

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

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**JUDITH MURPHY, Appellant**

**and**

**U.S. POSTAL SERVICE, SHARED SERVICE  
CENTER, Pittsburgh, PA, Employer**

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**Docket No. 05-1949  
Issued: December 9, 2005**

*Appearances:*  
*Thomas R. Uliase, Esq., for the appellant*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
DAVID S. GERSON, Judge  
WILLIE T.C. THOMAS, Alternate Judge

**JURISDICTION**

On September 21, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decisions dated November 8, 2004 and January 15 and May 11, 2005 denying her traumatic injury claim. 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 sustained a traumatic injury while in the performance of duty.

**FACTUAL HISTORY**

On March 26, 2003 appellant, a 44-year-old casual mail carrier, filed a traumatic injury claim (Form CA-1) alleging that, on February 27, 2003, she strained her wrist as a result of repetitive motion. In a medical report dated March 25, 2003, Dr. Roy Stahlman, Board-certified in the area of emergency medicine, provided a diagnosis of left wrist strain. The diagnosis for

the right wrist was illegible. In an April 1, 2003 report, Dr. Stahlman diagnosed bilateral wrist/forearm tendinitis.

Appellant submitted numerous physical therapy notes and physician's notes. Unsigned notes dated May 7, 2003 reflected that, on January 15, 2003, heavy bundles fell on appellant's thumbs while she was handling mail.

Appellant submitted a report dated May 23, 2003 from Dr. Lawrence S. Forman,<sup>1</sup> a treating physician and Dr. Arnold S. Lincow, a Board-certified family practitioner. Dr. Forman stated that appellant informed him that she had been injured at work on January 15, 2003, when heavy bundles fell on her thumbs, causing severe pain in both hands; that she had reported the incident to her supervisor, who sent her to the hospital; and that she had been having problems for several months prior to the incident, but that the incident had worsened her condition. Dr. Forman provided a diagnosis of bilateral carpal tunnel syndrome (CTS) "due to the repetitive nature of the job."

On July 16, 2003 the Office notified appellant that the evidence submitted was insufficient to establish her claim and advised her to provide additional documentation, including a firm diagnosis and a physician's opinion as to how her injury resulted in the diagnosed condition. The Office specifically asked appellant to provide a detailed description as to how the injury occurred, the cause of the injury; statements from any witnesses or other documentation supporting his claim; and the reason she delayed seeking medical treatment.

In a response dated October 30, 2003, appellant stated that her injury occurred "over a period of time"; that she worked repetitively, lifting 100-pound bundles eight hours per day; that on January 15, 2003 a 20-pound bundle of flats fell onto her hands; and that she reported the incident to her supervisor on February 27, 2003.

In an October 23, 2003 statement, a coworker, Darlene Ford-Bey, reported that she witnessed bundles of flats fall onto appellant's hands on January 15, 2003.

In a report of a November 13, 2003 electromyogram (EMG) and nerve conduction study, Dr. Stephen Sacks, a treating physician, related that appellant had sustained a work-related injury on January 15, 2003 resulting in significant pain, numbness and tingling involving the upper extremity area. He also indicated that the study was consistent with bilateral CTS.

November 12, 2003 reports of magnetic resonance imaging scans of both wrists were "unremarkable." In a November 25, 2003 report of a triple phase nuclear bone scan, Dr. Irene B. Darocha, a Board-certified diagnostic radiologist, provided the following impression: "abnormal triple phase nuclear bone scan in the delayed phase only with multiple areas of degenerative type uptake in both wrists and in the left hand as well as in both feet and ankles."

In a merit decision dated December 19, 2003, the Office denied appellant's claim, finding that the evidence was insufficient to establish that she had sustained an injury under the Federal

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<sup>1</sup> Dr. Forman represents that he is Board-certified in the area of family medicine; however, his credentials cannot be verified.

Employees' Compensation Act. The Office found that appellant had failed to establish that the alleged event had occurred and that there was no medical evidence that provided a diagnosis connected to an injury occurring on February 27, 2003 from repetitive motion.

On January 8, 2004 appellant requested an oral hearing. In a February 23, 2004 letter, her representative stated that appellant had experienced a traumatic injury on January 15, 2003 which aggravated her repetitive motion condition.

