United States Department of Labor
Employees' Compensation Appeals Board

C.D., Appellant	)	
and	)	**Docket No. 10-1698**
	)	**Issued: April 12, 2011**
U.S. POSTAL SERVICE, POST OFFICE, Cincinnati, OH, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 14, 2010 appellant filed a timely appeal from the February 3, 2010 merit decision of the Office of Workers' Compensation Programs, which denied her recurrence claim. Pursuant to the Federal Employees' Compensation Act[1] and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of the case.

ISSUE

The issue is whether appellant sustained a recurrence of disability in 2008 causally related to her 2003 employment injury.

FACTUAL HISTORY

In 2003 appellant, a 33-year-old dock clerk, filed a claim alleging that she developed carpal tunnel syndrome (CTS) as a result of her federal employment. She explained that she

[1] 5 U.S.C. § 8101 *et seq.*

pulled heavy doors, entered data into a computer and worked as a keyer clerk for seven years. The Office accepted her claim for bilateral CTS.

Appellant underwent right wrist surgery in June 2003 and left wrist surgery in September 2003. She received compensation for continuing disability through December 21, 2003. Appellant accepted a modified assignment in January 2004 and thereafter received compensation for some medical appointments.

In September 2005, appellant left the employing establishment and enrolled in a police academy. She began work as a police officer for the Cincinnati Police Department in March 2006.

From March 21, 2007 to May 30, 2008, appellant received a schedule award for a 12 percent impairment of the right upper extremity and an 8 percent impairment of the left.

On January 17, 2008 Dr. Marc P. Orlando, appellant's physiatrist, saw appellant for an increase in numbness and tingling following an increase in weight-lifting activities. He diagnosed chronic CTS that was minimally symptomatic.

On June 24, 2008 appellant reported that her hands were tingling more. An electromyogram study on July 22, 2008 revealed evidence of bilateral CTS affecting sensory and motor components. Dr. Orlando took appellant off work from July 22 to August 21, 2008. He noted that she likely had recurrent carpal tunnel, "which is somewhat rare." Dr. Orlando stated that appellant could not return to work as a police officer in her current status.

On August 19, 2008 appellant claimed compensation for wage loss from August 2 to 20, 2008.

On an August 21, 2008 form report, Dr. Orlando indicated with a mark that appellant's CTS was caused or aggravated by employment activity: "repetitive motion to this area can lead to CTS." He added that she would have intermittent flares of pain or numbness that would inhibit her ability to perform normal tasks.

On September 17, 2008 Dr. Orlando noted that appellant's symptoms never fully resolved following surgery and that "in recent months" she had pain, numbness and tingling in both hands and some pain in her wrist.

On January 22, 2009 Dr. Orlando noted that appellant was originally injured in the employing establishment before she became a police officer. "This, again, is related to her prior original injury of carpal tunnel in the [employing establishment] and therefore is being petitioned through them. I agree with this." He added that appellant was still doing desk-type work without splints. Dr. Orlando determined that she needed surgical consideration.

On September 17, 2009 Dr. Orlando stated that appellant thought her right hand was getting slightly weaker than her left. He found a positive Tinel's and Phalen's sign but appreciated no obvious weakness. Dr. Orlando's impression: "[CTS] related to her [w]orkers' [c]ompensation injury from the [employing establishment] not from the police department."

In a decision dated February 3, 2010, the Office denied appellant's claim for compensation. It found that she failed to provide sufficient medical evidence to establish that the disability for which she claimed compensation was due to a spontaneous and material worsening of her accepted bilateral CTS without intervening cause. The Office noted that Dr. Orlando demonstrated no knowledge of appellant's duties at the Cincinnati Police Department, which required writing tickets, writing reports and two to three weeks of firearms training. It also noted that he failed to explain how her current condition was related to her original injury when she had not been exposed to the causative factors of her federal employment since 2005.[2]

On appeal, appellant submits medical evidence the Board has no jurisdiction to review.[3] She argues that she sustained her injuries in federal employment and still had carpal tunnel when she joined the Cincinnati Police Department. Appellant believes that the Federal Government should be held accountable for her injury and provide compensation for lost wages and other benefits.

LEGAL PRECEDENT

The Act provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of her duty.[4] "Disability" means the incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of injury. It may be partial or total.[5]

A "recurrence of disability" means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.[6]

A claimant seeking benefits under the Act has the burden of proof to establish the essential elements of her claim by the weight of the evidence,[7] including that she sustained an injury in the performance of duty and that any specific condition or disability for work for which she claims compensation is causally related to that employment injury.[8]

It is not sufficient for the claimant to establish merely that she has disability for work. She must establish that her disability is causally related to the accepted employment injury. The

[2] She was last exposed to the causative factors of her federal employment in early 2003.

[3] The Board's review of a case is limited to the evidence in the case record that was before the Office at the time of its final decision. Evidence not before the Office on February 3, 2010 will not be considered. 20 C.F.R. § 501.2(c)(1).

[4] 5 U.S.C. § 8102(a).

[5] 20 C.F.R. § 10.5(f).

[6] *Id*. at § 10.5(x).

[7] *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

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

claimant must submit a rationalized medical opinion that supports a causal connection between her current disabling condition and the employment injury. The medical opinion must be based on a complete factual and medical background with an accurate history of the employment injury and must explain from a medical perspective how the current disabling condition is related to the injury.[9]

It is an accepted principle of workers' compensation law that when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent, intervening cause.[10]

To constitute the kind of intervening cause that will break the chain of causation of an earlier injury, the second injury must be competent to cause the disabling condition without reference to the earlier injury; moreover, there must be evidence to sustain a finding that such second incident did cause the condition. Therefore, the result of the second incident could not have developed without the presence of damage from the primary employment-related incident, that primary incident is not exonerated. Liability under the Act continues so long as the disability is in any part caused by the employment-related incident.[11]

ANALYSIS

The Office accepted that appellant developed bilateral CTS in the course of her federal employment and paid compensation for continuing disability through December 21, 2003. Appellant left the employing establishment in September 2005 to enroll in a police academy. She began work at the Cincinnati Police Department in March 2006. Appellant later claimed compensation for wage loss from August 2 to 20, 2008. She therefore has the burden to establish that she sustained a recurrence of disability in 2008 causally related to her 2003 employment injury.

