

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

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**YA-CHIN C. TAI, Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Dulles, VA, Employer**

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**Docket No. 05-1263  
Issued: April 17, 2006**

*Appearances:*

*William K. Martin*, for the appellant  
*Miriam D. Ozur, Esq.*, for the Director

Oral Argument March 22, 2006

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On May 23, 2005 appellant filed a timely appeal from an Office of Workers' Compensation Programs' merit decision dated November 29, 2004, which denied appellant's claim for an occupational disease. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

**ISSUE**

The issue is whether appellant has met her burden of proof in establishing that she developed a repetitive motion condition of the upper extremities while in the performance of duty.

**FACTUAL HISTORY**

On August 28, 2002 appellant, then a 49-year-old mail clerk, filed an occupational disease claim alleging that she developed repetitive motion disease of the upper extremities

while performing her clerk duties. Appellant became aware of her condition on May 28, 2001. She did not stop work but continued in her light-duty position.<sup>1</sup>

In a letter dated September 24, 2002, the Office advised appellant of the factual and medical evidence needed to establish her claim and requested that she submit a physician's reasoned opinion addressing the relationship of her claimed condition and specific employment factors.

In support of her claim, appellant submitted an x-ray of the lumbar spine dated May 10, 2002, which revealed mild L4-5 disc degeneration with minimal scoliosis.

In a decision dated October 26, 2002, the Office denied appellant's claim on the grounds that the medical evidence was not sufficient to establish that her condition was caused by her employment duties.

In a letter dated November 12, 2002, appellant requested a review of the written record. Appellant submitted a report from Dr. Henry Herbert, a specialist in occupational medicine, who noted treating appellant for lateral epicondylitis of the left elbow, de Quervain's tendinitis of the thumb and possible overuse of the right upper extremity secondary to compensation for problems of the left upper extremity. He noted that appellant was previously treated for left upper extremity epicondylitis and was overcompensating on the right side where similar symptoms manifested. He diagnosed bilateral de Quervain's tenosynovitis and bilateral epicondylitis.

By a decision dated May 2, 2003, the hearing representative set aside the October 26, 2002 decision. The hearing representative advised the Office to review other claims filed by appellant for conditions of the upper extremities and determine if the percent was a claimed recurrence of disability related to those claims or if appellant's present condition was one for a consequential injury under a prior claim. The Office was directed to refer appellant for a second opinion examination to determine whether appellant's condition was causally related to her employment.

On July 7, 2003 the Office referred appellant for a second opinion to Dr. Robert A. Smith, a Board-certified orthopedic surgeon. The Office provided Dr. Smith with appellant's medical records, a statement of accepted facts as well as a detailed description of appellant's employment duties. In a medical report dated August 22, 2003, Dr. Smith reviewed the records provided to him and performed a physical examination of appellant. He noted a history of appellant's condition. Dr. Smith noted an essentially normal physical examination with no focal motor, sensory or reflex deficit, no focal atrophy, negative Finkelstein's test and subjective tenderness over the elbows, epicondyles and both thumbs. He opined that appellant's complaints of discomfort in the neck and the bilateral upper extremities were not causally related to her employment duties. Dr. Smith advised that appellant experienced similar symptoms while preparing meals at home. He indicated that appellant could return to work full duty without restrictions.

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<sup>1</sup> Appellant filed another claim for right epicondylitis, which was accepted by the Office, claim number 25-0553895.

By a decision dated September 30, 2003, the Office denied appellant's claim on the grounds that she did not establish that the claimed medical condition was causally related to the implicated employment factors.

By letters dated October 27, 2003 and February 4, 2004, appellant requested an oral hearing before an Office hearing representative. The hearing was held on August 25, 2004. Appellant submitted reports from Dr. Geannie M. Bennett, a Board-certified gynecologist, dated February 19 to 23, 1999, she noted that appellant underwent a hysterectomy in 1999. Other reports from Dr. Van Ngoc Pho, family practitioner, dated August 16, 2000, diagnosed lack of sleep, dizziness and nervousness. In a medical clearance form of the same date, Dr. Pho recommended that appellant work light duty six hours per day. A report from Dr. Sylvia R. Medley, a Board-certified internist, dated February 10, 2004, noted that appellant injured her left arm in 1999 and was placed on light duty. She noted that appellant used her right arm to perform her work duties, which included processing 20 trays of mail in an eight-hour day, pulling items in a repetitive manner and rapid sorting of mail at one height repeatedly. Dr. Medley advised that appellant had documented work-related lateral epicondylitis and de Quervain's of the left arm and indicated that "based on the history of repetitious movements involving the right arm at work, right lateral epicondylitis and [de] Quervain's may be work related as well." In a September 13, 2004 report, Dr. Saul Kaplan, a Board-certified orthopedic surgeon, dated September 13, 2004, who diagnosed right lateral epicondylitis and bilateral basal joint arthrosis and opined that these conditions were "aggravated by patient's work as a postal clerk."

