United States Department of Labor
Employees' Compensation Appeals Board

KAREN T. PISCOPO, Appellant	)	
and	)	**Docket No. 05-1573**
	)	**Issued: October 21, 2005**
U.S. POSTAL SERVICE, POST OFFICE, Flushing, NY, Employer	)	

Appearances
Karen T. Piscopo, pro se
Office of the Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On July 20, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' August 10, 2004 merit denial of her claim and a May 6, 2005 hearing representative's decision affirming the denial. Under 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 has established that she sustained a carpal tunnel condition in the performance of duty.

FACTUAL HISTORY

This is the second appeal before the Board. Appellant, a 47-year-old mail handler, filed a claim for benefits on May 21, 2002 alleging that she developed a bilateral carpal tunnel condition causally related to factors of her employment.

In a report dated April 29, 2002, Dr. Ahmed E. Elemam, a specialist in physical medicine and rehabilitation, stated that appellant was symptomatic for neck pain with radicular symptoms to the bilateral upper extremities, with tingling and numbness sensations in both hands. He diagnosed bilateral tendinitis in her hands.

In a report dated May 9, 2002, Dr. Dinesh Shukla, a second opinion referral neurologist, noted that appellant had been experiencing pain in the right hand, right joint, elbow, in addition to intermittent numbness in her hands. He noted that x-rays of the left hand and left wrist were reported to be normal. Dr. Shukla indicated that appellant had been previously diagnosed with bilateral carpal tunnel syndrome, but advised that there was no indication for neurological intervention to the hand, cervical or lumbar area. He further noted that appellant was currently working in a modified position for four hours a day since she sustained a lower back injury in March 1997. He found that she was capable of working an eight-hour day with restrictions.

In a report dated May 23, 2002, Dr. Elemam stated:

> "[Appellant] is known to me for a long time now because of her work injury which [affected] her neck [and] back and now she was diagnosed with bilateral carpal tunnel syndrome, as well as tendinitis in both hands, which [she] claims is occupational[;] this has developed over time with repetition movement of both hands and wrists. She started to complain of wrist problems a long time ago, [appellant] works as a mail handler and uses her hands in a continuous repetitious movement which aggravates her condition. [Appellant] complains of tingling and numbness sensation in both hands, mainly in the outer three fingers, which is worse at night, sometimes she wakes up in the middle of the night shaking her hands because of the numbness and pain. She also has difficulty using her hands, the pain shoots up to the elbows sometimes."

Dr. Elemam noted that an electromyogram (EMG) and nerve conduction studies were performed on April 6, 2002 which were suggestive of mild bilateral carpal tunnel syndrome. He diagnosed bilateral carpal tunnel syndrome and stated that the symptoms and findings appellant presented were causally related to her occupation as a mail handler, which developed throughout the years while working. Dr. Elemam advised appellant not to move her hands in a repetitively way for any type of work in order to decrease her symptoms.

In a report dated July 9, 2002, an Office medical adviser indicated that there were no findings to support a diagnosis of bilateral carpal tunnel syndrome. He noted that the nerve conduction studies and EMG performed on appellant were normal and based on the report of Dr. Shukla, she was able to work.

By decision dated May 19, 2003, the Office denied appellant's claim on the grounds that the claimed medical condition was not causally related to factors or incidents of employment. The Office stated that "given the discrepancy in the medical evidence received, the Office requested a review of the medical evidence" by an Office medical adviser, who found that a diagnosis of bilateral carpal tunnel syndrome was not supported by the test results in the record.

By decision dated October 31, 2003, the Office denied reconsideration.

In an April 22, 2004 decision, the Board found a conflict of medical opinion between Dr. Shukla and Dr. Elemam regarding whether appellant's alleged bilateral carpal tunnel condition was sustained in the performance of duty. The Board remanded the case for referral of appellant, the case record and a statement of accepted facts, to an appropriate impartial medical specialist. The complete facts of this case are set forth in the April 22, 2004 decision and are herein incorporated by reference.

