



decision dated December 9, 2005, the Board remanded the case to the Office for further development of the medical evidence.<sup>1</sup> The facts contained in that decision are incorporated herein by reference.

On remand, the Office referred appellant, together with a statement of accepted facts and the medical record, to Dr. Kevin F. Hanley, a Board-certified orthopedic surgeon. It requested an opinion as to whether appellant developed a medical condition involving her wrists as a result of the accepted January 15, 2003 incident, when bundles of mail fell on her hands. In a report dated February 27, 2006, Dr. Hanley diagnosed “lateral hand pain and electrodiagnostic evidence of median nerve slowing at the wrist.” He stated that there did not appear to be a well-defined carpal tunnel syndrome. On examination, appellant was able to close her fingers fully, but showed diminished grip strength. Dr. Hanley found no evidence of soft tissue swelling, and surface markings were intact. Appellant had good function of the intrinsic muscles without atrophy. There was no focal loss of sensation in the median distribution. Tinel’s sign was atypical, causing radiation up the arm, a condition not typically seen in carpal tunnel syndrome. Dr. Hanley stated, “As far as the incident of bundles falling on her hands, I believe that this was a nonincident. I do not believe it led to any injury whatsoever, as the patient did not seek any medical attention initially.” Dr. Hanley further stated, “I do not believe that [appellant] has a symptomatic carpal tunnel syndrome due to cumulative exposure and therefore it is my belief that she did not sustain an injury at the workplace.” In an accompanying work capacity evaluation, he opined that appellant was capable of performing her usual job without restrictions.

By decision dated October 25, 2006, the Office affirmed its denial of appellant’s claim. The Office found that the weight of the medical evidence was represented by Dr. Hanley’s report and failed to support that her wrist condition was causally related to the established work-related incident.<sup>2</sup>

On October 25, 2006 appellant, through her representative, submitted a request for an oral hearing.

Appellant submitted reports dated October 11 and December 5, 2006 from her treating physician, Dr. Arnold S. Lincow, a Board-certified family practitioner. On October 11, 2006 Dr. Lincow opined that appellant’s bilateral carpal tunnel syndrome was solely related to the January 15, 2003 work-related incident. He noted that November 2003 and December 2, 2004 electromyogram (EMG) and nerve conduction studies revealed a chronic denervation pattern of the bilateral median innervated muscles, which was consistent with carpal tunnel syndrome. On December 5, 2006 Dr. Lincow related the history of injury and treatment, noting that appellant

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<sup>1</sup> Docket No. 05-1949 (issued December 9, 2005). The record that was before the Board in the first appeal, contains numerous reports for the period May 23, 2003 through February 23, 2005 from appellant’s treating physician, Dr. Arnold S. Lincow, a Board-certified family practitioner, who opined that appellant’s wrist condition was causally related to the January 15, 2003 employment incident.

<sup>2</sup> The Board notes that appellant filed an occupational disease claim (No. 032038342) on March 5, 2005, alleging that she developed carpal tunnel syndrome as a result of repetitive employment duties. By decision dated March 20, 2007, the Board affirmed the Office’s March 31, 2006 denial of appellant’s claim, finding that she failed to establish that she developed carpal tunnel syndrome as a result of her federal employment duties. Docket No. 07-218 (issued March 20, 2007).

sustained a severe wrist injury on January 15, 2003 when bundles of mail fell on her hands and wrists. Noting that appellant had experienced problems prior to this incident, he stated that the January 15, 2003 event precipitated and worsened her carpal tunnel syndrome. Dr. Lincow opined that appellant's injury was directly and causally related to her January 15, 2003 severe trauma, which accelerated her hand condition, and was "the straw that broke the camel's back." Appellant also submitted a December 2, 2004 electromyogram (EMG) and nerve conduction study, signed by Dr. Martin Weaver, a Board-certified physiatrist, who stated, "This is an abnormal study, indicating a bilateral carpal tunnel syndrome."

At the February 22, 2007 hearing, appellant's representative contended that Dr. Hanley's report was insufficient to carry the weight of the medical evidence. He argued that Dr. Lincow's report was well rationalized or was sufficient to create a conflict in medical opinion.

By decision dated June 4, 2007, the Office hearing representative affirmed the October 26, 2006 decision, finding that the evidence failed establish that appellant sustained an injury or condition causally related to the January 15, 2003 work incident.

### **LEGAL PRECEDENT**

The Federal Employees' Compensation Act<sup>3</sup> provides for payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.<sup>4</sup> The phrase "sustained while in the performance of duty" is regarded as the equivalent of the coverage formula commonly found in workers' compensation laws, namely, "arising out of and in the course of employment."<sup>5</sup>

An employee seeking benefits under the Act has the burden of proof to establish 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 or specific condition for which compensation is claimed is causally related to the employment injury.<sup>6</sup> When an employee claims that she sustained a traumatic injury in the performance of duty, she must establish the "fact of injury," namely, she must submit sufficient evidence to establish that she experienced a specific event, incident or

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<sup>3</sup> 5 U.S.C. § 8101 *et seq.*

<sup>4</sup> *Id.* at § 8102(a).