In a decision dated November 29, 2004, the hearing representative affirmed the September 30, 2003 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under the 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

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

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

It is not disputed that appellant's duties as a mail clerk included performing some repetitive activities using her arms. However, she has not submitted sufficient medical evidence to support that a medical condition was caused by the employment factors one that any alleged bilateral epicondylitis and de Quervain's disease is causally related to the employment factors or conditions. On September 24, 2002 the Office advised appellant of the medical evidence needed to establish her claim. Appellant did not submit a rationalized medical report from an attending physician addressing how specific employment factors may have caused or aggravated her claimed condition.

Appellant submitted a report from Dr. Herbert dated February 27, 2002, who noted treating appellant for lateral epicondylitis of the left elbow and de Quervain tendinitis of the thumb and possible overuse of the right upper extremity secondary to overcompensating for problems with her left upper extremity. He diagnosed bilateral de Quervain tenosynovitis and bilateral epicondylitis. However, the physician neither noted a history of the injury nor addressed the employment factors believed to have caused or contributed to appellant's condition.<sup>4</sup> Additionally, he failed to provide a rationalized opinion regarding the causal relationship between appellant's condition and the factors of employment believed to have caused or contributed to such condition.<sup>5</sup> Therefore, this report is insufficient to meet appellant's burden of proof.

A report from Dr. Medley dated February 10, 2004, noted that appellant used her right arm to perform her work duties which included processing 20 trays of mail in an eight-hour day, pulling items in a repetitive manner and rapid sorting of mail at one height repeatedly. However, Dr. Medley failed to provide a rationalized opinion regarding the causal relationship between appellant's condition and the factors of employment believed to have caused or contributed to such condition.<sup>6</sup> She advised that "based on the history of repetitious movements involving the right arm at work, right lateral epicondylitis and de Quervain's may be work related as well."

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

<sup>4</sup> *Frank Luis Rembisz*, 52 ECAB 147 (2000) (medical opinions based on an incomplete history or which are speculative or equivocal in character have little probative value).

<sup>5</sup> *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>6</sup> *Id.*

Dr. Medley noted that appellant's condition "may be" work related, couching her opinion in speculative terms. The Board has held that medical opinions which are speculative or equivocal in character have little probative value.<sup>7</sup> Therefore, this report is insufficient to meet appellant's burden of proof.

On September 13, 2004 Dr. Kaplan diagnosed right lateral epicondylitis and bilateral basal joint arthrosis and advised that these conditions were aggravated by appellant's work as a postal clerk. However, the physician did not address a full history of the injury or the specific employment factors believed to have caused or contributed to the appellant's condition.<sup>8</sup> Additionally, he failed to provide a rationalized opinion regarding the causal relationship between appellant's condition and the factors of employment believed to have caused or contributed to such condition.<sup>9</sup> Therefore, this report is insufficient to meet appellant's burden of proof.

The remainder of the medical evidence, including reports from Dr. Bennett dated February 19 to 23, 1999 and Dr. Pho dated August 16, 2000, fail to provide an opinion on the causal relationship between appellant's job and her diagnosed condition of bilateral epicondylitis and de Quervain's disease. For this reason, this evidence is not sufficient to meet appellant's burden of proof.

The Board notes that the Office referred appellant for a second opinion examination to Dr. Smith, who, in a report dated August 22, 2003, opined that appellant's complaints of discomfort in the neck and the bilateral upper extremities were not causally related to her employment duties. He advised that he found no objective findings with regard to appellant's neck or upper extremities on examination and indicated that appellant could return to work full duty without restrictions.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that her condition was caused, precipitated or aggravated by her employment is sufficient to establish causal relationship.<sup>10</sup> Causal relationships must be established by rationalized medical opinion evidence. Appellant failed to submit such evidence and the Office therefore properly denied appellant's claim for compensation.

### **CONCLUSION**

The Board therefore finds that, as none of the medical reports provided an opinion that appellant developed an employment-related injury in the performance of duty, appellant failed to meet her burden of proof.

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<sup>7</sup> See *Frank Luis Rembisz*, *supra* note 4.

<sup>8</sup> *Id.*

<sup>9</sup> See *Jimmie H. Duckett*, *supra* note 5.

<sup>10</sup> See *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 29, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 17, 2006  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board