

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

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J.M., Appellant )  
and ) Docket No. 07-218  
U.S. POSTAL SERVICE, SOUTHEASTERN ) Issued: March 20, 2007  
MAIL FACILITY, Devon, PA, Employer )  
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)

*Appearances:*

*Thomas R. Uliase, 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 October 31, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated May 31, 2006 denying her occupational disease claim. Pursuant to 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 has met her burden of proof in establishing that she sustained an occupational disease causally related to factors of her federal employment.

**FACTUAL HISTORY**

On March 7, 2005 appellant, then a 44-year-old mail carrier, filed an occupational disease claim alleging that she developed carpal tunnel syndrome (CTS) as a result of performing repetitive duties in the course of her employment. Appellant allegedly first realized that her

condition was caused by her employment on November 2, 2002 but did not file her claim for more than two years, for fear she would be fired.<sup>1</sup>

In support of her occupational disease claim, appellant submitted a May 23, 2003 report from Dr. Arnold S. Lincow, a Board-certified family practitioner, who stated that appellant was injured on January 15, 2003 at work, when heavy bundles of mail fell on her thumbs, causing severe pain in both hands. Dr. Lincow indicated that appellant had been having pain for several months prior, but that the January 15, 2003 incident had worsened her condition. Examination of the wrists and hands were remarkable for edema. Dr. Lincow found positive Tinel's and Phalen's signs bilaterally and decreased grip strength bilaterally (1/5). The forearms were painful to palpitation bilaterally. Dr. Lincow provided a diagnosis of bilateral CTS and opined to a reasonable degree of medical certainty that the injuries sustained were severe in nature and were causally related to the trauma experienced by appellant in a motor vehicle accident that occurred on January 22, 2003.

In a May 4, 2004 report, Dr. Lincow opined, to a reasonable degree of medical certainty, that appellant sustained a severe on-the-job injury on January 15, 2003, when heavy bundles of mail fell on her hands, resulting in bilateral thumb strains with traumatic and median nerve neuropathies and aggravation of bilateral CTS. He stated that, on or about February 27, 2003, appellant sustained a repetitive motion injury, but was afraid to report the injury, for fear of being fired. Dr. Lincow stated that she had no disability prior to the February 27, 2003 trauma. He reviewed a November 12, 2003 magnetic resonance imaging scan, a November 13, 2003 electromyogram (EMG) report, and a November 25, 2003 nuclear bone scan. Dr. Lincow provided diagnoses of bilateral CTS, median nerve entrapment, injury to the bilateral thumbs, myofascial pain syndrome, aggravation of the bilateral CTS, and chronic complex pain syndrome, type 2 with a compression cyst on the median nerve secondary to the capitate and lunate bone. His April 23, 2004 examination revealed bilateral Tinel's and Phalen's signs, decreased grip bilaterally, with allodynia and coolness of the hands bilaterally, atrophy of the left thenar and bilateral pain at the metacarpophalangeal joint of the thumbs. Dr. Lincow opined that appellant's injuries were directly and causally related to being injured on January 15, 2003 and again on February 27, 2003.

In a November 13, 2003 report, Dr. Stephen E. Sacks, a Board-certified osteopath, specializing in the field of neurology, conducted an EMG and nerve conduction study. He stated that appellant had sustained a work-related injury on January 15, 2003, which resulted in significant pain, numbness and tingling involving the upper extremity area. Appellant had significant restriction in range of motion of the cervical area, limited flexion and extension at the wrist, resulting in irritation and positive Tinel's sign bilaterally. Dr. Sacks noted dyesthesia along the median nerve distribution of both hands. The sensory examination was intact to vibration and joint position sense. The nerve conduction study was consistent with CTS involving the median nerve across the wrist and palmar aspects of the nerve.

