

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

I.S., Appellant

and

**DEPARTMENT OF DEFENSE, DEFENSE
COMMISSARY AGENCY, PATRICK AIR
FORCE BASE, FL, Employer**

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Docket No. 08-952

Issued: November 20, 2008

Appearances:

Ronald S. Webster, Esq., for the appellant

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 February 13, 2008 appellant filed a timely appeal from May 3 and December 11, 2007 decisions of the Office of Workers' Compensation Programs, denying her claim for disability between January 8, 2004 and July 28, 2006. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant was disabled between January 8, 2004 and July 28, 2006 causally related to her accepted thoracic strain, bilateral shoulder impingement syndrome, right shoulder sprain and right complete rotator cuff rupture.

FACTUAL HISTORY

On February 4, 2005 appellant, then a 39-year-old sales store checker filed a traumatic injury claim noting that on July 20, 2003 she developed neck and back pain and upper extremity problems due to repetitive lifting, pulling, pushing, twisting and turning movements performed in the course of her work duties. On September 14, 2005 and March 13, 2006 the Office

accepted her claim for a thoracic strain, bilateral shoulder impingement syndrome, a right shoulder sprain and a right complete rotator cuff rupture.

In an April 21, 2005 letter, the employing establishment stated that appellant had a separate claim accepted for bilateral carpal tunnel syndrome.¹ Appellant's compensation benefits for her carpal tunnel syndrome were terminated on February 18, 2005 because the medical evidence established that she could return to her regular work. However, she did not return to work.

In a July 20, 2005 report, Dr. Jeffrey Greenspoon, a Board-certified orthopedic surgeon, obtained a history that appellant repetitively lifted, pulled and carried heavy objects at her job. Appellant had multiple orthopedic problems causally related to a repetitive motion syndrome including bilateral carpal tunnel syndrome, bilateral shoulder impingement and neck and low back problems. Dr. Greenspoon stated that there was no particular episode of trauma which would correspond to her medical conditions other than her work-related activity. There were no reported or documented preexisting conditions and appellant had never sought treatment previously for similar problems. Dr. Greenspoon stated that it was "highly likely" that the major contributing cause of appellant's upper extremity, neck and back problems was her work activity. He provided findings on physical examination and noted that nonoperative treatment methods had failed. Dr. Greenspoon indicated that appellant's right shoulder impingement had worsened as of September 12, 2006. Appellant underwent right shoulder arthroscopic surgery on September 28, 2006 consisting of subacromial decompression and a distal clavicle resection.

On October 3, 2005 appellant filed a claim for total disability beginning January 8, 2004.

An October 6, 2005 disability certificate indicated that appellant was totally disabled until December 1, 2005. No cause for the disability was provided.

On March 1, 2006 the Office requested additional medical evidence establishing that appellant's claimed disability beginning January 8, 2004 was causally related to her July 20, 2003 employment injury.

On June 26, 2006 the employing establishment notified appellant that it proposed to remove her from her position because of her unauthorized absence and failure to follow instructions. It noted that she had not returned to work since the wage-loss compensation for her carpal tunnel syndrome was terminated on February 18, 2005.

A December 7, 2006 order from a Merit Systems Protection Board (MSPB) administrative law judge noted that appellant and the employing establishment reached a settlement regarding the removal from her federal job. The employing establishment agreed to cancel appellant's removal and retroactively effect her separation to July 28, 2006 due to her medical inability to perform her duties.

¹ Appellant underwent a right carpal tunnel release on February 24, 2004 and a left carpal tunnel release on June 17, 2007.

On February 21, 2007 appellant submitted a compensation claim for wage-loss benefits between January 8, 2004 and July 28, 2006.

On April 18, 2007 Sylvia Liles, an employing establishment injury compensation specialist, stated that appellant submitted a claim for 3,035 hours of leave between January 8, 2004 and July 28, 2006. She noted that appellant received compensation from August 14, 2003 to January 8, 2004 under her claim accepted for bilateral carpal tunnel syndrome. Appellant received a modified job offer in December 2003 based on her carpal tunnel syndrome limitations but she failed to report for work.

By decision dated May 3, 2007, the Office denied appellant's claim on the grounds that she failed to establish that she was disabled between January 8, 2004 and July 28, 2006 as a result of her July 20, 2003 employment-related injury accepted for thoracic strain, bilateral shoulder impingement syndrome, right shoulder sprain and right complete rotator cuff rupture.

On July 20, 2007 the Office requested medical evidence establishing her need for treatment due to her July 20, 2003 accepted conditions, including a detailed medical report with an accurate history of the injury, a firm diagnosis, findings on physical examination, test results, a description of the treatment provided, the prognosis and the period and extent of disability.