The Office referred the case to Dr. C.M. Sharma, Board-certified in psychiatry and neurologist, for an impartial medical evaluation. In a report dated June 17, 2004, he stated findings on examination and reviewed the medical evidence. Dr. Sharma noted that appellant's motor tone was normal in the arms and legs, with no atrophy or deformity. He advised that the muscles in the hands showed normal appearance and that the grasping, apposition and manipulation of the fingers all showed a normal pattern. Dr. Sharma stated that appellant had numbness and tingling in both hands and asserted that the testing of touch, vibration and position was normal. The Tinel's sign and Phalen's sign were negative. Dr. Sharma diagnosed subjective soft tissue pain and paresthesias in the hands, with a normal neurological examination. He concluded:

> "Based on the information provided, the symptoms of pain are not accompanied by objective signs of neurological problems. There are no signs of neurological problems. There are no signs of cervical or lumbar nerve root lesions. There are no signs of cervical spinal cord lesion. There are no signs of bilateral carpal tunnel syndrome.
>
> "There is no neurological disability. There are no neurological limitations to continuation of usual work and activities of daily living. It is my opinion that [appellant] is able to return to her usual work without any limitations. There are no limitations in the use of the hands for grasping or for repetitive activity.
>
> "There is no further need for neurological testing or treatment. From a neurological point of view there is no indication for any treatment that would be considered medically necessary."

By decision dated August 10, 2004, the Office denied appellant's claim on the grounds that the medical condition was not causally related to factors of her federal employment. The weight of the medical evidence was represented by Dr. Sharma's impartial medical opinion.

By letter dated August 31, 2004, appellant requested a review of the written record. She submitted a July 8, 2003 report from Dr. Elemam in which he reiterated his previous findings and conclusions.

By decision dated May 6, 2005, an Office hearing representative affirmed the August 10, 2004 decision.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of establishing that 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. The medical evidence required to establish causal relationship is usually rationalized medical 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 medical 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.[4]

When a case is referred to a referee medical specialist for the purpose of resolving a conflict in medical opinion, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.[5]

ANALYSIS

The Board finds that Dr. Sharma's impartial medical opinion negated a causal relationship between appellant's claimed bilateral carpal tunnel condition and factors of her federal employment. He stated that on examination, she had a normal motor tone and showed no atrophy or deformity of her arms or wrists. Dr. Sharma advised that appellant complained of

[1] 5 U.S.C. § 8101-8193.

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

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

[4] *Id.*

[5] *Wiley Richey*, 49 ECAB 166 (1997).

numbness and tingling in both hands and found that the testing of touch, vibration and position was normal. He reported that the Tinel's sign and Phalen's sign were negative, that the muscles in the hands showed normal appearance and that the grasping, apposition and manipulation of the fingers all showed a normal pattern. Dr. Sharma further advised that appellant's pain symptoms were not accompanied by objective signs of neurological problems. He concluded that she had a normal neurological examination with no neurological disability and no need for further neurological testing or treatment.

Dr. Sharma found, based on his examination, that appellant had no signs of cervical nerve root lesions and no signs of bilateral carpal tunnel syndrome. He opined that she had no neurological limitations precluding her from returning to her usual work and activities of daily living and no limitations in the use of her hands for grasping or for repetitive activity. The Board finds that Dr. Sharma's report is sufficiently probative, rationalized and based upon a proper factual background. His opinion represents the weight of the medical evidence. The Office properly denied appellant's claim for a bilateral carpal tunnel condition in its August 10, 2004 decision.

Following the August 10, 2004 decision, appellant requested reconsideration and submitted Dr. Elemam's July 8, 2003 report. This report, however, is of limited probative value as it is merely a restatement of one side of the conflict of medical evidence which was resolved by Dr. Sharma. The subsequently submitted report of Dr. Elemam is insufficient to overcome the special weight accorded the report of Dr. Sharma.[6] The Office properly denied appellant's claim for compensation.

CONCLUSION

The Board finds that appellant has failed to establish that she sustained a bilateral carpal tunnel condition in the performance of duty.

[6] *See Richael O'Brien*, 53 ECAB 234 (2001); *Dorothy Sidwell*, 41 ECAB 857 (1990).

ORDER

IT IS HEREBY ORDERED THAT the February 6, 2005 and August 10, 2004 decisions of the Office of Workers' Compensation Programs be affirmed.

Issued: October 21, 2005
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

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