United States Department of Labor
Employees' Compensation Appeals Board

TAJUANNA K. JOHNSON, Appellant	)	
	)	**Docket No. 06-252**
and	)	**Issued: February 14, 2006**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS BENEFITS ADMINISTRATION, Houston, TX, Employer	)	

Appearances:
Tajuanna K. Johnson, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On November 14, 2005 appellant filed a timely appeal of a February 10, 2005 merit decision of the Office of Workers' Compensation Programs, finding that she did not sustain an injury while in the performance of duty and an October 27, 2005 merit decision denying modification. 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 has established that she sustained an injury while in the performance of duty.

FACTUAL HISTORY

On December 17, 2004 appellant, then a 40-year-old legal administrative assistant, filed an occupational disease claim alleging that on December 6, 2004 she first realized that her carpal tunnel syndrome was caused by factors of her federal employment. While typing, she

experienced sharp pains in her wrists, from the wrist to the forearm and the ring finger and pinkie finger on the right hand became numb. Appellant's hands also swelled, cramped and locked up. Appellant submitted a December 16, 2004 medical report of Dr. Thomas J. Williamson, a Board-certified internist. He found that she could return to work on December 17, 2004 and limited her typing due to carpal tunnel syndrome.

By letter dated January 5, 2005, the Office advised appellant that the evidence submitted was insufficient to establish her claim. The Office further advised her about the factual and medical evidence she needed to submit to establish her claim. In a letter of the same date, the Office requested that the employing establishment respond to appellant's allegations and provide information regarding her work activities and work area, the precautions it took to minimize the effects of her activities and a description of her position.

In a letter dated January 20, 2005, appellant provided a description of the duties of her legal administrative specialist position and a history of her hand and wrist problems beginning in 1994. She stated that she had a wrist and hand condition due to repetitive typing at work. Appellant believed that her symptoms increased due to the Office's denial of previous claims and delayed therapy and treatment. She requested that the Office consider medical evidence from Dr. James B. Bennett, a Board-certified orthopedic surgeon, which was already of record in addressing her claim.

The employing establishment submitted a January 25, 2005 letter from Milton Austin, with the public contact group, who recommended that appellant's request for leave without pay be approved in compliance with her physician's request for a six-hour work schedule. Her work modifications required her to rest her wrists one hour in the morning and one hour in the afternoon and work from 8:00 a.m. until 2:30 p.m. instead of 7:00 a.m. to 3:30 p.m. Mr. Austin's recommendation was approved by Ramon L. Aldrete, appellant's supervisor.

In a January 27, 2005 letter, Mr. Aldrete stated that appellant was never required to stand at her workstation to perform any typing. He stated that, if she did this, it was on her own and she was not told by him or anyone on his staff to do so. Mr. Aldrete indicated that her work area had been adjusted to include an adjustable typing tray with a foam pad for her to rest both wrists while typing. He estimated that appellant used the keyboard from 4 to 10 minutes in any given hour.

The employing establishment submitted appellant's January 12, 2005 memorandum which provided Mr. Austin with her employment history. She noted that, in the positions of transcriber, program clerk and legal administration specialist, she was required to work 8 hours a day and 80 hours a week. She did not have any hobbies, physical fitness or other activities outside of work which involved exertion or repeated motions of the wrist and hand. Appellant also stated that she had never been diagnosed with gout, arthritis, hypothyroidism, diabetes, a tumor or any deformity of the hand or wrist from birth. She noted that she began to experience problems with her hands and wrists in 1994.

