

FACTUAL HISTORY

On August 18, 2006 appellant, then a 41-year-old transportation security officer, filed an occupational disease claim alleging that she developed carpal tunnel syndrome of the left wrist and tendinitis of the left elbow while performing her work duties. She became aware of her condition on March 1, 2006. Appellant did not stop work.¹

Appellant submitted reports from Dr. Peter M. Cimino, a Board-certified orthopedic surgeon, dated February 27 to July 17, 2006. Dr. Cimino treated appellant for left arm pain. He advised that she was status post right shoulder surgery and diagnosed rotator cuff repair, distal clavicle excision and left shoulder inflammation. Dr. Cimino noted that appellant had left elbow pain that she attributed to overuse of the left arm while her right arm was healing from surgery. He diagnosed left elbow inflammation and tendinitis. An April 3, 2006 magnetic resonance imaging scan revealed minimal edema in distal tendon of biceps. In a June 12, 2006 report, Dr. M. Andrew Thompson, a Board-certified orthopedic surgeon, noted that appellant worked as an airport baggage screener and presented with left elbow pain and tingling in the fingers. Appellant underwent a right shoulder rotator cuff repair in February 2006 and subsequently used her left arm more frequently. Dr. Thompson noted findings of mild pain in the medial epicondyle, no varus-valgus laxity, negative Tinel's and Phalen's signs, no muscle atrophy and decreased sensation in the index, middle and thumb fingers. He diagnosed left elbow biceps tendinitis, mild medial epicondylitis and left-sided carpal tunnel syndrome.

By letter dated August 23, 2006, the Office advised appellant of the evidence needed to establish her claim. It requested that she submit a physician's reasoned opinion addressing the relationship of her claimed condition and specific employment factors.

Appellant submitted an August 2, 2006 statement noting that she underwent surgery on February 13, 2006 for a torn right rotator cuff and subsequently developed left arm pain. She was diagnosed with carpal tunnel syndrome which she asserted was related to her job duties which included repetitive lifting, pushing and pulling of baggage. A March 31, 2006 electromyogram (EMG) revealed an injury to the myelin of the median sensory branches across the carpal tunnels which were mild on the left and very mild on the right.

In a July 10, 2006 report, Dr. Thompson noted appellant's complaints of elbow pain, numbness and tingling in the digits. He diagnosed left carpal tunnel syndrome and left elbow medial epicondylitis and advised that conservative treatment was unsuccessful and recommended surgery. On August 3, 2006 Dr. Thompson performed an open median nerve decompression of the left carpal tunnel and diagnosed carpal tunnel syndrome. On August 14, 2006 he opined that appellant's left elbow tendinitis could have been aggravated by her employment with repetitive lifting of bags. Dr. Thompson opined that appellant's diagnosed carpal tunnel syndrome was aggravated by her employment which included repetitive lifting and repetitive elbow flexion and

¹ The record reveals that appellant filed a separate claim for a traumatic injury sustained on November 30, 2005, file number 11-2032259, which was accepted by the Office for right superior labrum tear. On September 13, 2006 she filed a claim for an occupational disease, file number 11-2036330, which was accepted by the Office for temporary aggravation of spinal stenosis of the lumbar region. These claims were consolidated with the current claim before the Board.

extension. In a report dated September 21, 2006, he noted a history of her treatment for left elbow pain commencing in January 2006 and subsequent surgery for left carpal tunnel syndrome on August 3, 2006. Dr. Thompson opined that appellant's carpal tunnel syndrome and elbow tendinitis were aggravated by work duties that included repetitive screening of bags, repetitive lifting and repetitive wrist flexion and extension.

In a November 15, 2006 decision, the Office denied appellant's claim, finding that the medical evidence did not establish that her condition was caused by her employment duties. The Office noted that her physician did not address how nonwork activities would have affected the development of the carpal tunnel syndrome.

On December 20, 2006 appellant requested reconsideration. In a December 15, 2006 report, Dr. Thompson noted a history of appellant's treatment for left elbow pain commencing in January 2006. He indicated that a March 31, 2006 EMG revealed carpal tunnel syndrome. Dr. Thompson stated that appellant had an episode in March 2006, where she was cleaning a rug at home and first noticed radiation of pain in her arm, but asserted that the numbness and tingling predated this incident. Appellant had a four-year history of working at the airport screening luggage for approximately 10 hours per day and was responsible for lifting luggage weighing 5 to 100 pounds onto a conveyor belt. Dr. Thompson advised that appellant subsequently underwent a carpal tunnel release on August 3, 2006 and had excellent resolution of her symptoms. He opined that appellant's carpal tunnel syndrome and elbow tendinitis were aggravated by her work which included the repetitive screening of bags. In a December 18, 2006 report, Dr. Cimino noted that appellant's activities of staining and painting her deck in April 2006 were not enough to cause carpal tunnel syndrome.

