

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

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M.W., Appellant )

and )

U.S. POSTAL SERVICE, POST OFFICE, )  
Tolono, IL, Employer )

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**Docket No. 07-137  
Issued: April 12, 2007**

*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 October 19, 2006 appellant filed a timely appeal from a July 18, 2006 merit decision of the Office of Workers' Compensation Programs that affirmed the denial of appellant's occupational disease claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

**ISSUE**

The issue is whether appellant met his burden of proof in establishing that he developed an occupational disease in the performance of duty.

**FACTUAL HISTORY**

On February 18, 2005 appellant, then a 49-year-old rural mail carrier, filed an occupational disease claim alleging that he developed tennis elbow in the performance of duty. He stated that he first became aware of his condition and related it to his employment on January 31, 2005. Appellant stopped work on January 31, 2005. In support of his claim, he submitted a January 27, 2005 note from Warren Lee, a physician's assistant, stating that

appellant had medial epicondylitis. The employing establishment controverted appellant's claim, noting that appellant also worked as a farmer and drove a truck despite his claimed physical limitations.

On March 14, 2005 the Office requested additional information concerning appellant's claim. In response, appellant submitted a March 3, 2005 note from Mr. Lee and Dr. George Bark, a Board-certified family medicine specialist, diagnosing medial epicondylitis. The report noted that appellant reported that his symptoms had not improved during the time that he was off work, vacationing in Hawaii, over the previous two weeks. He also submitted a January 27, 2005 report from Dr. Bark, again diagnosing medial epicondylitis and stating that appellant related that he performed "a lot of heavy lifting and mail delivery" on the job. Next, appellant submitted several disability certificates from Mr. Lee as well as March 24 and April 22, 2005 disability certificates from Dr. Ronald Michael, a Board-certified neurosurgeon, who indicated that he would be on leave for at least one month. Appellant also submitted March 3 and 4, 2005 reports from Mr. Lee.

The employing establishment submitted a March 15, 2005 statement from Postmaster Bonnie Elson, who stated that appellant filed the claim and stopped work after being told that he had insufficient annual leave for his vacation. The employing establishment also submitted an April 1, 2005 investigative memorandum regarding appellant's claim. The employing establishment also submitted an April 11, 2005 memorandum of an interview with appellant. Appellant stated that his job duties involved repetitive use activities while casing mail, but that his off the job activities did not.

By decision dated May 17, 2005, the Office denied appellant's occupational disease claim on the grounds that the medical evidence did not establish a causal relationship between appellant's claimed condition and employment factors.

Appellant requested reconsideration on May 15, 2006. In support of his request, he submitted an undated statement in which he indicated that both employment and nonemployment factors contributed to his condition. Appellant also submitted an April 21, 2006 report from Dr. Scott A. Paluska, a Board-certified family medicine specialist, stating that appellant was status 12 weeks past medial epicondylar release and experiencing some tenderness. Dr. Paluska addressed causal relationship, stating:

"[Appellant] work likely contributed significantly to his problem as well as the underlying complete rupture of the flexor carpi radialis tendon from the medial epicondyle. It is difficult to say that work is the sole cause of his problem but there was likely a significant contribution from the repetitive work-related duties using his left upper extremity."

By decision dated July 18, 2006, the Office affirmed the denial of appellant's occupational disease claim on the grounds that the medical evidence was insufficient to establish a causal relationship between appellant's diagnosed condition and employment factors.

## LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act<sup>1</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 disabilities and/or specific conditions for which compensation is claimed are causally related to the employment injury.<sup>2</sup> 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.<sup>3</sup>

An occupational disease or injury is one caused by specified employment factors occurring over a longer period than a single shift or workday.<sup>4</sup> The test for determining whether appellant sustained a compensable occupational disease or injury is three-pronged. To establish the factual elements of the claim, appellant must submit "(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>5</sup>

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.<sup>6</sup> The opinion of the physician must be based on a complete factual and medical background of the claimant<sup>7</sup> and must be one of reasonable medical certainty<sup>8</sup> explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>9</sup>

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>3</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>4</sup> D.D., 57 ECAB \_\_\_ (Docket No. 06-1315, issued September 14, 2006).

