United States Department of Labor
Employees' Compensation Appeals Board

G.M., Appellant	)	
and	)	**Docket No. 12-1804**
	)	**Issued: February 20, 2013**
U.S. POSTAL SERVICE, POST OFFICE, New Orleans, LA, Employer	)	

Appearances:
Brett E. Blumstein, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
PATRICIA HOWARD FITZGERALD, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On August 29, 2012 appellant, through her attorney, filed a timely appeal from the June 29, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 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 met her burden of proof to establish that she sustained an upper extremity condition in the performance of duty.

FACTUAL HISTORY

On April 15, 2011 appellant, than a 47-year-old distribution clerk, filed an occupational disease claim alleging bilateral carpal tunnel syndrome due to performing her repetitive work duties over a period of time. She asserted that she never experienced such pain and numbness in

[1] 5 U.S.C. § 8101 *et seq.*

her hands and wrists until she began working on a new mail processing machine.[2] On November 12, 2010 appellant first became aware of her claimed condition and that it was caused or aggravated by her employment. She stopped work on December 18, 2010.

In a May 5, 2011 letter, OWCP requested that appellant submit additional factual and medical evidence in support of her claim.

In a May 26, 2011 report, Dr. Justin Lundgren, an attending Board-certified neurosurgeon, stated that appellant had undergone bilateral carpal tunnel release procedures since he last saw her. He reported the findings on physical examination and stated:

> "This is a female with a work[-]related injury resulting in chronic neck pain and carpal tunnel syndrome."

Dr. Lundgren indicated that it appeared that appellant's carpal tunnel syndrome had not yet been accepted as a workers' compensation claim and that he had addressed that matter in a February 15, 2011 report. He stated that she did not have carpal tunnel symptoms before taking on new job responsibilities prior to her work injury. Dr. Lundgren noted that appellant had dealt with the symptoms consistently since that time. He agreed with Dr. Dale Morris, an attending Board-certified family practitioner, that appellant's condition was a work[-]related injury and should be accepted as such. Dr. Lundgren stated, "I do believe her care should fall under the workers' compensation system."[3]

In a June 21, 2011 decision, OWCP denied appellant's claim for a work-related upper extremity condition. It found that it had not received a complete history of her condition or a comprehensive medical report that related her condition to her federal employment. OWCP noted that the initial evidence of file was insufficient to establish that appellant experienced the claimed accident, event or employment factor at the time, place and in the manner alleged. Therefore, an injury within the meaning of FECA was not demonstrated.

In a November 30, 2011 letter, counsel requested reconsideration.

In a January 20, 2011 report, Dr. Morris stated that he first saw appellant on November 8, 2010 with complaints of right-sided low back pain and spasm with radiation to her right leg which began after she started to use a new machine at work. Appellant's low back pain resolved but she returned on December 2, 2010 complaining of right wrist pain which began about a week prior and which she attributed to lifting requirements with a new machine at work. Dr. Morris stated that her diagnosis was right carpal tunnel syndrome and cervical strain syndrome. On December 4, 2010 appellant reported that her symptoms had not resolved and that she had been unable to get used to the new lifting requirements. On January 20, 2011 she complained of experiencing the same pains if she engaged in lifting related to the new work requirements. Dr. Morris discussed diagnostic test results and noted that appellant had moderate changes in her

[2] Appellant indicated that she worked an average of 40 hours each week.

[3] Appellant also submitted a May 17, 2011 note in which an attending physician indicated that she could return to full duty on May 18, 2011.

cervical spine and a possible thoracic disc protrusion of unknown origin. He stated, "Her symptoms began with and are exacerbated by work with a new machine at work which requires repetitive bending and lifting but, more specific to her symptoms and findings, repeated lifting [of] objects and placing them at a level above her head."

In a February 15, 2011 report, Dr. Lundgren stated that appellant had complained of neck pain and hand numbness, likely due to carpal tunnel syndrome, since starting a new job at the post office. He performed an electromyogram (EMG) study that confirmed the presence of median nerve neuropathies at the wrists. Appellant brought a January 20, 2011 note in which Dr. Morris attributed her onset of symptoms to the requirements at her new job. She repeatedly lifted objects and placed them above her head. Appellant reported that she had never dealt with anything like this in the past and had never been treated medically for neck or carpal tunnel syndrome. Dr. Lundgren stated, "My general feeling based on the history that I have been given is that her pain is attributable to these work activities, specifically the lifting and overhead reaching on a repetitive basis. I am not saying that any of the anatomic changes seen on appellant's MRI [scan] are due to the work, but I am saying that her clinical situation and the pain that it entails is due to her work[-]related duties."

In an April 12, 2011 report, Dr. Lundgren stated that appellant had started a job with the post office the prior year that required more physically demanding activities. Appellant developed terrible neck pain and hand numbness. Dr. Lundgren obtained diagnostic testing which confirmed the presence of carpal tunnel syndrome and noted that she informed him that she never had such symptoms prior to the new job at the employing establishment. He stated:

> "I can only conclude that this is likely a work[-]related condition. Appellant is seeing a hand surgeon now. I would argue that this is a work[-]related injury."

