

FACTUAL HISTORY

On April 27, 2006 appellant, then a 51-year-old window clerk, filed an occupational disease claim alleging that she sustained tendinitis in the arm and elbow as a result of using a computer keyboard and moving packages while in the performance of duty.

Appellant submitted three form reports from Kaiser Permanente Medical Center dated January 1, April 24 and May 24, 2006 which were unsigned and did not provide a diagnosis. She also submitted physicians' progress reports dated April 6 and May 4, 2006 from Dr. Robert Pandya, Board-certified in internal and occupational medicine. In both reports, Dr. Pandya diagnosed appellant with right lateral epicondylitis. In a May 8, 2006 report, Dr. Pandya noted the date of injury as September 1, 2005 and stated that appellant had intermittent pain in her right elbow "when using a pencil against the keyboard at work."

In a June 1, 2006 letter, the Office requested additional factual and medical information from appellant. Appellant responded, in a June 25, 2006 letter, describing her duties as a sales associate/window clerk. She noted that she began to experience pain in her arm while typing the keys of her computer.

By decision dated August 4, 2006, the Office denied appellant's claim on the grounds that the medical evidence was insufficient to establish that the claimed medical condition was related to the established work-related events.

Appellant submitted numerous physicians' progress reports dated February 2 and 7, June 7, July 3 and August 21, 2006 from Dr. Pandya who diagnosed appellant with right forearm strain in his February 7, 2006 report. Regarding the cause of appellant's condition, Dr. Pandya stated: "Based on the history and mechanism of injury, as described by my patient, my findings and diagnoses are consistent with this history and it appears that as a result of performance of her job duties the patient developed the above-mentioned condition."

Dr. Nicole Pham, Board-certified in physical medicine and rehabilitation, reviewed the results of appellant's electromyogram (EMG) in her consultation report dated July 21, 2006. A visit report from Dr. Pham on July 31, 2006 was also received. The Office also received progress reports from Dr. Paul J. Papanek, Board-certified in occupational and family medicine, dated March 2 and October 17, 2006.

Appellant requested reconsideration on September 27, 2006. In an October 27, 2006 letter to Dr. Pandya, the Office asked for clarification of the causation of appellant's condition. Dr. Pandya did not respond.

By merit decision dated November 30, 2006, the Office denied modification of the claim on the grounds that the medical opinions failed to support the necessary causal relationship between appellant's condition and the accepted work factors.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act has the burden of establishing the essential elements of his or her claim by the weight of the reliable,

probative and substantial evidence, 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 or specific condition for which compensation is claimed is causally related to the employment injury.²

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.³

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.⁴

ANALYSIS

Appellant alleged that her right arm condition was causally related to factors of her federal employment which began on August 1, 2005. The Board finds that appellant has submitted insufficient medical evidence to establish that her right arm condition was caused or aggravated by her federal employment.

The medical evidence establishes the presence of a condition. In an April 6, 2006 report, Dr. Pandya diagnosed appellant with right lateral epicondylitis. The Office accepted that appellant performed the duties she described. Appellant described her position working at the counter which involved typing on a computer as well as reaching and moving packages. The case focuses on the third requirement that the medical evidence establishes that the employment factors were the proximate cause of appellant’s condition.

The medical evidence of record consists primarily of physician progress notes from February 2 through September 22, 2006. The three other documents from Kaiser Permanente Medical Center dated January 1, April 24 and May 24, 2000 are partially illegible and do not contain any notes related to appellant’s condition.

Dr. Pandya diagnosed appellant with right lateral epicondylitis in his February 2, 2006 report and released her to modified duty. In a February 7, 2006 report, Dr. Pandya extended his diagnosis to include right forearm strain. In this report, Dr. Pandya opined that his findings and

² *Anthony P. Silva*, 55 ECAB 179 (2003).

³ *Elizabeth H. Kramm (Leonard O. Kramm)*, 57 ECAB ____ (Docket No. 05-715, issued October 6, 2005).

⁴ *Morris Scanlon*, 11 ECAB 384, 385 (1960).

diagnoses were consistent with appellant's described work history of repetitive hand, wrist and arm motion and lifting boxes. He also opined that appellant developed her condition as a result of the performance of her job duties. However, Dr. Pandya did not provide medical rationale to explain the causal relationship between appellant's work duties and her current condition, specifically describing how appellant's work duties caused her right lateral epicondylitis and right forearm strain. In April 6 and May 4, 2006 reports, he released appellant to modified duty. In the June 7, 2006 report, Dr. Pandya released appellant to regular duty. In a July 3, 2006 report, he described appellant's pain and the reaching she has to do at her workstation. In the August 21, 2006 report, Dr. Pandya did not identify the cause of appellant's condition.

None of Dr. Pandya's progress reports contain a medical explanation as to how the described work duties caused the diagnosed conditions of right lateral epicondylitis and right forearm strain.

The Office received other doctors' reports as well. In a July 21, 2006 report, Dr. Pham reviewed appellant's EMG and concluded that appellant had an abnormal EMG. He did not discuss appellant's work duties or the cause of appellant's condition.

Dr. Papanek saw appellant on March 2 and September 22, 2006. In an October 17, 2006 report, he stated that appellant's magnetic resonance imaging scan of September 3, 2006 was normal and released appellant to modified duty. In a March 2, 2006 report, Dr. Papanek diagnosed appellant with an old bilateral rotator cuff tendinitis with the left side greater than the right and right lateral epicondylitis and released her to modified duty. None of his reports contained a rationalized medical opinion that describes the causal relation between appellant's employment duties and her right lateral epicondylitis.

The medical opinion needed to establish an occupational disease claim 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.⁵ No such opinion has been submitted. Appellant has failed to submit medical evidence to establish causal relationship and, therefore, has failed to discharge her burden of proof to establish that she sustained a condition due to factors of her federal employment.

CONCLUSION

Appellant has not met her burden of proof to establish that she sustained an occupational disease in the performance of duty.

⁵ Donald W. Wenzel, 56 ECAB ____ (Docket No. 05-146, issued March 17, 2005).

ORDER

IT IS HEREBY ORDERED THAT the November 30 and August 4, 2006 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: August 6, 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