

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

C.W., Appellant

and

U.S. POSTAL SERVICE, POST OFFICE,
Newark, NJ, Employer

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**Docket No. 08-1908
Issued: February 12, 2009**

Appearances:
Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On July 1, 2008 appellant filed a timely appeal of the Office of Workers' Compensation Programs' decision dated July 20, 2007 denying her claim for compensation. 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 her burden of proof in establishing that she sustained an occupational disease in the performance of duty.

FACTUAL HISTORY

On October 7, 2004 appellant, then a 40-year-old mail handler, filed an occupational disease claim alleging that she sustained bilateral carpal tunnel syndrome and right shoulder cuff tendinitis as a result of pushing equipment weighing 89 to 400 pounds, grabbing, pulling and pitching mail and stacking flats. She first became aware of her condition in May 2004 and realized her condition was caused or aggravated by her employment on September 23, 2004.

Appellant did not stop work. The employing establishment controverted her claim in an October 27, 2004 letter.

Appellant submitted an October 7, 2004 statement noting that she previously saw Dr. Andrew Hutter, a Board-certified orthopedic surgeon, for shoulder pain and hand numbness. Dr. Hutter treated appellant beginning in January 2004, testing her for carpal tunnel syndrome and tendinitis. Appellant subsequently sought treatment from Dr. John Capo, a Board-certified orthopedic surgeon. In a September 22, 2004 work restriction form, Dr. Capo diagnosed right carpal tunnel syndrome and right shoulder rotator cuff tendinitis. On September 23, 2004 he noted appellant's eight-month history of right hand numbness, tingling and pain and right shoulder pain. In an October 19, 2004 work restriction form, Dr. Capo reiterated the diagnosis. In a work capacity evaluation form of the same date, he specified limitations in appellant's work activities.

In a January 25, 2005 letter, the Office advised appellant of the factual and medical evidence needed to establish her claim and allowed her 30 days to submit such evidence. It requested that she submit a comprehensive medical report containing a physician's reasoned opinion on the cause of her condition.

In response, appellant submitted an August 9, 2004 treatment note in which Dr. Capo advised that appellant had an eight-month history of right hand numbness, tingling and pain as well as right shoulder pain. She had a history of no significant trauma, but noticed right arm symptoms while working. Dr. Capo diagnosed right shoulder rotator cuff tendinitis and right carpal tunnel syndrome. In an October 11, 2004 progress note, he noted appellant's right arm symptoms and also noted complaint of left hand numbness and tingling with carpal tunnel-like symptoms. On December 7, 2004 Dr. Capo repeated the diagnosis. He also noted that appellant's condition could be aggravated by continuous stress on the hand for long periods of time. A February 21, 2005 treatment note indicated that appellant was involved in a motor vehicle accident on February 11, 2005 and experienced mild pain in her neck and shoulder. Other treatment notes from Dr. Capo addressed appellant's status and findings and recommended carpal tunnel surgery on the right. An April 29, 2004 diagnostic study obtained by Dr. Dong Cho, a Board-certified physiatrist, advised that electromyogram (EMG) results were suggestive of moderate-to-severe right carpal tunnel syndrome.

Appellant submitted treatment notes from Dr. Hutter dated February 27 to May 14, 2004. Dr. Hutter advised that appellant had left quad repair after a fall down stairs and diagnosed status post left quad repair. On April 9, 2004 he stated that her numbness and tingling in her right hand became worse at night and when driving. Dr. Hutter advised that appellant had right carpal tunnel syndrome. On April 30, 2004 appellant was treated "for the work-related shoulder injury and her hand." Dr. Hutter stated that an EMG showed moderate carpal tunnel syndrome on the right and it "appeared to be related to the injury at work." On May 14, 2004 he reiterated that appellant's right carpal tunnel syndrome was documented by the EMG and "appeared to be work-related due to repetitive trauma.

