. In explaining the delay for not filing her claim within 30 days, appellant stated that she had severe anemia and had been very weak and dizzy and unable to hold up her head. Appellant noted that she sought treatment for her condition and that she was scheduled for surgery on January 2, 2003 to remove a tumor. She stopped work on November 16, 2002.

In support of her claim, appellant submitted a hospital report from a physician whose initials are illegible indicating that she suffered from leg pain. Discharge instructions noted a diagnosis of anemia and vertigo and her follow-up care. Progress notes from Dr. Pilar Stevens-Haynes, an internist, indicated that appellant was a patient at Mt. Sinai Hospital on November 26, 2002 and that she was treated for anemia and vertigo. Dr. Stevens-Haynes prescribed bed rest and advised appellant to return to work. She advised appellant to refrain from working outside and to work in a seated position. In a December 5, 2002 letter, Dr. David Muller, a Board-certified internist, noted that appellant suffered from uterine fibroids, which caused significant regional bleeding and significant iron deficiency anemia. He stated that, once the fibroids were removed, the anemia condition could be corrected in two to four months. Dr. Boris Itsikovich, a Board-certified internist, stated in a November 4, 2002 letter that appellant was seen on that date. He noted her complaints of severe pain in her legs and cramps. Appellant related to him that her job required her to stand for seven hours, which made the pain worse. Dr. Itsikovich opined that appellant would benefit from performing her job in a seated position until her health status improved.

The employing establishment controverted appellant's claim on the grounds that her anemia, vertigo and the removal of her fibroid tumor were unrelated to her work duties. The employing establishment contended that the medical evidence submitted did not establish a causal relationship between appellant's medical conditions and any factors of her federal employment.

By letter dated March 3, 2003, the Office advised appellant that the evidence submitted was insufficient to establish her claim as it pertained to her anemia and uterine fibroids and not carpal tunnel syndrome. The Office further advised appellant about the type of factual and medical evidence she needed to submit to establish her claim. Appellant did not respond within 30 days.

In an April 10, 2003 decision, the Office denied appellant's claim on the grounds that she failed to establish that she sustained an injury while in the performance of duty. The Office found that appellant failed to submit sufficient medical evidence to establish that factors of her federal employment were responsible for her diagnosed medical conditions.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of 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 presence or existence of the disease or condition for which compensation is claimed;⁴ (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;⁵ 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.⁶ The evidence required to establish a causal relationship is rationalized medical opinion evidence, based on a complete factual and medical background, showing a causal relationship between the claimed condition and identified factors. The belief of a claimant that a condition was caused or aggravated by the employment is not sufficient to establish causal relation.⁷

The medical evidence required to establish causal relationship generally 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.⁸ The opinion of the physician must be based on a complete factual and medical background of the claimant,⁹ also must be one of reasonable medical certainty,¹⁰ and must be supported by medical

¹ 5 U.S.C. §§ 8101-8193.

² *Derrick C. Miller*, 54 ECAB __ (Docket No. 02-140, issued December 23, 2002).

³ *Janice Guillemette*, 54 ECAB __ (Docket No. 03-1124, issued August 25, 2003).

⁴ *Solomon Polen*, 51 ECAB 341 (2000).

⁵ *Marlon Vera*, 54 ECAB __ (Docket No. 03-907, issued September 29, 2003); *Janet L. Terry*, 53 ECAB __ (Docket No. 00-1673, issued June 5, 2002); *Roger Williams*, 52 ECAB 468 (2001).

⁶ *Ernest St. Pierre*, 51 ECAB 623 (2000).

⁷ *Luis M. Villanueva*, 54 ECAB __ (Docket No. 03-977, issued July 1, 2003).

⁸ *Conrad Hightower*, 54 ECAB __ (Docket No. 02-1568, issued September 9, 2003).

⁹ *Tomas Martinez*, 54 ECAB __ (Docket No. 03-396, issued June 16, 2003).

¹⁰ *John W. Montoya*, 54 ECAB __ (Docket No. 02-2249, issued January 3, 2003).

rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹¹

ANALYSIS

The Office found that appellant failed to establish that factors of her federal employment caused or aggravated her claimed medical conditions. Appellant alleged that being exposed to cold weather as she stood by the door checking customers' identification cards as they entered into the store, standing while working as a cashier and putting store coupon books on the racks aggravated her carpal tunnel syndrome. (R 16) It is well established that a claimant cannot establish fact of injury if there are inconsistencies in the evidence that cast serious doubt as to whether the specific event or incident occurred at the time, place and in the manner alleged.¹² The Board notes, however, that an employee's statement regarding the occurrence of an employment incident is of great probative value and will stand unless refuted by strong or persuasive evidence.¹³ The Board notes that the employing establishment did not dispute appellant's description of her duties while working as a cashier. The Board finds that she has submitted sufficient factual evidence to establish that she performed the job duties alleged to have caused or contributed to her medical conditions.

The Board finds, however, that appellant did not submit sufficient medical evidence to establish that her bilateral carpal tunnel syndrome or other medical conditions were caused by factors of her employment as a cashier. The hospital medical report and discharge instructions which indicated that she suffered from leg pain, anemia and vertigo failed to address whether these conditions were caused or aggravated by factors of her federal employment.¹⁴ Dr. Stevens-Haynes' November 26, 2002 progress notes, which indicated that appellant suffered from anemia and vertigo, failed to provide any discussion as to whether appellant's conditions were caused by factors of her employment.¹⁵ Dr. Muller's December 5, 2002 letter diagnosed uterine fibroids and iron deficiency anemia. The physician did not address whether these conditions were caused by factors of appellant's federal employment.¹⁶ Dr. Itsikovich's November 4, 2002 opinion that appellant would benefit from performing her job in a seated position until her health status improved failed to provide a diagnosis or address whether her condition was caused by factors of her employment. The medical evidence of record does not indicate that appellant was diagnosed with carpal tunnel syndrome that was causally related to factors of her employment. Based on the foregoing, the Board finds that appellant did not satisfy her burden of proof in this case.

¹¹ *Judy C. Rogers*, 54 ECAB __ (Docket No. 03-565, issued July 9, 2003).

¹² *Gene A. McCracken*, 46 ECAB 593 (1995); *Mary Joan Coppolino*, 43 ECAB 988 (1992).

¹³ *Thelma Rogers*, 42 ECAB 866 (1991).

¹⁴ See *Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (finding that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

¹⁵ *Id.*

¹⁶ *Id.*

CONCLUSION

The Board finds that appellant has established the employment activities that she alleged contributed to her condition. The Board also finds that appellant has failed to submit sufficiently rationalized medical evidence to establish that she sustained an injury causally related to factors of her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the April 10, 2003 decision of the Office of Workers' Compensation Programs is modified to find that appellant failed to establish factors of her employment and affirmed in finding that she failed to submit sufficiently rationalized medical evidence establishing that she sustained an injury causally related to factors of her employment.

Issued: September 23, 2004
Washington, DC

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member