United States Department of Labor
Employees' Compensation Appeals Board

PENNY J. PORTER, Appellant	)	
and	)	**Docket No. 04-809**
	)	**Issued: June 4, 2004**
U.S. POSTAL SERVICE, ELGIN POSTAL ANNEX, Elgin, IL, Employer	)	

Appearances:
Penny J. Porter, 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
WILLIE T.C. THOMAS, Alternate Member

JURISDICTION

On February 9, 2004 appellant filed a timely appeal from the November 24, 2003 decision of the Office of Workers' Compensation Programs, finding the evidence of record insufficient to establish that she sustained an injury in the performance of duty. Pursuant to 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 has established that she sustained an injury in the performance of duty.

FACTUAL HISTORY

On August 25, 2003 appellant, then a 40-year-old city carrier, filed an occupational disease claim alleging that on August 11, 2003 she first became aware of her sore right wrist and first realized that it was caused by factors of her federal employment. She stated that she never injured her hand or wrist and it started to hurt while she was lifting mail at work on August 11, 2003. The employing establishment controverted appellant's claim on the grounds

that she did not have a prior wrist injury or complaint of wrist pain on the job. The employing establishment stated that the contract physician believed appellant's condition was nonwork-related arthritis.

In support of her claim, appellant submitted an August 25, 2003 duty status report from a physician whose signature is illegible providing her physical limitations and opinion that her wrist tendinitis was probably not due to an injury at work. An employee's work status report from a nurse whose signature is illegible revealed a diagnosis of wrist pain that was suspected to be arthritis, that appellant could return to work as of August 25, 2003 and her physical restrictions and discharge instructions. A medical treatment slip from the same nurse indicated that appellant was evaluated on August 25, 2003. In an August 25, 2003 work status report, Dr. Marc Applebaum, appellant's attending Board-certified physiatrist, diagnosed an acute sprained right wrist in an unspecified site. He stated that she could perform modified work on August 25, 2003 and noted her physical restrictions. Dr. Applebaum's August 25, 2003 medical assessment for a limited-duty job assignment revealed that appellant was not totally disabled for work and her physical restrictions.

By letter dated September 10, 2003, the Office advised appellant that the evidence submitted was insufficient to establish her claim. The Office further advised her about the type of factual and medical evidence she needed to submit to establish her claim.

The Office received a September 9, 2003 report from a physician whose signature is illegible indicating that appellant could return to light-duty work with certain physical restrictions on September 10, 2003.

In response to the Office's September 10, 2003 letter, appellant submitted a September 11, 2003 magnetic resonance imaging (MRI) report of Dr. Patrick F. Para, a Board-certified radiologist. He suspected degeneration versus tear triangular fibrocartilage, predominately in the region of ulnar styloid attachment. Appellant provided information regarding her right wrist injury. She stated that her right wrist started to hurt on August 11, 2003. Appellant noted that she experienced a sharp pain and it had not stopped. She further noted that for the past year she experienced pain off and on, but nothing continuous. Appellant stated that she did a lot of pulling and pushing. She also stated that she is left-handed and that she performed everything at work with her right hand and with her left hand outside of work. Appellant indicated that she had about 435 stops and she did a lot of pushing and pulling and she put the mail in and took it out of the case. She worked eight to nine hours a day, five days a week. Appellant stated that three hours were spent in the office casing mail and five to six hours were spent on the street. In addition, she stated that she had never injured either hand.

By decision dated November 24, 2003, the Office found the evidence of record insufficient to establish that appellant's right wrist condition was caused by factors of her employment. The Office noted that contrary to appellant's statement that she had never injured her right wrist, its records contained two claims for right wrist injuries, assigned numbers 10-04878800 and 10-0486927.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[1] 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.[2] These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[3]

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.[4]

ANALYSIS

In this case, appellant did not submit rationalized medical evidence establishing that her right wrist condition was causally related to factors of her federal employment. The August 25, 2003 duty status report from a physician whose signature is illegible, provided appellant's physical restrictions and opinion that tendinitis in her wrist was probably not due to a work injury. This report does not provide that appellant's wrist condition was causally related to factors of her employment.

The employee's work status report from a nurse whose signature is illegible providing, among other things, a diagnosis of wrist pain that was suspected to be arthritis and that appellant could return to work as of August 25, 2003 and the nurse's medical treatment slip indicating that

[1] 5 U.S.C. §§ 8101-8193.

[2] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[3] *See Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

[4] *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

she was evaluated on August 25, 2003 have no probative value, inasmuch as, a nurse is not considered a "physician" under the Act.[5]

In his August 25, 2003 work status report, Dr. Applebaum diagnosed acute sprained right wrist in an unspecified site and opined that appellant could perform modified work on August 25, 2003 with certain physical restrictions. Dr. Applebaum failed to address whether appellant's wrist condition was caused by factors of her employment. Similarly, Dr. Para's September 11, 2003 MRI report does not relate appellant's suspected condition of degeneration versus tear triangular fibrocartilage, predominantly in the region of ulnar styloid attachment to factors of her employment.

In his medical assessment of the same date, Dr. Applebaum found that appellant was not totally disabled for work and noted her physical restrictions. However, he failed to provide a diagnosis that was causally related to factors of her employment. Further, the September 9, 2003 report of a physician whose signature is illegible and indicated that appellant could return to light-duty work with certain physical restrictions on September 10, 2003 does not provide a diagnosed condition caused by factors of her employment.

The Office advised appellant of the type of medical evidence required to establish her claim; however, she failed to submit such evidence. She did not provide a rationalized medical opinion to describe or explain how her right wrist condition was caused by factors of her federal employment.[6]

CONCLUSION

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

[5] 5 U.S.C. § 8101(2) which defines "physician" as including surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law; *see also Joseph N. Fassi*, 42 ECAB 231 (1991) (medical evidence signed only by a registered nurse or nurse practitioner is generally not probative evidence).

[6] The Board notes that appellant submitted new evidence with her appeal. The Board, however, cannot consider evidence that was not before the Office at the time of the final decision. *See Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35 (1952); 20 C.F.R. § 501.2(c)(1). Appellant may submit the new evidence and legal contentions to the Office accompanied by a request reconsideration pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606(b)(2) (1999).

ORDER

IT IS HEREBY ORDERED THAT the November 24, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 4, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member