

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

R.W., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Ocean Park, WA, Employer**

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**Docket No. 10-1464
Issued: February 15, 2011**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 5, 2010 appellant filed a timely appeal from a March 16, 2010 merit decision of the Office of Workers' Compensation Programs. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant met his burden of proof to establish that he sustained an occupational disease in the performance of duty.

FACTUAL HISTORY

On December 3, 2009 appellant, then a 39-year-old sales and service associate, filed an occupational disease claim alleging that he sustained carpal tunnel syndrome as a result of sorting mail between two and four hours a day for 12 years. He first became aware of his condition in May 2008. Appellant did not stop work.

In a December 4, 2009 accident report, appellant's supervisor noted that appellant visited his physician on May 10, 2008, underwent electrical impulse testing for his wrist pain, was

diagnosed with mild carpal tunnel syndrome and received a wrist brace. Appellant did not miss work due to this condition in the ensuing months. The supervisor pointed out that a different physician later attributed the carpal tunnel syndrome to repetitive mail sorting for the past 12 years and recommended surgery. In addition, appellant mentioned that he constructed a two-story, triple bay garage as well as framed and roofed his 3,000-square-foot house.

On December 16, 2009 the Office informed appellant that the evidence submitted was insufficient to establish his claim and advised him about additional evidence needed to establish his claim.

A December 31, 2009 statement from appellant's supervisor detailed that sorting was "eliminated" as mail arrived at the workplace already sequenced and casing involved repetitive motion for up to two hours a day. He added that sorting was more commonplace during the first 10 years of appellant's employment.

In a January 6, 2010 statement, appellant described his job duties, including moving and unloading mail from containers, cages, bags, trays and tubs weighing up to 70 pounds and sorting between 21 and 40 feet of letters, magazines, catalogs, parcels and accountable mail for at least four hours a day. He denied any previous hand injuries. Appellant stated that he began building a house five years earlier and only completed a roof and shell. He was unable to devote more than two hours a week on the project due to his employment schedule and his hand pain, which hindered his ability to use tools such as a hammer. Appellant's supervisor concurred with this account in a December 26, 2009 statement, but noted that appellant failed to discuss that he built a garage about six or seven years earlier.

In a December 2, 2009 note from Dr. Jon Kretzler, a Board-certified orthopedic surgeon, appellant complained of pain and numbness radiating from his right hand to his shoulder for several years. He listed a history of post-traumatic stress disorder, anxiety disorder, hyperlipidemia, spondylosis of the cervical spine and lumbar radiculopathy. Dr. Kretzler commented that appellant worked at the employing establishment "with heavy repetitive use of the hand and wrist." He referred to May 2008 nerve conduction studies showing evidence of a median nerve compression of the right wrist. Dr. Kretzler examined appellant's right hand and observed mild tenderness over the first dorsal compartment, a mildly positive Phalen's sign and a positive Tinel's sign. He diagnosed right carpal tunnel syndrome and recommended decompression surgery. In a January 14, 2010 note, Dr. Kretzler stated that appellant's pain markedly improved following a January 5, 2010 surgical release.

A December 16, 2009 report from Dr. Richard D. Baertlein, Board-certified in occupational medicine, noted that appellant presented with carpal tunnel syndrome of the right hand supported by May 2008 nerve conduction studies and exhibited "classic" symptoms for over two years without significant weakness. Dr. Baertlein advised that appellant described hand-intensive work activities that were "temporally associated" with symptom flares. On examination, he observed a mildly positive Tinel's sign and assessed right carpal tunnel syndrome. Dr. Baertlein noted time loss from surgery for the period January 5 to 21, 2010. In January 21 and February 4, 2010 reports, he stated that appellant's January 5, 2010 surgery resolved his numbness and tingling. Dr. Baertlein returned appellant to modified duty status on January 22, 2010.

In a January 23, 2010 report, Dr. Baertlein reiterated that appellant had confirmed symptoms of right carpal tunnel syndrome for nearly two years and described “a temporal association between symptom aggravation and intensive hand activity at work.” He pointed out that appellant did not demonstrate any of the other normally-associated risk factors based upon endogenous body size, sex, age, underlying inflammatory or arthritic conditions or endocrinopathies. Dr. Baertlein stated, “It would be my inclination to support [appellant’s] claim of an occupational association between his work activities and his condition.”

