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

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| **A.S., Appellant** | ) | |
| **and** | ) | **Docket No. 07-1466** |
| | ) | **Issued: November 15, 2007** |
| **DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Alexandria, LA, Employer** | ) | |

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

*Case Submitted on the Record*

## DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

### ***JURISDICTION***

On May 7, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' hearing representative's decision dated February 20, 2007, finding that he failed to establish that he sustained an injury as alleged. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the issue in this case.

### ***ISSUE***

The issue is whether appellant has met his burden of proof in establishing that he sustained an injury in the performance of duty, causally related to factors of his federal employment.

### ***FACTUAL HISTORY***

On March 16, 2005 appellant, then a 43-year-old medical clerk, filed an occupational disease claim alleging that he sustained an overuse disorder of the right hand. He alleged that his

condition began on October 15, 1990 and that he first became aware of the condition and its relation to his work on March 16, 2005. Appellant did not stop work.

On April 4, 2005 the employing establishment controverted the claim. Cindy Twilligear, a human resources officer, indicated that appellant began working for the employing establishment on June 29, 2003 as a housekeeping aide. She alleged that appellant requested reassignment to his current position of a medical support assistant on February 6, 2005. Ms. Twilligear indicated that the position did not require the skills of a proficient typist. Additionally, she noted that appellant had a preexisting military service disability related to the right hand.[1]

By letters dated April 22, 2005, the Office advised appellant and the employing establishment that additional factual and medical evidence was needed.

In treatment notes dated March 24, 2005, Dr. Patrick D. Murray, a Board-certified orthopedic surgeon, indicated that he saw appellant for right hand pain and was "well known to orthopedics for this problem with previous workup for CTS [carpal tunnel syndrome], surgical complications which have been ruled out." He noted that appellant had a positive Tinel's sign. Dr. Murray also indicated that appellant related that he was now doing more typing which he believed was "causing pain and swelling in the right hand." He diagnosed right hand pain and opined that he found no signs of CTS. Dr. Murray recommended a splint for 23 hours per day until appellant returned in four weeks. The Office subsequently received a March 24, 2005 report from a nurse practitioner, a position description and a clinic workload report.

In an April 5, 2005 memorandum, Scott Berry, the safety manager, noted that an ergonomic survey of appellant's work area revealed that his computer monitor was too low for proper viewing. He indicated that appellant might require some additional changes to his workstation due to a preexisting injury.

In a May 9, 2005 memorandum, Loria A. Jackson, the supervisor of specialty care, indicated that appellant transferred from nursing to specialty care on February 7, 2005. She noted that, "[a]pproximately one month later, [appellant] began to complain of an aggravated old injury to his right hand (per conversation with employee this was a service-connection condition)." Ms. Jackson explained that appellant was required to check-in and check-out approximately 40 to 50 patients daily. His additional duties included "scheduling appointments, lab[oratory] work and performing any other clerical duties associated with the clinic where he is assigned." Ms. Jackson noted that, once appellant's problems were brought to her attention, she arranged for an ergonomic survey within his workspace.

Appellant submitted treatment notes dated March 24 and 25, 2005 from several nurses. In an April 22, 2005 treatment note, Dr. Murray indicated that appellant had symptoms of pain in the right upper extremity and recommended the use of a wrist splint.

[1] The record reflects that appellant receives Veterans benefits for various parts of his body.

In a May 16, 2005 statement, Ms. Twilligear noted findings of the ergonomic survey of appellant's workspace and advised the Office that he had filed a separate claim on May 10, 2005 for a left knee condition, "which was also service connected."

By decision dated June 6, 2005, the Office denied appellant's claim. It found that the medical evidence did not demonstrate that the claimed medical condition was related to established work-related events.

On June 10, 2005 appellant requested a hearing, which was held on December 6, 2006. He alleged that he had to cancel the names of over 1,100 patients. Appellant contended that he was given this assignment after filing a grievance against Ms. Jackson for denying his leave request. On June 17, 2005 he informed the Office that some of his medical records were placed in his previous claim, File No. 162093365, instead of the present claim. Appellant requested that the Office place the records in his present claim.

