

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

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**P.J., Appellant**

**and**

**DEPARTMENT OF THE TREASURY,  
INTERNAL REVENUE SERVICE, Austin, TX,  
Employer**

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**Docket No. 07-2125  
Issued: February 5, 2008**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On August 15, 2007 appellant filed a timely appeal from a December 8, 2006 merit decision of the Office of Workers' Compensation Programs denying her occupational disease claim and a June 5, 2007 nonmerit decision denying her request for a hearing as untimely. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case and over the June 5, 2007 nonmerit decision.

**ISSUES**

The issues are: (1) whether appellant has established that she sustained carpal tunnel syndrome causally related to factors of her federal employment; and (2) whether the Office properly denied her request for an oral hearing as untimely under 5 U.S.C. § 8124.

**FACTUAL HISTORY**

On September 22, 2005 appellant, then a 46-year-old customer service representative, filed an occupational disease claim alleging that she sustained carpal tunnel syndrome due to the continuous use of her hands in the course of her employment.

In a report dated August 25, 2005, Dr. Brian C. Buck, a Board-certified physiatrist, diagnosed status post motor vehicle accident with cervical and lumbar sprain and upper extremity pain with numbness. He related that she had injured her neck and back in a motor vehicle accident a year earlier and had received spinal manipulation treatment which left her hands numb. Dr. Buck noted that appellant typed and answered the telephone at work and was on light duty due to the numbness in her hands.

An electromyogram (EMG), obtained on September 2, 2005, revealed mild to moderate bilateral carpal tunnel syndrome with the right side worse than the left. On September 27, 2005 Dr. Robert A. Foster, a Board-certified orthopedic surgeon, performed a right carpal tunnel and de Quervain's release.<sup>1</sup>

By decision dated December 6, 2005, the Office denied appellant's claim on the grounds that she had not established a condition due to the accepted work factors. She requested an oral hearing, which was held on May 3, 2006. Appellant submitted a report dated May 8, 2006 from Dr. Charles B. Mallett, who is Board-certified in family practice. Dr. Mallett stated, "I saw [appellant] on June 2, 2005 for carpal tunnel syndrome in both wrists that had been going on for two to three weeks. She works in data entry at the [employing establishment]. I feel that her carpal tunnel syndrome is a direct result of her job."

By decision dated July 18, 2006, the hearing representative vacated the December 6, 2005 decision. He found that the opinion of Dr. Mallett was sufficient to require further development of the claim. The case was remanded for the Office to obtain a second opinion examination.

On November 6, 2006 the Office referred appellant to Dr. Jonathan Clark Race, a Board-certified orthopedic surgeon, for a second opinion examination. In a report dated November 28, 2006, he discussed her work and medical history and reviewed the medical evidence. On physical examination, he found a positive Phalen's sign on the right and negative Tinel's sign bilaterally. Dr. Race diagnosed status post bilateral carpal tunnel release, status post bilateral de Quervain's release with mild residual symptoms and cervical lumbar pain due to a prior motor vehicle accident. He stated:

"It would appear that [appellant] developed carpal tunnel syndrome and de Quervain's symptoms as a result of the motor vehicle accident as documented by Dr. Foster. She also has thumb basal joint arthritis, which is not related to clerical work at the [employing establishment]. It would appear that based on her records that her work activities aggravated her carpal tunnel and de Quervain's symptoms, which occurred as a result of the motor vehicle accident [of] October 21, 2004. In my opinion, the effects of that aggravation have resolved. The primary underlying problem appears to be a preexisting carpal tunnel, which became more symptomatic with her work activities in 2005. She has been treated adequately with surgical treatment and postoperative physical therapy. In my opinion, the ongoing symptoms are more related to her preexisting injury, her

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<sup>1</sup> Appellant submitted progress reports and disability certificates from Dr. Foster dated August and September 2005.

underlying metabolic problems and other unknown factors. The thumb joint arthritis is a disease of ordinary life and cannot reasonably be attributed to her work activities. Based upon these opinions, [appellant] could return to work.”

In an accompanying work restriction evaluation, Dr. Race found that appellant could work for eight hours per day with no limitations.

By decision dated December 8, 2006, the Office denied appellant’s claim. The Office determined that the medical evidence did not establish that her “current medical condition was a direct result” of her work activities. The Office indicated that Dr. Race found that appellant’s carpal tunnel syndrome, de Quervain’s syndrome and cervical pain were due to a 2004 motor vehicle accident and that, while work factors aggravated the condition, the aggravation had resolved.