In a May 4, 2004 report, Dr. Lincow provided diagnoses of traumatic injury to bilateral hands and wrists -- repetitive motion injury; aggravation of bilateral CTS; traumatic aggravation of median nerve entrapment neuropathy; chronic complex pain syndrome, type 2; unresolved bilateral thumb sprains; and compressive cyst of the left hand causing aggravation of the left wrist. Dr. Lincow opined that appellant's condition was directly and causally related to her January 15 and February 27, 2003 work injuries, when heavy mail bundles fell on her hands. He further opined that appellant was totally disabled.

In a May 24, 2004 letter, appellant's representative stated that he was forwarding Dr. Lincow's May 4, 2004 report in support of appellant's "occupational disease claim."

At the August 30, 2004 oral argument, appellant's representative asked that appellant's claim be amended to reflect that the alleged traumatic injury occurred on January 15, 2003. Appellant testified that on that date a bulk of magazines struck both of her hands and thumbs; that she informed her supervisor; that she had missed no time from work from January 15 through March 23, 2003 as a result of her injury; that she had been involved in a motor vehicle accident on January 22, 2003; and that she had been having problems for several months prior to the January 15, 2003 injury, including tingling, numbness and pain in her hands. A coworker, Ms. Ford-Bey, testified that she witnessed bundles of mail fall onto appellant's hands on January 15, 2003 and that appellant had cried out in pain at that time.

By decision dated November 8, 2004, the Office hearing representative affirmed the December 19, 2003 decision, modifying the decision to reflect that appellant had not established the fact of injury for an injury occurring on either January 15 or February 27, 2003.

On December 16, 2004 appellant requested reconsideration. Appellant submitted a statement from her supervisor, Ron D'Annunzio, reporting that appellant was injured on January 15, 2003 when bundles fell on her hands. Appellant also submitted a December 2, 2004 EMG report reflecting bilateral CTS.

By decision dated January 15, 2005, the Office modified its November 18, 2004 decision, finding that appellant had established the fact of injury, namely that two bundles fell on her hands on January 15, 2003. However, the Office denied appellant's claim on the grounds that she had failed to establish a causal relationship between her diagnosed condition and the accepted event. Specifically, the Office found that the evidence did not support that appellant's wrist condition was due to the traumatic event of January 15, 2003.

On March 2, 2005 appellant requested reconsideration. In a December 2, 2004 report, Dr. Martin D. Weaver, a Board-certified psychiatrist, described appellant's persistent radiating cervical pain and parasthesias in her upper extremities bilaterally. Noting that appellant had

been asymptomatic for any cervical injury prior to the work-related injury, he opined that appellant's bilateral CTS was a direct result of a work-related accident of February 27, 2003.

In a February 23, 2005 report, Dr. Lincow reiterated his opinion that appellant's current condition was directly and causally related to the February 27, 2003 work-related injuries. Dr. Lincow indicated that he had reviewed the entire medical record. His physical examination of appellant revealed atrophy of the right hand and wrist thenar eminence with multiple trigger points, coolness, spasm edema from the thumb to the fourth finger with a positive Finkelstein's test, painful click over the metacarpophalangeal joint of the right wrist, positive Phalen's and Tinel's signs, positive shuck test and pain over the triangular fibrocartilage of bilateral wrists at the area of the ulnar, lunate and scaphoid bones. He also indicated that appellant had allodynia as well as edema and sweating. He provided the following diagnoses: bilateral CTS; traumatic aggravation of preexisting asymptomatic arthritis of bilateral hands; traumatic aggravation of median nerve entrapment neuropathy; chronic complex pain syndrome, type 2; unresolved bilateral thumb sprains with de Quervain's disease; and compressive cyst of the left hand causing aggravation of CTS and median nerve neuropathy. Dr. Lincow stated that the Office's opinion that there was no medical rationale relating appellant's condition to the work-related injury was "beyond [his] comprehension." He explained that, when appellant's hands were injured, they were in a prone position and banged backward, causing a compression neuropathy of bilateral hands and traumatic impaction CTS. He stated that this phenomenon is quite common, especially in sports areas.

