

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

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**E.B., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Inglewood, CA, Employer**

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**Docket No. 07-1062  
Issued: August 21, 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 March 6, 2007 appellant filed a timely appeal from an Office of Workers' Compensation Programs' November 14, 2006 merit decision. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant met her burden of proof to establish that she sustained a right lateral epicondylitis condition in the performance of duty.

**FACTUAL HISTORY**

On September 18, 2006 appellant, a 59-year-old mail clerk/mail carrier, filed a Form CA-2 claim for benefits, alleging that she developed a right lateral epicondylitis condition caused by factors of her employment.

By letter dated September 26, 2006, the Office advised appellant that it required additional factual and medical evidence to determine whether she was eligible for compensation benefits. The Office asked appellant to submit a comprehensive medical report from her treating physician

describing her symptoms and the medical reasons for her condition and an opinion as to whether her claimed condition was causally related to her federal employment.

In an October 5, 2006 report, Dr. Mark Goldstein, an osteopath, opined that appellant had a right lateral epicondylitis condition. He stated:

“[Appellant] is a 59-year[-]old right hand dominant, female, who works as a mail carrier for [the employing establishment] for approximately 29 years. She describes this job in which apparently she cases approximately two hours per day (repetitive hand/arm movements), previous to that was casing for up to four hours a day. [Appellant] carries her satchel on either her left or right shoulder, bundles of magazines typically in her left forearm [and] arm area, holds mail in her left hand and uses her right hand to deliver mail. She states that for several months she has been experiencing some pain and discomfort in her right elbow. [Appellant] states it subsequently worsened on July 12, 2006 and subsequently [she] reported her injury. She was evaluated on two separate occasions, once in Urgent Care and once by her primary care physician.... Apparently, [appellant] complains of pain in her right lateral elbow. She describes it as a [5] out of 10 at rest and increased to a [7] out of [10] with activities such as grasping, pushing or pulling. [Appellant] denies any numbness or tingling to her right upper extremity.”

Dr. Goldstein noted no swelling, erythema or bruising on examination. Appellant showed moderate tenderness with palpation of the lateral epicondyle. She appeared to have a bone spur on the right lateral elbow area, with increased pain at the elbow with forced extension of the wrist. Dr. Goldstein noted normal range of motion with no pain. A radiographic examination showed no evidence for joint effusion, with very minimal degenerative changes noted at the humeroulnar joint. Dr. Goldstein opined that, in the absence of any other injury to appellant’s right elbow and based on her clinical history, measurable objective findings and a review of her medical records, appellant’s right lateral epicondylitis condition was more likely than not due to the cumulative trauma she sustained while working for the employing establishment.

By decision dated November 14, 2006, the Office denied appellant’s claim, finding that appellant failed to submit medical evidence sufficient to establish that she sustained the claimed right lateral epicondylitis condition in the performance of duty.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees’ Compensation Act<sup>1</sup> has the burden of establishing that 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.<sup>2</sup> These are the

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

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>

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 causal relationship is usually rationalized medical 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>4</sup>

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between her claimed right lateral epicondylitis condition and her federal employment. This burden includes providing medical evidence from a physician who concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.<sup>5</sup>

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. Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence.

### ANALYSIS

The Board finds that appellant has failed to submit any medical evidence containing a rationalized, probative opinion which relates her claimed right lateral epicondylitis condition to factors of her employment. For this reason, she has not discharged her burden of proof to establish her claim that this condition was sustained in the performance of duty.

In support of appellant's claim, she submitted Dr. Goldstein's October 5, 2006 report. This report, however, did not address how her right lateral epicondylitis condition was causally

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

<sup>4</sup> *Id.*

<sup>5</sup> *See Nicolea Brusio*, 33 ECAB 1138, 1140 (1982).

related to employment factors. Dr. Goldstein related mostly normal findings on examination and a normal range of elbow motion. He noted moderate tenderness with palpation of the lateral epicondyle a bone spur on the right lateral elbow area and increased pain at the elbow with forced extension of the wrist. Dr. Goldstein's radiographic examination indicated no evidence of joint effusion, with very minimal degenerative changes noted at the humeroulnar joint. He related that appellant had experienced right elbow pain and discomfort she attributed to repetitive hand and arm movements such as casing mail and carrying a satchel of mail for hours at a time. She noted that her pain increased with activities such as grasping, pushing or pulling. Dr. Goldstein concluded on the basis of his examination, the medical history, the clinical findings and the absence of any other documented cause that appellant's right lateral epicondylitis condition was more likely than not due to the cumulative trauma she sustained while working for the employing establishment. However, he did not explain how her duties as a mail carrier/mail clerk would cause or contribute to her right lateral epicondylitis condition. The mere fact that appellant was asymptomatic of prior elbow problems or that the condition manifested itself during a period of employment does not raise an inference of causal relation.<sup>6</sup> Dr. Goldstein's opinion is, therefore, of limited probative value as it does not contain any medical rationale explaining how or why appellant's right lateral epicondylitis condition was currently affected by or related to factors of employment.<sup>7</sup>

The weight of medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of physician's knowledge of the facts of the case, the medical history provided, the care of analysis manifested and the medical rationale expressed in support of stated conclusions.<sup>8</sup> Dr. Goldstein's opinion is of diminished probative value for the further reason that it is generalized in nature and equivocal in that he was not able to state conclusively that appellant's right lateral epicondylitis condition was causally related to her employment. The Office, therefore, properly found that appellant did not sustain a right lateral epicondylitis condition in the performance of duty.

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.<sup>9</sup> Causal relationship must be established by rationalized medical opinion evidence. The Office advised appellant, of the type of medical evidence required to establish her claim; however, she failed to submit such evidence. Accordingly, the Office properly denied appellant's claim for compensation based on a right lateral epicondylitis condition.

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<sup>6</sup> See *Ernest St. Pierce*, 51 ECAB 623 (2000).

<sup>7</sup> *William C. Thomas*, 45 ECAB 591 (1994).

<sup>8</sup> See *Anna C. Leanza*, 48 ECAB 115 (1996).

<sup>9</sup> See *id.*

**CONCLUSION**

The Board finds that appellant has failed to meet her burden of proof in establish that her claimed right lateral epicondylitis condition was sustained in the performance of duty.

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 14, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 21, 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