

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of DENISE BURNSED and DEPARTMENT OF VETERANS AFFAIRS,  
VETERANS ADMINISTRATION MEDICAL CENTER, Gainesville, FL

*Docket No. 02-541; Submitted on the Record;  
Issued May 13, 2003*

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DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,  
A. PETER KANJORSKI

The issue is whether appellant sustained an occupational illness in the performance of her federal duties.

On July 28, 1999 appellant, then a 41-year-old ultrasound technician, filed a notice of occupational disease and claim for compensation (Form CA-2), alleging that her duties caused her to experience neck and shoulder pain. Appellant indicated that she first became aware of a relationship between her medical condition and her employment factors in 1996. Her last day of work was June 23, 1999 and she resigned from her work on September 1, 1999.

In an undated letter, appellant indicated that she first noticed neck muscle burning and fatigue in her neck within three months of starting as an ultrasound technician in 1988. By 1996 she felt cramping, tingling and pain in the posterior of the neck along with severe headaches.

Appellant had a history of headaches and neck pain including "major cervical spasms" throughout her life; the first occurring when she was 10. Since 1988 appellant has had five major neck and back spasms; one occurring after painting at home, another while on vacation and the others while at work.

In support of her occupational claim, appellant submitted a June 30, 1999 report from Dr. Gwen Hanson, a family physician, who has been treating appellant for neck and head pain and paresthesias since 1994, provided a brief summary:

"February 25, 1994: neck stiffness started after painting at home for several hours. Muscles were tight in neck.

"May 19, 1995: identifies MSG as a trigger. Notes family history of migraines, normal neurological examination.

“October 21, 1996: chiropractic, acupuncture and calan have not helped headaches, normal neurological examination.

“September 10, 1997: continues to have bad headaches requiring fiorinal.

“April 5, 1999: headaches may be hormonally and stress related ... normal neurological examination.

“June 30, 1999: feels headaches and tingling are triggered by neck pain which is triggered by her work as an ultrasound tech[nician]. Paresthesias mentioned of hands and face. Neurological examination not done.... C spine x-ray was normal.

“Diagnosis: migraine headaches, tension headaches, musculoskeletal neck aches with latter two diagnoses possibly triggered and/or exacerbated by repetitive activity at the workplace. Paresthesias, possibly related to neck problem.”

In a June 30, 1999 report, Dr. Hanson wrote that “[appellant] cannot perform ultrasound scanning. Complete status is pending her workman’s comp[ensation] evaluation. Effective dates June 23, 1999 until workman’s comp[ensation] evaluation.”

A July 12, 1999 magnetic resonance imaging (MRI) scan examination revealed that the cervical spine demonstrates no evidence of spinal stenosis or neural foraminal narrowing. There are minimal disc bulges seen at C4-5 and C5-6 which minimally efface the anterior thecal space. The cervical spinal cord demonstrates a normal morphology and signal intensity. Normal MRI of the thoracic spine.

In a July 22, 1999 report, Dr. Lalitha Ganesh, after performing an occupational therapy functional evaluation, wrote that “based on clinical findings and OT evaluation [appellant] is physically able to perform the tasks specified in her job description -- however, she is unable to hold static postures for prolonged periods of time because of pain of musculo-tendenous origin.”

In a July 28, 1999 report, Dr. Joseph Chung wrote that “extensive physical and radiological examinations fail to demonstrate any specific abnormality to substantiate her subjective feelings. Furthermore, it rather proves her to be capable of performing her current work. Her complaint is beyond the physical evidence.”

In an August 12, 1999 letter, the Office of Workers’ Compensation Programs requested more information from appellant including a “secure diagnosis.”

In a September 1, 1999 report, Dr. Hanson wrote:

“Objective findings ... include ... decreased range of motion of neck, reduced right hand grip strength, although [appellant] is right handed, severe myofascial restriction to neck and shoulders and paraspinous spasm, decreased mobility of the C spine.

“MRI of C and T spine done on July 8, 1999 are essentially normal with minimal disc bulges seen at C4-5 and C5-6 which minimally efface the anterior thecal space. The spinal cord appears normal. The T spine MRI is normal.

“I believe that it is extremely likely that [appellant’s] pain and paresthesia symptoms resulted from the repetitive motions she has been performing as an ultrasound tech. I do not feel golf has been a significant cause as her symptoms predated her golf games.

“[Appellant] has had persistent symptoms and inability to work in spite of good compliance with physical therapy.... Although [appellant’s] symptoms do not carry a more specific diagnosis, I believe she has musculoskeletal pain with paresthesias that resulted from repetitive motions.”

In a November 10, 1999 decision, the Office denied appellant’s claim finding that fact of injury had not been established because the medical evidence did not establish a “secure diagnosis.”

In a May 25, 2001 letter, appellant requested reconsideration that was denied on July 11, 2001 because no new evidence had been submitted.

In an August 9, 2001 letter, appellant requested reconsideration and submitted in support of her request a June 18, 2001 report from Dr. Hanson.

In her report, Dr. Hanson repeated most of her September 1, 1999 report and added: “[Appellant] has a cumulative trauma disorder of the muscles, joints, nerves and tendons resulting directly from the repetitive motions she performed while doing ultrasound work.... However, due to her symptoms she is unable to pursue the career in which she trained.”

In further support to her claim, appellant submitted a July medical history report, a copy of an Occupational Safety and Health Administration News Release related on musculoskeletal injuries and an article from a 1998 issue of Educational Reviews that discussed the pain experienced by ultrasound technicians.

In an October 16, 2001 decision, the Office denied modification of its November 10, 1999 decision. The Office found that the medical evidence lacked a secure diagnosis. Dr. Hanson’s diagnoses were determined to describe symptoms, not the underlying medical condition that was causally related to specific employment factors.

The Board finds that appellant has not met her burden of proof to establish that she sustained an employment-related occupational illness.

An employee seeking benefits under the Federal Employees’ Compensation Act<sup>1</sup> 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

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

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>2</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>3</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>4</sup>

Appellant has not met her burden of proof because she has not submitted medical evidence substantiating the diagnosis of her condition and she has not submitted rationalized medical evidence that causally relates her medical condition to specific employment factors. Dr. Hanson's reports are clear that appellant experienced pain while performing her employment duties, but it is not clear from her reports that appellant's employment factors caused a medical condition resulting in pain. Furthermore, rationalized medical evidence of causal relationship is critical to appellant's claim because appellant experienced similar pain prior to working as an ultrasound technician and outside of her workplace. Appellant reported that she has a family history of headaches and neck pain, she experienced her first spasm at age 10 and she has had episodes while painting at home and while on vacation. As appellant has not submitted the necessary medical evidence that explains how her medical condition is causally related to the alleged factors of employment, appellant has not met her burden of proof in this case.

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<sup>2</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>3</sup> *See Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

<sup>4</sup> *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

The decision of the Office of Workers' Compensation Programs dated October 16, 2001 is hereby affirmed.

Dated, Washington, DC  
May 13, 2003

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

A. Peter Kanjorski  
Alternate Member