

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

M.E., Appellant)
and) Docket No. 09-1170
U.S. POSTAL SERVICE, POST OFFICE,) Issued: December 2, 2009
Nashville, TN, Employer)

)

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
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On March 31, 2009 appellant filed a timely appeal from the Office of Workers' Compensation Programs' February 24, 2009 merit decision denying modification of a December 14, 2007 decision. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met his burden of proof to establish that he sustained bilateral carpal tunnel syndrome in the performance of duty causally related to his employment.

FACTUAL HISTORY

On September 19, 2007 appellant, a 51-year-old mail handler, filed an occupational disease claim (Form CA-2) alleging that he sustained bilateral carpal tunnel syndrome which he attributed to "fine manipulation and repetitive motion work." He first became aware of his condition and that it was caused by his employment on October 1, 1999.

Appellant submitted no evidence to support his claim and by decision dated December 14, 2007 the Office denied the claim because he had not established that employment factors caused a diagnosed medical condition.

On December 9, 2008 appellant requested reconsideration.

In a June 2, 2008 note, appellant attributed his condition to mail handling, sorting and repairing activities requiring “fine manipulation” of letters using his hands and fingers.

In a November 15, 2007 note, Dr. Frank M. Berklacich, a Board-certified orthopedic surgeon, reported findings on examination. He noted that “[t]o help sort out [appellant’s] diagnosis, I have recommended … an EMG [electromyogram].”

Appellant also submitted a December 6, 2007 report in which Dr. W.G. Strickland, a Board-certified neurologist, reported findings following an electrodiagnostic study. Dr. Strickland diagnosed bilateral carpal tunnel syndrome.

By decision dated February 24, 2009, the Office accepted sorting, repairing and handling mail activities involving “fine manipulation” of mail as the employment factors allegedly responsible for appellant’s condition but denied the claim nonetheless because he had not established that these employment factors caused a medically diagnosed condition.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees’ Compensation Act¹ has the burden of establishing the essential elements of the 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.² These are essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.³

To establish that an injury was sustained in the performance of duty in a claim for occupational disease, an employee must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.⁴

¹ 5 U.S.C. §§ 8101-8193.

² C.S., 60 ECAB ____ (Docket No. 08-1585, issued March 3, 2009).

³ S.P., 59 ECAB ____ (Docket No. 07-1584, issued November 15, 2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁴ See *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

ANALYSIS

The Office accepted that appellant established employment factors allegedly responsible for his condition. Appellant's burden is to establish that these employment factors caused a medically diagnosed condition. Causal relationship is a medical issue that can only be proven by probative rationalized medical opinion evidence. The evidence of record lacks a rationalized medical opinion explaining how the accepted employment factors caused a medically diagnosed condition and, therefore, appellant has not satisfied his burden of proof.

The note and report signed by Drs. Berklaich and Strickland are of little probative value on the issue of causal relationship.⁵ Dr. Berklaich's note lacked a diagnosis as well as a rationalized opinion explaining how the accepted employment factors caused any diagnosed condition. Although Dr. Strickland diagnosed bilateral carpal tunnel syndrome, he did not explain how this condition was caused by the accepted employment factors. These deficiencies reduce the probative value of this evidence such that it is insufficient to establish appellant's claim.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's claimed condition became apparent during a period of employment nor his belief that his condition was aggravated by his employment is sufficient to establish causal relationship.⁶

Appellant has not submitted probative rationalized medical evidence supporting his claim and thus the Board finds appellant has not established that he sustained bilateral carpal tunnel syndrome in the performance of duty causally related to his employment.

CONCLUSION

The Board finds that appellant has not established that he sustained bilateral carpal tunnel syndrome in the performance of duty causally related to his employment.

⁵ See *Mary E. Marshall*, 56 ECAB 420 (2005) (medical reports that do not contain rationale on causal relationship have little probative value). See also *Franklin D. Haislah*, 52 ECAB 457 (2001); *Jimmie H. Duckett*, 52 ECAB 332 (2001).

⁶ *D.I.*, 59 ECAB ____ (Docket No. 07-1534, issued November 6, 2007); *Ruth R. Price*, 16 ECAB 688, 691 (1965).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' February 24, 2009 decision is affirmed.

Issued: December 2, 2009
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board