Dr. Orlando, the attending physiatrist, indicated with his September 17, 2009 diagnosis that appellant's CTS was related to her federal injury and not to her employment as a police officer, but he did not explain. Appellant had not worked for the Federal Government in three years. It had been over five years since she was last exposed to the conditions of federal employment that caused her bilateral CTS. Appellant accepted a modified assignment in January 2004 to accommodate her injury and thereafter claimed no disability for work.[12]

Dr. Orlando acknowledged that recurrent carpal tunnel is somewhat rare. He therefore needs to explain why appellant's residual CTS spontaneously changed or worsened in the summer 2008 without an intervening injury or new exposure. In January 2008, Dr. Orlando

[9] *John A. Ceresoli, Sr.*, 40 ECAB 305 (1988).

[10] *John R. Knox*, 42 ECAB 193 (1990); *Lee A. Holle*, 7 ECAB 448 (1955).

[11] *Charles R. Hollowell*, 8 ECAB 352 (1955).

[12] Appellant did receive compensation for keeping some physician's appointments in the latter part 2004 and the beginning of 2005.

diagnosed chronic CTS, but one that was "minimally symptomatic" even after increased weight-lifting activities. By June 2008, however, appellant's hands were tingling more, such that he took her off work as a police officer from July 22 to August 21, 2008.

Because appellant trained as a police officer from September 2005 and worked at the Cincinnati Police Department since March 2006, an issue arises whether the worsening of her condition might be related to a new exposure, whether the physical demands of her private employment had aggravated her residual federal injury. Dr. Orlando needs to demonstrate his understanding of her duties at the Cincinnati Police Department. Physician's acknowledgement of "desk-type work" without splints, without more, is insufficient to establish appellant's claim. Medical conclusions based on inaccurate or incomplete histories are of little probative value.[13] Medical conclusions unsupported by rationale are also of little probative value.[14]

Because Dr. Orlando offered no medical rationale to explain the worsening of appellant's carpal tunnel condition in the summer 2008 and because he did not base his opinion on a complete and accurate factual history, the Board finds that she has not met her burden of proof to establish that she sustained a recurrence of disability in 2008 causally related to her 2003 employment injury. The Board will therefore affirm the Office's February 3, 2010 decision denying her claim for compensation.

Appellant argues on appeal that her carpal tunnel condition originated in federal employment. However, that alone is not enough to establish that the disability for which she claims compensation in the summer 2008 was caused by a spontaneous change in her accepted condition without an intervening injury or new exposure.

In *Anthony S. Wax*,[15] the employee injured his low back lifting heavy mail. On January 13, 1951 after completing his work, he drove to an apartment building he owned to examine the fuel supply. Mr. Wax moved ash barrels weighing between 100 to 150 pounds and sustained severe pain in his low back. The Board found that appellant failed to establish a chain of causation to the accepted injury. The Board found that his disability following January 13, 1951 was not a direct and natural result of his accepted low back condition but was due to an independent intervening cause.

In *Howard S. Wiley*,[16] the employee injured his low back lifting a five-gallon can of paint. He was diagnosed with a subluxation of the lumbosacral joint and acute sciatica. A year and a half later, while on his way to work, he slipped on the steps leading from his house. He claimed a recurrence of his back disability. The Board found that the employee's disability was

[13] *James A. Wyrick*, 31 ECAB 1805 (1980) (physician's report was entitled to little probative value because the history was both inaccurate and incomplete).

[14] *Ceferino L. Gonzales*, 32 ECAB 1591 (1981); *George Randolph Taylor*, 6 ECAB 968 (1954). *See generally Melvina Jackson*, 38 ECAB 443, 450 (1987) (addressing factors that bear on the probative value of medical opinions).

[15] 7 ECAB 330 (1954).

[16] *Id*. at 126 (1954).

not a direct and natural result of the earlier injury but was due to an independent and intervening cause.

In *John R. Knox*,[17] the employee dislocated his left patella when he struck his knee on a ridge while climbing out of an enclosed space. Two years later, he alleged a recurrence of his knee disability. The Board noted that at the time of the alleged recurrence, the employee was playing basketball when he dislocated his left patella making a sharp turn. The Board found that his disability was not the result of the natural consequence or progression of his accepted condition but was due to an independent intervening cause.

Although these cases are not identical to the present appeal, they do serve to show that a recurrence of disability requires more than an injury having its origins in federal employment. A recurrence of disability requires a spontaneous change in the accepted condition without an intervening injury or new exposure. It requires that the disability claimed be the direct and natural result or progression of the accepted medical condition. Given appellant's work history -- her uneventful return to modified duty in January 2004, her enrollment in a police academy in September 2005, her work for the Cincinnati Police Department in March 2006 -- it is not at all clear that her total disability in the summer 2008 was a direct and natural result of her federal injury and not a consequence of an independent intervening injury or new exposure. She bears the burden of proof to establish the chain of causation through a well-reasoned medical opinion based on a proper factual and medical history.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that she sustained a recurrence of disability in 2008 causally related to her 2003 employment injury.

[17] *Id*. at 193 (1990).

ORDER

IT IS HEREBY ORDERED THAT the February 3, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 12, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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