

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

S.W., Appellant

and

**DEPARTMENT OF THE NAVY, Newport, RI,
Employer**

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**Docket No. 06-1195
Issued: September 15, 2006**

Appearances:
S.W., pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On May 4, 2006 appellant filed a timely appeal from an Office of Workers' Compensation Programs' merit decision dated May 6, 2005 which denied her claim for an occupational disease. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue on appeal is whether appellant has met her burden of proof in establishing that she developed lateral epicondylitis of the left elbow while in the performance of duty.

FACTUAL HISTORY

On October 22, 2003 appellant, then a 55-year-old purchasing agent, filed an occupational disease claim alleging that she developed lateral epicondylitis of the left elbow

while performing her work duties. Appellant became aware of her condition on July 28, 2003. She did not stop work but was on light duty due to other work-related injuries.¹

In support of her claim, appellant submitted a statement noting that she was involved in an automobile accident in August 2002 and sustained a soft tissue contusion of the left elbow. Her job duties required constant repetitive use of her left hand and arm while using a keyboard, answering telephones, writing and filing which caused an aggravation of appellant's preexisting soft tissue contusion. Appellant experienced pain in her left elbow in July 2003 while recovering from right hand surgery. At this time, she was restricted to using only her left arm in performing her job duties which aggravated her left elbow condition. Also submitted were physical therapy notes from 2002 to 2003.

In an undated statement, Constance M. Menard, appellant's supervisor, controverted the claim. Appellant was off work from May 7 to August 14, 2003 and then worked only four hours per day until October 14, 2003. Ms. Menard noted that from August 11 to September 30, 2003 appellant was assigned minimal duties.

In a letter dated December 3, 2003, the Office advised appellant of the factual and medical evidence needed to establish her claim. It requested that she submit a physician's reasoned opinion addressing the relationship of her claimed condition and specific employment factors.

Appellant submitted reports from Dr. James O. Maher, III, a Board-certified orthopedic surgeon, dated September 23, 1996 to February 4, 1997. Dr. Maher treated her for tendinitis, bilateral wrists (de Quervain's tendinitis), carpometacarpal joint arthritis of the thumbs and mild carpal tunnel syndrome bilaterally. Dr. Arnold-Peter C. Weiss, a Board-certified orthopedic surgeon, who treated her on March 27 and July 15, 1997 for wrist tendinitis and joint disease of the left thumb. Dr. Leonard F. Hubbard, a Board-certified orthopedist, dated July 23 to September 10, 1997, who diagnosed de Quervain's tenosynovitis, bilateral basal joint arthritis and ulnar nerve subluxation. On June 16, 1998 Dr. Edward V. Reardon, an osteopath, diagnosed fibromyalgia syndrome, temporomandibular joint dysfunction, history of carpal tunnel, chronic headaches and osteoarthritis.

Appellant came under the treatment of Dr. Sean M. Griggs, a Board-certified orthopedic surgeon, who treated appellant on February 11, 2003 for right thumb joint arthritis and possible carpal tunnel syndrome of the right upper extremity. He prepared duty status reports from July 22 to December 8, 2003 which diagnosed lateral epicondylitis and advised that appellant could work full time subject to various restrictions. In an attending physician's report dated September 8, 2003, Dr. Griggs diagnosed lateral epicondylitis and noted with a checkmark "yes" that her condition was caused or aggravated by employment activity and aggravated by increased use of the left arm due to surgery on the right hand. On December 9, 2003 he noted that appellant underwent a ligament interposition arthroplasty on May 7, 2003 and diagnosed right

¹ On September 23, 1996 appellant filed a claim which was accepted for bilateral wrist tendinitis in claim number A1-341637. On September 5, 2002 she filed a claim which was accepted for aggravation of arthritis of the right thumb in claim number 01-201296. On October 17, 2005 appellant filed a claim which was accepted for right carpal tunnel syndrome in claim number 01-02031978.

thumb joint arthritis and left elbow lateral epicondylitis. Dr. Griggs opined that the left epicondylitis was not related to her work, but was likely related to the fact that she was using her left arm more due to the immobilization of her right arm postoperatively.

In a decision dated February 13, 2004, the Office denied appellant's claim on the grounds that the medical evidence was insufficient to establish that her condition was caused by her employment duties.²

In a letter dated February 4, 2005, appellant requested reconsideration. She submitted a report from Dr. Griggs dated July 22, 2003, who treated her for right thumb arthritis and left elbow pain. Appellant reported that her elbow pain was caused by using her left arm due to the lack of mobility of her right arm postoperatively. Dr. Griggs diagnosed right thumb joint arthritis and lateral epicondylitis likely secondary to overuse. In reports dated August 19 and September 10, 2003, he opined that her left lateral epicondylitis was related to her previous surgery and was an aggravation of a preexisting condition which would resolve when appellant began to use her right hand. On October 10 and November 4, 2003, Dr. Griggs treated appellant in follow-up for her thumb joint arthroplasty. He indicated that her postoperative course was complicated by left elbow lateral epicondylitis that was being treated as part of her work-related injury. Dr. Griggs diagnosed right thumb joint arthritis status post ligament interposition arthroplasty, left lateral epicondylitis and left cubital tunnel syndrome. He advised that appellant could increase her workday to six hours. On February 3, 2004 Dr. Griggs advised that she was at maximum medical improvement and could work without restrictions.

By a decision dated May 6, 2005, the Office denied modification of the February 13, 2004 decision, finding that the medical evidence was insufficient to establish causal relationship.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act has the burden of establishing the essential elements of his or his 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 the 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. These are the essential elements of each and every 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; (2) 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

² 5 U.S.C. §§ 8101-8193.

