U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANGELA M. ELG and DEPARTMENT OF AGRICULTURE, NATIONAL RESOURCES CONSERVATION SERVICE, Phillips, WI

Docket No. 03-820; Submitted on the Record;
Issued May 28, 2003

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON, WILLIE T.C. THOMAS

The issue is whether appellant sustained injuries to her arms, wrists and shoulders, causally related to her employment duties.

On July 20, 2001 appellant, then a 38-year-old soil scientist, filed a notice of occupational disease, Form CA-2, alleging that she developed carpal tunnel syndrome with accompanying numbness and tingling in her hands and wrists and spasms in her shoulders, as a result of manual soil boring. On her claim form and in a narrative statement submitted in support of her claim, appellant explained that, from April to November of each year, the field season, her duties consisted of obtaining soil samples using a manual soil auger. She stated that soil sampling required great physical exertion and stress on her wrists and shoulders and that during the field season she performed this duty for two to seven hours a day and zero to five days a week, depending on the weather and distance from the field office. Appellant stated that she first experienced problems with her hands and wrists during the field season of 1994, although she did not seek medical treatment at that time. Her condition returned in the 1996 and 1997 field seasons and she sought treatment from Dr. James Barr, a chiropractor. During the 2001 field season, her symptoms of numbness, tingling and spasms returned and she again sought medical treatment from Dr. Barr.

In a decision dated November 28, 2001, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that, despite a September 10, 2001 request for additional information, appellant had not submitted sufficient medical evidence to establish her claim for an employment-related medical condition.

By letter dated February 22, 2002, appellant requested reconsideration and submitted additional medical evidence in support of her claim. The medical evidence submitted included additional reports from Dr. Barr, her treating chiropractor and two reports from Dr. Eric D. Dichsen, a Board-certified family practitioner. In a decision dated May 21, 2002, the Office found the newly submitted medical evidence to be insufficient to warrant modification of the prior decision. By letter dated July 25, 2002, appellant again requested reconsideration and

submitted additional medical evidence in support of her claim. In a decision dated November 19, 2002, the Office found the newly submitted evidence insufficient to warrant modification of its prior denial.

The Board finds that this case is not in posture for a determination of whether appellant sustained injuries to her arms, wrists and shoulders, causally related to her employment duties. Further development of the medical evidence is required.

An employee seeking benefits under the Federal Employees' Compensation Act[1] 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. These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[2]

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 diagnosed condition is causally related to the employment factors identified by the claimant.[3]

In this case, appellant stated on her claim form and in a narrative statement, that she experienced pain in her arms and shoulders while performing soil sampling using a manual soil auger. In a statement dated July 30, 2001, appellant's supervisor, Arthur L. Voigtlander, stated that, during the months of April to November, soil scientists often spend eight-hour days auguring and digging holes with hand equipment to check soil properties. He stated that the soil auger has two teeth on the end that open a hole as the person turns the auger. Mr. Voigtlander stated that this is a repetitive motion that puts stress on the wrists, shoulders, neck, back and arms and that, often, stones are encountered while digging, which puts added stress on the joints. The Board finds that the evidence of record is sufficient to establish that appellant is required to perform the duties alleged to have caused her injuries.

The question, therefore, becomes whether appellant's employment duties caused or aggravated the arm, hand, wrist and shoulder conditions for which she seeks compensation.

Causal relationship is a medical issue and the medical evidence required to establish causal relationship, generally, is rationalized medical opinion evidence.[4] Rationalized medical

[1] 5 U.S.C. §§ 8101-8193.

[2] *Caroline Thomas*, 51 ECAB 451 (2000); *see also* 5 U.S.C. § 8101(5) ("injury" defined); 20 C.F.R. §§ 10.5(q), 10.5(ee) ("occupational disease" and "traumatic injury" defined).

[3] *Solomon Polen*, 51 ECAB 341 (2000).

