

undergone surgery. Appellant also filed a Form CA-7, claim for compensation, for the period December 1 through 24, 2005. By letters dated June 6, 2006, the Office informed appellant of the evidence needed to support her claim and requested that the employing establishment respond.

Appellant submitted medical evidence including an unidentified medical report dated July 13, 2005 that noted complaints of left-sided neck, shoulder and arm pain and low back pain. In a July 25, 2005 report, Alan Bybee, a physician's assistant, diagnosed neck pain, right arm paresthesia and right wrist tendinitis. In reports dated July 28 and August 5, 2005, Dr. John M. Hemmersmeier, Board-certified in family medicine, noted appellant's complaints of bilateral hand pain and numbness. He found hand and shoulder tenderness on physical examination and diagnosed bilateral hand pain consistent with osteoarthritis and recommended rheumatology consult. In an August 23, 2005 report, Dr. A. Nadim Al-Sadat, a Board-certified neurologist, noted appellant's complaints of neck pain radiating down her right arm, right hand pain and numbness radiating to her elbows, left hand complaints and low back pain radiating down her left leg. He recommended electromyography (EMG). A September 1, 2005 EMG was interpreted by Dr. Al-Sadat as abnormal, demonstrating evidence of right ulnar neuropathy across the elbow, mild carpal tunnel syndrome on the left and no electrodiagnostic evidence of carpal tunnel syndrome on the right.

By report dated September 8, 2005, Dr. Bruce E. Thomas, Board-certified in orthopedic surgery, noted that appellant was seen for shoulder, elbow and wrist pain. He stated that she reported that she was injured due to repetitive duties at work but that she did not elaborate. Dr. Thomas diagnosed right cubital tunnel syndrome, right rotator cuff tendinitis or impingement and mild left carpal tunnel syndrome. In a November 2005 treatment note, he advised that surgery was planned. By report dated December 1, 2005, Dr. Thomas diagnosed right cubital tunnel syndrome and requested that appellant work modified duty. On January 5, 2006 he noted that he had performed a right ulnar nerve transposition and right carpal tunnel release on the right. Dr. Thomas checked the "yes" box, indicating that the condition was employment related, noting "repetitive motion" as a comment. He continued to provide follow-up treatment for her arm surgery and treatment for her shoulder condition.

By report dated January 5, 2005, Dr. Gregory A. Benbow, an osteopath who is Board-certified in family medicine and an employing establishment physician, noted appellant's diffuse and chronic complaints. He noted that her physician diagnosed cubital tunnel syndrome on the right and that the EMG did not demonstrate carpal tunnel syndrome on the right. The employing establishment also provided a job description and unsigned answers to Office questions.

In a decision dated March 22, 2006, the Office denied the claim on the grounds that the medical evidence was insufficient to establish causal relationship.

On May 24, 2006 appellant requested reconsideration and provided a statement in which she stated that since the beginning of 2005 she had been in document production. She described her job duties which included stamping numerous documents by hand, pulling heavy duty staples and editing many records. Appellant stated that she had had no previous problems with her hands. In a March 30, 2006 report, Dr. Thomas noted a significant improvement in her shoulder. On May 3, 2006 he described appellant's job duties and recommended that she not return to

repetitive work.¹ In a May 21, 2006 report, Mr. Bybee opined that appellant's carpal tunnel and elbow pain were secondary to a change of work.

By decision dated June 23, 2006, the Office denied modification of the March 22, 2006 decision. On November 20, 2006 her requested a hearing, and in a December 29, 2006 decision, the Office denied her hearing request. The Office noted that, as appellant had previously requested reconsideration, she was not entitled to a hearing as a matter of right and further denied the request on the grounds that the issue in the case could be fully addressed by requesting reconsideration with the Office.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act² 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 disability and/or specific condition for which compensation is claimed are causally related to the employment injury. Regardless of whether the asserted claim involves traumatic injury or occupational disease, an employee must satisfy this burden of proof.³

Office regulations define the term "occupational disease or illness" as a condition produced by the work environment over a period longer than a single workday or shift."⁴ 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 diagnosed condition is causally related to the employment factors identified by the claimant. The medical opinion 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

Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.⁶ Rationalized medical evidence is medical

¹ Dr. Thomas described her job as "a great amount of repetitive work" in which she used a large instrument for numbering and that she would process 10 to 20 packs of documents that included 25 to 50 documents each in an eight-hour shift, five days a week. This entailed taking apart stapled documents that were anywhere from one to four inches thick.

² 5 U.S.C. §§ 8101-8193.

³ *Gary J. Watling*, 52 ECAB 278 (2001).

⁴ 20 C.F.R. § 10.5(ee).

⁵ *Solomon Polen*, 51 ECAB 341 (2000).

