

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

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D.L., Appellant )

and )

**DEPARTMENT OF VETERANS AFFAIRS,** )  
**VETERANS ADMINISTRATION MEDICAL** )  
**CENTER, Wilkes-Barre, PA, Employer** )

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**Docket No. 06-1239**  
**Issued: September 5, 2006**

*Appearances:*  
*Jeffrey Zeelander, 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 May 1, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' July 22, 2006 merit decision denying his claim for an employment-related upper extremity condition. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant met his burden of proof to establish that he sustained an upper extremity condition in the performance of duty.

## **FACTUAL HISTORY**

On November 17, 2004 appellant, then a 64-year-old physician,<sup>1</sup> filed an occupational disease claim alleging that he sustained bilateral carpal tunnel syndrome due to typing at work.<sup>2</sup> He indicated that he first became aware of his condition on November 16, 2004.

In a letter dated November 22, 2004, an employing establishment official stated that since October 11, 2004 appellant had 127 visits to his clinics. The official noted, "He does not type his own progress notes, they are dictated. When he does utilize the computer station it is for minimal typing." In an undated letter, Dr. Mohammad Shaikh, indicated that during a typical week appellant spent Monday in the operating room and handled clinic appointments all day on Tuesday and for half days on Wednesday, Thursday and Friday. He stated:

"[Appellant] utilizes the computer station to access patients' records to view test results, complete encounter information (point and click), obtain consents for proposed surgery, enter his brief op-note (minimal typing required), read/respond to email, etc. He does not type his own progress notes. [Appellant] dictates his notes and they are transcribed by the transcription department.

"There were 127 visits to his clinics for the period October 11 through November 18, 2004. During the same time frame he performed 15 surgical procedures."

Appellant submitted notes, dated between June and November 2004, in which physician's assistants indicated that he reported pain from his carpal tunnel syndrome.

By letter dated December 7, 2004, the Office requested that appellant submit additional factual and medical evidence in support of his claim.

In a December 8, 2004 report, Dr. Thomas W. Byron, an attending Board-certified orthopedic surgeon, indicated that appellant believed that the dysesthesia in his hands was aggravated by use of the computer and typewriter and had become more prominent since his last evaluation 11 months prior. He stated that appellant had mildly positive Tinel's, Phalen's and carpal tunnel compression tests bilaterally and diagnosed "left carpal tunnel syndrome, status post left carpal tunnel release many years ago with residual symptoms" and "right carpal tunnel syndrome, work related." Dr. Byron indicated that appellant could return to his preinjury job without restriction. In a report dated January 28, 2004, he indicated that appellant was participating in nine orthopedic clinics per week "which requires computer data entry and computer work with each patient."<sup>3</sup>

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<sup>1</sup> Appellant is a Board-certified orthopedic surgeon.

<sup>2</sup> Appellant stated, "I was given a schedule requiring nine one-half day clinics per week on October 11, 2004. This involved much typing which resulted in the problem." He later clarified that this schedule began on October 11, 2003.

<sup>3</sup> In a December 16, 2004 statement, an employing establishment official stated that appellant did not participate in nine orthopedic clinics per week which required computer data entry and computer work.

In an undated statement, appellant noted that beginning October 1, 2003 he worked a clinic schedule of nine half-day sessions per week and that he “was continually using the computer as all medical records are on it.” He indicated that he had carpal tunnel surgery on his left wrist 15 to 20 years prior but that he had not experienced symptoms until recently.

By decision dated January 14, 2005, the Office denied appellant’s claim on the grounds that he did not submit sufficient medical evidence to establish that he sustained an upper extremity condition in the performance of duty.<sup>4</sup>

Appellant submitted the findings of December 22, 2004 electromyogram (EMG) testing which showed normal results in both upper extremities and the findings of January 5, 2005 EMG testing in which it was noted that “upper limit of normal distal motor latencies of both median nerves and slight prolongation of sensory latencies and relatively decreased amplitude indicate bilateral carpal tunnel syndrome.”

In a statement dated February 6, 2005, appellant stated that between October 1, 2003 and January 1, 2004 he worked a clinic schedule of nine half-day sessions per week. He noted:

“I was continuously using the computer -- this is a paper-free institution. Plus, any document doctors dictated had to be individually electronically signed. Intra-hospital email is also on the computer. These must be opened, and many require answers or other action, such as writing orders.”

In a report dated January 5, 2005, Dr. Ajit M. Chikarmane, an attending Board-certified neurologist, stated that appellant experienced numbness, tingling and paresthesia of his hands beginning in October 2003. He stated that appellant reported that he “had to use the computer continuously for medical recordkeeping and doing typing to keep the medical records which was in addition to his usual orthopedic work....” Dr. Chikarmane diagnosed bilateral carpal tunnel syndrome, greater on the left, based primarily on clinical results including decreased sensation over both median nerve distributions. He stated, “In my opinion, [appellant] indeed does have work-related carpal tunnel syndrome since his symptomatology started in October 2003 after he had to use computers for medical recordkeeping excessively in addition to his usual orthopedic duties....”<sup>5</sup>

By decision dated July 22, 2006, the Office affirmed its January 14, 2005 decision.<sup>6</sup>

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<sup>4</sup> The Office also determined that the statements of the employing establishment showed that appellant did not engage in typewriting as often as he alleged in his own statements.