³ Gary J. Watling, 52 ECAB 357 (2001).

which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by claimant. The medical evidence required to establish causal relationship is generally 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.⁴

ANALYSIS

It is not disputed that appellant's duties as a purchasing agent included lifting and pushing and performing some repetitive activities using her left arm and elbow. However, she has not submitted sufficient medical evidence to support that her left lateral epicondylitis is causally related to the implicated employment factors. On December 3, 2003 the Office advised appellant of the type of medical evidence needed to establish her claim. She did not submit a rationalized medical report from an attending physician addressing how specific employment factors may have caused or aggravated her claimed condition.

Appellant submitted reports from Dr. Maher, Dr. Weiss, Dr. Hubbard and Dr. Reardon dated September 23, 1996 to June 16, 1998, who treated her for various conditions including tendinitis, bilateral wrists (de Quervain's tendinitis) with carpometacarpal joint arthritis of the thumbs, mild carpal tunnel syndrome bilaterally and de Quervain's tenosynovitis. However, these reports are of no value in establishing the claimed left lateral epicondylitis condition since they predate the time of the claimed condition of July 2003.

On July 22, 2003 Dr. Griggs treated appellant for right thumb arthritis and left elbow pain. However, he appears merely to be repeating the history of injury as reported by appellant without providing his own reasoned opinion regarding whether her condition was work related.⁵ To the extent that Dr. Griggs is providing his own opinion, he failed to provide a rationalized opinion regarding the causal relationship between appellant's condition and the factors of employment believed to have caused or contributed to such condition.⁶ Therefore, this report is insufficient to meet appellant's burden of proof.

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

⁵ See *Roy L. Humphrey*, 57 ECAB ___ (Docket No. 05-1928, issued November 23, 2005) (medical opinion evidence must be 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); *William A. Archer*, 55 ECAB ___ (Docket No. 04-1138, issued August 27, 2004) (when a physician's statements regarding an employee's ability to work consist only of a repetition of the employee's complaints that he or she hurt too much to work without objective signs of disability being shown, the physician has not presented a medical opinion on the issue of disability or a basis for payment of compensation).

⁶ *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

In reports dated August 19 and September 10, 2003, Dr. Griggs treated appellant for follow-up of her right thumb joint arthritis and left elbow pain and diagnosed right thumb joint arthritis and left lateral epicondylitis. He opined that her left lateral epicondylitis was related to her previous surgery and was an aggravation of a preexisting condition which would resolve when she began the normal use of her right hand more normally. However, Dr. Griggs did not provide a rationalized opinion regarding the causal relationship between the left lateral epicondylitis condition and the implicated employment factors. Reports from October 10, 2003 to February 3, 2004 noted appellant's treatment in follow-up for her thumb joint arthroplasty and indicated that her postoperative course was complicated by developing left elbow lateral epicondylitis which was being treated as part of her work-related injury. Dr. Griggs opined that the left lateral epicondylitis was felt to be an aggravation due to overuse of the left arm due to rehabilitation of the right thumb. The Board finds that, although he supported causal relationship in a conclusory statement, he did not provide a rationalized opinion regarding the causal relationship between appellant's left lateral epicondylitis and the factors of employment believed to have caused or contributed to such condition.⁷ Rather, Dr. Griggs appears to attribute appellant's left elbow condition to overuse as a result of a right thumb surgery, not to work duties identified by appellant in her occupational disease claim. Therefore, these reports are insufficient to meet appellant's burden of proof.

In a report dated December 9, 2003, Dr. Griggs diagnosed right thumb joint arthritis and left elbow lateral epicondylitis. However, as noted above he neither noted a history of the injury or the employment factors believed to have caused or contributed to appellant's condition.⁸ Additionally, Dr. Griggs failed to provide a rationalized opinion regarding the causal relationship between her condition and the factors of employment believed to have caused or contributed to such condition.⁹ Rather, he opined that the lateral epicondylitis of appellant's left elbow was not related to her work but related to her using the arm more given the fact that she had immobilization of the right upper extremity during postoperative recovery. Therefore, this report is insufficient to meet her burden of proof.

Also submitted were physical therapy notes from 2003. However, the Board has held that physical therapy notes are not considered medical evidence as a physical therapist is not a physician as defined under the Act.¹⁰ Therefore, these reports are insufficient to meet appellant's burden of proof.

The remainder of the medical evidence fails to provide an opinion on the causal relationship between appellant's job and her diagnosed left lateral epicondylitis condition and the

⁷ *Id.*

⁸ *Frank Luis Rembisz*, 52 ECAB 147 (2000).

⁹ *See Jimmie H. Duckett*, *supra* note 6.

¹⁰ *See* 5 U.S.C. § 8101(2) (this subsection defines a "physician" as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law. *See also Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (where the Board has held that a medical opinion, in general, can only be given by a qualified physician).

factors of employment believed to have caused or contributed to the her condition. For this reason, this evidence is insufficient to meet appellant's burden of proof.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that her condition was caused, precipitated or aggravated by her employment is sufficient to establish causal relationship.¹¹ Causal relationship must be established by rationalized medical opinion evidence. Appellant failed to submit such evidence and the Office, therefore, properly denied her claim for compensation.

CONCLUSION

The Board, therefore, finds that, as none of the medical reports provided an opinion that appellant developed an employment-related injury in the performance of duty, she failed to meet her burden of proof.¹²

ORDER

IT IS HEREBY ORDERED THAT the May 6, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 15, 2006
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

¹¹ See *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

¹² To the extent that appellant may be alleging that she developed a consequential injury to the left elbow as a result of a work-related right thumb injury. However; the Office has not issued a final decision with regard to any allegation of a consequential injury and, therefore, the Board does not have jurisdiction over any such matter on the present appeal. See 20 C.F.R. § 501.2 (c).