

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

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**B.W., Appellant**

**and**

**ENVIRONMENTAL PROTECTION AGENCY,  
Washington, DC, Employer**

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**Docket No. 06-1806  
Issued: December 4, 2006**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
DAVID S. GERSON, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On August 3, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated July 18, 2006 which denied her occupational disease claim. Pursuant to 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 in the performance of duty.

**FACTUAL HISTORY**

On March 29, 2006 appellant, a 51-year-old secretary, filed an occupational disease claim alleging that on March 23, 2006 she first realized that the injury to her hands was caused by the performance of her duties. In an attached statement, appellant stated the circumstances of her alleged injury. She stated that she had lifted and carried boxes during the week of March 20, 2006 and had felt sharp pain and stiffness in her hands. Also attached to the claim was a

statement from the employing establishment agreeing with appellant's statement about her activities during the prior week.

Accompanying the claim were various documents from appellant's treating physician, Dr. Rida N. Azer, a Board-certified orthopedic surgeon. The documents included a note from Dr. Azer, dated March 29, 2006, and an unsigned consultation report of the same date which diagnosed tenosynovitis of the right and left wrists and hands. Dr. Azer restricted appellant's pushing, pulling, lifting and overhead use of both upper extremities from March 29 to April 19, 2006.

In a letter dated May 25, 2006, the Office informed appellant that the evidence was currently insufficient to support her claim and advised her as to the medical and factual evidence required, specifically noting that an explanation from her doctor explaining how appellant's work activities contributed to her condition was needed.

By decision dated July 18, 2006, the Office denied appellant's claim on the grounds that the medical evidence of record failed to establish that appellant sustained an injury in the performance of duty.<sup>1</sup>

### **LEGAL PRECEDENT**

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 factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the 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 factors identified by the claimant.<sup>2</sup>

While the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty.<sup>3</sup>

### **ANALYSIS**

The employing establishment has not disputed that appellant was lifting boxes at work during the time alleged. Her treating physician diagnosed tenosynovitis of the right and left wrists and hands. The Board finds, however, that she has failed to submit sufficient medical evidence providing a rationalized opinion which relates to her claimed right and left hand

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<sup>1</sup> Appellant submitted additional medical reports to the Office on August 16, 2006 after the Office had issued the decision denying her claim. These documents cannot be considered by the Board as the review is restricted to evidence in the record at the time of the Office's decision. 20 C.F.R. § 501.2(c).

<sup>2</sup> *Michael R. Shaffer*, 55 ECAB 386 (2004).

<sup>3</sup> *Morris Scanlon*, 11 ECAB 384, 385 (1960).

conditions to factors of her federal employment. For this reason, she has not discharged her burden of proof to establish her claim.

Appellant submitted an orthopedic consultation report dated March 29, 2006 from Dr. Azer. The report addresses the condition but not the causal relationship between the condition and appellant's duties.

An award of compensation may not be based on surmise, conjecture, speculation or upon appellant's own belief that there is causal relationship between her claimed condition and her employment.<sup>4</sup>

Appellant has not met her burden of proof because she has not submitted a rationalized medical report which explains how the alleged lifting of boxes during the week of March 20, 2006 caused her bilateral wrist and hand tenosynovitis.

**CONCLUSION**

The Board finds that appellant has not established that her right and left hand conditions are causally related to factors of her federal employment.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated July 18, 2006 is affirmed.

Issued: December 4, 2006  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>4</sup> *Donald W. Long*, 41 ECAB 142 (1989).