In a January 31, 2005 letter, Roy W. Palmer, an assistant director of the employing establishment, stated that appellant served as a clerk typist and an office automation clerk in a former office for approximately 4 years in the early 1990s and that she had not been in a job that

required typing for 8 hours a day in the past 10 years. Her primary function as a telephone representative in the public contact group involved taking telephone calls eight hours a day from veterans regarding the status of their claims. Mr. Palmer noted Mr. Aldrete's January 27, 2005 statement regarding appellant's work duties and contended that her allegation that she was required to work 8 hours a day and 80 hours a week was incorrect. He stated that she worked 40 hours a week and only typed 10 minutes per hour. Mr. Palmer explained that, even if she entered information to send a letter to a veteran or the veteran's family, keyboarding was minimal as templates were used for the letters. He noted that appellant was not required to use the voluminous manuals which contained the regulations relating to the program or spend time online clicking her mouse to locate the regulations on her computer. Mr. Palmer indicated that she possessed master knowledge of the laws, regulations and procedures that applied to her work duties and that the ergonomics of her work area were as safe and modern as possible as demonstrated by accompanying photographs of her work area. Mr. Palmer contested appellant's statement that none of her activities outside of work involved exertion or repeated motions of the wrist and hand as everyday activities involved such actions of the wrists and hands. He concluded that appellant was currently performing light-duty work based on her attending physician's restrictions.

A February 1, 2005 letter of Diane Bemrich, assistant chief of the employing establishment's service center, stated that, although typing and keyboarding were required in appellant's position, they were not a paramount function of the job. She denied that appellant spent more than 4 to 10 minutes per hour in an 8-hour workday, 40 hours per week typing on her keyboard. Ms. Bemrich indicated that someone with appellant's expertise would rarely need to refer to a manual other than a lightweight desk reference to assist a client. She concluded that appellant was provided with an adequate workstation, she was not required to either lift heavy items or type while standing as her job was sedentary in nature.

In a February 1, 2005 memorandum, Brenda Nielson, an employing establishment employee, provided a history of the type of workstation and seating provided to appellant while working at the employing establishment.

In a January 24, 2005 memorandum, appellant requested that the employing establishment reconsider its denial of her request for two hours of leave without pay for her painful and swollen wrists based on the January 24, 2005 revised medical restrictions of Dr. Steven G. Seefeldt, a Board-certified internist.

The employing establishment submitted medical records which included Dr. Seefeldt's December 27, 2004 treatment note. He reported appellant's symptoms of bilateral pain, numbness and tingling in her hands. Dr. Seefeldt stated that she had experienced these symptoms on and off beginning about 10 years prior while pregnant. He related that about five years prior appellant sustained an injury and was diagnosed with a triangular fibrocartilage complex (TFCC) tear of the right wrist. Dr. Seefeldt provided his findings on physical examination, diagnosed bilateral hand pain, numbness and tingling and noted appellant's treatment plan. In a January 17, 2005 treatment note, Dr. Seefeldt reported the normal results of nerve conduction velocity (NCV) studies and an electromyogram (EMG), but noted that symptomatically, appellant had classic carpal tunnel syndrome symptoms. He found that her rest restrictions at work were not being followed and that she continued to have pain, numbness and

tingling diffusely about the hands with use. Dr. Seefeldt recommended that she work six hours a day. His January 24, 2005 disability certificate found that appellant was able to work on that date with restrictions which included working six hours a day for four weeks and resting both wrists from typing, exertion and repetitive movements which caused pain and numbness in her wrists and hands.

Dr. Williamson's January 10, 2005 report referred to his September 1, 2004 letter which emphasized that appellant had a cervical disc injury that was the direct result of repetitive trauma incurred at work that was likely due to poor ergonomics in her work environment. He noted that her job required prolonged standing and looking down at a computer while typing which put excessive strain on her neck over time and caused a cervical disc herniation. Dr. Williamson stated that appellant did not have a neck injury prior to performing these job duties which he believed caused her injury.

By decision dated February 10, 2005, the Office found that the medical evidence of record was insufficient to establish that appellant sustained an injury while in the performance of duty. Accordingly, the Office denied her claim.

The Office received Dr. Seefeldt's December 27, 2004 disability certificate which indicated that appellant could work with restrictions as of December 28, 2004. Typing was limited due to carpal tunnel syndrome. A January 28, 2005 electronic mail message from Denise Gabino, an employing establishment employee, indicated that some employees asked about carpal tunnel syndrome and at that time, all employees were provided with literature regarding this condition and wrist pads.

