



## **FACTUAL HISTORY**

On March 2, 2006 appellant, then a 39-year-old lead accounting technician, filed a claim for an occupational disease (Form CA-2) file number 09-2070596.<sup>1</sup> On February 6, 2006 she first realized that her right elbow medial epicondylitis and paresthesias were caused by a heavy workload at the employing establishment. Appellant stated that her current position tripled her work duties which included using a keyboard and using a mouse. She stated that her duties created tenderness in her right elbow and forearm.

By letter dated April 24, 2006, the Office advised appellant that the evidence submitted was insufficient to establish her claim. It addressed the factual and medical evidence she needed to submit.

The Office received several medical records of Dr. Robert J. Nowinski, an orthopedic surgeon. In a March 15, 2006 treatment note, Dr. Nowinski stated that appellant sustained right elbow medial epicondylitis and paresthesias. He recommended a nerve conduction test of her bilateral upper extremity to rule out evolving carpal tunnel syndrome. A March 15, 2006 nerve conduction study provided a diagnosis of bilateral carpal tunnel syndrome. In a disability certificate of the same date, Dr. Nowinski stated that appellant had bilateral elbow and wrist pain and swelling of the right forearm. He opined that she was disabled for work beginning March 15, 2006. In an April 13, 2006 treatment note, Dr. Nowinski stated that appellant had mild paresthesias and possible early carpal tunnel syndrome. His May 18, 2006 medical report noted his treatment of appellant's complex bilateral upper extremity pain and chronic overuse exertional tenosynovitis in the forearm and medial epicondylitis of the upper extremity. Dr. Nowinski opined that appellant's chronic epicondylitis and pain syndrome were directly related to her work-related activities of working on a keyboard eight hours per day. He believed that she had sustained an occupational disease. On May 17, 2006 Dr. Nowinski prescribed occupational therapy for appellant's right elbow. In a disability certificate of the same date, he opined that she was disabled for work beginning on May 17, 2006.

In undated narrative statements received by the Office on May 22 and 25, 2006, appellant reiterated that she had a heavy workload on February 6, 2006 that required her to perform massive amounts of typing and use a mouse. She also reiterated that her work duties caused her right elbow and forearm and bilateral hand problems. Appellant stated that when she did not perform the noted work activities, her symptoms ceased.

In an October 25, 2005 e-mail, Jo Ann Newsome, an employing establishment supervisor, advised appellant about her work duties upon her return to work as a lead accounting technician. Her duties included responding to e-mails from customer service that needed to be answered within 24 hours. Ms. Newsome stated that the position involved keying throughout the day. She further stated that appellant had no set quota but as a lead technician, she was expected to set an example and keep her desk current at all times. Ms. Newsome suggested that appellant key part of the day and then perform her other work duties to avoid pain in her wrist and arms.

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<sup>1</sup> Prior to the instant claim, appellant, on December 20, 2004 filed a CA-2 form file number 09-2055545 alleging that his complex bilateral pain syndrome, epicondylitis and carpal tunnel syndrome were caused by his federal employment. By letter dated June 16, 2005, the Office accepted the claim for bilateral medial epicondylitis.

In a May 16, 2006 e-mail, Ms. Newsome stated that appellant was not required to sit at her desk for long periods which caused strain and discomfort. Her position involved duties that allowed movement in the work area. Ms. Newsome related that as a lead technician appellant should have been up moving around to interact with other technicians. She stated that her duties included sorting and filing documentation which appellant performed while standing and making copies of payments she made and screen prints of documentation which she retrieved from a printer. Appellant was allowed two breaks and a lunch period. Ms. Newsome noted that despite being given a special chair, foot rest, keyboard tray, keyboard and two different computer mice and a voice recognition system, appellant chose to place her keyboard on her desk and not to use the special keyboard tray or mice.

A June 1, 2006 report of Dr. Gene S. Harrison, a chiropractor, stated that appellant sustained carpal tunnel syndrome, shoulder and elbow tendinitis and subluxations at C-2 and C-5. He opined that these conditions were directly related to her work exposure. Dr. Harrison related that the constant repetitive motion required by appellant's computer use, combined with her long-term sitting and forward head posture directly contributed to her conditions, especially since her conditions improved dramatically when these stressors were removed and treatment was provided.

