U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ROSIE C. MONTEMAYOR and DEPARTMENT OF THE AIR FORCE, KELLY AIR FORCE BASE, San Antonio, TX

*Docket No. 98-137; Submitted on the Record;*
*Issued August 3, 1999*

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DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant met her burden of proof to establish that her alleged cervical condition was sustained in the performance of duty.

On October 16, 1993 appellant, a 46-year-old supply clerk, filed a Form CA-2 claim for benefits based on occupational disease, asserting that operating the data entry machine at work caused her constant pain and resulted in a tendinitis condition in her right elbow. She first became aware of this condition and related it to her employment in May 1993. The Office of Workers' Compensation Programs accepted her claim for tendinitis of the left elbow.

On December 5, 1994 appellant filed a claim for tendinitis in her right elbow based on the same employment factors, which the Office also accepted. Appellant has been on light duty since January 26, 1995, when she was restricted to one hour of keyboard work alternating with one hour of rest and has received compensation for temporary disability for intermittent periods.

On February 13, 1996 appellant filed a Form CA-7 claim for a schedule award for an impairment of the upper extremity based on her accepted bilateral tendinitis conditions.

In support of her claim, appellant submitted a February 9, 1996 impairment rating evaluation from Dr. Howard J. Hassell, a specialist in orthopedic surgery. Dr. Hassell found that appellant had a 11 percent total impairment of the right upper extremity pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (fourth edition) (the A.M.A., *Guides*), derived from impairments of the hand, wrist, elbow and shoulder, pursuant to the combined values chart.

In an April 11, 1996 memorandum, an Office medical adviser reviewed Dr. Hassell's findings and, applying the standards outlined in the A.M.A., *Guides,* agreed that appellant had an 11 percent permanent impairment in her right upper extremity and a 2 percent permanent impairment of the left upper extremity.

On May 14, 1996 the Office granted appellant a schedule award for an 11 percent permanent impairment in her right upper extremity and a 2 percent permanent impairment of the left upper extremity for the period from February 9 to November 18, 1996, for a total of 40.56 weeks of compensation.

In a report dated May 29, 1996, Dr. Hassell stated that appellant underwent a magnetic resonance imaging scan (MRI) which showed an effusion with annular ligament scarring and an electromyelogram (EMG) which showed bilateral C7 mild radiculopathy, which correlated with paresthesis she was experiencing down her right arm. In addition, appellant underwent a myelogram and enhanced computerized axial tomography (CAT) scan, which indicated very prominent osteophytes at C4-5 and C5-6 with anterior extradural effects and spondylosis at C5-6 and C6-7. He advised that the results of these diagnostic tests "confirmed" that appellant's problem was not originally in her elbow, as was originally believed, but was rather a radiculopathy originating in the cervical spine at C5-6 and C6-7. Dr. Hassell recommended that appellant undergo a second opinion examination with a neurosurgeon in order to confirm these findings.

The Office subsequently scheduled appellant for a second opinion examination with Dr. Arnulfo Garza-Vale, a Board-certified neurosurgeon, on June 20, 1996 who examined appellant on June 20, 1996 and issued a report on that date. Dr. Garza-Vale noted that appellant had a history of repetitive-type injury to both of her arms, which indicated a tennis elbow type of symptomatology. He stated, however, that he had reviewed the diagnostic studies and did not perceive any well-defined lateralization, foraminal stenosis or root compression and did not find any C7 radiculopathy based on the clinical examination. Dr. Garza-Vale agreed that appellant had cervical spondylosis, but without evidence of root or cord compression. He recommended that appellant consider a change in her occupation, which he believed aggravated her "tennis-elbow" type symptoms.[1]

On December 18, 1996 Dr. Hassell performed an impairment rating evaluation based on appellant's cervical condition and concluded that she had a total 15 percent impairment of the upper extremities. He also submitted a January 10, 1997 report, in which he found that appellant had cervical spondylitis with spondylosis at C5-6 and C6-7 and bilateral upper extremity radiculopathy, greater on the right side, as indicated by an EMG appellant underwent on August 21, 1996. Dr. Hassell stated that he had accorded her the 15 percent impairment rating of the upper extremities based on her range of motion as well as her radiculopathy.

On February 3, 1997 appellant filed a claim for a schedule award based on Dr. Hassell's medical reports.

[1] Dr. Garza-Vale also diagnosed shoulder arthritis with mild restriction regarding range of motion.