On September 13, 2007 appellant requested reconsideration of the May 3, 2007 decision and submitted additional medical evidence. A letter from a paralegal in her attorney's office noted that she was separated from her federal employment "due to medical inability to perform the duties of her position." The letter continued, "Common sense dictates that [appellant's] ongoing shoulder condition and the subsequent surgical repair was a major factor in [her] medical inability to perform the duties of her position."

In a June 18, 2007 report, Dr. Gary M. Weiss, a Board-certified neurologist, stated that he treated appellant following the right carpal tunnel release performed on February 24, 2004. He diagnosed left carpal tunnel syndrome, a partial tear or tendinosis of the right shoulder supraspinatus tendon, disc protrusions in the thoracic spine, neck pain with a normal magnetic resonance imaging (MRI) scan, facial numbness and tingling, low back pain with radicular symptoms and left shoulder pain. He stated:

"[Appellant] was originally seen for neurologic consult[ation] and examination on August 14, 2003....

"EMG/NCS [electromyogram/nerve conduction study] testing ... revealed bilateral carpal tunnel syndrome. It was determined that [appellant's] diagnosis is directly related to her employment/work as a cashier...."

* * *

"MRI [scan] right shoulder April 29, 2004 -- consistent with partial tear and/or supraspinatus tendon, full thickness tear or disruption not identified, impingement by acromion morphology and down sloping acromion is noted."

* * *

“At the time of her visit on April 26, 2006, [appellant] complained of right shoulder pain.... Pain is intermittent worse with movement. Bilateral shoulders bother her at night, left more than right. [Appellant] cannot tell if pain is coming from wrist or from shoulder.... She has ‘a lot of weakness and numbness’ in her left shoulder.

“Over the course of her treatment, [appellant] has had MRI [scan] thoracic spine which revealed [p]rotrusions at T1-2, T2-3 and T3-4. Neck pain with normal MRI [scan]. Facial numbness and tingling. Low back pain with radicular symptoms and left shoulder pain. ... [Appellant] did not have the [right shoulder] rotator cuff surgery [scheduled for May 4, 2006].²

“At the time of her visit on June 1, 2006, I discussed things with [appellant] in detail. She wishes to proceed with surgery as soon as she can get her anxiety under control. ... [Appellant] is T.T.D. (Temporarily Totally Disabled) due to her current medical condition, continued symptomatology and complaints. It is undetermined at this time the expected date of [appellant’s] recovery.”

In a July 18, 2007 report, Dr. Greenspoon stated that he first saw appellant on October 22, 2004 for multiple orthopedic problems “that would be causally related to a repetitive motion syndrome including bilateral carpal tunnel syndrome, bilateral shoulder impingement, neck and low back problems.” He stated that initial diagnostic studies, including an MRI scan, revealed a partial thickness tearing of the right shoulder rotator cuff and impingement, partial thickness tearing and a superior labrum anterior to posterior tear of the left shoulder. Appellant’s right shoulder condition had resolved as of December 6, 2006 following her surgery. Dr. Greenspoon stated that appellant’s current unresolved problems were left shoulder impingement and right recurrent carpal tunnel syndrome. Treatment for these conditions was ongoing. He stated that “Based on the available information, to a reasonable degree of medical probability, there is a causal relationship between [appellant’s] current complaints and the injury reported.”

On September 24, 2007 the Office noted that, following the December 7, 2006 MSPB order, the reason for appellant’s removal from her employment was retroactively changed to medical inability to perform the duties of her position. It asked the employing establishment what medical condition was referenced in the MSPB order. On October 9, 2007 the employing establishment stated that appellant was removed from her position because she maintained that her bilateral carpal tunnel syndrome prevented her from performing her light-duty position.³

By decision dated December 11, 2007, the Office denied modification of the May 3, 2007 decision.

² It appears that Dr. Weiss was not aware that appellant had right shoulder surgery on September 28, 2006 consisting of subacromial decompression and a distal clavicle resection. In the operative report, Dr. Greenspoon noted that the distal clavicle was impinging on the rotator cuff.

³ In December 2003, on January 15, 2004 and again on June 21, 2004 the employing establishment offered appellant a position as an ID card checker which involved no use of her hands or upper extremities.

LEGAL PRECEDENT

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, generally, is rationalized medical evidence.⁴ 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 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

An award of compensation may not be based on surmise, conjecture, speculation or upon appellant's own belief that there is a causal relationship between her claimed injury and her employment.⁶ To establish a causal relationship, appellant must submit a physician's report in which the physician reviews the employment factors identified by her as causing her condition and, taking these factors into consideration, as well as findings upon physical examination of appellant and her medical history, state whether the employment factors caused or aggravated her diagnosed conditions and present medical rationale in support of his or her opinion.⁷

ANALYSIS

Appellant alleged that she was disabled between January 8, 2004 and July 28, 2006 due to her July 20, 2003 employment injury, accepted for a thoracic strain, bilateral shoulder impingement syndrome, right shoulder sprain and right complete rotator cuff rupture.