In a June 8, 2006 narrative statement, Ms. Newsome related that appellant struggled to perform her work duties. It was not until appellant was counseled about her low sick leave balance when she advised Ms. Newsome that her workers' compensation issues prevented her from performing her work duties. Ms. Newsome noted that, on August 23, 2005, appellant was reassigned from her area to a lateral position to allow her to meet her work standards. The new supervisor granted appellant's request for a position that did not require keying. Ms. Newsome stated that appellant was subsequently reassigned to her area as a lead technician in the latter part October 2005. She advised her about the expectations and timeframes that were involved in this position. Ms. Newsome reiterated that the position allowed appellant to be more mobile in her interaction with technicians and to avoid keying for prolonged periods of time. She indicated that sorting and filing reports and vouchers for payments from accounting could be performed while standing or sitting, 30 to 45 minutes per day and did not involve any keying. Appellant was required to process less than 15 foreign payments per month which involved some keying and tracking them onto an Excel spreadsheet. She took copies of these payments to other work areas. Ms. Newsome contended that appellant was not required to key eight hours per day, five days per week as she had to walk payments to a central pick-up area. When she witnessed and questioned appellant about surfing the Internet, she responded that she was at lunch or on break.

In an addendum to her June 8, 2006 statement, Ms. Newsome related that every lead position at the employing establishment required the employee to sit at a desk and perform a certain amount of duties. She stated that there was no reason for appellant to lean forward to use a computer. Ms. Newsome reiterated that appellant had a special keyboard tray but chose to place it on top of her desk which caused her to lean over and resulted in her spine and neck strains. A description of appellant's lead accounting technician position required, among other things, inputting data into computerized systems.

The Office received treatment notes from appellant's occupational therapists which covered intermittent dates from April 28 through June 30, 2006 and addressed pain in her epicondyle area.

By decision dated July 12, 2006, the Office found that appellant did not sustain an injury in the performance of duty. The evidence of record failed to establish that her right elbow condition was causally related to her heavy workload as a lead accounting technician.

The Office received Dr. Harrison's June 27 and 30, 2006 disability certificates which stated that appellant had been under his care for a work-related injury. He opined that she could not work until August 6, 2006. Dr. Harrison requested that appellant be excused from work for strength conditioning and rehabilitation with a physical therapist so that she could return to her work capacity. In the June 30, 2006 disability certificate, he stated that she sustained work-related tendinitis.

In a July 15, 2006 letter, appellant, through counsel, requested an oral hearing before an Office hearing representative regarding the Office's July 12, 2006 decision.

In a July 27, 2006 treatment note, Dr. Nowinski found that appellant sustained mildly persistent medial and lateral epicondylitis of the right elbow. In an October 10, 2006 report, he found that her right elbow epicondylitis was aggravated by her extra work duties, which involved keyboard and mouse activities as a lead accounting technician. Dr. Nowinski opined that appellant's previously accepted condition was aggravated by her work duties.

In a December 11, 2006 disability certificate, Dr. Nowinski stated that appellant was being treated for tendinitis in the elbow and wrist and shoulder pain. He opined that these conditions were aggravated by work stressors. Dr. Nowinski stated that appellant could work with restrictions.

At a January 9, 2007 hearing, the hearing representative stated that the record in the instant case would reflect that appellant provided prior testimony in her claim file number 09-2070595 regarding her work duties, extent and duration of those duties, the onset of her symptoms and beginning date of her duties as a lead accounting technician.

Following the hearing, Ms. Newsome stated that appellant was not required to sit at her desk for seven hours. She stated that at most, appellant sat at her desk five hours per day. Ms. Newsome stated that appellant did not work part time as no lead position was part time. She contended that appellant stated that she never underwent surgery for her right elbow or wrist. Ms. Newsome noted that it was odd that appellant could not perform repetitive activities in the workplace, but could perform such activities while either keying or writing for three college classes paid for by the employing establishment. She contended that taking these classes aggravated appellant's conditions. In October 2006, Ms. Newsome reviewed internet statistics for all employees including, appellant. She related that appellant surfed nongovernment websites during work hours for jobs and houses while her attending physician restricted her to keying 30 minutes per day. During this time, appellant advised Ms. Newsome about the enormous pain she experienced while performing her work duties. Ms. Newsome disagreed that appellant's workload had tripled. She submitted a January 2006 workload distribution list and two e-mails.