On February 15, 2007 appellant requested an oral hearing. By decision dated June 5, 2007, the Office denied her request for a hearing as untimely under section 8124.

### **LEGAL PRECEDENT -- ISSUE 1**

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 the individual is an “employee of the United States” within the meaning of the Act, that the claim was filed within the applicable time limitation; that an injury was sustained while 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> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.<sup>4</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;<sup>5</sup> (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;<sup>6</sup> and (3) medical evidence establishing 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.<sup>7</sup>

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *Tracey P. Spillane*, 54 ECAB 608 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>4</sup> *See Ellen L. Noble*, 55 ECAB 530 (2004).

<sup>5</sup> *Michael R. Shaffer*, 55 ECAB 386 (2004).

<sup>6</sup> *Marlon Vera*, 54 ECAB 834 (2003); *Roger Williams*, 52 ECAB 468 (2001).

<sup>7</sup> *Beverly A. Spencer*, 55 ECAB 501 (2004).

The medical evidence required to establish causal relationship generally is 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.<sup>8</sup> The opinion of the physician must be based on a complete factual and medical background of the claimant,<sup>9</sup> must be one of reasonable medical certainty<sup>10</sup> explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>11</sup>

### **ANALYSIS -- ISSUE 1**

Appellant attributed her bilateral carpal tunnel syndrome to repetitive work during the course of her employment. The Office accepted the occurrence of the claimed employment factors. The issue, therefore, is whether the medical evidence establishes a causal relationship between the claimed conditions and the identified employment factors.

In a report dated August 25, 2005, Dr. Buck diagnosed status post motor vehicle accident with cervical and lumbar sprain and upper extremity pain with numbness. He indicated that appellant experienced numbness in her hands following spinal manipulation. In a report dated May 8, 2006, Dr. Mallett opined that her carpal tunnel syndrome was directly related to her federal employment.

The Office referred appellant to Dr. Race for a second opinion examination. On examination, the physician listed findings of a positive Phalen's sign on the right and negative Tinel's sign bilaterally. Dr. Race diagnosed status post bilateral carpal tunnel release, status post bilateral de Quervain's release with mild residual symptoms and cervical lumbar pain due to a prior motor vehicle accident. He found that appellant's carpal tunnel syndrome was due to her October 2004 motor vehicle accident but that her employment duties had aggravated her carpal tunnel syndrome and de Quervain's syndrome. Dr. Race opined that the work-related aggravation had ceased and that she had no physical limitations.

In its December 8, 2006 decision, the Office denied appellant's claim after determining that the medical evidence did not establish that her current condition was the direct result of her employment. The Board finds that the Office did not properly adjudicate the issue presented. The issue is whether appellant sustained carpal tunnel syndrome and/or de Quervain's syndrome caused or aggravated by her federal employment and, if so, whether she sustained any periods of disability or required medical treatment due to her employment injury. The Office did not adjudicate the issue of fact of injury but instead determined that she had no "current condition" caused or aggravated by work factors. The Office noted that Dr. Race opined that appellant's employment duties aggravated her bilateral carpal tunnel syndrome and de Quervain's syndrome

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<sup>8</sup> *Conrad Hightower*, 54 ECAB 796 (2003); *Leslie C. Moore*, 52 ECAB 132 (2000).

<sup>9</sup> *Tomas Martinez*, 54 ECAB 623 (2003); *Gary J. Watling*, 52 ECAB 278 (2001).

<sup>10</sup> *John W. Montoya*, 54 ECAB 306 (2003).

<sup>11</sup> *Judy C. Rogers*, 54 ECAB 693 (2003).

and that the aggravation had ceased. The Office did not adjudicate whether the medical evidence was sufficient to establish that she sustained an employment injury.<sup>12</sup> The case will, therefore, be remanded to the Office for an appropriate decision on this issue and any further development as deemed necessary.

**CONCLUSION**

The Board finds that the case is not in posture for decision.<sup>13</sup>

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated June 5, 2007 and December 8, 2006 are set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: February 5, 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

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<sup>12</sup> Where the medical evidence reveals that factors of employment contributed in any way to a disabling condition, such condition is considered employment related for purposes of compensation under the Act. *Roger W. Griffith*, 51 ECAB 491 (2000).

<sup>13</sup> In view of the Board's disposition of the merits, the issue of whether the Office properly denied appellant's request for an oral hearing is moot.