⁶ *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

evidence which includes a physician's rationalized medical 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.⁷ Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.⁸

ANALYSIS -- ISSUE 1

The Board finds that appellant failed to meet her burden of proof to establish that she sustained employment-related right carpal tunnel syndrome or nerve damage. The Board initially notes that Mr. Bybee's reports are not competent medical evidence as a physician's assistant is not considered a physician under the Act.⁹ While Dr. Hemmersmeier noted appellant's complaints of hand pain and numbness and Dr. Al-Sadat advised that she had abnormal EMG findings, neither physician addressed the cause of her condition. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹⁰ Furthermore, the EMG advised that there was no electrodiagnostic evidence of right carpal tunnel syndrome. The reports of Dr. Hemmersmeier and Dr. Al-Sadat are therefore insufficient to meet appellant's burden of proof.

Dr. Thomas, who performed nerve transposition surgery and carpal tunnel release on the right, provided a January 5, 2006 attending physician's report in which he checked the "yes" box indicating that appellant's right upper extremity condition and surgery were employment related and provided a comment "repetitive motion." It is well established that the checking of a box "yes" in a form report, without additional explanation or rationale, is of diminished probative value and insufficient to establish causal relationship.¹¹ While Dr. Thomas provided a brief comment in explanation, to establish causal relationship, a claimant must submit a physician's report in which the physician reviews the employment factors identified by the claimant as causing the claimed condition and, taking these factors into consideration as well as findings upon examination, state whether the employment injury caused or aggravated the diagnosed conditions and present medical rationale in support of his or her opinion.¹² In a May 3, 2006 report, Dr. Thomas merely advised that appellant should not return to repetitive work and did not

⁷ *Id.*

⁸ *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

⁹ *Ricky S. Storms*, 52 ECAB 349 (2001).

¹⁰ *Willie M. Miller*, 53 ECAB 697 (2002).

¹¹ *Joan R. Donovan*, 54 ECAB 615 (2003).

¹² *D.D.*, 57 ECAB ____ (Docket No. 06-1315, issued September 14, 2006).

provide a cause of any diagnosed condition.¹³ His opinion is therefore insufficient to establish causal relationship.

While the medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute certainty, neither can such opinion be speculative or equivocal. The opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to federal employment and such relationship must be supported with affirmative evidence, explained by medical rationale and be based upon a complete and accurate medical and factual background of the claimant.¹⁴ The medical evidence in this case is insufficient to establish that appellant has an employment-related right carpal tunnel syndrome or nerve damage.

LEGAL PRECEDENT -- ISSUE 2

Any claimant dissatisfied with a decision of the Office shall be afforded an opportunity for an oral hearing or, in lieu thereof, a review of the written record. A request for either an oral hearing or a review of the written record must be submitted in writing, within 30 days of the date of the decision for which a hearing is sought. If the request is not made within 30 days or if it is made after a reconsideration request, a claimant is not entitled to a hearing or a review of the written record as a matter of right.¹⁵ The Board has held that the Office, in its broad discretionary authority in the administration of the Act, has the power to hold hearings in certain circumstances where no legal provision was made for such hearings and that the Office must exercise this discretionary authority in deciding whether to grant a hearing.¹⁶ The Office's procedures, which require the Office to exercise its discretion to grant or deny a hearing when the request is untimely or made after reconsideration, are a proper interpretation of the Act and Board precedent.¹⁷

ANALYSIS -- ISSUE 2

In this case, in its December 29, 2006 decision, the Office denied appellant's request for a hearing on the grounds that she had previously requested reconsideration with the Office. The Board finds that the Office properly found that appellant was not, as a matter of right, entitled to a hearing since she had previously requested reconsideration on May 24, 2006. While the Office also has the discretionary power to grant a hearing request when a claimant is not entitled to a hearing as a matter of right, the Office, in its December 29, 2006 decision, properly exercised its discretion by stating that it had considered the matter in relation to the issue involved and had denied appellant's request on the basis that the issue in this case could be addressed through a

¹³ *Willie M. Miller, supra* note 10.

¹⁴ *Patricia J. Glenn*, 53 ECAB 159 (2001).

¹⁵ *Claudio Vazquez*, 52 ECAB 496 (2001).

¹⁶ *Marilyn F. Wilson*, 52 ECAB 347 (2001).

¹⁷ *Claudio Vazquez, supra* note 15.

reconsideration application. The Board has held that, as the only limitation on the Office's authority is reasonableness, abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deduction from established facts.¹⁸ In the present case, the evidence of record does not indicate that the Office committed any act in connection with its denial of appellant's hearing request which could be found to be an abuse of discretion. Appellant retains the right to request reconsideration with the Office.¹⁹

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained an injury in the performance of duty causally related to factors of employment. The Board further finds that the Office properly denied her request for a hearing.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated December 29, June 23 and March 22, 2006 be affirmed.

Issued: August 21, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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

¹⁸ See *Claudio Vazquez*, *supra* note 15; *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

¹⁹ 20 C.F.R. § 10.607.