

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

R.F., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Philadelphia, PA, Employer**

)
)
)
)
)
)
)
)
)
)
)

**Docket No. 12-1554
Issued: December 14, 2012**

Appearances:
Jeffrey P. Zeelander, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA HOWARD FITZGERALD, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 12, 2012, through her attorney, appellant filed a timely appeal of a July 9, 2012 decision of the Office of Workers' Compensation Programs (OWCP) denying her occupational disease claim. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 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 met her burden of proof to establish that she sustained bilateral carpal tunnel syndrome in the performance of duty.

On appeal, counsel asserts that the report of an attending physician is sufficient to establish causal relationship of the claimed condition to work factors. Alternatively, he asserts that the physician's opinion is of sufficient probative quality to warrant a second opinion referral.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On March 23, 2011 appellant, then a 52-year-old mail processing clerk, filed an occupational disease claim (Form CA-2) alleging that, on or before March 16, 2011, she sustained bilateral carpal tunnel syndrome due to lifting trays of mail and repetitive hand motion at work. She noted a prior occupational right arm injury diagnosed as tendinitis.²

In an April 11, 2011 report, Dr. Barry Kenneally, Board-certified in family practice and sports medicine, diagnosed bilateral carpal tunnel syndrome and right-sided cervical radiculopathy.³ In an April 21, 2011 report, Dr. Donald Fox, an attending internist, noted treating appellant since March 22, 2011 for bilateral carpal tunnel syndrome, cervical radiculopathy and pinched nerves. He held her off work from March 21 to April 29, 2011.

In a May 9, 2011 letter, OWCP advised appellant of the evidence needed to establish her claim, including a narrative report from her attending physician explaining how and why factors of her federal employment would cause the claimed bilateral carpal tunnel syndrome. Appellant was afforded 30 days to submit such evidence.

In response, appellant submitted a statement describing her duties beginning in January 1994, including sorting mail, operating sorting equipment and placing mail in trays or bins. She provided a November 22, 2011 note from Dr. Fox, who diagnosed carpal tunnel syndrome and limited her lifting to 10 pounds. Appellant also submitted medical reports related to prior compensation claims.⁴

By decision dated June 24, 2011, OWCP denied the claim finding that causal relationship was not established. It found that appellant submitted insufficient medical evidence to establish that her bilateral carpal tunnel syndrome was causally related to work factors of sorting and processing mail.

In a June 10, 2012 letter appellant, through counsel, requested reconsideration. He submitted a detailed description of her job duties sorting mail and loading equipment, which entailed repetitive grasping and reaching with both arms, twisting and turning both wrists and lifting sacks of mail weighing 70 pounds. Appellant noted that an August 1994 traumatic injury was accepted under File No. xxxxxx858 for tendinitis of the right wrist, a May 3, 1999 lumbar strain accepted under File No. xxxxxx619, bilateral epicondylitis accepted under File

² In a May 2, 2011 letter, appellant posited that the claimed condition developed concurrently with a prior neck injury under File No. xxxxxx004. She submitted November 2008 and July 2009 reports regarding tendinitis of the neck and right shoulder. File No. xxxxxx004 is not before the Board on the present appeal.

³ A March 28, 2011 electromyogram (EMG) and nerve conduction velocity (NCV) studies showed bilateral C5, C7 and C8 radiculopathy and mild bilateral carpal tunnel syndrome, right greater than left, with no evidence of ulnar nerve entrapment.

⁴ In a December 15, 1994 report, Dr. Donald Parks, an attending family practitioner, diagnosed right wrist tendinitis necessitating work restrictions. A November 5, 2009 neck x-ray showed degenerative changes at C5-6 unchanged from prior studies. In a September 14, 2010 note, Dr. Azad Khan, an attending internist, held appellant off work due to a neck injury. An April 14, 2011 magnetic resonance imaging (MRI) scan showed mild disc bulging and central spinal stenosis at C4-5, C5-6 spondylosis with right neural foraminal encroachment and a suspected central disc herniation and disc generation at T1.