Ms. Newsome stated that the February 4, 2006 e-mail added only two alphas to appellant's workload. The March 8, 2006 e-mail removed all alphas from appellant which left her with only foreign payments and regular lead duties. Ms. Newsome related that appellant cancelled an order for a voice activated system because she was going on leave without pay until her disability was approved. She stated that she did not inform the employing establishment about the cancellation. The software was reordered and appellant was advised on January 31 and February 2, 2007 that the software had arrived. She was also advised to report to work on February 6, 2007 before 9:00 a.m., but failed to do so. Ms. Newsome stated that she was currently on absent without leave status.

On February 12, 2007 the Office received Dr. Harrison's November 14, 2006 report. He noted appellant's symptoms of exacerbation of bilateral wrist and right elbow pain, tightness and stiffness in her neck and shoulders. Dr. Harrison reiterated his prior opinion that constant repetitive motion required by appellant's computer use along with long-term sitting and forward head posture caused her conditions.

In an April 13, 2006 disability certificate, Dr. Nowinski stated that appellant was disabled for work until May 21, 2006 and that she could return to work on May 22, 2006. In an August 8, 2006 report, Dr. Nowinski found that appellant's persistent medial lateral epicondylitis of the right elbow affected the performance of her work duties. He noted that she was disabled for work from July 24 through September 24, 2006. In treatment notes dated September 21, 2006 and March 29, 2007 and a February 19, 2007 report, Dr. Nowinski reiterated his prior finding that appellant had chronic medial and lateral epicondylitis of the right elbow. In a November 10, 2006 report, he stated that appellant had been off work from March 15 through September 22, 2006 for treatment of her right elbow epicondylitis. She returned to work three days per week on September 25, 2006.

A March 6, 2006 letter of Glenda E. Hampton, appellant's family friend, stated that she helped her type term papers for school and other letters due to pain in her hands. She also witnessed appellant's inability to use her hands while dining together at a restaurant.

In an undated narrative statement received by the Office on May 30, 2007, appellant disagreed with Ms. Newsome's statement that she was only at her desk five out of seven hours per day. She stated that no supervisor would allow employees to be away from their desks for such a long period of time and not say anything to the employees. Appellant explained that working part time meant that she worked less than 40 hours per week since her return to work on September 25, 2006, noting that she used leave due to severe chronic epicondylitis and spinal subluxation. She disputed Ms. Newsome's account of when Ms. Newsome became her supervisor. Appellant stated that she was reassigned from the entitlement section to the document control branch due to her work experience and not because she was unable to perform her work duties as alleged by Ms. Newsome. She reiterated the duties involved in her heavy workload. Appellant denied cancelling the voice activation software as she had been waiting for well over two years for it. She discovered that the order had not been cancelled and that it would be available upon her return to work. Appellant noted that she had been deemed totally disabled for work from January 23 through March 15, 2006 by an attending physician due to increased flare ups. She intended to return to work.

By decision dated May 30, 2007, an Office hearing representative affirmed the July 12, 2006 decision. The hearing representative found that appellant worked in a sedentary position that required her to key and use a mouse at a computer five hours per day. She further found that appellant could get up from this position to perform other tasks on an intermittent basis. The hearing representative, however, determined that appellant failed to submit rationalized medical evidence establishing that she sustained a right elbow condition causally related to the accepted employment factors.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation Act<sup>2</sup> has the burden of establishing the essential elements of 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>3</sup> These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>4</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 a causal relationship 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>5</sup> Neither the fact that appellant's condition became apparent during a period of employment nor her belief that the condition was caused by her employment is sufficient to establish a causal relationship.<sup>6</sup>

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>4</sup> *See Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

<sup>5</sup> *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

<sup>6</sup> *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

## ANALYSIS

Appellant alleged that she sustained a right elbow injury due to a heavy workload which included using a keyboard and mouse and sitting at her desk seven hours per day while working as a lead accounting technician for the employing establishment. The Board finds that appellant was required to use a keyboard and a mouse and sit at her desk five hours per day in her federal employment. Appellant stated that, due to a staff shortage, she was given a heavy workload on February 6, 2006 which required her to perform massive amounts of typing and to use a mouse. While Ms. Newsome, an employing establishment supervisor, disputed appellant's allegation that she had a heavy workload, she stated that appellant's position required keying throughout the day, noting that she sat at her desk five hours per day. She related that appellant was provided with an ergonomic keyboard and two computer mice to accommodate her upper extremity problems even though she refused to use this equipment. Ms. Newsome recommended that appellant key part of the day and then perform her other desk work duties to avoid pain in her wrist and arms. The Board finds that based on the statements of appellant and Ms. Newsome, the employment factors alleged to have caused appellant's upper extremity condition have been established as she was required to use a keyboard and mouse and that she sat five hours per day during the course of her employment at the employing establishment.