Appellant also provided occupational therapy records for the period January 25 to February 24, 2010.

By decision dated March 16, 2010, the Office denied appellant’s claim on the grounds that the medical evidence did not sufficiently establish that employment activities caused or aggravated his condition.¹

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees’ Compensation Act² has the burden of establishing the essential elements of his 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 disabilities and/or specific conditions for which compensation is claimed are causally related to the employment injury.³ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

Whether an employee actually sustained an injury in the performance of duty begins with an analysis of whether fact of injury has been established.⁵ To establish fact of injury in an occupational disease claim, 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.⁶

¹ Appellant requested an oral hearing on March 18, 2010, which was scheduled for June 22, 2010. However, he appealed to the Board on May 5, 2010. The Board and the Office may not have simultaneous jurisdiction over the same issue. *See* 20 C.F.R. § 501.2(c)(3).

² 5 U.S.C. §§ 8101-8193.

³ *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁵ *See S.P.*, 59 ECAB 184, 188 (2007).

⁶ *See R.R.*, 60 ECAB ___ n.12 (Docket No. 08-2010, issued April 3, 2009); *Roy L. Humphrey*, 57 ECAB 238, 241 (2005).

Causal relationship is a medical issue and the evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is evidence which includes a physician's 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, 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.⁷

ANALYSIS

The record supports that appellant moved, unloaded and sorted mail at least four hours a day. The medical evidence supports that he was diagnosed with right carpal tunnel syndrome. However, appellant has not submitted sufficient medical evidence to establish that his condition was caused or aggravated by the accepted employment factors.

Dr. Baertlein opined that appellant's right carpal tunnel syndrome was temporally associated with hand-intensive activities at the workplace. A temporal relationship alone is insufficient to establish a causal relationship.⁸ A physician must do more than note a temporal relationship. The physician must base his opinion on a complete factual and medical background with an accurate history of employment injury and explain how appellant's condition is pathophysiologically related to employment factors.⁹ Dr. Baertlein stated that appellant did not exhibit any of the other risk factors associated with carpal tunnel syndrome based on endogenous body size, sex, age, underlying inflammatory or arthritic conditions or endocrinopathies; but he did not provide adequate medical reasoning to explain how moving, unloading and sorting mail for four hours a day would cause or aggravate appellant's diagnosed condition.¹⁰ The need for medical rationale is important as the evidence suggests that appellant was also involved in repetitive off-duty construction tasks.

Dr. Kretzler's December 2, 2009 note mentioned only that appellant's employment entailed heavy repetitive use of his hand and wrist. He did not clearly explain the causal relationship between appellant's mail sorting activity and his right carpal tunnel syndrome. Dr. Kretzler did not discuss the reasons why particular employment duties would cause or aggravate the diagnosed right carpal tunnel syndrome.

⁷ *I.J.*, 59 ECAB 408, 415 (2008); *Woodhams*, *supra* note 4 at 352.

⁸ *See also D.I.*, 59 ECAB 158 (2007) (fact that a condition manifests itself during a period of employment does not raise an inference of causal relationship). *Louis T. Blair*, 54 ECAB 348 (2003); *Thomas D. Petrylak*, 39 ECAB 276 (1987).

⁹ *See Joan R. Donovan*, 54 ECAB 615, 621 (2003).

¹⁰ *See John W. Montoya*, 54 ECAB 306, 309 (2003) (a physician's opinion must discuss whether the employment incident described by the claimant caused or contributed to diagnosed medical condition).

Appellant also provided occupational therapy records for the period January 25 to February 24, 2010. These records do not constitute competent medical evidence as an occupational therapist is not considered a physician within the meaning of the Act.¹¹

Appellant argues on appeal that he suffered extreme hand, arm and armpit pain for years and that his physicians, advised that his carpal tunnel syndrome was employment related. The carpal tunnel syndrome diagnosis is not in dispute; but as addressed above, the physicians of record did not sufficiently explain how repetitive moving, unloading and sorting of mail caused or contributed to appellant's condition.

CONCLUSION

The Board finds that appellant did not establish that he sustained an occupational disease in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the March 16, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 15, 2011
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

¹¹ 5 U.S.C. § 8101(2); *Jerre R. Rinehart*, 45 ECAB 518 (1994). See also *Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (medical opinion, in general, can only be given by a qualified physician).