In a decision dated February 9, 2007, the Office denied modification of the November 15, 2006 decision.

In a letter dated June 9, 2007, appellant requested reconsideration. She addressed her treatment for carpal tunnel syndrome and asserted that her employment duties were the cause of her condition. Appellant submitted duplicate copies of a March 31, 2006 EMG and December 18, 2006 report from Dr. Cimino.

By decision dated June 28, 2007, the Office denied appellant's reconsideration request on the grounds that she neither raised substantive legal questions nor included new and relevant evidence and was insufficient to warrant review of the prior decision.

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 the 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. These are the

² 5 U.S.C. §§ 8101-8193.

essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³

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) 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 generally 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. 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.⁴

ANALYSIS -- ISSUE 1

Appellant alleged that she developed carpal tunnel syndrome of the left wrist and left elbow tendinitis while performing her work duties as a transportation security officer which included repetitive lifting of bags onto a conveyor belt. The Office denied appellant's claim for compensation, finding that the medical evidence was not sufficient to establish that her claimed condition was causally related to her employment.

The Board notes that the medical evidence submitted by appellant generally supports that she developed carpal tunnel syndrome of the left wrist and left elbow tendinitis due to repetitive lifting of luggage onto a conveyor belt. Specifically, Dr. Thompson opined that appellant's carpal tunnel syndrome was aggravated by her employment duties, which included repetitive screening of bags, repetitive lifting and repetitive wrist flexion and extension. On September 21, 2006 he noted a history of appellant's treatment for left elbow pain beginning in January 2006 and subsequent surgery for left carpal tunnel syndrome. Dr. Thompson opined that appellant's carpal tunnel syndrome and elbow tendinitis were aggravated by her work duties, including repetitive screening of bags, repetitive lifting and repetitive wrist flexion and extension. In a December 15, 2006 report, he noted that appellant had a four-year history of working at the airport 10 hours per day screening luggage and indicated that she was responsible for lifting luggage weighing 5 to 100 pounds onto a conveyor belt. Dr. Thompson advised that appellant subsequently underwent a carpal tunnel release on August 3, 2006 and experienced excellent resolution of her symptoms. He opined that appellant's carpal tunnel syndrome and elbow

³ Gary J. Watling, 52 ECAB 357 (2001).

⁴ Solomon Polen, 51 ECAB 341 (2000).

tendinitis were aggravated by her employment which included repetitive screening of bags. Although Dr. Thompson's opinion is not sufficiently rationalized to establish her claim, it stands uncontroverted in the record and is sufficient to require further medical development by the Office.⁵ Moreover, Dr. Cimino stated that appellant's activities outside her federal employment would not cause her carpal tunnel condition.

Proceedings under the Act are not adversary in nature nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence. It has the obligation to see that justice is done.⁶

The case will be remanded to the Office for preparation of a statement of accepted facts concerning appellant's working conditions. It should refer the matter to an appropriate medical specialist, consistent with Office procedures, to determine whether appellant developed carpal tunnel syndrome of the left wrist and tendinitis of the left elbow as a result of performing her employment duties. Following this, and any other further development as deemed necessary, the Office shall issue an appropriate merit decision on appellant's claim.⁷

CONCLUSION

The Board finds that this case is not in posture for decision.⁸

⁵ *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

⁶ *Jimmy A. Hammons*, 51 ECAB 219 (1999); *Marco A. Padilla*, 51 ECAB 202 (1999); *John W. Butler*, 39 ECAB 852 (1988).

⁷ The Board finds that it is unnecessary to address the second issue in this case in view of the Board's disposition of the first issue.

⁸ The Board notes that, on June 14, 2007, the Office terminated appellant's compensation benefits in File No. 11-2036330. In her appeal papers, she specifically appealed the denial of her occupational disease claim in File No. 11-2035244; she did not appeal the termination of benefits in File No. 11-2036330.

ORDER

IT IS HEREBY ORDERED THAT the June 28 and February 9, 2007 decisions of the Office of Workers' Compensation Programs are set aside and the case is remanded for further development in accordance with this decision of the Board.

Issued: February 25, 2008
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

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

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