In a May 5, 2005 letter, the Office informed appellant that the information submitted in connection with her occupational disease claim for benefits filed for CTS (File No. 032038342) was insufficient to establish her claim.

By decision dated May 11, 2005, the Office denied modification of its January 18, 2005 decision. The Office found that appellant had failed to provide a well-reasoned medical report confirming a relationship between her wrist condition and the January 15, 2003 incident.

### **LEGAL PRECEDENT**

The Act<sup>2</sup> provides for payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.<sup>3</sup> The phrase "sustained while in the performance of duty" is regarded as the equivalent of the coverage formula commonly found in workers' compensation laws, namely, "arising out of and in the course of employment."<sup>4</sup>

An employee seeking benefits under the Act has the burden of proof to establish the essential elements of his or her claim including the fact that the individual is an "employee of the

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<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

<sup>3</sup> 5 U.S.C. § 8102(a).

<sup>4</sup> This construction makes the statute effective in those situations generally recognized as properly within the scope of workers' compensation law. *Charles E. McAndrews*, 55 ECAB \_\_\_\_ (Docket No. 04-1257, issued, September 10, 2004); *see also Bernard D. Blum*, 1 ECAB 1 (1947).

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 or specific condition for which compensation is claimed is causally related to the employment injury.<sup>5</sup> When an employee claims that he sustained a traumatic injury in the performance of duty, he must establish the “fact of injury,” namely, he must submit sufficient evidence to establish that he experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged and that such event, incident or exposure caused an injury.<sup>6</sup>

The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of employment.<sup>7</sup> An award of compensation may not be based on appellant’s belief of causal relationship. Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.<sup>8</sup>

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician’s rationalized opinion on whether there is a causal relationship between the claimant’s diagnosed condition and the established incident or factor of employment. The opinion 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 established incident or factor of employment.<sup>9</sup>

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 the employment factors alleged to have caused or contributed to the

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<sup>5</sup> *Robert Broome*, 55 ECAB \_\_\_\_ (Docket No. 04-93, issued February 23, 2004); *see also Elaine Pendleton*, 40 ECAB 1143 (1989). *See also* 5 U.S.C. § 8101(5) (“injury” defined); 20 C.F.R. § 10.5(q) and (ee) (2000). (“Occupational disease or illness means a condition produced by the work environment over a period longer than a single workday or shift.”) (“Traumatic injury means a condition of the body caused by a specific event or incident, or a series of events or incidents, within a single workday or shift.”)

<sup>6</sup> *Betty J. Smith*, 54 ECAB \_\_\_\_ (Docket No. 02-149, issued October 29, 2002); *see also Tracey P. Spillane*, 54 ECAB \_\_\_\_ (Docket No. 02-2190, issued June 12, 2003). The term “injury” as defined by the Act, refers to a disease proximately caused by the employment. 5 U.S.C. § 8101(5). *See* 20 C.F.R. § 10.5(q), (ee).

<sup>7</sup> *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

<sup>8</sup> *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

<sup>9</sup> *John W. Montoya*, 54 ECAB \_\_\_\_ (Docket No. 02-2249, issued January 3, 2003).

presence or occurrence of the disease or condition; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.<sup>10</sup>

### ANALYSIS

The Board finds that this case is not in posture for a decision. The Office accepted that appellant had established fact of injury, namely that two bail bundles fell on her hands on January 15, 2003. However, the Office denied appellant's claim on the grounds that she had failed to establish a causal relationship between her diagnosed condition and the accepted event. Specifically, the Office found that the medical evidence of record did not support that appellant's wrist condition was due to the traumatic event of January 15, 2003. Appellant submitted probative medical evidence supporting that her diagnosed CTS resulted from her work-related injury. The evidence is insufficient, however, for the Board to determine whether appellant's current condition resulted from a traumatic injury or an occupational disease. The Board finds that this case requires further development by the Office in order for the Board to render a full and fair decision.