In the December 20, 2006 statement, Ms. Jackson advised that appellant was informed of the duties of his position at the time he was hired. She alleged that he did not advise her that he was having any problems with his hand, other than to ask for leave, which was approved for the period for which he had leave. Ms. Jackson disputed appellant's account of how many patients he cancelled from the new system, noting that he only cancelled 70 patients on March 7 and 15 and on March 16, 2005. In a December 27, 2006 statement, Ms. Twilligear noted that appellant was removed, which was subsequently rescinded as part of a settlement agreement. The Office also received a copy of a previously submitted grievance filed by appellant, a copy of a March 10, 2005 email denying his request for leave due to workload and unforeseen staffing and a certificate of medical examination signed by a nurse.

By decision dated February 20, 2007, the Office hearing representative affirmed the June 6, 2005 decision.[2]

## ***LEGAL PRECEDENT***

An employee seeking benefits under the Federal Employees' Compensation Act[3] 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 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.[4] 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.[5]

[2] The Office hearing representative also noted that the records from his prior claim were in the present claim.

[3] 5 U.S.C. §§ 8101-8193.

[4] *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[5] *Victor J. Woodhams*, 41 ECAB 345 (1989).

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 causal relationship, generally, 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.[6]

## ***ANALYSIS***

The evidence establishes that appellant has right hand pain and that his work involved utilizing the computer system to cancel a number of patients at work.[7] However, he submitted insufficient medical evidence to establish that his right hand condition was caused or aggravated by the activities of canceling patients or any other specific factors of his federal employment.

Appellant submitted treatment notes dated March 24, 2005 from Dr. Murray, a Board-certified orthopedic surgeon. While Dr. Murray noted that he saw appellant for right hand pain, he also indicated that appellant's condition was "well known to orthopedics for this problem with previous workup for CTS, surgical complications which have been ruled out." He provided a diagnosis of right hand pain and opined that he found "no signs of [CTS]." A firm diagnosis was not provided. On April 22, 2005 Dr. Murray noted that appellant had symptoms of pain in the right upper extremity and recommended the use of a wrist splint. However, the Board notes that Dr. Murray did not specifically address whether any factors of appellant's employment caused or contributed to his symptoms.[8] Consequently, the Board finds that this evidence is insufficient to establish appellant's claim.

The record also contains a March 24, 2005 report from a nurse practitioner and several treatment notes from nurses dated March 24 and 25, 2005. Section 8101(2) of the Act[9] provides

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[6] *Id.*

[7] While the employing establishment alleges that the number of patients that appellant cancelled was quite low, it is undisputed that he did cancel some patients.

[8] *Linda I. Sprague*, 48 ECAB 386 (1997) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship).

[9] *See* 5 U.S.C. § 8101(2). *See also Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (where the Board has held that a medical opinion, in general, can only be given by a qualified physician).

that the term "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by the applicable state law. Health care providers such as nurses, are not physicians under the Act. Thus, a nurse is not competent to give a medical opinion.[10]

The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.[11] Neither the fact that the condition became apparent during a period of employment nor the belief that the condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[12] Causal relationship must be substantiated by reasoned medical opinion evidence, which is appellant's responsibility to submit.

There is no reasoned medical evidence addressing how appellant's employment duties caused or aggravated a right hand condition. Appellant has not met his burden of proof in establishing that he sustained a medical condition in the performance of duty causally related to factors of his employment.

## ***CONCLUSION***

The Board finds that appellant has not met his burden of proof in establishing that he sustained an injury in the performance of duty.

[10] *See Bertha L. Arnold*, 38 ECAB 282 (1986).

[11] *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

[12] *Id.*

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated February 20, 2007 is affirmed.

Issued: November 15, 2007
Washington, DC

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

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

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