In a January 25, 2012 decision, OWCP denied appellant's claim for a work-related upper extremity condition finding that she had not submitted sufficient medical evidence to establish causal relationship.

Appellant, through counsel, requested reconsideration. In an April 18, 2012 report, Dr. Lundgren stated that he had been asked to comment on how she developed carpal tunnel syndrome in the context of her job. He noted that he had commented on this in previous notes, but stated:

> "[T]o be specific, [appellant's] job involved quite a bit of lifting, reaching, wrist flexion and extension, and sorting mail. This repetitive stress on the wrist likely lead to the development of median nerve irritation and damage.
>
> "I do believe that [appellant's] work responsibilities at that time lead to the development of carpal tunnel syndrome."

In a May 8, 2012 report, Dr. Lundgren stated that appellant had fairly chronic neck pain and carpal tunnel syndrome and noted that she was a candidate for cervical surgery. He noted that she did not report any new signs or symptoms, but indicated that she continued to have functional limitations in her neck. In a June 5, 2012 report, Dr. Lundgren stated that, on a functional basis, appellant's condition remained the same.

In a June 29, 2012 decision, OWCP affirmed its January 25, 2012 decision denying appellant's claim for a work-related upper extremity condition. It found that she did not submit sufficient medical evidence in support of her claim.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of establishing 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 FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged and that any disability and specific condition for which compensation is claimed are causally related to the employment injury.[4] These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[5]

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. 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.[6]

It is well established that proceedings under FECA are not adversarial in nature, and while the claimant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.[7]

ANALYSIS

On April 15, 2011 appellant filed an occupational disease claim alleging that she sustained bilateral carpal tunnel syndrome due to performing her repetitive work duties for 40 hours a week over a period of time. She indicated that she first became aware of her condition in October 2010 and asserted that she never experienced such pain and numbness in her hands and wrists until she began working on a new mail processing machine. OWCP denied appellant's claim on the grounds that she did not submit sufficient medical evidence in support thereof.

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

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

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

[7] *Dorothy L. Sidwell*, 36 ECAB 699, 707 (1985); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983).

Appellant submitted a May 26, 2011 report in which Dr. Lundgren, an attending Board-certified neurosurgeon, stated that she had undergone bilateral carpal tunnel release procedures since he last saw her. Dr. Lundgren noted that she did not have carpal tunnel symptoms before taking on new job responsibilities prior to her work injury.[8] He noted that appellant had dealt with the symptoms consistently since that time and for that reason he agreed with Dr. Morris, an attending Board-certified family practitioner, that it was a work-related injury and should be accepted as such.[9] Dr. Lundgren stated, "I do believe her care should fall under the workers' compensation system."

In an April 12, 2011 report, Dr. Lundgren stated that appellant had started a job with the employing establishment last year that required a lot more physically demanding activities and he indicated that during that time she developed terrible neck pain and hand numbness. He noted that she told him that she never had symptoms similar to this prior to working the new job at the employing establishment. Dr. Lundgren stated:

> "I can only conclude that this is likely a work[-]related condition…. I would argue that this is a work[-]related injury."

In an April 18, 2012 report, Dr. Lundgren stated that with regards to appellant's carpal tunnel syndrome:

> "[T]o be specific, her job involved quite a bit of lifting, reaching, wrist flexion and extension and sorting mail. This repetitive stress on the wrist likely led to the development of median nerve irritation and damage.
>
> "I do believe that [appellant's] work responsibilities at that time lead to the development of carpal tunnel syndrome."

The Board notes that, while none of the reports of appellant's attending physicians are completely rationalized, they are consistent in indicating that she sustained a work-related upper extremity condition and are not contradicted by any substantial medical or factual evidence of record.[10] Therefore, while the reports are not sufficient to meet appellant's burden of proof to establish her claim, they raise an uncontroverted inference between her claimed condition and work factors, and are sufficient to require OWCP to further develop the medical evidence and the case record.[11]

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[8] In a February 15, 2011 report, Dr. Lundgren indicated that the last time he saw appellant he performed an EMG study that confirmed the presence of median nerve neuropathies at the wrists.

[9] In January 20, 2011 report, Dr. Morris noted appellant's wrist and neck pain and stated, "Her symptoms began with and are exacerbated by work with a new machine at work which requires repetitive bending and lifting but, more specific to her symptoms and findings, repeated lifting [of] objects and placing them at a level above her head."

[10] *See supra* note 7.

[11] *See Robert A. Redmond*, 40 ECAB 796, 801 (1989). The Board notes that appellant has not explicitly claimed that she sustained a work-related neck condition, but on remand OWCP should consider whether she developed such a condition.

CONCLUSION

The Board finds that the case is not in posture for decision regarding whether appellant sustained an upper extremity condition in the performance of duty. The case is remanded to OWCP for further development.

ORDER

IT IS HEREBY ORDERED THAT the June 29, 2012 decision of the Office of Workers' Compensation Programs is set aside and the case remanded to OWCP for further proceedings consistent with this decision of the Board.

Issued: February 20, 2013
Washington, DC

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

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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