On March 26, 2003 appellant filed a traumatic injury claim alleging that her CTS condition was caused by heavy bundles falling on her hands. The record also reflects that, in May 2005, appellant filed an occupational disease claim (File No. 032038342) for benefits related to her CTS.<sup>11</sup> Although the Office developed the instant case as a traumatic injury claim, the record contains evidence suggesting that appellant's condition developed over a period of time and was at least, in part, a result of repetitive motion related to her employment, rather than simply the traumatic injury of January 15, 2003. In fact, appellant alleged in her CA-1 form that she strained her wrist as a result of repetitive motion. In a May 23, 2003 report, Drs. Forman and Lincow provided a diagnosis of bilateral CTS "due to the repetitive nature of the job." Appellant represented that her injury occurred "over a period of time" and that she worked repetitively, lifting 100-pound bundles 8 hours per day. On May 4, 2004 Dr. Lincow provided diagnoses of traumatic injury to bilateral hands and wrists -- repetitive motion injury; aggravation of bilateral CTS; traumatic aggravation of median nerve entrapment neuropathy; chronic complex pain syndrome, type 2; unresolved bilateral thumb sprains; and compressive cyst of the left hand causing aggravation of the left wrist. While Dr. Lincow opined that appellant's condition was directly and causally related to her January 15 and February 27, 2003 work injuries, he implied that she had a preexisting carpal tunnel condition that was aggravated by the work-related injury.

Medical evidence supporting appellant's claim for traumatic injury included Dr. Lincow's May 4, 2004 opinion that appellant's condition was directly and causally related to her January 15 and February 27, 2003 work injuries, when heavy mail bundles fell on her hands; Dr. Weaver's December 2, 2004 report describing appellant's persistent radiating cervical pain and paresthesias in her upper extremities bilaterally and opining that appellant's bilateral CTS was a direct result of the work-related accident of February 27, 2003; and Dr. Lincow's

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<sup>10</sup> *Michael R. Shaffer*, 55 ECAB \_\_\_\_ (Docket No. 04-233, issued March 12, 2004). *See also Solomon Polen*, 51 ECAB 341, 343 (2000).

<sup>11</sup> The record does not contain a copy of appellant's CA-2 form.

February 23, 2005 report reiterating his opinion that appellant's current condition was directly and causally related to the February 27, 2003 work-related injuries. Dr. Lincow's physical examination of appellant revealed atrophy of the right hand and wrist thenar eminence with multiple trigger points, coolness, spasm edema from the thumb to the fourth finger with a positive Finkelstein's test, painful click over the metacarpophalangeal joint of the right wrist, positive Phalen's and Tinel's signs, positive shuck test and pain over the triangular fibrocartilage of bilateral wrists at the area of the ulnar, lunate and scaphoid bones. He also indicated that appellant had allodynia as well as edema and sweating. Based upon a review of the entire medical record, he provided the following diagnoses: bilateral CTS; traumatic aggravation of preexisting asymptomatic arthritis of bilateral hands; traumatic aggravation of median nerve entrapment neuropathy; chronic complex pain syndrome, type 2; unresolved bilateral thumb sprains with de Quervain's disease; and compressive cyst of the left hand causing aggravation of CTS and median nerve neuropathy. Dr. Lincow stated that the Office's opinion that there was no medical rationale relating appellant's condition to the work-related injury was "beyond [his] comprehension." He explained that, when appellant's hands were injured, they were in a prone position and banged backward, causing a compression neuropathy of bilateral hands and traumatic impaction CTS. He stated that this phenomenon is quite common, especially in sports areas.

The Board finds that the medical evidence of record supports that appellant's condition is causally related to factors of her federal employment. However, the evidence is not sufficiently well rationalized to determine whether appellant sustained a traumatic or occupational injury. The Board finds that appellant has submitted sufficient evidence to warrant further development of her claim by the Office. It is well established that proceedings under the Act are not adversarial in nature and while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.<sup>12</sup>

The Board will remand this case to the Office for further development and a determination as to whether this case should proceed as a traumatic injury or occupational disease case. On remand, after further development of the record as deemed necessary, the Office shall issue a *de novo* decision.

### **CONCLUSION**

The Board finds that this case is not in posture for a decision as to whether appellant sustained a traumatic injury while in the performance of duty.

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<sup>12</sup> Jimmy A. Hammons, 51 ECAB 219 (1999).

**ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' decisions dated May 11 and January 15, 2005 and November 8, 2004 are set aside and remanded for further action in accordance with the terms of this order of the Board.

Issued: December 9, 2005  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge  
Employees' Compensation Appeals Board