<sup>5</sup> *Michael R. Shaffer*, 55 ECAB 386, 389 (2004), citing *Lourdes Harris*, 45 ECAB 545 (1994); *Victor J. Woodhams*, *supra* note 3.

<sup>6</sup> *Conrad Hightower*, 54 ECAB 796 (2003); *Leslie C. Moore*, 52 ECAB 132 (2000).

<sup>7</sup> *Tomas Martinez*, 54 ECAB 623 (2003); *Gary J. Watling*, 52 ECAB 278 (2001).

<sup>8</sup> *John W. Montoya*, 54 ECAB 306 (2003).

<sup>9</sup> *Judy C. Rogers*, 54 ECAB 693 (2003).

## ANALYSIS

The Board finds that appellant failed to meet his burden of proof in establishing that he developed an occupational disease in the performance of duty. The record establishes that appellant has a diagnosed condition, namely medial epicondylitis and rupture of the flexor carpi radialis tendon and that his job required arm movement in tasks such as casing mail. However, the medical evidence of record does not provide sufficient support for a causal relationship between appellant's diagnosed condition and employment factors.

Appellant submitted reports from Dr. Bark, stating that he had medial epicondylitis. Dr. Bark's reports, however, did not specifically address causal relationship. He did not discuss appellant's employment factors or job activities, other than noting that appellant reported performing "heavy lifting and mail delivery" or explain how appellant's job activities caused or aggravated the diagnosed condition. Accordingly, Dr. Bark's reports are insufficient to establish appellant's claim.

Dr. Paluska's April 21, 2006 report<sup>10</sup> is also insufficient to establish that appellant's diagnosed condition is causally related to his employment factors. First, his report did not address appellant's particular job responsibilities or explain the precise causes of his diagnosed condition. Dr. Paluska stated that, while he could not opine with certainty that work was the sole cause of appellant's diagnosed condition, it was "likely a significant" contributor. He attributed appellant's condition, at least in part, to repetitive tasks using appellant's left upper extremity. However, Dr. Paluska did not elaborate on specifically which tasks may have contributed to appellant's claimed condition or how. The Board has held that a medical opinion not fortified by sufficient explanation or rationale carries limited probative value.<sup>11</sup> Moreover, Dr. Paluska's report couched its support for causal relationship in speculative terms noting that the employment was a "likely" contributor to appellant's condition. The Board has held that medical opinions which are speculative or equivocal in character have little probative value.<sup>12</sup> Accordingly, the Board finds that Dr. Paluska's report is insufficient to establish a causal relationship between appellant's claimed condition and employment factors.

Appellant also submitted several reports from Mr. Lee. These reports, however, do not constitute competent medical evidence, as Mr. Lee is a physician's assistant, not a physician.<sup>13</sup> Accordingly, Mr. Lee's reports are insufficient to establish appellant's claim. There is no additional medical evidence of record supporting a causal relationship between appellant's claimed condition and employment factors.

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<sup>10</sup> Appellant also submitted two additional reports from Dr. Paluska, dated March 23 and June 6, 2006, respectively, on appeal to the Board. The Board, however, notes that it cannot consider these reports for the first time on appeal because the Office did not consider this evidence in reaching its final decision. The Board's review is limited to the evidence in the case record at the time the Office made its final decision. 20 C.F.R. § 501.2(c).

<sup>11</sup> See *Caroline Thomas*, 51 ECAB 451, 456 n. 10 (2000); *Brenda L. Dubuque*, 55 ECAB 212, 217 (2004).

<sup>12</sup> See *Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962)

<sup>13</sup> A physician's assistant's reports are of no probative value as a physician's assistant is not considered a physician under the Act. See 5 U.S.C. § 8101(2); *John D. Williams*, 37 ECAB 238 (1985).

**CONCLUSION**

The Board finds that appellant did not meet his burden of proof in establishing that he developed an occupational disease in the performance of duty.

**ORDER**

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

Issued: April 12, 2007  
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