<sup>5</sup> In a note dated February 7, 2005, Dr. Byron stated, “Carpal tunnel syndrome is a result of using computer in 2003.”

<sup>6</sup> The Office again noted that appellant’s computer duties were not as extensive as he had claimed.

## LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act<sup>7</sup> has the burden of establishing the essential elements of 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 an 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.<sup>8</sup> These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<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 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 a causal relationship 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>10</sup>

## ANALYSIS

Appellant alleged that he developed bilateral carpal tunnel syndrome due to the duties of his job which included using the computer to answer emails, to retrieve records, and to record information regarding clinical visits. He claimed that his computer use increased significantly during the period October 11, 2003 to January 1, 2004.<sup>11</sup>

The record reflects that appellant used the computer to respond to emails and that, for a given patient, he might use the computer to view test results, complete encounter information,

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<sup>7</sup> 5 U.S.C. §§ 8101-8193.

<sup>8</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>9</sup> *See Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

<sup>10</sup> *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

<sup>11</sup> It does not appear that appellant felt that his surgical duties contributed significantly to his claimed upper extremity condition.

obtain consent for proposed surgery or enter a brief operative note. Appellant did not type his own progress notes as these were transcribed. While the precise number of patients consistently saw per week is unclear, it appears that he generally saw at least 25 patients per week.<sup>12</sup>

The Board finds that appellant did not submit sufficient medical evidence to show that he sustained an upper extremity condition due to the above-described work factors.

Appellant submitted a December 8, 2004 report in which Dr. Byron, an attending Board-certified orthopedic surgeon, indicated that he reported that his upper extremities “were aggravated by use of the computer and typewriter.” Dr. Byron diagnosed “left carpal tunnel syndrome, status post left carpal tunnel release many years ago with residual symptoms” and “right carpal tunnel syndrome, work related.” Although Dr. Byron referred to appellant’s right carpal tunnel syndrome as “work related,” it is not clear that he held such an opinion on causal relationship or was merely repeating appellant’s belief regarding the cause of his condition. Moreover, Dr. Byron’s report is of limited probative value on the relevant issue of the present case as he did not provide adequate medical rationale in support of his ostensible conclusion on causal relationship.<sup>13</sup> He did not describe the implicated employment factors other than to note that appellant used a computer and typewriter. Dr. Byron did not indicate how often appellant engaged in computer or typewriter use per day or over how long a period he engaged in such activities. He did not explain the medical process through which appellant sustained carpal tunnel syndrome or indicate why his problems would not have been due to some nonwork-related cause.<sup>14</sup>

In a report dated January 5, 2005, Dr. Chikarmane, an attending Board-certified neurologist, stated that appellant reported that he “had to use the computer continuously for medical recordkeeping and doing typing to keep the medical records which was in addition to his usual orthopedic work....” He diagnosed bilateral carpal tunnel syndrome, greater on the left, and stated, “In my opinion, [appellant] indeed does have work-related carpal tunnel syndrome since his symptomatology started in October 2003 after he had to use computers for medical record keeping excessively in addition to his usual orthopedic duties....”

Dr. Chikarmane’s opinion is of limited probative value in that he failed to provide adequate medical rationale in support of his opinion on causal relationship. He did not provide a full description of appellant’s actual work duties and his repetition of appellant’s assertion that he “had to use the computer continuously for medical recordkeeping” suggests that he had an exaggerated idea of the amount of computer work appellant was required to perform. Dr. Chikarmane seemed to base his opinion on causal relationship on the fact that appellant did not report symptoms prior to October 2003, but the Board has held that the fact that a condition manifests itself or worsens during a period of employment<sup>15</sup> or that work activities produce

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<sup>12</sup> For example, between October 11 and November 18, 2004 there were 127 visits to appellant’s clinics.

<sup>13</sup> See *Leon Harris Ford*, 31 ECAB 514, 518 (1980) (finding that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

<sup>14</sup> In a note dated February 7, 2005, Dr. Byron stated, “Carpal tunnel syndrome is a result of using computer in 2003.” However, he did not provide any further explanation of this brief, unrationalized statement.

<sup>15</sup> *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

symptoms revelatory of an underlying condition<sup>16</sup> does not raise an inference of causal relationship between a claimed condition and employment factors. Dr. Chikarmane did not provide any description of the medical process which caused appellant's upper extremity condition or explain the role employment factors might have played in that process.

**CONCLUSION**

The Board finds that appellant did not meet his burden of proof to establish that he sustained an upper extremity condition in the performance of duty.

**ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' July 22, 2006 decision is affirmed.

Issued: September 5, 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

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<sup>16</sup> *Richard B. Cissel*, 32 ECAB 1910, 1917 (1981).