United States Department of Labor
Employees' Compensation Appeals Board

A.B., Appellant	)	
and	)	**Docket No. 11-182**
	)	**Issued: September 12, 2011**
U.S. POSTAL SERVICE, POST OFFICE, Newark, NJ, Employer	)	

Appearances:
Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On October 29, 2010 appellant filed a timely appeal from a July 1, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP) concerning her schedule award claim. Pursuant to the Federal Employees' Compensation Act (FECA)[1] and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this claim.

ISSUE

The issue is whether appellant established that she has any permanent impairment of the right upper extremity causally related to her accepted employment-related conditions.

FACTUAL HISTORY

On October 20, 1999 appellant, then a 37-year-old mail handler, was struck by a container when a jeep towing a line of containers crossed the pathway of a cable-tow line pulling containers, which caused the container to careen out of control. OWCP accepted the conditions

[1] 5 U.S.C. §§ 8101-8193.

of right wrist sprain; contusion of chest wall; left hip contusion and right knee sprain. Appellant returned to full-time limited duty on February 16, 2000.[2] OWCP paid benefits, including a recurrence of total disability of November 10, 1999 and left knee surgery on July 11, 2005. Appellant underwent a right carpal tunnel release in the 1980s for a nonwork-related condition.[3]

A May 16, 2006 electromyogram (EMG) test showed denervation of L5-S1, left side greater than right side.

On November 17, 2007 Dr. Ernesto Tolentino, a Board-certified orthopedic surgeon, performed an impartial medical examination of appellant regarding the nature and extent of her work-related condition. He found evidence of prior surgery with regard to examination of the upper extremities, including the elbow and wrist. Full range of motion of all digits, as well as the wrist itself, were found. On the right distal phalanges of the second through fourth fingers, Dr. Tolentino noted questionable hypesthesia with the rest of the hand essentially normal. Palpation of the volar aspect of the wrist elicited some discomfort in the area of both median nerves, which had prior surgical intervention. With respect to the right upper extremity, Dr. Tolentino diagnosed status post sprain of the right shoulder and right upper extremity resolved as well as status post sprain of right upper extremity, hand and wrist. He opined that conditions that affected the cervical spine, the right upper extremity and the left wrist had resolved. The remaining residuals affecting appellant's left and right knees were found to be permanent and directly related to the October 20, 1999 work injury.

In a February 27, 2008 report, Dr. Mark A.P. Filippone, a Board-certified physiatrist, noted appellant's complaints included pain in the volar aspect of the right hand up to the elbow. He recommended EMG and nerve conduction studies (NCS) of both upper extremities. Progress reports on appellant's other conditions, mainly her knees, were submitted.

On January 29, 2009 appellant requested a schedule award for both her left leg and right arm. In a September 25, 2008 report, Dr. Arthur Becan, an orthopedic surgeon, noted the history of injury, reviewed available medical records and set forth his examination findings. He diagnosed the following right arm conditions: chronic strain and sprain to the right wrist; post-traumatic carpal tunnel syndrome to the right hand; and post-traumatic de Quervain's disease to the right wrist. Under the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*), Dr. Becan opined that appellant had 36 percent right arm impairment. Copies of appellant's *Quick*DASH scores for the right arm were provided.

In a November 25, 2008 letter, Dr. Filippone noted that he agreed with Dr. Becan's 36 percent impairment rating of the right upper extremity.

[2] On October 28, 2008 OWCP found that her earnings as a modified mail handler fairly and reasonably represented her wage-earning capacity and reduced her wage-loss compensation to zero.

[3] Under claim number xxxxxx919, appellant has an accepted left wrist injury with a date of injury of December 29, 2004, for which she underwent left carpal tunnel release on August 29, 2006.

On February 20, 2009 OWCP's medical adviser reviewed the medical evidence, including Dr. Becan's September 25, 2008 report. He opined that appellant reached maximum medical improvement on September 25, 2008. Based on Dr. Becan's findings and the A.M.A., *Guides*, right arm impairment could not be accepted because the condition of carpal tunnel syndrome was never accepted, only a right wrist sprain. OWCP's medical adviser noted that while appellant had right carpal tunnel release prior to the accepted work injury of December 20, 1999, Dr. Becan made no reference to it in his report and the treating surgeon never mentioned the right wrist in any of his reports.

In a March 11, 2010 report, Dr. Filippone reexamined appellant's right arm and performed EMG and NCS studies. He stated that the EMG and NCS studies indicated that a mild right carpal tunnel syndrome that was not present on June 6, 2008 studies.

In an April 12, 2010 letter, OWCP informed appellant that the medical evidence was insufficient to support that her right carpal tunnel syndrome was causally related to the accepted injury of October 20, 1999. It noted that a right wrist sprain was accepted as a result of the October 20, 1999 work incident and her right carpal tunnel release in the late 1980s or early 1990s was nonwork related. OWCP requested a medical report from appellant's treating physician, including a rationalized medical opinion on the causal relationship, if any, between the work injury and the condition for which she was now being treated. It also requested factual and medical evidence pertaining to appellant's preexisting carpal tunnel syndrome.

