



stated that she performed repetitive duties as a distribution clerk, including operating a letter sorting machine. In a report dated June 6, 2001, electromyogram (EMG) and nerve conduction velocities were reported as normal.

By decision dated April 3, 2002, the Office denied the claim for compensation on the grounds that the medical evidence was insufficient to establish causal relationship between the claimed conditions and federal employment. Appellant requested a hearing before an Office hearing representative, which was held on February 27, 2003. He submitted a report dated April 1, 2002 from Dr. Michael Pecoraro, a surgeon, who stated that he first saw appellant on May 3, 2001 with physical examination revealing “a positive feeling test” of the left and right hands within 20 seconds,<sup>1</sup> a positive Tinel’s sign over left and right medial nerve at both wrists and a left wrist dorsal ganglion cyst. He noted that EMG and nerve conduction studies were reported as normal on June 6, 2001 but physical examination on September 20, 2001 showed a positive Tinel’s test and the diagnosis bilateral carpal syndrome and dorsal ganglion cyst of the left wrist. Dr. Pecoraro stated that the lack of positive findings for EMG and nerve conduction studies did not mean that appellant did not have carpal tunnel syndrome, as these studies can give a false negative in 10 to 15 percent of cases. He opined that within a reasonable degree of medical certainty appellant’s work activities contributed to her condition.

By decision dated June 5, 2003, the hearing representative remanded the case for further development, finding that Dr. Pecoraro’s report was sufficient to remand the case for referral to a second opinion orthopedic surgeon. The Office prepared a statement of accepted facts and referred appellant to Dr. Irving D. Strouse, a Board-certified orthopedic surgeon.

In a report dated July 18, 2003, Dr. Strouse provided a history and results on examination. He noted that there was no sign of any ganglion cysts. Dr. Strouse noted that while the diagnosis of carpal tunnel syndrome had been entertained, it had not been proven by EMG studies. He recommended that appellant have current EMG and nerve conduction studies. By report dated September 16, 2003, Dr. Strouse indicated that EMG and nerve conduction studies had been performed on August 19, 2003 and the results were normal with no electrophysiologic evidence of a peripheral neuropathy in the nerves tested. Dr. Strouse opined that appellant did not have a medical condition that was causally related to her employment. He also stated that there was no current medical condition that required treatment.

By decision dated September 29, 2003, the Office denied appellant’s claim for compensation on the grounds that the medical evidence did not establish a medical condition causally related to appellant’s federal employment. Appellant requested a hearing, which was held on May 25, 2004. In a decision dated August 18, 2004, the hearing representative found that the evidence was sufficient to establish a left wrist ganglion cyst as employment related, with the condition resolved as of July 18, 2003.<sup>2</sup> With respect to carpal tunnel syndrome, the hearing representative found that the weight of the medical evidence did not establish the presence of carpal tunnel syndrome.

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<sup>1</sup> The reference to the time elapsed indicates that Dr. Pecoraro may be referring to the Phalen’s test.

<sup>2</sup> Appellant’s representative did not request that the Board review the findings with respect to a ganglion cyst.

## LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act<sup>3</sup> 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 or specific condition for which compensation is claimed is causally related to the employment injury.<sup>4</sup>

Section 8123(a) of the Act provides that when there is a disagreement between the physician making the examination for the United States and the physician of the employee, a third physician shall be appointed to make an examination to resolve the conflict.<sup>5</sup> When there are opposing medical reports of virtually equal weight and rationale, the case must be referred to an impartial specialist, pursuant to section 8123(a), to resolve the conflict in the medical evidence.<sup>6</sup>

## ANALYSIS

In this case, an attending surgeon, Dr. Pecoraro, diagnosed carpal tunnel syndrome and opined that it was causally related to repetitive work activities. Dr. Pecoraro acknowledged that the June 2001 EMG and nerve conduction studies were normal, but he based his diagnosis on positive clinical findings and stated that in 10 to 15 percent of cases the electrophysiologic testing will give a false negative.

On the other hand, the second opinion physician, Dr. Strouse, found that the diagnosis of carpal tunnel was not established and noted normal EMG and nerve conduction studies and the lack of findings on physical examination. Although the Office found that Dr. Strouse represented the weight of the evidence, Dr. Pecoraro provided a reasoned medical opinion which was, as noted by the hearing representative in the June 5, 2003 decision, sufficient to require further development of the record. Dr. Pecoraro explained that his diagnosis was based on clinical findings and he opined that the condition was causally related to employment.

The record is in conflict on the issue of whether the diagnosis of carpal tunnel syndrome was established in this case. The case will be remanded to the Office for resolution of the conflict in accord with 5 U.S.C. §8123(a). The physician selected as an impartial medical specialist should provide an opinion as to whether the evidence is sufficient to establish the diagnosis of carpal tunnel syndrome, either currently or historically and if so, whether the condition was causally related to federal employment. After such further development as the Office deems necessary, it should issue an appropriate decision.

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<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>5</sup> *Robert W. Blaine*, 42 ECAB 474 (1991); 5 U.S.C. § 8123(a).

<sup>6</sup> *William C. Bush*, 40 ECAB 1064 (1989).

**CONCLUSION**

The Board finds that a conflict in the medical evidence exists with respect to the diagnosis of carpal tunnel syndrome and the case will be remanded for resolution of the conflict.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated August 18, 2004 is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: May 3, 2005  
Washington, DC

Alec J. Koromilas  
Chairman

David S. Gerson  
Alternate Member

A. Peter Kanjorski  
Alternate Member