

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

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**DORIS J. ANDERSON, Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Bala Cynwyd, PA, Employer**

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**Docket No. 06-153  
Issued: April 18, 2006**

*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  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On November 1, 2005 appellant filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs dated June 15, 2005, denying modification of the denial of her right shoulder condition. 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 met her burden of proof in establishing that she sustained a right shoulder condition causally related to factors of her federal employment.

**FACTUAL HISTORY**

On March 12, 2003 appellant, then a 53-year-old technician, filed a claim for a traumatic injury stating that on April 22, 2002 she aggravated a prior injury by constantly lifting, pulling and pushing items weighing 75 pounds or more while in the performance of duty. Appellant also noted that she was not performing sedentary duties. Appellant referenced a 1995 employment-related injury when she fell, causing back and upper extremity injuries. She related that her

doctor later advised her that she had a torn right rotator cuff. The employing establishment controverted the claim, noting that appellant was not required to push objects of 75 pounds.<sup>1</sup> The employing establishment also noted that appellant was currently out of work for a separate work-related injury, claim number 032008330, sustained on May 3, 2002, for which she was receiving compensation.<sup>2</sup>

By decision dated June 20, 2003, the Office denied appellant's claim on the grounds that she failed to submit evidence establishing an employment-related injury on or about April 22, 2002. On June 23, 2003 appellant, through counsel, requested an oral hearing. In a report dated June 8, 2003, appellant stated that her April 22, 2002 claim was for an aggravation of her April 1995 injury and that her pains worsened in her right shoulder, neck, elbow, hand and right side on April 22, 2002.

In a report dated April 1, 2002, Dr. Joseph J. Thoder, a Board-certified orthopedic surgeon, noted rotator cuff tendinitis and carpal tunnel syndrome with onset six to seven years earlier. He noted that appellant worked on a computer at work, which may have contributed to the upper extremity complaints of the right side. On physical examination, appellant had pain in the right shoulder with internal rotation and abduction. He noted a positive median nerve compression test and a positive Tinel's sign at the right wrist. X-rays revealed degenerative changes at the carpometacarpal joint with joint space narrowing and mild joint subluxation. X-rays of the wrist and shoulder were normal. Neck examination revealed limited range of motion secondary to pain. Low back x-rays revealed osteophytes and joint space narrowing. He noted that her carpal tunnel syndrome, discomfort of the carpometacarpal joint and rotator cuff tendinopathy made it difficult to function and recommended new diagnostic tests. On June 13, 2002 Dr. Thoder noted low back pain and "rotator cuff."

On July 1, 2002 Dr. Thoder stated that appellant had significant complaints of numbness, tingling, paresthesias and pain in the right upper extremity. He also noted that she fell at work on May 3, 2002 which aggravated her other conditions. Dr. Thoder noted that results of her nerve conduction study revealed median motor dysfunction with motor and sensory neuropathy on the right wrist. He stated that appellant's current problems were due to mechanical and physical effects rather than compressive neuropathy. Appellant also related pain radiating up the forearm with manipulation of the wrist and stretching of the median nerve. He noted that appellant was currently out of work because of her fall on May 3, 2002.

In a report dated July 23, 2002, Dr. Joseph S. Torg, a Board-certified orthopedic surgeon, stated that appellant's x-rays and magnetic resonance imaging (MRI) scans of the cervical and thoracic spine and shoulders were normal. On August 20, 2002 Dr. Thoder stated that based on electromyogram evaluation and a positive Phalen's test and Tinel's sign appellant had carpal tunnel syndrome. He noted that appellant's upper extremity use had worsened her condition

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<sup>1</sup> Appellant claimed that on April 25, 1995 she sustained injuries work-related injuries to her right-sided knee, elbow, hip and thumb. Claim number A3-213734. On January 31, 1996 the Office denied appellant's claim, referring to the issue as chronic pain syndrome. On June 10, 1996 the Office denied modification of its January 31, 1996 decision. This claim is not before the Board.

<sup>2</sup> Claim number 032008330 is not before the Board on the present appeal.

over the short term and was the cause of her condition, “dating back some [seven] years.” In a clinic note dated August 20, 2002, Dr. Thoder stated that appellant had overuse injuries which caused her distal hand complaints with bilateral carpal tunnel syndrome, greater on the right.

The Office held an oral hearing on November 13, 2003.