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<sup>1</sup> The Board notes that appellant filed a traumatic injury claim on March 26, 2003, alleging wrist strain due to repetitive motion related to her employment. She appealed the denial of her claim to the Board. By decision dated December 9, 2005, the Board remanded the case to the Office for further development and a determination as to whether the case should proceed as a traumatic injury or occupational disease claim. Docket No. 05-1949 (issued December 9, 2005).

In a February 23, 2005 report, Dr. Lincow described the results of a December 2, 2004 nuclear bone scan, which he stated were grossly abnormal. These new findings revealed increased uptake in the presence of the distal aspects of both ulnar bones and mid aspect of the left wrist, as well as the head of the left 3<sup>rd</sup> metacarpal. December 2, 2004 EMG and nerve conduction study reports showed progression of appellant's CTS. Dr. Lincow's examination revealed atrophy of the right hand and wrist thenar eminence with multiple trigger points, coolness, spasm edema from the thumb to the 4<sup>th</sup> finger with a positive Finkelstein test, painful click over the metacarpophalangeal joint of the right wrist, positive Phalen's and Tinel's sign, positive shuck test and pain over the triangular fibrocartilage of bilateral wrists at the area of the ulnar, lunate and scaphoid bones. He provided diagnoses of bilateral CTS, traumatic aggravation of median nerve entrapment neuropathy, traumatic aggravation of preexisting asymptomatic arthritis of bilateral hands, worse on the left than on the right, chronic complex pain syndrome, type 2, unresolved bilateral thumb sprains with de Quervain's disease, more so on the right than on the left, compressive cyst of the left hand causing aggravation of CTS and median nerve neuropathy. Dr. Lincow opined, to a reasonable degree of medical certainty, that appellant's conditions were directly and causally related to the severe trauma she suffered on February 27, 2003. He explained that, when appellant was injured, "her hands were in a prone position, banged backwards which caused her to have a compression neuropathy of bilateral hands causing her traumatic impaction [CTS.]" Dr. Lincow stated that this type of injury is quite common, especially in sports areas.

On May 5, 2005 the Office informed appellant that the information submitted was insufficient to establish a causal relationship between the employment incidents identified and her diagnosed condition or to resolve the conflicting etiology of her injury. Appellant was provided 30 days to submit additional evidence. She submitted an undated note, in which she stated that she had not been involved in a motor vehicle accident in January 2003. Appellant also submitted therapy and progress notes bearing illegible signatures.

By decision dated October 3, 2005, the Office denied appellant's claim. The Office found that the medical evidence was insufficient to establish that her diagnosed CTS was causally related to work-related events. On October 6, 2005 appellant, through her representative, requested an oral hearing.

At the March 2, 2006 oral hearing, appellant testified she injured her hand on January 15, 2003, when several bundles of mail fell directly on her thumbs and bent back her fingers. She indicated that she also performed a great deal of repetitive work at the employing establishment since 2000 and began experiencing pain and cramping in her hands in November 2002. Appellant reiterated that she was not involved in a motor vehicle accident in January 2003.

By decision dated May 31, 2006, the Office hearing representative affirmed the October 3, 2005 decision. The Office found that appellant had failed to establish a causal relationship between the incidents of her employment and her diagnosed condition.

## **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation Act<sup>2</sup> has the burden of establishing the essential elements of his or her claim, including the fact 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>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 the 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.<sup>4</sup> The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence, *i.e.*, medical evidence presenting a physician's well-reasoned opinion on how the established factor of employment caused or contributed to claimant's diagnosed condition. To be of probative value, 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>5</sup>

An award of compensation may not be based on appellant's belief of causal relationship. 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 a causal relationship.<sup>6</sup>

## **ANALYSIS**

Appellant alleged that she developed CTS as a result of performing repetitive duties in the course of her employment. The Board finds that the medical evidence of record, which consists of reports from Drs. Sacks and Lincow, fails to establish that appellant sustained an occupational disease causally related to factors of her federal employment.

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *Dennis M. Mascarenas*, 49 ECAB 215, 217 (1997).