[4] *Ruth C. Borden*, 43 ECAB 146 (1991).

opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment.[5] 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 established incidents or factors of employment.[6]

In support of her claim, appellant submitted narrative reports and treatment notes dating from July 11, 2001 to July 25, 2002, from Dr. Barr, a chiropractor. These treatment notes repeatedly diagnose carpal tunnel syndrome, cervical and thoracic subluxation, wrist subluxation and cervical-related paresthesias and indicate that spinal manipulation and occasional wrist manipulation, were performed to correct these conditions. In his initial report dated July 11, 2001, Dr. Barr noted appellant's complaints of pain and numbness in her arms and wrists, made worse by her soil augering duties and further noted that appellant had sought treatment from his office for this condition in the past. He diagnosed carpal tunnel syndrome, cervical subluxation, wrist subluxation and cervical-related paresthesias. In a report dated July 25, 2002, Dr. Barr stated that x-rays were taken on July 29, 1996, which revealed that appellant has a significant chronic cervical subluxation known as a congenital block vertebra. Dr. Barr explained that this is a malformation subluxation of the neck in which the bones have fused together at birth. He stated that this means that instead of the normal seven neck vertebrae, appellant only has five. Therefore, motion segments of her neck are inherently subluxated. Dr. Barr further stated that there was no reason to x-ray appellant again, given the lack of physical injury or trauma to her neck. In an undated report, Dr. Barr explained that appellant suffered from periods of remission and exacerbation with symptoms related to tingling in her hands and neck discomfort. He stated that these flare ups seem to be related to many of the tasks she is required to perform in her normal work duties, in that appellant complained of flare ups while twisting the auger while taking soil samples, a job she had performed for many years. Dr. Barr recommended that appellant's augering responsibilities be reduced, stating:

> "Considering healthy individuals would, more than likely, realize aggravations of tendinitis and carpal tunnel like symptoms from the workload described above, [appellant] is more uniquely prone to these flare ups. The neck vertebrae in [appellant's] neck at [one] segment of the spine have "fused" together creating an immobile motor unit. Normally, this would not be clinically significant, however, I believe due to the physical nature of the activities described from the job description listed above, [appellant] will be more prone to problems because of this condition."

The Board initially notes that medical opinion, in general, can only be given by a qualified physician.[7] Therefore, in assessing the probative value of chiropractic evidence, the

[5] *Joe L. Wilkerson*, 47 ECAB 604 (1996).

[6] *Id.*

[7] *Jean Culliton*, 47 ECAB 728 (1996).

initial question is whether Dr. Barr, a chiropractor, is a physician under the Act.[8] Pursuant to sections 8101(2) and (3) of the Act[9] the Board has recognized chiropractors as physicians to the extent that they diagnose spinal subluxation, according to the Office's definition[10] and as demonstrated by x-rays to exist[11] and treat such subluxation by manual manipulation. In this case, as Dr. Barr stated in his July 25, 2002 report, that x-rays taken on July 29, 1996 revealed a significant chronic congenital subluxation, his opinion is considered that of a physician under the Act. The Board has held, however, that chiropractic opinions are of no probative medical value on conditions beyond the spine.[12] As a chiropractor may only qualify as a physician in the diagnosis and treatment of spinal subluxation, his opinion is of probative medical value only with regard to the spine, even though he or she meets the Act's criteria as a physician.[13] The Board has also recognized that disorders of the spine can produce impairment of extremities.[14] In the instant case, appellant's chiropractor opined that a preexisting spinal condition had been aggravated by her employment duties resulting in a neurological symptom, namely carpal tunnel syndrome, in her upper extremities. The Board has held that, even under the circumstances where a chiropractor is recognized as a physician under the Act, the chiropractor is still not considered a physician in diagnosing or evaluating disorders of the extremities, although those disorders may originate in the spine.[15] Dr. Barr's diagnosis of carpal tunnel syndrome, therefore, is beyond the scope of review of x-rays and manual manipulation for the treatment of spinal subluxation, which are recognized as reimbursable services under the Act.[16] As Dr. Barr, a chiropractor, is not a physician for the purpose of diagnosing carpal tunnel syndrome or other conditions of the upper extremities, his opinion is of no probative medical value on the issue of

[8] 5 U.S.C. §§ 8101-8193*; Thomas R. Horsfall*, 48 ECAB 180 (1996)

[9] 5 U.S.C. §§ 8101(2), (3).

[10] 20 C.F.R. § 10.5(bb) of the Office's regulations provides that the term "subluxation" means an incomplete dislocation, off-centering, misalignment, fixation or abnormal spacing of the vertebrae anatomically which must be demonstrable on any x-ray film to individuals trained in the reading of x- rays. A chiropractor may interpret his or her own x-rays to the same extent as any other physician defined under the Act. *Carol A. Dixon*, 43 ECAB 1065 (1992).