On February 5, 2004 the hearing representative affirmed the June 20, 2003 decision, as modified to find that the issue presented was whether appellant sustained an occupational disease instead of a traumatic injury as appellant advised at the hearing that there was no specific injury on April 22, 2002. The hearing representative stated that the Office denied her right shoulder claim previously and that the record contained no evidence to support a right shoulder work-related injury. Regarding her right wrist and arm, the hearing representative noted that the Office previously denied her 1996 claim for carpal tunnel syndrome in an April 30, 1997 decision, claim number 03-224290. Thus, the issue was whether appellant established carpal tunnel syndrome subsequent to her prior claim. The hearing representative found that Dr. Thoder’s reports were insufficient to establish an aggravation of carpal tunnel syndrome from 1996.

On May 3, 2005 appellant, through counsel, requested reconsideration of the Office’s decision dated February 5, 2004.

In a report dated January 28, 2005, Dr. John D. Kelly, a Board-certified orthopedic surgeon, stated that he treated appellant after rotator cuff repair and noted bilateral shoulder pain. Appellant related that her bilateral shoulder pain worsened after she fell at work. Dr. Kelly opined that it “is within reasonable medical certainty to say that patient’s shoulder condition was materially related to her fall at work.”<sup>3</sup>

By decision dated June 15, 2005, the Office denied modification of the February 5, 2004 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees’ Compensation Act<sup>4</sup> 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, 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> These are the essential elements of each and every

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<sup>3</sup> Appellant initially appealed the Office’s February 5, 2004 decision to the Board but, upon receipt of Dr. Kelly’s report, filed a motion to dismiss her appeal. The Board issued an order dismissing her appeal on March 17, 2005. Docket No. 05-641 (issued March 17, 2005).

<sup>4</sup> 5 U.S.C. §§ 8101-8193.

<sup>5</sup> *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>6</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 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 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. 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 identified by the claimant.<sup>7</sup>

Neither the 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 causal relationship.<sup>8</sup>

### ANALYSIS

It is not disputed that appellant engaged in pushing, pulling and lifting duties at work. However, the medical evidence is insufficient to establish that these duties caused or aggravated a particular condition.

In an April 1, 2002 report, Dr. Thoder, appellant's treating a Board-certified orthopedic surgeon, noted multiple symptoms of right shoulder condition and possible nerve compression symptoms. However, he made no determination as to whether these conditions were employment related. The report does not address a causal relationship between the diagnosed conditions and appellant's employment. Medical reports not containing a rationalized medical opinion on causal relationship are entitled to little probative value.<sup>9</sup> In a June 11, 2002 report, Dr. Thoder noted only back pain and rotator cuff. This report includes no opinion associating appellant's conditions with employment.<sup>10</sup> On July 1, 2002 Dr. Thoder stated that appellant fell

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<sup>6</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>7</sup> *Id.*

<sup>8</sup> *Minnie L. Bryson*, 44 ECAB 713 (1993).

<sup>9</sup> *Michael E. Smith*, 50 ECAB 313 (1999).

<sup>10</sup> *Id.*

at work on May 3, 2002, aggravated her upper extremity condition and that her current problems were caused by mechanical and physical effects rather than neuropathy. The Board notes that appellant filed a claim for a work-related injury on May 3, 2002 and that this report relates to that claim. It does not specifically address any prior occupational disease that appellant may have sustained due to employment factors. On August 20, 2002 Dr. Thoder noted that her carpal tunnel syndrome had worsened based on overuse of the upper extremity. However, the physician did not provide a clear medical explanation of how her work activities caused her diagnosed carpal tunnel syndrome, thus this report does not establish the essential element of causal relationship. The Board has held that medical conclusions unsupported by rationale are of little probative value.<sup>11</sup>

Dr Kelly's report related appellant's right upper extremity condition to a fall at work. To the extent that he may be referring to the May 3, 2002, fall, this has been, as noted above, adjudicated by the Office in a separate claim and is not presently before the Board. Dr. Kelly did not otherwise provide a description of how specific employment factors during particular time frames caused or aggravated an occupational disease. Consequently, this report is insufficient to establish appellant's claim for an occupational disease.<sup>12</sup>

Other medical reports submitted by appellant did not specifically address how specific employment factors caused or aggravated the claimed occupational disease.

As there is no probative, rationalized medical evidence indicating that appellant indeed sustained an occupational disease or that was caused and/or aggravated by factors of her employment, appellant has not met her burden of proof in establishing that she sustained a medical condition in the performance of duty causally related to factors of employment.

### **CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish that she sustained an injury in the performance of duty.

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<sup>11</sup> *Albert C. Brown*, 52 ECAB 152 (2000).

<sup>12</sup> *Id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated June 15, 2005 is affirmed.

Issued: April 18, 2006  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board