<sup>4</sup> *Solomon Polen*, 51 ECAB 341, 344 (2000). An occupational disease or illness means a condition produced in the work environment over a period longer than a single workday or shift by such factors as systemic infection, continued or repeated stress or strain or other continued or repeated conditions or factors of the work environment. *William Taylor*, 50 ECAB 234 (1999). See also 5 U.S.C. § 8101(5) (injury defined, 20 C.F.R. § 10.5(q) and (ee) (2002) (occupational disease or illness and traumatic injury defined).

<sup>5</sup> *Leslie C. Moore*, 52 ECAB 132, 134 (2000); see also *Ern Reynolds*, 45 ECAB 690, 695 (1994).

<sup>6</sup> *Dennis M. Mascarenas*, *supra* note 3 at 218.

In a November 13, 2003 report of an EMG and nerve conduction study, Dr. Sacks stated that appellant had sustained a work-related injury on January 15, 2003, which resulted in significant pain, numbness and tingling involving the upper extremity area. He concluded that the nerve conduction study was consistent with CTS involving the median nerve across the wrist and palmar aspects of the nerve. Dr. Sacks did not sufficiently describe appellant's job duties or explain the medical process through which such duties would have been competent to cause the claimed condition. Medical conclusions unsupported by rationale are of little probative value.<sup>7</sup> Moreover, Dr. Sack's opinion was vague and was not rendered to a reasonable degree of medical certainty.<sup>8</sup> The Board also finds that Dr. Sacks' conclusion that appellant's condition resulted from an injury that allegedly occurred on a specific day, to-wit; January 15, 2003, does not support appellant's occupational disease claim. An occupational disease or illness is a condition produced in the work environment over a period longer than a single workday or shift by such factors as systemic infection, continued or repeated stress or strain or other continued or repeated conditions or factors of the work environment.<sup>9</sup> On the other hand, a traumatic injury is a condition caused by a specific event or series of events, within a single workday.<sup>10</sup> For these reasons, Dr. Sacks' report is of reduced probative value.

Dr. Lincow's reports are also insufficient to establish appellant's occupational disease claim on several counts. Appellant is required to submit medical evidence establishing that her diagnosed condition is causally related to the employment factors she has identified.<sup>11</sup> To be of probative value, the opinion of the physician must be based on a complete and accurate 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>12</sup> Dr. Lincow's reports are both inaccurate and poorly rationalized.

Dr. Lincow's opinion on the cause of appellant's condition was based on an inaccurate factual background, as demonstrated by inconsistencies in his reports. On May 23, 2003 Dr. Lincow stated that appellant was injured on January 15, 2003 at work, when heavy bundles of mail fell on her thumbs, causing severe pain in both hands. In that same report, he opined to a reasonable degree of medical certainty that her bilateral CTS was causally related to the trauma experienced by appellant in the motor vehicle accident that occurred on January 22, 2003. The Board notes that appellant later testified at her hearing that she was not involved in an automobile accident in January 2003. On May 4, 2004 Dr. Lincow stated that, on or about February 27, 2003, appellant sustained a repetitive motion injury, but was afraid to report the injury, for fear of being fired. In his February 23, 2005 report, Dr. Lincow opined, to a

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<sup>7</sup> *Willa M. Frazier*, 55 ECAB 379 (2004).

<sup>8</sup> *See Ricky S. Storms*, 52 ECAB 349 (2001).

<sup>9</sup> *William Taylor*, *supra* note 4; *see also* 20 C.F.R. § 10.5(q).

<sup>10</sup> 20 C.F.R. § 10.5(ee).

<sup>11</sup> *Solomon Polen*, *supra* note 4.

<sup>12</sup> *See supra* note 5.

reasonable degree of medical certainty, that appellant's conditions were directly and causally related to the severe trauma she suffered on February 27, 2003. He explained that, when appellant was injured, "her hands were in a prone position, banged backwards which caused her to have a compression neuropathy of bilateral hands causing her traumatic impaction [CTS.]" Appellant has not alleged and the evidence of record does not establish that she was injured at work on February 27, 2003. The factual inconsistencies presented by Dr. Lincow diminishes the probative value of his reports.

