

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

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S.C., Appellant )

and )

DEPARTMENT OF VETERANS AFFAIRS, )  
VETERANS ADMINISTRATION HOSPITAL, )  
Danville, IL, Employer )

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**Docket No. 08-1265  
Issued: October 16, 2008**

*Appearances:*

*Alan J. Shapiro, 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 March 24, 2008 appellant filed a timely appeal from the Office of Workers' Compensation Programs' hearing representative decision dated February 25, 2008, which affirmed the denial of her claim for an occupational disease. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits in this case.

**ISSUE**

The issue is whether appellant has met her burden of proof in establishing that she sustained an injury causally related to factors of her federal employment.

**FACTUAL HISTORY**

On June 8, 2007 appellant, then a 41-year-old medical support assistant, filed an occupational disease claim alleging that her carpal tunnel syndrome was a result of continuous typing and working on the computer while in the performance of duty. She first became aware of her condition and its relation to her work on January 10, 2006.

By letter dated June 26, 2007, the Office advised appellant that additional factual and medical evidence was needed. Appellant was requested to describe in detail the employment

activities which she believed contributed to her condition, including all duties which required exertion or repeated movement of the wrist or hand. She was also advised to provide dates of examination and treatment, a history of injury given by her to a physician, a detailed description of any findings, the results of all x-rays and laboratory tests, a diagnosis and course of treatment followed and a physician's opinion supported by a medical explanation as to how the reported work incident caused the claimed injury. The Office explained that the physician's opinion was crucial to appellant's claim and allotted her 30 days within which to submit a response.

The Office received a June 29, 2007 disability certificate from Dr. Bipin B. Bavishi, a Board-certified orthopedic surgeon, who indicated that appellant was disabled for work for 10 days. An August 25, 2005 report from Dr. Muhammad Mushtaq, a Board-certified anesthesiologist, noted that appellant had no evidence of deep venous thrombosis in either lower extremity. Electrodiagnostic studies dated December 31, 2004 from Dr. Vathiar Tazudeen, a Board-certified neurologist, revealed mild to moderate right carpal tunnel syndrome and right cubital tunnel syndrome. January 30, 2006 laboratory test results from Dr. George Gindi, Board-certified in family medicine, were also submitted. The Office also received reports dated January 26 and May 25, 2007 from a physician's assistant.

In a June 5, 2007 report, Dr. Bavishi diagnosed moderately severe right carpal tunnel syndrome and right cubital tunnel syndrome.

By decision dated September 12, 2007, the Office denied appellant's claim finding that she failed to submit sufficient medical evidence in support of her claim. The Office found that the medical evidence did not demonstrate that the claimed medical condition was related to established work-related events.

On September 19, 2007 appellant's representative requested a telephonic hearing, which was held on January 7, 2008.

By decision dated February 25, 2008, the Office hearing representative affirmed the September 12, 2007 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation Act<sup>1</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 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 and/or specific condition for which compensation is claimed are causally related to the employment injury.<sup>2</sup> These are the essential

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<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 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, 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. 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>4</sup>

### ANALYSIS

Appellant alleged that her carpal tunnel syndrome was caused by factors of her federal employment which included continuous typing and computer work. The Office denied the claim finding the medical evidence did not relate her condition to her work duties. The Board finds that appellant has submitted insufficient medical evidence to establish that her carpal tunnel condition was caused or aggravated by the typing or computer work of her federal employment.

In a June 5, 2007 report, Dr. Bavishi diagnosed moderately severe right carpal tunnel syndrome and right cubital tunnel syndrome. In a disability certificate, he indicated that appellant was disabled for work for 10 days. However, he did not offer any opinion regarding the cause of appellant's medical condition. Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.<sup>5</sup> Medical reports from other physicians did not address causal relationship.

Appellant also submitted reports from a physician's assistant. However, lay individuals such as physician's assistants, nurses and physical therapists are not physicians as defined under the Act.<sup>6</sup> Thus, these reports are insufficient to establish appellant's claim.

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<sup>3</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>4</sup> *Id.*

<sup>5</sup> *Michael E. Smith*, 50 ECAB 313 (1999).

<sup>6</sup> *David P. Sawchuk*, 57 ECAB 316 (2006).

Although the medical records indicate that appellant was treated for carpal tunnel syndrome, there is no discussion by a physician explaining how factors of appellant's employment, such as typing and working on the computer, caused or contributed to her diagnosed condition or aggravated a preexisting medical condition. The record contains no rationalized medical opinion explaining the cause of appellant's carpal tunnel syndrome. The Office informed appellant of the deficiencies in the medical evidence and what was needed to establish her claim in a letter dated June 26, 2007. Appellant did not submit a medical report from her physician that explained how specific duties of her federal employment caused or aggravated her diagnosed condition.

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>7</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>8</sup> Causal relationship must be substantiated by reasoned medical opinion evidence, which is appellant's responsibility to submit.

Appellant has not met her burden of proof in establishing that she sustained carpal tunnel syndrome causally related to factors of employment.

### **CONCLUSION**

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

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<sup>7</sup> See *Joe T. Williams*, 44 ECAB 518, 521 (1993).

<sup>8</sup> *Id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated February 25, 2008 is affirmed.

Issued: October 16, 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