

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

C.A., Appellant)

and)

**DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL
CENTER, Cleveland, OH, Employer**)

**Docket No. 07-1150
Issued: September 21, 2007**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 16, 2007 appellant filed a timely appeal from a decision of the Office of Workers' Compensation Programs dated August 16, 2006 and from an Office hearing representative's decision of March 1, 2007, denying her claim for compensation for an employment-related injury. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of the claim.

ISSUE

The issue is whether appellant established that she sustained an injury in the performance of duty.

FACTUAL HISTORY

On May 12, 2006 appellant, then a 60-year-old administrative support clerk, filed a recurrence claim alleging that she sustained a disability due to a February 5, 2004 injury on April 25, 2006. She alleged that her trigger thumbs were caused by highly repetitive force in the use of the digits of her hands. Appellant noted that this caused swelling around the tendons and

increased her pain. The tendons on both her thumbs became inflamed and swollen. The employing establishment noted that, after the original injury, appellant was placed in transitional assignments not requiring her to use a keyboard or type. It noted that she was returned to dental service but did not type or use a keyboard in her light-duty dental assignment. On May 19, 2006 the employing establishment stated that bilateral trigger thumbs were never accepted in appellant's original claim and that there were new work factors involved. It converted her claim.

Appellant submitted an April 4, 2005 progress note from a physician's assistant at the employing establishment. She complained on that date of right hand pain in the region of the thenar eminence which had been ongoing since February 15, 2006. The physician's assistant noted that appellant indicated that the pain was primarily caused when she is writing with a pen or pencil." He listed his impression as sprain of the right thumb.

In a May 26, 2005 letter to appellant, the employing establishment confirmed that she was placed in a new transitional assignment with the patient escort program. In an April 12, 2006 letter to appellant, the employing establishment noted that she was unable to meet the physical requirements of her current secretarial position in dental service. Appellant was being transferred to in patient care administrative service where she would perform clerical duties in support of patients at the clinic. Her position title would be administrative support clerk. On April 20, 2006 appellant accepted the position.

On May 11, 2006 appellant was seen by Dr. Patrick Convery, a Board-certified orthopedic surgeon. He indicated that she had been using a keyboard at work and that this has caused her right thumb pain to recur. Dr. Convery noted that appellant had left and right radial trigger tendinitis and left and right hand thumb pain. He made a permanent restriction of no typing or keyboard use. In response to an inquiry from the employing establishment, Dr. Convery completed a work restriction evaluation. He noted that he had reviewed the job description for administrative support clerk and that appellant could perform the duties of this job.

By letter dated May 31, 2006, the Office requested that appellant submit further information. On June 16, 2006 appellant noted that she had been having problems with both her thumbs since October 2004 and that recent job assignments caused inflammation and swelling around the tendons in both hands. From February 6 to April 20, 2006 she was reassigned to her former position as secretary for dental services and the job involved filing and longhand writing. At that time, appellant was on permanent restrictions for no keyboard and no computer duties so she did the work, other staff members did on the computer by longhand. She also noted that filing was painful. This dental work assignment ended in April 2006 and appellant was placed in patient administration care services. She was required to do keyboarding and typing despite her restrictions and this has caused her thumbs to swell.

By letter dated June 20, 2006, the employing establishment noted that appellant had been returned to her nontyping position in dental service because her inability to walk prevented her from continuing in a patient escort position. It noted that appellant did no typing in her dental service position and did very little writing. The employing establishment indicated that she was not doing anything remotely connected to highly repetitive force on the keyboard or writing in February 2006. It submitted a note from the chief of dental services dated June 19, 2006. He

indicated that, when appellant returned to her dental assignment, she only answered telephones and provided liaison with other services. Appellant had others do typing for her. The chief of dental services also indicated that the only writing appellant did was telephone messages or short one or two line notations on forms.

By decision dated August 16, 2006, the Office denied appellant's claim finding that the evidence was insufficient to establish that the work event occurred as alleged. It noted that appellant had failed to establish the work conditions that could have caused an injury.

