



stopped working on November 3, 2006. A preoperative instruction sheet prepared by an unidentified nurse stated that appellant was scheduled for a fasciectomy of the right elbow on November 14, 2006.

On November 28, 2006 the Office noted that appellant had previously filed two occupational disease claims related to her right arm, both of which had been denied for lack of medical evidence.<sup>1</sup> It noted, on review of appellant's new claim, that appellant was claiming her work duties through her most recent work stoppage as the factual basis for her claim. Because the previous claims had not been accepted and the current claim involved a new period of work exposure, the Office adjudicated her claim as a new occupational disease claim, rather than a recurrence of disability. On December 6, 2006 the Office requested additional factual and medical information about appellant's claim.

On December 27, 2006 appellant submitted a November 28, 2006 report by Dr. Patrick Convery, a Board-certified orthopedic surgeon, who stated that appellant could return to work on November 29, 2006. Until January 2, 2007, she was restricted from lifting over five pounds, carrying, repetitive motion and casing.

By decision dated February 9, 2007, the Office denied appellant's claim. It found that she had not identified the duties which caused her right arm condition or present medical evidence that diagnosed a condition or provided a physician's opinion on causation.

On February 24, 2007 appellant requested an oral hearing. In an October 31, 2006 report, Dr. Convery stated that appellant continued to experience persistent pain in her lateral right elbow, which impaired her activities. Appellant had been treated with multiple steroid injections and physical therapy in the previous year. On examination, Dr. Convery noted that appellant's right elbow was tender and painful with grip at the right lateral epicondyle. Appellant's sensation and pulse were normal. Dr. Convery diagnosed right lateral epicondylitis and recommended fasciectomy of the right elbow because nonoperative treatment had been unsuccessful.

At the July 11, 2007 oral hearing, appellant stated that her letter carrying duties included up to two hours of sorting mail and four hours of delivering mail. Her mail sorting duties entailed reaching for and lifting mail, gathering mail into containers and loading the containers into the delivery van. Appellant delivered mail to businesses, which required her to carry heavy containers, and to residences, which often required her to force mail into small door slots. Appellant, who is right-handed, stated that these activities caused pain in her right elbow. She indicated that, over time, the shots she received to manage her pain lasted for shorter and shorter durations and the underlying pain increased. Following appellant's November 14, 2006 surgery, her condition improved. The Office hearing representative left the record open for appellant to submit additional medical information. Appellant did not submit any additional medical reports.

By decision dated September 18, 2007, the Office hearing representative affirmed the February 9, 2007 denial of appellant's claim. She found that the medical evidence of record

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<sup>1</sup> File No. 092042999 was filed in February 2004 and File No. 092061669 was filed in July 2005.

established that appellant had been treated for epicondylitis in her right elbow; however, it did not address the causal relationship between her condition and her employment activities.

### **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 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 or specific condition for which compensation is claimed is 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;<sup>4</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>5</sup> and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.<sup>6</sup>

When determining whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors, the Office generally relies on the rationalized opinion of a physician.<sup>7</sup> To be rationalized, the opinion must be based on a complete factual and medical background of the claimant<sup>8</sup> and must be one of reasonable medical certainty,<sup>9</sup> explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>10</sup>

### **ANALYSIS**

The Office found that the medical evidence did not establish a causal relationship between the implicated employment factors and appellant's right arm condition. The issue on appeal is whether she has established a causal relationship between her condition and her employment.

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *Caroline Thomas*, 51 ECAB 451 (2000); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>4</sup> *Solomon Polen*, 51 ECAB 341 (2000).

<sup>5</sup> *Marlon Vera*, 54 ECAB 834 (2003); *Roger Williams*, 52 ECAB 468 (2001).

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

<sup>7</sup> *Conard Hightower*, 54 ECAB 796 (2003); *Leslie C. Moore*, 52 ECAB 132 (2000).

<sup>8</sup> *Tomas Martinez*, 54 ECAB 623 (2003); *Gary J. Watling*, 52 ECAB 278 (2001).

<sup>9</sup> *John W. Montoya*, 54 ECAB 306 (2003).

<sup>10</sup> *Judy C. Rogers*, 54 ECAB 693 (2003).

On October 31, 2006 Dr. Convery, a Board-certified orthopedic surgeon, stated that appellant had experienced persistent pain in her lateral right elbow that impaired her activities. She had been treated with several steroid injections and physical therapy during the previous year. On physical examination, Dr. Convery noted that appellant's right elbow was tender and had pain at the right lateral epicondyle with gripping. He diagnosed right lateral epicondylitis. Noting that nonoperative treatment had not been successful, he recommended fasciectomy of the right elbow. A nurse's note indicated that appellant was scheduled for surgery on November 14, 2006. On November 28, 2006 Dr. Convery stated that appellant could return to work on November 29, 2006 but that, until January 2, 2007, she was restricted from lifting over five pounds, carrying, repetitive motion and casing. The Board notes that Dr. Convery provided no opinion addressing the cause of appellant's right elbow condition. The Board has held that medical reports that do not contain an opinion on causal relationship carry little probative value.<sup>11</sup> The Board finds that Dr. Convery's reports are insufficient to establish appellant's claim.

Appellant has not met her burden of proof to establish that her diagnosed right lateral elbow epicondylitis is causally related to her duties as a letter carrier.

### **CONCLUSION**

The Board finds that appellant has not established that she sustained an injury to her right elbow in the performance of duty causally related to factors of her federal employment.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs' hearing representative dated September 18, 2007 is affirmed.

Issued: March 25, 2008  
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

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<sup>11</sup> *Mary E. Marshall*, 56 ECAB 420, 427 (2005).