Appellant requested reconsideration by letters dated July 21 and 25, 2005. She submitted a June 6, 2005 treatment note of Dr. David T.J. Netscher, a Board-certified surgeon, who indicated that she suffered from neck, shoulder, wrist and hand pain and prescribed medication. In a June 6, 2005 patient evaluation form, Dr. Netscher provided information regarding appellant's medical background. In a June 6, 2005 postoperative report, he provided a history of appellant's wrist and hand problems, noting that her job required her to be on the telephone a lot and at a computer keyboard. Dr. Netscher reviewed magnetic resonance imaging (MRI) scan reports and clinical notes from Dr. Bennett, Dr. Jeffery M. Whelan, a Board-certified orthopedic surgeon, and Dr. Seefeldt. He stated that the imaging studies were normal and an evaluation by Dr. Litski for a systemic illness was negative.[1] Dr. Netscher found that the x-rays of appellant's wrists, hands and knees appeared to be normal. He reported essentially normal findings on physical examination with the exception of swelling of the right wrist and ordered an additional electrodiagnostic study based on appellant's unhappiness with a previous study.

Dr. Whelan's May 9, 2005 report revealed appellant's medical background related to her wrist and hand problems. He reported his findings of pain on physical examination of her neck and right upper extremity. Dr. Whelan stated that x-rays of the wrists and hand were normal with no acute changes and early January 2005 EMG/NCV studies did not demonstrate any definite carpal or ulnar symptomatology or obvious cervical radiculopathy. Dr. Whelan

[1] The Board notes that the professional qualifications of Dr. Litski are not contained in the case record.

diagnosed multiple problems of the right upper extremity with "possible" TFCC tears, ganglion cysts, carpal tunnel syndrome and cervical problems.

Dr. Jin S. Park, a Board-certified radiologist, indicated in a June 20, 2005 report that appellant underwent an arthrogram on the right wrist and that he ordered an MRI scan evaluation. Dr. Amar Gaalla, a Board-certified radiologist, performed an MRI scan of appellant's right wrist on June 20, 2005 which was most compatible with a tear of the triangular fibrocartilage near the ulnar attachment. A December 27, 2004 diagnostic report of Dr. Patrick M. Conoley, a Board-certified radiologist, found no abnormality of either of appellant's wrists.

Dr. Seefeldt's May 9, 2005 report indicated that appellant was diagnosed as having carpal tunnel syndrome in December 2004 and that she still experienced numbness and swelling.

Dr. Joseph P. Hasapes, a Board-certified radiologist, performed an MRI scan of appellant's cervical spine on February 21, 2005 and found mild disc desiccation at C7-T1. At C4-5, he found a moderate broad-based disc bulge with a focal right paracentral disc protrusion with associated annular tear with focal effacement of the anterior cerebrospinal fluid (CSF) space and mild anterior cord compression. Dr. Hasapes further found moderate broad-based disc bulge with effacement of the anterior CSF space and minimal anterior cord compression with bilateral uncovertebral hypertrophy and mild narrowing of the neural foramen bilaterally at C5-6. At C3-4, he reported moderate broad-based disc bulge with moderate narrowing of the anterior CSF space with left uncovertebral hypertrophy and mild narrowing of the left neural foramen. On February 21, 2005 Dr. Hasapes performed an MRI scan of the thoracic spine which found mild degenerative changes at T4-5, T5-6, T6-7, T7-8, T8-9, T9-10, T10-11, T11-12 and T12-L1.

A May 4, 2005 diagnostic report of Dr. Steven Dileo, a Board-certified radiologist, found no evidence of fracture and dislocations and no other bony abnormalities or soft tissue defects.

January 13, 2005 NCV/EMG studies performed by Dr. Edith G. Rumbaut, a Board-certified physiatrist, were normal. She stated that there was no evidence of median, ulnar or radial neuropathy on either the right or left side. In addition, there was no evidence of cervical radiculopathy affecting C5-T1 nerve roots on either the right or left side.

In a June 14, 2005 NCV/EMG studies report, Dr. Michael J. Vennix, a Board-certified physiatrist, found no electrodiagnostic evidence of right median neuropathy at the wrist, right proximal ulnar neuropathy, right distal ulnar neuropathy or right C6-T1 radiculopathy.

