United States Department of Labor
Employees' Compensation Appeals Board

ROBERT A. REEVES, Appellant	)	
and	)	**Docket No. 04-127**
	)	**Issued: June 25, 2004**
U.S. POSTAL SERVICE, POST OFFICE, Lebanon, MO, Employer	)	

Appearances:
Robert A. Reeves, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On October 20, 2003 appellant filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs dated September 15, 2003, finding that he had no employment-related right third middle finger condition. Pursuant to 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's right third finger condition was causally related to his employment.

FACTUAL HISTORY

On November 8, 1993 appellant, then a 50-year-old security engineering technician, filed a claim stating that he injured his right arm and elbow on June 7, 1993 while in the performance of duty.

The Office accepted the claim for right medial epicondylitis and subsequently expanded the claim to include bilateral carpal tunnel syndrome and bilateral cubital tunnel syndrome and authorized right ulnar nerve transposition and right carpal tunnel release. The surgeries were performed on February 8, 1995 by Dr. Susan E. Mackinnon, a specialist in plastic and reconstructive surgery. Appellant was released to resume full-time duty on April 24, 1995 and retired from the employing establishment on January 2, 1998.

On November 13, 1998 Dr. Mackinnon reported decreased range of motion as well as pain and swelling of the right long finger. She noted this "may be a very unusual presentation of a triggering of the long finger" and recommended a consultation with a rheumatologist. Appellant subsequently requested that his claim also be accepted for his middle finger condition.

On March 16, 1999 Dr. Varsha Rathod, a rheumatologist, noted chronic proximal interphalangeal (PIP) joint osteoarthritic changes in the right third joint and a tender and swollen right third flexor tendon at the third metacarpophalangeal (MCP) joint. Dr. Rathod opined that appellant had right third trigger finger and primary osteoarthritis involving the PIP joints. She injected the claimant with cortisone and provided medication for pain.

On October 5, 1999 Dr. Rathod stated that she again injected the claimant in his right trigger finger for pain relief and opined that the right trigger finger was most likely related to his government work which required repetitive use of rotary equipment. She noted that he used: "jackhammers, which are known to cause tendinitis, as well as nerve damage." Dr. Rathod then asked the Office to accept appellant's right third trigger finger as a work-related injury.

On October 13, 1999 the Office advised appellant that his claim would be reviewed to determine whether the right third trigger finger was causally related to his employment. On February 3, 2000 an Office medical adviser noted that there was no medical evidence to establish a causal relationship between the trigger finger and the claimant's federal employment, noting the condition occurred after retirement on January 2, 1998.

On May 8, 2000 the Office referred appellant to Dr. John A. Gragnani, a second opinion physician Board-certified in physical medicine and rehabilitation and in preventive medicine. Dr. Gragnani reported on May 31, 2000 that there was no documentation of a right trigger finger until November 1998, 10 months after the claimant's retirement. He noted that appellant had right hand osteoarthritis and opined that the diagnosis of trigger finger as offered by Dr. Rathod was "not that solid at this point," and was "extremely unlikely" that the trigger finger was work related. The physician diagnosed osteoarthritis and indicated that this was not employment related.

By decision dated April 20, 2001, the Office denied the claim stating that the right third trigger finger was not causally related to his accepted condition. Appellant then requested a review the written record. On August 20, 2001 an Office hearing representative set aside the April 20, 2001 decision and remanded the case for referral to an impartial medical specialist to resolve the conflict in medical opinion between Drs. Rathod and Gragnani regarding whether his middle finger condition was caused by his accepted injuries. On October 3, 2001 the Office

referred appellant, a statement of accepted facts and the case record to Dr. Edward F. Schlafly, a Board-certified orthopedic surgeon, for an impartial medical evaluation.

In a report dated October 16, 2001, Dr. Schlafly stated that he evaluated appellant on that day and noted a familiarity with the history of injury. He noted that the right long finger had a loss of about seven degrees of extension at the PIP joint and about four degrees of flexion at the PIP joint and MCP joint. Dr. Schlafly noted no actual triggering but observed tenderness at the base of long finger in the palm. Sensations in circulation were intact, grip strength was good and no deformities were noted beyond the slight loss of extension of the long finger. Dr. Schlafly reviewed in detail Dr. Gragnani's report noting that the May 31, 2000 physical examination did not reveal finger triggering. He also noted reports from Dr. Rathod which described a right third trigger finger, noting that it most likely was causally related to his employment. The doctor then stated that appellant reported symptoms in his right hand, primarily along the right long finger, including stiffness and occasional locking, consistent with trigger finger. He noted, however, that actual triggering had not been noted by either Dr. Gragnani or Dr. Rathod during their examinations. The doctor found that appellant had osteoarthritis involving the right hand including multiple joints and some signs of flexor tenosynovitis. Dr. Schlafly also diagnosed a possible trigger finger based on appellant's history. However, he was unable to attribute the possible trigger finger, "such as it is," to any work-related activities. Dr. Schlafly noted that he could not with 100 percent certainty rule out work-related activities as a causative factor in appellant's condition, it was nonetheless unlikely that the condition was caused by his employment. The doctor noted that his symptoms related primarily to osteoarthritis which was not work related and a flexor tenosynovitis condition that developed 10 months after retiring from work. Thus, his condition was not clearly related to any particular work activity. Dr. Schlafly noted that trigger finger was occasionally related to particular activities but the relationship was generally clear with patients reporting symptoms after a significant amount of grasping activities. He also noted that when trigger finger occurs after upper extremity injuries or surgery, it occurs shortly after the injury or surgery, as in a matter of days or weeks, not months or years. However, in this case, the symptoms of triggering occurred about 10 months after he retired and thus it was unlikely that the condition was attributable to any particular work-related activity.