In a March 18, 1997 memorandum, an Office medical adviser reviewed Dr. Hassell's findings and found that the evidence He provided was not suitable to establish entitlement to a schedule award based on the claimed cervical condition. The Office medical adviser stated:

> "Practically all of the medical data refers to radiculopathy at C6 and C7. This concerns reduced motion of the shoulders and loss of strength about the shoulders. I find no clear opinion from Dr. Hassell that any of the abnormalities are due to the accepted elbow conditions; he does not furnish any information about how the elbow tendinitis has caused restriction of motion of the shoulder, or how the loss of muscle strength about the shoulder is related to elbow tendinitis."

The Office medical adviser concluded that Dr. Hassell's report was "confusing and unclear" and suggested that appellant be evaluated by a physician more familiar with the Office's standards for impairment ratings.

In a decision dated June 17, 1997, the Office denied appellant's claim, finding that she failed to submit medical evidence sufficient to establish that her cervical condition was causally related to employment factors. The Office also denied appellant a schedule award for greater aripairmait of her upper extremities.

In a letter dated June 23, 1997, appellant requested reconsideration. In support of her claim, appellant submitted July 7 and 29, 1997 reports from Dr. Hassell.[2] In his July 7, 1997 report, Dr. Hassell opined that the reason appellant had problems in her upper extremities was not due to any inherent compressive neuropathy at her elbow or hand, but was primarily due to the spondylitis that was belatedly found in the cervical spine. Dr. Hassell advised that the cervical spine problems were not fully considered when her initial problem was evaluated as being primarily confined to her elbows and knees.

In a September 2, 1997 memorandum, an Office medical adviser reviewed the statement of accepted facts and Dr. Hassell's July 7, 1997 report. The Office medical adviser noted that Dr. Hassell had identified cervical spondylosis as the cause of appellant's arm and shoulder problems, but found that there was insufficient evidence to relate this condition to her employment.

By decision dated September 2, 1997, the Office denied modification of the June 17, 1997 decision.

In a letter dated September 29, 1997, appellant requested reconsideration. In support of her claim, appellant submitted a September 29, 1997 report from Dr. Hassell. Who noted that appellant's cervical condition was employment related, but suggested she obtain an additional opinion in order to bolster her claim.

By decision dated October 7, 1997, the Office again denied modification of its prior decisions.

[2] The July 7 and 29, 1997 reports were merely progress reports which reported findings on examination and provided updates regarding the state of appellant's cervical condition.

The Board finds that appellant failed to meet her burden of proof to establish that her claimed cervical condition is causally related to her federal employment.

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that her condition was caused by her employment. As part of this burden she must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relation.[3]

In the present case, the Office accepted appellant's claim for bilateral tendinitis of her elbows due to factors of her federal employment. Appellant has not submitted a probative, rationalized medical opinion, however, sufficient to establish that her cervical conditions resulted from her employment. In this regard, 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.[4] 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.[5] Causal relationship must be substantiated by reasoned medical opinion evidence which is appellant's responsibility to submit. In the instant case, none of the medical reports pertaining to the claimed condition contain any rationalized medical opinion which relates the cause of this claimed condition to factors of appellant's federal employment.

The reports from Dr. Hassell do not constitute sufficient medical evidence demonstrating a causal connection between appellant's degenerative cervical conditions and factors of her employment. Causal relationship must be established by rationalized medical opinion evidence. The reports from Dr. Hassell merely state his findings and conclusions that appellant had a cervical condition based on examination and the results from diagnostic tests. His reports do not contain a probative, rationalized medical opinion addressing how appellant's degenerative cervical conditions were caused or contributed to by factors of her federal employment.

Appellant was referred for a second opinion examination with a neurosurgeon, Dr. Garza-Vale, who reviewed these diagnostic tests and did not find any well-defined lateralization, foraminal stenosis or root compression or C7 radiculopathy. Dr. Garza-Vale agreed that appellant had a cervical spondylosis but did not relate the cervical findings to appellant's federal employment. Although Dr. Garza-Vale concurred with Dr. Hassell that appellant had cervical spondylosis, he opined that there was no evidence of root or cord compression.

As there is no probative, rationalized medical evidence addressing and explaining why appellant's cervical condition and disability were caused by her accepted job duties, she has not met her burden of proof in establishing that she sustained a cervical condition stemming from her employment. The Board, therefore, affirms the Office's finding that appellant did not sustain a

[3] *Arlonia B. Taylor,* 44 ECAB 591, 595 (1993).

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

[5] *Id.*

compensable cervical condition and properly denied her claim for a greater schedule award based on findings attributed to her cervical condition.

Accordingly, the decisions of the Office of Workers' Compensation Programs dated June 17, September 2 and October 7, 1997 are hereby affirmed.

Dated, Washington, D.C.
August 3, 1999

George E. Rivers
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member