The opinions offered by Dr. Lincow are not well rationalized and are, therefore, of limited probative value. On May 23, 2003 he stated that appellant was injured on January 15, 2003 at work, when heavy bundles of mail fell on her thumbs and opined to a reasonable degree of medical certainty that her CTS was causally related to the trauma experienced by appellant in the motor vehicle accident that occurred on January 22, 2003. Dr. Lincow did not ever address his erroneous reference to a January 22, 2003 motor vehicle accident nor did he provide medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>13</sup> On May 4, 2004 Dr. Lincow opined that appellant's injuries were directly and causally related to her January 15, 2003 injury, when heavy bundles of mail fell on her hands, resulting in bilateral thumb strains with traumatic and median nerve neuropathies and aggravation of bilateral CTS and again on February 27, 2003, when she sustained a repetitive motion injury. As he did not explain the physiological process whereby the cited work conditions caused appellant's diagnosed condition, this report is also of diminished probative value. On February 23, 2005 Dr. Lincow noted progression of appellant's CTS. He provided diagnoses of bilateral CTS, traumatic aggravation of median nerve entrapment neuropathy, traumatic aggravation of preexisting asymptomatic arthritis of bilateral hands, worse on the left than on the right, chronic complex pain syndrome, type 2, unresolved bilateral thumb sprains with de Quervain's disease, more so on the right than on the left, compressive cyst of the left hand causing aggravation of CTS and median nerve neuropathy. Dr. Lincow opined, to a reasonable degree of medical certainty, that appellant's conditions were directly and causally related to the severe trauma she suffered on February 27, 2003. He explained that, when appellant was injured, "her hands were in a prone position, banged backwards which caused her to have a compression neuropathy of bilateral hands causing her traumatic impaction carpal tunnel syndrome." Dr. Lincow noted that this type of injury is quite common, especially in sports areas. This report is deficient for several reasons. As noted above, Dr. Lincow's opinion is based on an inaccurate history of injury. He also failed to explain how the employment incidents identified by appellant caused her diagnosed conditions. Dr. Lincow's February 23, 2005 report would indicate that appellant's conditions were attributable solely to a February 27, 2003 incident. However, appellant alleged that she first became aware of her condition on November 2, 2002 and that she developed CTS as a result of performing repetitive duties in the course of her employment. Dr. Lincow did not discuss appellant's repetitive job duties or address how her performance of those duties could have caused her current condition. His description of a single incident that allegedly occurred on February 27, 2003, cannot, by definition, support appellant's occupational disease claim.

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<sup>13</sup> *Id.*

Appellant expressed her belief that her condition resulted from repetitive work activities. The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.<sup>14</sup> Neither the fact that the condition became apparent during a period of employment nor the belief that the condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.<sup>15</sup> Causal relationship must be substantiated by reasoned medical opinion evidence, which it is appellant's responsibility to submit. Therefore, appellant's belief that her condition was caused by work-related activities is not determinative.

The Office advised appellant that it was her responsibility to provide a comprehensive medical report which described her symptoms, test results, diagnosis, treatment and the doctor's opinion, with medical reasons, establishing a causal relationship between the identified employment activities and the diagnosed condition. As the medical evidence of record does not contain a probative medical opinion explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant, appellant has failed to satisfy her burden of proof.<sup>16</sup>

### **CONCLUSION**

The Board finds that appellant has not met her burden of proof in establishing that she sustained an occupational disease in the performance of duty.

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<sup>14</sup> See *Joe T. Williams*, 44 ECAB 518, 521 (1993).

<sup>15</sup> *Id.*

<sup>16</sup> See *supra* note 5.

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 31, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 20, 2007  
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