In a May 5, 2010 letter, appellant's attorney submitted an impairment rating from Dr. Becan under the sixth edition of the A.M.A., *Guides.* He requested OWCP issue a decision for a right upper extremity schedule award. In a September 25, 2008 report revised on April 27, 2010, Dr. Becan utilized the sixth edition of the A.M.A., *Guides* and opined that appellant had six percent right upper extremity impairment.

In a May 6, 2010 letter, appellant stated that she had right carpal tunnel release surgery in the 1980's and had no symptoms following the surgery until she injured her wrist in the October 20, 1999 work injury.

In a May 10, 2010 report, Dr. Filippone opined that appellant's right carpal tunnel syndrome was causally related to the repetitive nature of her federal job. He noted that she worked limited duty in rewrap of small parcels and that there was a history of a prior right carpal tunnel release in the 1980s. Dr. Filippone advised that the June 6, 2008 EMG/NCS studies of the bilateral upper extremities provided evidence of a right C5-C6 cervical radiculopathy only. Due to appellant's persistent progression of symptoms, he performed an EMG/NCS study of the right upper extremity on March 11, 2010, which revealed evidence of mild right carpal tunnel syndrome, which was not present on the previous studies of June 6, 2008. Dr. Filippone opined that, given appellant's history, the EMG/NCS study results and clinical presentation, it was well within reasonable medical probability that her carpal tunnel syndrome was directly the result of the repetitive nature of her federal work. Additional progress reports were submitted.

By decision dated July 1, 2010, OWCP found that appellant did not establish impairment of the right upper extremity due to her accepted injury.

LEGAL PRECEDENT

A claimant seeking compensation under FECA has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence; thus it is the claimant's burden to establish that he or she sustained a permanent impairment of a scheduled member or function as a result of his or her employment injury entitling him or her to a schedule award.[4] The evidence generally required to establish causal relationship is rationalized medical opinion evidence. The claimant must submit a rationalized medical opinion that supports a causal connection between her current condition and the employment injury.[5] The medical opinion must be based on a complete factual and medical background with an accurate history of the claimant's employment injury and must explain from a medical perspective how the current condition is related to the injury.[6]

Not all medical conditions accepted by OWCP result in permanent impairment to a scheduled member.[7] It is the claimant's burden to establish that he or she sustained a permanent impairment of a scheduled member or function as a result of an employment injury.[8] Schedule awards are payable for permanent impairments caused by the accepted employment injury and preexisting impairments of the scheduled members.[9]

ANALYSIS

Appellant previously underwent right carpal tunnel release in the 1980s. She claimed that the October 20, 1999 work injury aggravated her preexisting condition. Appellant requested OWCP to accept right carpal tunnel and issue a schedule award. With regard to her right upper extremity, OWCP only accepted a right wrist sprain as resulting from the October 20, 1999 work injury.

In a May 10, 2010 report, Dr. Filippone, appellant's treating physician, opined that appellant's right carpal tunnel syndrome was causally related to the repetitive nature of her federal employment. He noted that she worked limited duty in rewrap of small parcels and that there was a history of a right carpal tunnel release in the 1980s. Dr. Filippone also noted that the presence of mild right carpal tunnel syndrome on the March 11, 2010 EMG/NCS studies, which was not present on the previous studies of June 6, 2008. In this case, OWCP has not accepted a right carpal tunnel syndrome. While Dr. Filippone offered an opinion on causal relationship, he did not provide a reason explaining why either the accepted right wrist sprain of October 20, 1999 or appellant's limited duties in the rewrapping of small parcels aggravated her preexisting

[4] *See D.H.*, 58 ECAB 358 (2007); *Veronica Williams*, 56 ECAB 367 (2005).

[5] *Manuel Gill*, 52 ECAB 282 (2001).

[6] *Yvonne R. McGinnis*, 50 ECAB 272 (1999).

[7] *Thomas P. Lavin*, 57 ECAB 353 (2006).

[8] *Tammy L. Meehan*, 53 ECAB 229 (2001).

[9] *Peter C. Belkind*, 56 ECAB 580 (2005).

right carpal tunnel condition or caused a new right carpal tunnel condition. Thus, his report is of limited probative value.

Dr. Becan's reports are also of limited probative value. He bases his right arm impairment rating on the nonaccepted right carpal tunnel condition. However, since Dr. Becan's did not provide an explanation on how appellant's impairment was related to the accepted condition or other work factors, his report is of limited probative value. There is no other recent medical evidence explaining how appellant's right carpal tunnel syndrome was caused or aggravated by her employment.

On appeal, appellant's attorney argues that the medical evidence confirms appellant suffered an aggravation of the preexisting right carpal tunnel syndrome and thus established permanent injury to the right arm. However, as explained above, the medical evidence of record is insufficient to support causal relationship and thus there is no entitlement to a schedule award.

Appellant has not met her burden of proof to expand her claim to include a right carpal tunnel condition or establish entitlement to a schedule award because she has not submitted evidence that her accepted right wrist sprain caused a permanent impairment or that her preexisting or current right carpal tunnel condition was caused or aggravated by her current employment duties.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that her right carpal tunnel condition was aggravated by the October 20, 1999 injury or her employment duties.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 1, 2010 is affirmed.

Issued: September 12, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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