An October 6, 2005 disability certificate indicated that appellant was totally disabled until December 1, 2005. However, this certificate is of no probative value because it does not address the cause of appellant's disability between October 6 and December 1, 2005.

Dr. Greenspoon stated that he began treating appellant on October 22, 2004 for multiple orthopedic problems causally related to a repetitive motion syndrome. He diagnosed bilateral carpal tunnel syndrome, bilateral shoulder impingement, right shoulder acromioclavicular joint

⁴ *Michael S. Mina*, 57 ECAB 379 (2006).

⁵ *Gary J. Watling*, 52 ECAB 278 (2001); *Gloria J. McPherson*, 51 ECAB 441 (2000).

⁶ *Donald W. Long*, 41 ECAB 142 (1989).

⁷ *Id.*

arthritis and neck and low back problems. He indicated that appellant's right shoulder impingement had worsened as of September 12, 2006 and she underwent right shoulder arthroscopic surgery on September 28, 2006 consisting of subacromial decompression and a distal clavicle resection. Her right shoulder condition had resolved as of December 6, 2006. On July 18, 2007 Dr. Greenspoon stated that appellant's unresolved problems were left shoulder impingement and right recurrent carpal tunnel syndrome. Treatment for these conditions was ongoing. He indicated that there was a causal relationship between appellant's July 18, 2007 complaints and her employment. The Board finds that Dr. Greenspoon's reports are not sufficient to support appellant's claim. Dr. Greenspoon did not address the issue of whether appellant's disability between January 8, 2004 and July 28, 2006 was causally related to her July 20, 2003 employment injury. Dr. Greenspoon indicated that he began treating appellant on October 22, 2004 for her accepted July 20, 2003 conditions and other orthopedic conditions. However, he did not provide any dates when she was unable to work due to her July 20, 2003 accepted conditions. The worsening of appellant's right shoulder impingement on September 12, 2006 and surgery on September 28, 2006 occurred after the last date of her claimed disability, July 28, 2006. On July 18, 2007 Dr. Greenspoon noted that appellant's remaining problems were her bilateral carpal tunnel syndrome, accepted in a separate claim, and left shoulder impingement. This report does not address appellant's disability between January 8, 2004 and July 28, 2006. For these reasons, Dr. Greenspoon's reports are not sufficient to establish that appellant was disabled between January 8, 2004 and July 28, 2006 as a result of her July 20, 2003 employment injury.

Dr. Weiss treated appellant following the right carpal tunnel release surgery. He also diagnosed left carpal tunnel syndrome, a partial tear or tendinosis of the right shoulder supraspinatus tendon, disc protrusions in the thoracic spine, neck pain with a normal MRI scan, facial numbness and tingling, low back pain with radicular symptoms and left shoulder pain. On April 26, 2006 appellant complained of bilateral shoulder pain. She could not tell whether the pain was originating in her wrist or her shoulder. Dr. Weiss did not address the issue of whether she was disabled between January 8, 2004 and July 28, 2006 due to her July 20, 2003 accepted conditions. On June 1, 2006 he discussed appellant's desire to proceed with surgery. However, Dr. Weiss did not specify the particular condition for which surgery was considered or any periods of disability. On June 18, 2007 he opined that appellant was totally disabled due to her "current medical condition, continued symptomatology and complaints." However, the issue is whether appellant was disabled between January 20, 2004 and July 28, 2006 due to her July 20, 2003 employment injury. Dr. Weiss did not address this issue. For these reasons, his report is insufficient to establish that appellant was disabled between January 8, 2004 and July 28, 2006 as a result of her July 20, 2003 accepted conditions, a thoracic strain, bilateral shoulder impingement syndrome, right shoulder sprain and right complete rotator cuff rupture.

The medical evidence fails to establish that appellant's disability between January 8, 2004 and July 28, 2006 was causally related to her accepted thoracic strain, bilateral shoulder impingement syndrome, a right shoulder sprain and a right complete rotator cuff rupture. Accordingly, the Office properly denied her claim.

On appeal, appellant asserts that the medical evidence is overwhelming that she is disabled due to a "whole array of medical problems." The medical records submitted showed that she was temporarily and totally disabled by her accepted conditions. However, the medical

evidence does not specifically address the issue of whether her claimed disability from January 8, 2004 to July 28, 2006 was causally related to the accepted conditions arising from her July 20, 2003 employment injury.

CONCLUSION

The Board finds that appellant failed to meet her burden of proof in establishing that her disability between January 8, 2004 and July 28, 2006 was causally related to her July 20, 2003 accepted thoracic strain, bilateral shoulder impingement syndrome, right shoulder sprain and a right complete rotator cuff rupture.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated December 11 and May 3, 2007 are affirmed.

Issued: November 20, 2008
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