No. xxxxxx314 sustained on or before February 10, 2001 and a November 2007 traumatic neck injury accepted under File No. xxxxxx004.⁵ Appellant was placed in a modified job under the National Reassessment Process in 2011.⁶

In a May 21, 2012 report, Dr. Richard I. Zamarin, a Board-certified orthopedic surgeon to whom appellant was referred by counsel, reviewed the medical evidence of record. He provided a detailed account of appellant's duties as a mail sorter. On examination, Dr. Zamarin noted tenderness to palpation of the cervical spine, 5/5 strength in all muscle groups of the upper extremities, intact sensation in both hands, negative Phalen's and Tinel's signs bilaterally, limited lumbar motion and bilaterally positive patellofemoral grind tests. Based on his examination and review of the record, he diagnosed chronic neck pain with aggravation of underlying degenerative disc disease and "more likely than not, a herniated disc at C5-6, paresthesias in both arms "more likely than not secondary to radiculopathy and/or carpal tunnel syndrome," chronic back pain and bilateral patellofemoral pain syndrome. Dr. Zamarin opined that appellant's work duties, consisting of walking on concrete floors, reaching, bending, lifting trays, and pushing and pulling heavy equipment had resulted over the years in these conditions. He recommended that appellant seek a rheumatologic evaluation for the possibility of the diagnosis of fibromyalgia.

By decision dated July 9, 2012, OWCP denied modification of the June 24, 2011 decision on the grounds that the evidence submitted in support of appellant's request was insufficient to establish her burden of proof. It found that Dr. Zamarin did not explain how and why the identified work factors caused the claimed bilateral carpal tunnel syndrome.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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 FECA; that the claim was filed within the applicable time limitation; that an injury was sustained while 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.⁷ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁸

⁵ Appellant's prior claims are not before the Board on the present appeal.

⁶ Appellant also submitted diagnostic studies. November 11, 2009 EMG and NCV studies showed bilateral median nerve abnormalities at the level of the carpal tunnel. A September 2, 2011 whole body MRI scan showed widespread joint degeneration and L5 degenerative changes.

⁷ *Joe D. Cameron*, 41 ECAB 153 (1989).

⁸ *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

An occupational disease is defined as a condition produced by the work environment over a period longer than a single workday or shift.⁹ 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 the 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 medial 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.¹⁰

An award of compensation may not be based on appellant's belief of causal relationship.¹¹ Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.¹²

ANALYSIS

Appellant claimed that she sustained bilateral carpal tunnel syndrome due to repetitive hand motions at work. OWCP requested that she provide medical evidence supporting a causal relationship between those work factors and the claimed condition. Appellant provided two reports from Dr. Fox, an attending internist, diagnosing bilateral carpal tunnel syndrome. OWCP denied the claim on June 24, 2011 as the medical evidence did not establish a causal relationship between repetitive hand motions and lifting at work and bilateral carpal tunnel syndrome.

On reconsideration, appellant submitted a May 21, 2012 report from Dr. Zamarin, a Board-certified orthopedic surgeon, who examined her at counsel's request. Dr. Zamarin stated that the paresthesias appellant experienced in her arms and hands were "more likely than not

⁹ 20 C.F.R. § 10.5(q).

¹⁰ *Solomon Polen*, 51 ECAB 341 (2000).

¹¹ *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

¹² *Id.*

secondary to radiculopathy and/or carpal tunnel syndrome” but that fibromyalgia should also be considered. His diagnosis of carpal tunnel syndrome is thus equivocal, as Dr. Zamarin offered several possible causes for appellant’s symptoms. The indefinite, speculative nature of Dr. Zamarin’s opinion greatly diminishes its probative value.¹³ Also, he did not explain the pathophysiologic interplay between the previously accepted upper extremity conditions and the present claim. Although Dr. Zamarin opined that walking, reaching, bending, pulling and pushing at work caused a variety of musculoskeletal conditions, he did not explain how and why any of these activities would cause or contribute to the claimed carpal tunnel syndrome. Therefore, his opinion contains insufficient medical rationale to establish causal relationship.¹⁴

The Board notes that appellant was advised by May 9, 2011 letter of the necessity of submitting medical evidence explaining how and why work factors would cause or contribute to the claimed carpal tunnel syndrome. Appellant did not submit such evidence. Therefore, she failed to meet her burden of proof in establishing causal relationship.

On appeal, counsel asserts that Dr. Zamarin’s opinion is sufficient to establish causal relationship. Alternatively, he contends that Dr. Zamarin’s report is of sufficient probative value to warrant a second opinion referral. As stated, Dr. Zamarin did not provide sufficient medical rationale to establish appellant’s claim. Also, his opinion is too speculative to warrant additional development.

CONCLUSION

The Board finds that appellant has not established that she sustained bilateral carpal tunnel syndrome in the performance of duty.

¹³ *Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006) (a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

¹⁴ *Deborah L. Beatty*, 54 ECAB 340 (2003) (medical reports not containing rationale on causal relationship are entitled to little probative value).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 9, 2012 is affirmed.

Issued: December 14, 2012
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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