

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

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**THOMAS BOWEN, Appellant**

**and**

**U.S. DEPARTMENT OF COMMERCE,  
NATIONAL INSTITUTE OF STANDARDS  
AND TECHNOLOGY, Gaithersburg, MD,  
Employer**

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**Docket No. 03-1117  
Issued: January 21, 2004**

*Appearances:*  
*Thomas Bowen, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Member  
DAVID S. GERSON, Alternate Member  
MICHAEL E. GROOM, Alternate Member

**JURISDICTION**

On March 28, 2003 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated April 29, 2002. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.<sup>1</sup>

**ISSUE**

The issue is whether appellant has met his burden of proof in establishing that he developed bilateral epicondylitis in the performance of duty.

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<sup>1</sup> The Office issued a decision on July 23, 2003 denying appellant's reconsideration request on the grounds that the evidence submitted was immaterial and insufficient to warrant review of its prior decision. This decision is null and void as the Board and the Office may not simultaneously have jurisdiction over the same case. Appellant appealed his case to the Board on March 23, 2003 and the Office may not issue a decision regarding the same issue on appeal before the Board. See *Terry L. Smith*, 51 ECAB 182 (1999); *Arlonia B. Taylor*, 44 ECAB 591 (1993); *Russell E. Lerman*, 43 ECAB 770 (1992); *Douglas E. Billings*, 41 ECAB 880 (1990).

## **FACTUAL HISTORY**

On May 16, 2001 appellant, then a 47-year-old mail clerk, filed a claim alleging that he developed a bilateral elbow condition as a result of pushing a mail cart and sorting mail. He became aware of his condition on December 11, 1998. Appellant stopped work on April 30, 2001.

In a letter dated June 5, 2001, the Office advised appellant of the type of factual evidence needed to establish his claim and requested that he submit such evidence.

In a decision dated August 28, 2001, the Office denied appellant's claim as the evidence was not sufficient to establish that appellant developed a condition in the performance of duty.

In an undated letter, appellant requested a hearing before an Office hearing representative. The hearing was held on March 11, 2002. Appellant submitted several medical reports from Dr. Jeffrey A. Abend, a Board-certified orthopedist, dated April 20, 2001 to March 6, 2002. He diagnosed mild lateral epicondylitis and noted that appellant's symptomatology was exacerbated when pushing a mail cart at work. Dr. Abend noted upon physical examination tenderness in both elbows which radiated along the extensor muscles into his forearms and mild weakness in both lateral epicondylar regions. In a report dated July 20, 2001, he noted that appellant's bilateral epicondylitis seemed to be related to his job in the mail room and advised that his symptomatology occurred when he had a strenuous day pushing a mail cart. Dr. Abend's report of August 22, 2001 noted appellant's complaints of pain and tenderness in the medial and lateral epicondylar region radiating down the neck and recommended a sedentary position where appellant would not have to deliver mail, push a mail cart or case mail. He related, in his December 18, 2001 report, that appellant experienced new symptomatology of numbness and tingling of the hands and still had epicondylitis in his elbow. Dr. Abend's report of January 23, 2002 noted that electrodiagnostic tests revealed no abnormalities. He noted, in a work restriction form dated January 28, 2002, that appellant was restricted from pushing a mail cart or sorting mail. Dr. Abend's March 6, 2002 report diagnosed bilateral lateral epicondylitis at the elbows and advised that appellant's condition was due to the chronic sorting of mail and pushing a mail cart.

By decision dated April 29, 2002, the hearing representative affirmed the decision of the Office dated August 28, 2001.

By letter dated March 2, 2003 and date-stamped March 23, 2003, appellant appealed the Office decision to the Employees' Compensation Appeals Board.

In a letter dated April 27, 2003, appellant requested reconsideration of the Office decision and submitted additional medical evidence. In a report dated April 23, 2003, Dr. Abend advised that appellant continued to have problems in both elbows in the lateral epicondylar region when he pushed a mail cart. It was his opinion that appellant's elbow condition was directly related to pushing a mail cart and exacerbated by sorting mail.

In a decision dated July 23, 2003, the Office denied appellant's reconsideration request on the grounds that the evidence submitted was immaterial in nature and insufficient to warrant review of its prior decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation Act has the burden of establishing the essential elements of his or 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 the 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. 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.<sup>2</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) 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 claimant. The medical evidence required to establish causal relationship is generally 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>3</sup>

### **ANALYSIS**

Appellant alleged that he developed bilateral epicondylitis as a result of performing his mail clerk duties of pushing a mail cart and sorting mail.

In the instant case, the Office denied appellant's claim for compensation on the grounds that the medical evidence was not sufficient to establish that appellant's medical condition of bilateral epicondylitis was causally related to his employment. However, the Board notes that the medical evidence submitted by appellant generally supports that he developed bilateral epicondylitis as a result of pushing a mail cart and sorting mail. Specifically, Dr. Abend diagnosed appellant with a mild case of lateral epicondylitis and noted that his symptomatology

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<sup>2</sup> Gary J. Watling, 52 ECAB 357 (2001).

<sup>3</sup> Solomon Polen, 51 ECAB 341 (2000).

was exacerbated when pushing a mail cart at work. He noted upon physical examination tenderness in both elbows which radiated along the extensor muscles into his forearms and mild weakness in both epicondylar regions. In his report of July 20, 2001, Dr. Abend noted that appellant's bilateral epicondylitis seemed to be related to his job in a mail room and advised that his symptomatology occurred when he experienced a strenuous day pushing a mail cart. Dr. Abend related, in his December 18, 2001 report, that appellant experienced new symptomatology of numbness and tingling of the hands and still had epicondylitis in his elbow. He noted, in a work restriction form dated January 28, 2002, that appellant was restricted from pushing a mail cart or sorting mail. Dr. Abend's March 6, 2002 report diagnosed bilateral lateral epicondylitis at the elbows and advised that appellant's condition was due to the chronic sorting of mail and pushing a mail cart. Although these physician's opinions are not sufficiently rationalized<sup>4</sup> to carry appellant's burden of proof in establishing his claim, they stand uncontroverted in the record and are, therefore, sufficient to require further development of the case by the Office.<sup>5</sup>

In view of the above evidence, the Office should have referred the matter to an appropriate medical specialist to determine whether appellant may have developed bilateral epicondylitis as a result of his employment duties.

Proceedings under the Act are not adversary in nature nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence. It has the obligation to see that justice is done.<sup>6</sup> Accordingly, once the Office undertakes to develop the medical evidence further, it has the responsibility to do so in the proper manner.

Therefore, the Board finds that the case must be remanded to the Office for preparation of a statement of accepted facts concerning appellant's working conditions and referral of the matter to an appropriate medical specialist, consistent with Office procedures, to determine whether appellant may have developed bilateral epicondylitis as a result of performing his employment duties. Following this, and any other further development as deemed necessary, the Office shall issue an appropriate merit decision on appellant's claim.

### **CONCLUSION**

The Board finds that this case is not in posture for decision and the case is remanded for further development.

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<sup>4</sup> See *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

<sup>5</sup> *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

<sup>6</sup> *Jimmy A. Hammons*, 51 ECAB 219 (1999); *Marco A. Padilla*, 51 ECAB 202 (1999); *John W. Butler*, 39 ECAB 852 (1988).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated April 29, 2002 is hereby set aside and the case is remanded for further development in accordance with this decision of the Board.

Issued: January 21, 2004  
Washington, DC

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member