

**United States Department of Labor
Employees' Compensation Appeals Board**

S.S., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Luther, OK, Employer**

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**Docket No. 08-633
Issued: October 6, 2008**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 26, 2007 appellant filed a timely appeal from Office of Workers' Compensation Programs' merit decisions dated August 6 and 29 and November 30, 2007. 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 met her burden of proof in establishing that she sustained a right wrist condition in the performance of duty.

FACTUAL HISTORY

Appellant, a 50-year-old postmaster, filed a Form CA-2 claim for benefits on June 15, 2007, alleging that as of June 14, 2007 she became aware of a right wrist condition causally related to factors of her employment.

In a work status report dated June 14, 2007, Dr. Stephen W. Mihalsky, a Board-certified surgeon, diagnosed scapholunate advanced collapse of the right wrist. He outlined work restrictions of limited gripping and no flexing with the right wrist for four weeks.

By letter dated July 3, 2007, the Office advised appellant that it required additional factual and medical evidence to determine whether she was eligible for compensation benefits. It asked appellant to submit a comprehensive medical report from her treating physician describing her symptoms and the medical reasons for her condition and an opinion as to whether her claimed condition was causally related to her federal employment. Appellant did not submit any additional medical evidence.

By decision dated August 6, 2007, the Office denied appellant's claim, finding that she failed to submit sufficient medical evidence to establish that she sustained a right wrist condition in the performance of duty.

On August 11, 2007 appellant requested reconsideration and submitted additional evidence.

In a June 14, 2007 report, Dr. Mihalsky stated:

"[Appellant] is a 50-year[-]old right hand dominant female who is employed by the employing establishment, where she performs hand stamping and sorting. She reports that three to four years ago she had a right carpal tunnel release and what sounds like a right cubital tunnel release with a possible anterior transition performed.... [Appellant] reports that symptoms resolved following the surgery.

"Approximately one and one half years later, [appellant] awoke with right wrist and hand pain. She saw her family physician, who obtained x-rays reported as normal. Lab work was obtained and she was diagnosed with rheumatoid arthritis. [Appellant] was subsequently evaluated by Dr. Seradge, who performed a magnetic resonance imaging [MRI] scan of her right wrist. Arthroscopy of the wrist was performed and she states that she was told she had a wrist ligament injury. [Appellant] underwent a surgical procedure for scapholunate dissociation. Following this, she has had pain in her right wrist with limited range of motion.

"In April 2007, [appellant] was evaluated by Dr. [Rick D.] Beller. An MRI scan was obtained revealing fragmentation of the capitate proximally. The possibility of osteonecrosis or reflex sympathetic dystrophy was entertained. [Appellant] was sent to therapy with no improvement in her tenderness.... She indicates that any motion of her wrist aggravates the pain.

"X-ray from Dr. Beller's office dated April 3, 2007 reveals degenerative changes at the lunatocapitate joint consistent with scapholunate advanced collapse. [Appellant] does have evidence of a tunnel drilled through the distal pole of the scaphoid most likely from the procedure performed by Dr. Seradge. No other significant bone or joint abnormalities are identified."

Dr. Mihalsky diagnosed scapholunate advanced collapse. He advised appellant that she had degenerative changes in her right wrist with collapse of the alignment of the wrist bones. Dr. Mihalsky indicated that, when conservative measures to treat her condition were no longer helpful, a four corner wrist arthrodesis or total wrist fusion would become necessary. He advised

that no significant radioscapoid or radioulnate abnormalities were identified by x-ray or MRI scan.

In a report dated July 12, 2007, Dr. Mihalsky reiterated his prior report. He noted that appellant had been wearing a wrist splint and reported less pain when wearing it; however, she experienced limited range of motion when she removed the splint. Dr. Mihalsky related that he discussed the possibility of the aforementioned surgery with appellant in the event conservative measures did not improve her condition. In a report dated July 17, 2007, he stated:

“Without [appellant] describing a specific injury to her right wrist at work, it is my opinion that her work activities as a postal clerk were not the cause of her current degenerative changes in her right wrist. However, her work activities could have contributed to the progression of the degenerative changes. Specifically, activities such as hand stamping parcels and the wrist motion associated with mail sorting as well as lifting activities could certainly contribute to progression of the degenerative changes. Activities outside of work also would contribute to this.”

By decision dated August 29, 2007, the Office denied modification of the August 6, 2007 decision.

On September 29, 2007 appellant requested reconsideration.

In a report dated September 20, 2007, Dr. Mihalsky noted that appellant had undergone a procedure for right scaphoidectomy with four corner arthrodesis on August 9, 2007. He stated that appellant’s four corner arthrodesis, plate and screws were all in good position. Dr. Mihalsky advised that appellant reported good motion and no numbness in her fingers. In an additional September 20, 2007 report, he reiterated his opinion that, because appellant did not sustain a specific injury to her right wrist at work, her work activities were not the cause of the degenerative changes in the right wrist, though work activities could have contributed to the progression of the degenerative changes.