<sup>5</sup> This construction makes the statute effective in those situations generally recognized as properly within the scope of workers' compensation law. *Charles E. McAndrews*, 55 ECAB 711 (2004); *see also Bernard D. Blum*, 1 ECAB 1 (1947).

<sup>6</sup> *Robert Broome*, 55 ECAB 339 (2004); *see also Elaine Pendleton*, 40 ECAB 1143 (1989). *See also* 5 U.S.C. § 8101(5) ("injury" defined); 20 C.F.R. § 10.5(q) and (ee) (2000) ("Occupational disease or illness means a condition produced by the work environment over a period longer than a single workday or shift.") ("Traumatic injury means a condition of the body caused by a specific event or incident, or a series of events or incidents, within a single workday or shift.")

exposure occurring at the time, place and in the manner alleged, and that such event, incident or exposure caused an injury.<sup>7</sup>

The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of employment.<sup>8</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>9</sup>

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion 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 established incident or factor of employment.<sup>10</sup>

Section 8123(a) provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.<sup>11</sup> The implementing regulation states that, if a conflict exists between the medical opinion of the employee's physician and the medical opinion of either a second opinion physician or an Office medical adviser, the Office shall appoint a third physician to make an examination. This is called a referee examination and the Office will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.<sup>12</sup> Where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.<sup>13</sup>

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<sup>7</sup> *Betty J. Smith*, 54 ECAB 174 (2002); *see also Tracey P. Spillane*, 54 ECAB 608 (2003). The term "injury" as defined by the Act, refers to a disease proximately caused by the employment. 5 U.S.C. § 8101(5). *See* 20 C.F.R. § 10.5(q), (ee).

<sup>8</sup> *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

<sup>9</sup> *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

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

<sup>11</sup> 5 U.S.C. § 8123(a).

<sup>12</sup> 20 C.F.R. § 10.321.

<sup>13</sup> *David W. Pickett*, 54 ECAB 272 (2002); *Barry Neutuch*, 54 ECAB 313 (2003).

## ANALYSIS

Appellant alleged that she developed bilateral carpal tunnel syndrome as a result of a January 15, 2003 incident in which bundles of mail fell on her wrists. Her treating physician opined that her carpal tunnel condition was caused by the employment incident. The Office accepted that the incident occurred as alleged, but denied appellant's claim, finding the evidence insufficient to establish a causal relationship between her wrist condition and the accepted incident. In its December 9, 2005 decision, the Board remanded the case to the Office for further development of the medical evidence. Pursuant to the Board's instruction, the Office obtained a second opinion examination by Dr. Hanley, who concluded that appellant's wrist condition was not work related. The Board finds that there is a conflict in medical opinion between appellant's treating physician and the Office's referral physician.

Dr. Lincow opined that appellant's bilateral carpal tunnel syndrome was solely related to the January 15, 2003 work-related incident. On October 11, 2006 he reiterated his opinion and noted that November 2003 and December 2, 2004 EMG and nerve conduction studies revealed a chronic denervation pattern of the bilateral median innervated muscles, which was consistent with carpal tunnel syndrome. On December 5, 2006, noting that appellant had experienced problems prior to the accepted incident, Dr. Lincow stated that the January 15, 2003 event precipitated and worsened the carpal tunnel syndrome. He opined that appellant's condition was directly and causally related to her January 15, 2003 severe trauma, which accelerated her hand condition, and was "the straw that broke the camel's back."

Dr. Hanley opined that there was no causal relationship between appellant's diagnosed wrist condition and her job duties. Based upon his examination, he stated that there did not appear to be a well-defined carpal tunnel syndrome. On examination, appellant was able to close her fingers fully, but showed diminished grip strength. Dr. Hanley found no evidence of soft tissue swelling and surface markings were intact. Appellant had good function of the intrinsic muscles without atrophy. There was no focal loss of sensation in the median distribution. Tinel's sign was atypical, causing radiation up the arm, a condition not typically seen in carpal tunnel syndrome. Dr. Hanley stated, "As far as the incident of bundles falling on her hands, I believe that this was a nonincident. I do not believe it led to any injury whatsoever, as the patient did not seek any medical attention initially."

The Board finds that there is a conflict between the opinions of Dr. Lincow and Dr. Hanley. The Board notes that, while the Office found that Dr. Hanley's report constituted the weight of the medical evidence, he did not explain his opinion in light of the results of EMG and nerve conduction studies, which were consistent with carpal tunnel syndrome. Dr. Hanley did not address Dr. Lincow's opinion that the January 15, 2003 accepted incident precipitated and exacerbated appellant's carpal tunnel syndrome.

Where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.<sup>14</sup> The case will be remanded to the Office to resolve

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<sup>14</sup> *Id.*

the conflict. On remand, the Office shall prepare an updated statement of accepted facts and refer it, the medical record and appellant to an appropriate specialist to obtain an impartial medical opinion as to whether there exists a causal relationship between her wrist condition and the January 15, 2003 incident. Following other development as deemed necessary, the Office shall issue an appropriate decision in the case.

**CONCLUSION**

The Board finds that the case is not in posture for a decision due to a conflict of medical opinion.

**ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' June 4, 2007 decision be set aside and remanded for action consistent with this decision of the Board.

Issued: June 2, 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