By decision dated December 18, 2001, the Office denied appellant's claim for right third finger condition.

Also on December 18, 2001 the Office received an October 3, 2000 report from Dr. William K. Harris, a consulting osteopath and orthopedic surgeon, who read x-rays of the right middle finger as negative and on examination found no finger locking. He indicated that the claimant may have stenosing tenosynovitis of the A1 pulley of the finger. Appellant on January 7, 2002 requested an oral hearing which was held on June 25, 2003.

By decision dated September 15, 2003, the hearing representative determined that appellant's right third trigger finger was not causally related to his employment and denied the claim.

LEGAL PRECEDENT

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.[2] An award of compensation may not be based on surmise, conjecture, speculation or upon appellant's own belief that there is causal relationship between his claimed condition and his employment.[3] To establish causal relationship, appellant must submit a physician's report, in which the physician reviews the employment factors identified by appellant as causing his condition and, taking these factors into consideration as well as findings upon examination of appellant and his medical history, state whether the employment injury caused or aggravated appellant's diagnosed conditions and present medical rationale in support of his or her opinion.[4]

Section 8123(a) provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.[5]

ANALYSIS

The Office properly determined that there was a conflict in the medical evidence between Dr. Rathod who stated that appellant's right third finger trigger was caused by his employment activities, and Dr. Gragnani, who stated that appellant's right hand condition was a naturally occurring process consistent with osteoarthritis. In order to resolve the conflict, the Office properly referred appellant, pursuant to section 8123(a) of the Act, to Dr. Schlafly for an impartial medical examination and an opinion on the matter.

The Board has carefully reviewed the opinion of Dr. Schlafly and notes that it has reliable, probative value and convincing quality with respect to its conclusions regarding the relevant issue of the present case. His opinion is based on a proper factual and medical history in that he had the benefit of an accurate and up-to-date statement of accepted facts, provided a thorough factual and medical history and accurately summarized the relevant medical evidence.

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[1] 5 U.S.C. §§ 8101-8193.

[2] *Elaine Pendleton*, 40 ECAB 1143 (1989).

[3] *Donald W. Long*, 41 ECAB 142 (1989).

[4] *Id*.

[5] Section 8123(a) of the Act provides in pertinent part: "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination." 5 U.S.C. § 8123(a); *Alfred R. Anderson*, 54 ECAB ___ (Docket No. 02-1417, issued November 5, 2002).

Moreover, Dr. Schlafly provided a proper analysis of the factual and medical history and the findings on examination, including the results of a physical examination of appellant's right third finger and reached conclusions regarding appellant's condition which comported with this analysis.[6] He provided medical rationale for his opinion by explaining that trigger fingers are common conditions and occur in many people. Dr. Schlafly also explained that when trigger finger is caused by activities, patients are symptomatic "after doing a lot of activities [such as] gripping something such as a power tool, a golf club, a baseball bat, etc." In appellant's case since his symptoms developed 10 months after he retired, he could not attribute his trigger finger symptoms to any particular work-related activity. He also noted that trigger fingers, if they occur as a result of upper extremity injuries or by surgery, will become symptomatic within days or weeks of that injury or of the surgery. Since symptoms occurred for this instance 10 months after appellant retired from federal employment, it was unlikely that the condition was caused by his employment.[7] Although the doctor said he could not with 100 percent certainty rule out a work-related causation, absolute certainty is not a requirement to establish causal relationship. However, the doctor noted his reasons for finding no causal relationship, including the fact that appellant's symptoms occurred for the first time 10 months after his retirement from his federal employment. In addition, the doctor did not specifically diagnose trigger finger based on objective medical evidence. Dr. Schlafly further explained that appellant had osteoarthritis of the right hand, including multiple joints in some signs of flexor tenosynovitis which were not accepted injuries.

The October 3, 2000 report from Dr. Harris submitted by appellant prior to the hearing noted appellant's condition but the physician did not specifically address causal relationship and noted that x-rays taken that day of the right middle finger were negative.

In situations where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.[8] The Board finds that Dr. Schlafly provided a reasoned medical opinion that appellant's right third trigger finger was not causally related to his employment. It is well established that, when a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.[9] Dr. Schlafly's report is entitled to special weight and constitutes the weight of the evidence in this case.

[6] *See Melvina Jackson*, 38 ECAB 443, 449-50 (1987); *Naomi Lilly*, 10 ECAB 560, 573 (1957).

[7] The Board notes that the statement of accepted facts indicate that appellant returned to work for the Bureau of the Census. However, appellant did not attribute his condition to this employment.

[8] *Jack R. Smith*, 41 ECAB 691, 701 (1990); *James P. Roberts*, 31 ECAB 1010, 1021 (1980).

[9] *Harrison Combs, Jr.*, 45 ECAB 716, 727 (1994).

CONCLUSION

The Board finds that appellant has failed to satisfy his burden of proof in this case establishing that he has an employment-related condition of the right third finger.

ORDER

IT IS HEREBY ORDERED THAT the September 15, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 25, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member