

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

B.D., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Phoenix, AZ, Employer**

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**Docket No. 10-2106
Issued: May 6, 2011**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On August 17, 2010 appellant filed a timely appeal from a June 26, 2010 merit decision of the Office of Workers' Compensation Programs denying her occupational exposure claim. Pursuant to the Federal Employees' Compensation Act¹ and 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 to establish that she sustained a right thumb injury in the performance of duty.

FACTUAL HISTORY

On May 7, 2010 appellant, then a 54-year-old mail carrier, filed an occupational disease claim (Form CA-2) alleging that she developed flexo tenodyrodisis from using her hands in daily employment. She noted that her thumb became worse over time until she could no longer bend it

¹ 5 U.S.C. § 8101 *et seq.*

or use it. Appellant became aware of her condition and of its relationship to her employment on February 25, 2010. She first reported the condition to her supervisor on May 8, 2010.

By letter dated May 12, 2010, the Office informed appellant that no evidence had been received in support of her claim. It requested additional factual and medical evidence and asked that she respond to the provided questions within 30 days.

In an undated note, appellant reported that she had previously jammed her thumb in a locker at work. She also stated that, on February 25, 2010, she jammed her thumb again and went to a physician who diagnosed her with a sprain and opined that her thumb was not healing because she continued to use it at work.

Prescription slips dated March 19 and April 22, 2010 with an illegible physician's signature noted that appellant was out due to an arthritis injury but could return to work on March 19, 2010. Appellant also submitted a note indicating that her hand specialist was Dr. Jon Hanlon.

By letter dated June 22, 2010, appellant stated that her employment consisted of picking up flats and letters, lifting buckets, sorting mail for at least three to four hours, and placing mail in the case using her hands and fingers. She also noted that she loaded mail into her truck, used her hands to deliver mail, drove her mail truck, picked up mail and filed paperwork, all of which required that she use her right thumb. Appellant worked an eight-hour-a-day route, five days a week and did not engage in any other sports or hobbies other than swimming during the summer months. She stated that she first became aware of her condition on February 25, 2010 when she experienced pain, swelling and stiffness but that her condition worsened over time. Bending, grabbing, flexing and the general use of her hand in conjunction with her thumb caused appellant terrible pain. She also reported that she had no previous injury to her hand, arm or wrist. Appellant noted that she was previously diagnosed with arthritis in her right wrist but the hand specialist informed her that her injury was not arthritis but the condition she was suffering from in her current claim. In a handwritten note, she stated that her doctor would be returning Thursday and she would send over information as soon as she got it.

By letter dated June 23, 2010, the Office requested additional factual information from the employing establishment. The employing establishment did not submit any additional information and stated that it was not disputing appellant's statements regarding her work duties.

By decision dated July 26, 2010, the Office denied appellant's claim on the grounds that the evidence was insufficient to establish that she sustained an injury. It found that the occupational exposure occurred as alleged; however, that the evidence failed to provide a firm medical diagnosis which could be reasonably attributed to the accepted employment factors.

LEGAL PRECEDENT

An employee seeking benefits under the 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 or specific condition for which compensation is claimed is causally related to the employment injury.² These are the essential elements of every compensation claim regardless of whether the claim is predicated on a traumatic injury or occupational disease.³

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.⁴ The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

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 employee.⁵

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical evidence.⁶ 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 employee, 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 employee. This medical opinion must include an accurate history of the employee's employment injury, and must explain how the condition is related to the injury. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.⁷

² *Gary J. Watling*, 52 ECAB 278 (2001); *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

³ *Michael E. Smith*, 50 ECAB 313 (1999).

⁴ *Elaine Pendleton*, *supra* note 2.

⁵ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁶ *D.U.*, Docket No. 10-144 (issued July 27, 2010).

⁷ *James Mack*, 43 ECAB 321 (1991).

ANALYSIS

The Office accepted that the occupational exposure occurred as alleged. The issue, therefore, is whether appellant submitted sufficient medical evidence to establish that the employment exposure caused a right thumb injury. The Board finds that she did not submit sufficient medical evidence to support that she sustained a right thumb injury causally related to factors of her employment as a mail carrier.⁸ The evidence is deficient on two grounds: (1) it fails to provide a firm diagnosis; and (2) there is no narrative opinion on causal relationship between a diagnosed condition and factors of her employment as a mail carrier.

Appellant submitted prescription slips with an illegible signature dated March 19 and April 22, 2010 which noted that appellant was out due to an arthritis injury but could return to work. Even if signed by a physician, this report would not constitute probative medical evidence because it failed to provide a clear diagnosis and did not adequately explain the cause of appellant's thumb condition.⁹

Appellant also submitted a note that her hand specialist was Dr. Hanlon. In her letter dated June 22, 2010, she noted that she was previously diagnosed with arthritis in her right wrist but that her hand specialist informed her that she was not suffering from arthritis but was rather suffering from the condition in this current claim. On her Form CA-1 appellant noted that she developed flexo tenodyrodisis. However, no medical evidence was received containing a physician's opinion.

Appellant herself has alleged that her accepted duties as a mail carrier caused her injury. Her statements however, do not constitute the medical evidence necessary to establish causal relationship. In the instant case, the record is without rationalized medical evidence establishing a causal relationship between the established factors of employment and appellant's alleged right thumb injury. Thus, she has failed to establish her burden of proof.

An award of compensation may not be based on surmise, conjecture or speculation.¹⁰ To establish causal relationship, appellant must submit a physician's report in which the physician reviews those factors of employment alleged to have caused her condition and, taking these factors into consideration, as well as findings upon examination and appellant's medical history, explain how these employment factors caused or aggravated any diagnosed condition and present medical rationale in support of his opinion.¹¹ Her recitation of the facts does not support her allegation that her employment factors as a mail carrier caused her injury.¹² Where an appellant

⁸ See *Robert Broome*, 55 ECAB 339 (2004).

⁹ *Ceferino L. Gonzales*, 32 ECAB 1591 (1981).

¹⁰ *D.D.*, 57 ECAB 734 (2006).

¹¹ *Supra* note 8.

¹² *Paul Foster*, 56 ECAB 1943 (2004); *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

fails to submit any medical evidence, he or she has not established that the injury occurred as alleged.¹³

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained a right thumb injury in the performance of duty, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the July 26, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 6, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

¹³ *Tracey P. Spillane*, 54 ECAB 608 (2003); 5 U.S.C. § 8101(5).