The Board finds, however, that appellant did not submit sufficient medical evidence to establish that her right elbow condition was caused by the accepted employment factors. Appellant submitted several medical records from Dr. Nowinski, who's treatment notes, reports and disability certificates found that she sustained right elbow medial and lateral epicondylitis and paresthesias and carpal tunnel syndrome. Dr. Nowinski, stated that she was disabled for work during intermittent periods from March 15 to September 24, 2006.

Dr. Nowinski's May 16, 2006 prescription ordered occupational therapy for appellant's right elbow. He did not provide a diagnosis causally related to the accepted employment factors.

Dr. Nowinski's May 18, 2006 report found that appellant's chronic epicondylitis and complex bilateral upper extremity pain syndrome were directly related to her work-related activities which involved keyboarding eight hours per day. In an October 10, 2006 report, he opined that appellant's previously accepted right elbow epicondylitis was aggravated by her extra work duties which included the use of a keyboard and mouse as a lead accounting technician. Dr. Nowinski failed to provide sufficient medical rationale to explain how appellant's accepted job requirements of using a keyboard and mouse caused or contributed to her right elbow conditions. His brief medical reports noted only his treatment of appellant's right elbow conditions. Dr. Nowinski did not discuss how the diagnosed conditions would be caused or aggravated by the work duties required in appellant's lead accounting technician position.

Dr. Nowinski's December 11, 2006 disability certificate stated that appellant had tendinitis in the elbow and wrist and shoulder pain. He opined that these conditions were aggravated by work stressors. Dr. Nowinski, however, did not opine that appellant's conditions were caused by the accepted employment factors, use of a keyboard and mouse and sitting at her desk for five hours per day.

The June 1, 2006 report of Dr. Harrison, a chiropractor, stated that appellant's carpal tunnel syndrome, shoulder and elbow tendinitis and subluxations at C-2 and C-5 were directly related to her work exposure. He opined that the constant repetitive motion required by her computer use, combined with her long-term sitting and forward head posture directly contributed to her conditions, especially in light of the fact that when these stressors were removed and treatment was provided, her conditions improved dramatically. Similarly, Dr. Harrison's November 14, 2006 report stated that appellant's symptoms of exacerbation of bilateral wrist and right elbow pain, tightness and stiffness in her neck and shoulders were caused by constant repetitive motion required by her computer use together with long-term sitting and forward head posture. His June 27 and 30, 2006 disability certificates stated that appellant was disabled from work until August 6, 2006 due to work-related tendinitis. A chiropractor is considered a "physician" for purposes of the Act only where he treats a spinal subluxation as demonstrated by x-ray to exist.<sup>7</sup> There is no indication in Dr. Harrison's June 1, 2006 report that he obtained or reviewed x-rays in rendering his diagnosis of subluxation. Further, he did not diagnose subluxation by x-ray in his November 14, 2006 report and disability certificates. As Dr. Harrison does not meet the statutory definition of physician, his reports and disability certificates lack probative value.

The treatment notes from appellant's occupational therapists do not constitute probative medical evidence as an occupational therapist is not a "physician" under the Act.<sup>8</sup>

Appellant has not submitted rationalized medical evidence establishing that she sustained a right elbow injury causally related to the accepted factors of her employment. She has failed to meet her burden of proof.

### **CONCLUSION**

The Board finds that appellant has failed to establish that she sustained an injury in the performance of duty.

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<sup>7</sup> Section 8101(2) of the Act provides as follows: (2) physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law. The term physician includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulation by the secretary. See 20 C.F.R. § 10.311; *Merton J. Sills*, 39 ECAB 572, 575 (1988).

<sup>8</sup> 5 U.S.C. § 8101(2).



**ORDER**

**IT IS HEREBY ORDERED THAT** the May 30, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 19, 2008  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board