In a report dated October 25, 2007, Dr. Mihalsky noted that appellant continued to have swelling following her right scaphoidectomy with four corner arthrodesis procedure, though he expected her condition to improve. He released her to return to work with restrictions of no lifting more than three pounds with her right hand and no working without a splint.

By decision dated November 20, 2007, the Office denied modification of the August 6, 2007 decision.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees’ Compensation Act¹ 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

¹ 5 U.S.C. §§ 8101-8193.

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

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between her claimed right wrist condition and her federal employment. This burden includes providing medical evidence from a physician who concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.⁵

ANALYSIS

The Board finds that appellant has failed to submit sufficient medical evidence containing a rationalized, probative opinion relating her claimed right wrist condition to factors of her employment. For this reason, she has not established her claim that this condition was sustained in the performance of duty.

Appellant submitted reports from Dr. Mihalsky, but the physician did not provide an adequate rationalized medical opinion that the claimed right wrist condition was causally related to employment factors. In a June 14, 2007 report, Dr. Mihalsky noted a history of appellant's preexisting right wrist condition and diagnosed scapholunate advanced collapse of the right wrist.

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 *See Nicolea Brusio*, 33 ECAB 1138, 1140 (1982).

He outlined work restrictions of limited gripping and no flexing with the right wrist for four weeks. Dr. Mihalsky's report, however, did not address how the alleged employment factors caused or aggravated her claimed right wrist condition. His report is therefore of limited probative value as it did not contain any medical rationale explaining how or why appellant's claimed right wrist condition was currently affected by or related to any of her work duties.⁶ The weight of medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of physician's knowledge of the facts of the case, the medical history provided, the care of analysis manifested and the medical rationale expressed in support of stated conclusions.⁷ The June 14, 2007 report of Dr. Mihalsky is of diminished probative value for the further reason that it is generalized in nature and speculative on the issue of causal relation. He noted that appellant's work activities could have contributed to or exacerbated her right wrist symptoms.

Appellant requested reconsideration and submitted additional reports from Dr. Mihalsky. However, these reports are similarly deficient on the issue of causal relation. Dr. Mihalsky related a history of appellant undergoing right carpal tunnel release and a right cubital tunnel release with a possible anterior transition. These symptoms resolved, but she subsequently developed right wrist and hand pain which was diagnosed as rheumatoid arthritis. Dr. Mihalsky noted that appellant underwent an MRI scan, an arthroscopy and x-rays of the wrist, which revealed scapholunate dissociation and degenerative changes at the lunatocapitate joint consistent with scapholunate advanced collapse. The degenerative changes entailed a collapse of the alignment of the wrist bones. Dr. Mihalsky recommended conservative treatment and, if that did not produce an improvement in her wrist, reconstructive surgery. He noted on his July 12, 2007 that appellant was wearing a wrist splint and reported less pain when wearing it; however, she experienced limited range of motion when she removed the splint. On July 17, 2007 Dr. Mihalsky opined that, without her describing a specific work injury to her right wrist, he did not believe that her work activities as a postal clerk were the cause of the current degenerative changes in her right wrist. He stated that appellant's work activities could have contributed to the progression of the degenerative changes, but that activities outside of work could have also contributed to them. In reports dated September 20 and October 25, 2007, Dr. Mihalsky noted that appellant underwent surgery on August 9, 2007 for right scaphoidectomy with four corner arthrodesis. He indicated that appellant was progressing reasonably well from this procedure and released her to return to work. Dr. Mihalsky reiterated that, in the absence of any specific work injury to her right wrist, appellant's work activities were not the cause of her degenerative changes in the right wrist but could have contributed to the progression of the degenerative changes.

Dr. Mihalsky's reports are not sufficient to establish appellant's claim that her right wrist condition is causally related to employment factors. He did not describe appellant's work duties in any detail or how they would have been competent to cause the claimed condition. Dr. Mihalsky failed to submit a report which sufficiently described the medical process through which appellant's employment would have been competent to cause or aggravate her claimed right wrist condition. In fact, although he stated that her work activities could have contributed

⁶ *William C. Thomas*, 45 ECAB 591 (1994).

⁷ *See Anna C. Leanza*, 48 ECAB 115 (1996).

to the progression of the degenerative changes, he stated that without a specific incident he did not believe they were the cause of these changes. Dr. Mihalsky's opinion on the possible contribution of appellant's work duties to the progression of her degenerative condition is speculative.

The Office advised appellant of the evidence required to establish her claim; however, she failed to submit such evidence. Appellant has not met her burden of proof in establishing that her claimed right wrist condition is causally related to her employment.

CONCLUSION

The Board finds that appellant has failed to meet her burden of proof to establish that her right wrist condition was caused or aggravated by her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the November 30 and August 29 and 6, 2007, decisions of the Office of Workers' Compensation Programs be affirmed.

Issued: October 6, 2008
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board