[11] *George E. Williams*, 44 ECAB 530 (1993).

[12] *Id.*

[13] *Id.*

[14] *Id.*

[15] *Id.*

[16] *Id.* Office regulations specify that reimbursable chiropractic services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist. Also included for payment or reimbursement are physical examinations (and related laboratory tests) and x-rays performed by or required by a chiropractor to diagnose a subluxation of the spinal column. *Beverly G. Akins*, 47 ECAB 647 (1996). However, the diagnosis of subluxation must be established as employment related in order for chiropractic treatment to be reimbursable. *Theresa M. Fitzgerald*, 47 ECAB 689 (1996). Therefore, to the extent that Dr. Barr provided manual manipulations to treat a spinal subluxation which had been aggravated by appellant's employment duties, his services would be reimbursable.

whether appellant developed carpal tunnel syndrome or carpal tunnel-like symptoms, as a result of her employment duties.[17]

Appellant also submitted medical reports from Dr. Eric D. Dichsen, a Board-certified family practitioner. In his report dated October 15, 2001, Dr. Dichsen noted that appellant presented at his office for documentation of problems she had been having regarding carpal tunnel syndrome and cervical subluxation. He noted appellant's employment history and specific job duties and stated that he had reviewed the records provided by Dr. Barr in detail. Dr. Dichsen noted that, at the time of his examination, appellant's symptoms had completely resolved, with no tenderness, normal sensation and negative Tinel's and Phalen's tests. Dr. Dichsen diagnosed carpal tunnel syndrome and cervical subluxation, resolved and currently asymptomatic. He added that, although her examination was normal, the medical records provided by Dr. Barr, as well as appellant's history, supported these diagnoses. In a follow-up report dated November 12, 2001, Dr. Dichsen stated:

> "This case is somewhat complicated in that [appellant's] symptoms completely resolved prior to my evaluation. After reviewing [appellant's] history and the medical records from her chiropractor, Dr. Barr, I feel that I am able to comment on her condition. I feel that the work activities from her federal employment contributed to her condition. Specifically, the operation of a soil auger for soil borings appears to have contributed to the carpal tunnel syndrome which was treated by Dr. Barr."

The medical record in this case lacks a well-reasoned narrative report from a physician relating appellant's carpal tunnel syndrome to her federal employment duties. As discussed above, Dr. Barr is not qualified to offer an opinion on conditions affecting the extremities. While Dr. Dichsen clearly stated that he believed appellant's employment duties had contributed to her carpal tunnel syndrome, he did not offer a rationalized explanation for his conclusions beyond stating that they were based on appellant's history and the medical records provided by Dr. Barr.[18] Nonetheless, the Board finds that the medical reports submitted by appellant, taken as a whole, raise an uncontroverted inference of causal relationship sufficient to require further development of the case record by the Office.[19] Additionally, the Board notes that in this case the record contains no medical opinion contrary to appellant's claim and further notes that the Office did not seek advice from an Office medical adviser or refer the case to an Office referral physician for a second opinion. Furthermore, the Board notes that the record contains a notation

[17] *George E. Williams, supra* note 11.

[18] Rationalized medical opinion evidence is medical evidence that includes a physician's reasoned opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. 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 established incident or factor of employment. *Charles E. Evans*, 48 ECAB 692 (1997).

[19] *See John J. Carlone*, 41 ECAB 354 (1989) (finding that the medical evidence was not sufficient to discharge appellant's burden of proof but remanding the case for further development of the medical evidence given the uncontroverted inference of causal relationship raised).

that appellant had employment-related injuries to her back in 1996 and 1997, which were accepted by the Office. The Board will set aside the Office's May 21 and November 19, 2002 decisions and remand the case for further development of the medical evidence regarding the causal relationship, if any, between appellant's employment and the diagnosed cervical and upper extremity conditions. Upon return of the case record, the Office should double this case file with all appellant's injury claims for the same parts of the body.[20] Following such further development as may be necessary, the Office shall issue an appropriate final decision on appellant's claim.

The November 19 and May 21, 2002 decisions of the Office of Workers' Compensation Programs are set aside and the case is remanded for further action consistent with this opinion.

Dated, Washington, DC
May 28, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

[20] FECA Bulletin No. 97-10 (issued February 15, 1997) provides that cases should be combined when a new injury is reported for an employee who has filed a previous injury claim for the same part of the body.