By letter dated August 21, 2006, appellant requested an oral hearing.

At the hearing held on January 23, 2007, appellant stated that she worked for the employing establishment for 28 years before retiring and that she spent most of her career at the employing establishment as a secretary. Following surgery, she was off work from May 25 to July 9, 2004 and went back out on November 9, 2004 and came back to work on January 31, 2005. Appellant was put in a reception job from February 8 to June 2005, which involved no typing. She was then reassigned to a job as reception to a courier in the hospital where she ran errands such as picking up blood samples and running specimens. Appellant noted that this job involved little hand work. While on this job, she injured her calf muscle and was off work for about a week. After she returned in June 2005, she was placed back in the secretary position. Appellant noted that there was paperwork in this position but that she was unable to do typing and or use the keyboard so she sought assistance from other employees. Her supervisor told her to handwrite evaluations and this activity caused stress on her hand. Appellant noted that her right hand began to hurt so she used her left hand. She indicated that she wrote about three to four hours a day. Appellant wrote travel vouchers and papers, invoices, telephone messages, memos and evaluations. She also stated that it was difficult to dial the telephone, which was part of her job duties. Appellant noted that the job to which she was assigned in May 2006 involved typing which she could not do, so she retired on June 30, 2006.

In a November 6, 2006 report, Dr. Timothy Morley, an osteopath, indicated that appellant had an 11 percent impairment of her right upper extremity pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th edition).

By letter dated February 22, 2007, the employing establishment submitted comments on the hearing and contended that the factual assertions of appellant at the hearing did not establish her claim.

In a February 22, 2007 note, the chief of dental service indicated that the evaluations that appellant had to write were minimal. He noted that her physician stated that she could handwrite no longer than 15 minutes at a time, that he adhered to those restrictions and that he told her to stop if she was having any ill effects. The chief noted that, as far as travel documents, these were very few and that they were submitted by the individual traveling. He denied that appellant performed handwriting for three to four hours; and noted that her hand writing was limited and episodic. The chief denied that he assigned handwritten reports. He noted that appellant did use the telephone a lot, mostly for incoming calls. The chief noted that, although her physician restricted keyboarding, she was allowed to use the telephone.

By decision dated March 1, 2007, the hearing representative affirmed the denial of appellant's claim. He found that she had not met her burden of proof as the factual and medical evidence of record failed to establish that she sustained an injury causally related to her federal employment duties. The medical evidence failed to establish that appellant sustained an injury causally related to her employment duties, the Office denied the claim.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act¹ 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.² 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.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.⁴

ANALYSIS

In the instant case, appellant alleged that she sustained an injury to her thumbs as a result of the duties of her federal employment. The Board finds that she has failed to establish the employment factors. Appellant alleged that, during her work from February 5 to April 25, 2006, she was required to do extensive handwriting for approximately three to four hours a day, writing such things as travel vouchers, papers and invoices. However, the Board is persuaded that appellant's recitation of the duties of her job duties is not accurate. Appellant's allegations were contradicted by the statement of the chief of the dental services when he indicated that appellant did minimal, limited and episodic handwriting. The chief also noted that he adhered to appellant's physician's instructions that she do no more than 15 minutes of handwriting at a time and that he told her to stop if she was in pain. Appellant agrees with the employing establishment that keyboarding was not a part of this job. Accordingly she has not established that the employment factors occurred which she alleged contributed to her condition.

¹ 5 U.S.C. §§ 8101-8193.

² *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

³ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁴ *Daniel O. Vasquez*, 57 ECAB __ (Docket No. 06-568, issued May 5, 2006).

As appellant has not shown that the employment factors occurred as alleged, it is not necessary to address the medical evidence.

CONCLUSION

The Board finds that appellant has not established that she sustained an injury in the performance of duty, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs' hearing representative dated March 1, 2007 and the decision of the Office dated August 16, 2006 are affirmed.

Issued: September 21, 2007
Washington, DC

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

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