In a September 29, 2006 decision, the Office denied appellant's claim for compensation on the grounds that the medical evidence did not establish that her diagnosed conditions were caused by the factors of her employment.

On January 8, 2007 appellant requested an oral hearing which was held on May 15, 2007. The Office hearing representative indicated that she would hold the record open for 30 days in order to accept additional evidence. Appellant submitted an August 29, 2005 diagnostic testing report of Dr. Mark Wilner, a Board-certified physiatrist, who noted that appellant had numbness and tingling in the right fingers and hand for six months. Dr. Wilner advised that the EMG results revealed evidence of right carpal tunnel syndrome.

On July 20, 2007 an Office hearing representative affirmed the December 29, 2006 decision denying appellant's claim for compensation.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act 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. 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.¹

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 diagnosed condition is causally related to the employment factors identified by the claimant.²

ANALYSIS

The evidence establishes that appellant has been diagnosed with carpal tunnel syndrome and right shoulder rotator cuff tendinitis. The record also reflects that she pushes equipment weighing 89 to 400 pounds, grabs, pulls and pitches mail and stacks flats as part of her job duties. However, appellant has not provided sufficient medical evidence establishing that her diagnosed conditions are causally related to these employment factors.

In a December 7, 2004 treatment note, Dr. Capo stated that appellant's right carpal tunnel syndrome and right rotator cuff tendinitis can be aggravated by continuous stress on the hand for long periods of time. He did not define the source of continuing stress on appellant's hand or specifically state whether that source was related to her job duties. Dr. Capo diagnosed right carpal tunnel syndrome and right rotator cuff tendinitis but did not provide any medical opinion establishing causal relationship between the diagnosed condition and appellant's employment

¹ *J.E.*, 59 ECAB ___ (Docket No. 07-814, issued October 2, 2007); *Elaine Pendleton*, 40 ECAB 1143 (1989).

² *D.I.*, 59 ECAB ___ (Docket No. 07-1534, issued November 6, 2007); *Roy L. Humphrey*, 57 ECAB 238 (2005).

duties.³ In subsequent medical reports, Dr. Capo failed to address whether or how appellant's carpal tunnel syndrome was caused by her job duties. His records do not provide a full history of appellant's work duties or provide a narrative opinion on how her employment would cause or aggravate carpal tunnel syndrome or shoulder tendinitis. The fact that a disabling condition manifests itself during a period of employment does not establish a right to compensation benefits, nor does it raise an inference of causal relationship between such condition and an employment injury.⁴

In the April 30 and May 14, 2004 treatment notes, Dr. Hutter generally indicated that appellant's carpal tunnel syndrome was related to an injury sustained at work. However, he did not address any specific job duties as the cause of her diagnosed condition or explain the reasons any employment factors would cause or aggravate the diagnosed condition.⁵ Furthermore, the May 14, 2004 treatment note was speculative in nature, noting that it "appeared" that appellant's condition was related to a work injury.⁶ Other treatment notes from Dr. Hutter did not provide a medical opinion as to the cause of appellant's carpal tunnel syndrome.

The treatment notes from Drs. Cho and Wilner interpreted the EMG results to diagnose right carpal tunnel syndrome and right rotator cuff tendinitis. However, the physicians did not otherwise state an opinion regarding how appellant's pushing equipment, pitching mail or stacking flats caused or aggravated her diagnosed conditions. Consequently, the medical evidence of record does not establish that she sustained an occupational disease in the performance of duty.

CONCLUSION

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

³ See *K.W.*, 59 ECAB ____ (Docket No. 07-1669, issued December 13, 2007).

⁴ *Dolph G. Stuart*, 13 ECAB 480 (1969).

⁵ See *Gloria J. McPherson*, 51 ECAB 441 (2000) (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).

⁶ See *Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962) (where the Board held that medical opinions which are speculative or equivocal in character have little probative value).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated July 20, 2007 is affirmed.

Issued: February 12, 2009
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board