By decision dated October 27, 2005, the Office denied modification of the February 10, 2005 decision. The Office found that the medical evidence submitted was insufficient to establish that appellant sustained an injury while in the performance of duty.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[2] has the burden of establishing the essential elements of 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.[3] These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[4]

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 a causal relationship is 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 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.[5]

ANALYSIS

The Board finds that appellant has failed to establish a causal relationship between her claimed carpal tunnel syndrome condition and her federal employment.

Appellant submitted a December 16, 2004 medical report from Dr. Williamson and disability certificates from Dr. Seefeldt dated December 27, 2004 and January 24, 2005, which found that she could work within specified restrictions which included limited typing and exertion and repetitive movement of both wrists, resting her wrists from typing and working six hours a day for a specific period. Dr. Seefeldt's treatment notes indicated that appellant displayed symptoms of carpal tunnel syndrome, her rest restrictions at work were not being

[2] 5 U.S.C. §§ 8101-8193.

[3] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[4] *See Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

[5] *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

followed and that she continued experience pain, numbness and tingling diffusely about the hands with use. He recommended that she work six hours a day. Dr. Netscher's treatment note and reports provided a history of appellant's symptoms of neck, shoulder, wrist and hand pain. He reviewed the MRI scan and x-ray reports and clinical notes of appellant's attending physicians, which he determined were mostly normal and reported essentially normal findings on his physical examination of appellant. The Board finds that the medical evidence from Drs. Williamson, Seefeldt and Netscher is insufficient to establish appellant's claim because it fails to provide a diagnosis or to discuss how the diagnosed condition was caused by factors of her federal employment.

In a January 10, 2005 report, Dr. Williamson opined that appellant's job, which required prolonged standing and looking down at a computer while typing, put excessive strain on her neck over time and caused a cervical disc herniation. He noted that she did not have a neck injury prior to performing these job duties and found that they caused her injury. However, Dr. Williamson did not specifically explain how appellant's work duties caused a cervical disc herniation. The Board has held that an opinion that a condition is causally related to employment factors because the employee was asymptomatic before the injury is insufficient without supporting rationale to support a causal relationship.[6] The Board notes that Mr. Aldrete and Ms. Bemrich of the employing establishment, stated that appellant was not required to stand while typing and that she only typed 4 to 10 minutes in any given hour. Mr. Palmer and Ms. Neilson of the employing establishment, stated that her workstation was adjusted to accommodate her wrists while typing and that she was not required to lift heavy items such as manuals which contained its laws, regulations and procedures. Further, Mr. Palmer and Ms. Bemrich noted that appellant worked 40 hours and not 80 hours a week as she alleged. Mr. Palmer related that her typing was minimal as she used a template to prepare letters for clients regarding their claims. In light of the foregoing, the Board finds that Dr. Williamson's report is not based on an accurate history of her employment exposure and is insufficient to establish that appellant sustained an injury caused by factors of her federal employment.

Dr. Seefeldt's May 9, 2005 report found that appellant had symptoms related to her carpal tunnel syndrome which was diagnosed in December 2004. The Board finds that Dr. Seefeldt's report is insufficient to establish appellant's claim because he failed to address causal relationship.

Dr. Whelan's report found that appellant suffered from multiple problems related to the right upper extremity with "possible" TFCC tears, ganglion cysts, carpal tunnel syndrome and cervical problems. As he was speculative about the diagnosis of "possible" TFCC tears and did not address causal relationship between the other diagnosed conditions and factors of appellant's employment, his opinion is of reduced probative value.[7]

As appellant has failed to submit rationalized medical evidence of record establishing that her carpal tunnel syndrome was causally related to factors of her employment in her position as a legal administrative specialist, she did not meet her burden of proof in this case.

[6] *John F. Glynn*, 53 ECAB 562 (2002).

[7] *See Michael E. Smith*, 50 ECAB 313 (1999).

CONCLUSION

The Board finds that appellant has failed to establish that she sustained an injury while in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the October 27 and February 10, 2005 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: February 14, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

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