U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of NANCIE L. SCALERCIO and U.S. POSTAL SERVICE,
POST OFFICE, Phoenix, Ariz.

Docket No. 96-1545; Submitted on the Record;
Issued June 2, 1998

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether appellant has established that she sustained carpal tunnel syndrome, de Quervain's tendinitis, chronic fatigue syndrome, optic neuritis, and fibromyalgia on or before July 22, 1994 in the performance of duty.

After a thorough review of the record and consideration of the issue presented, the Board finds that appellant has not met her burden of proof in establishing that she sustained carpal tunnel syndrome, de Quervain's tendinitis, chronic fatigue syndrome, optic neuritis, and fibromyalgia on or before July 22, 1994 in the performance of duty.

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed;[1] (2) a factual statement identifying employment factors alleged to have caused or contributed to the disease or condition;[2] and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.[3] The fact that the condition became apparent during a period of employment, nor the belief of the employee that the condition was caused by or aggravated by employment factors, is sufficient to establish a causal relationship.[4]

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[1] *See Ronald K. White*, 37 ECAB 176, 178 (1985).

[2] *See Walter D. Morehead*, 31 ECAB 188, 194 (1979). The Office, as part of its adjudicatory function, must make findings of fact and a determination as to whether the implicated working conditions constitute employment factors prior to submitting the case record to a medical expert; *see John A. Snowberger*, 34 ECAB 1262, 1271 (1983); *Rocco Izzo*, 5 ECAB 161, 164 (1952).

[3] *See generally Lloyd C. Wiggs*, 32 ECAB 1023, 1029 (1981).

[4] *Juanita C. Rogers*, 34 ECAB 544, 546 (1983).

On September 23, 1994 appellant, then a 37-year-old distribution clerk, filed a notice alleging that she sustained carpal tunnel syndrome, de Quervain's tendinitis, chronic fatigue syndrome, optic neuritis, and fibromyalgia on or before July 22, 1994 in the performance of duty. She described her duties beginning July 26, 1989. Effective December 1992, she worked 30 hours a week, loading trays of mail weighing 10 to 50 pounds[5] into a letter sorting machine, grasping and bundling mail, and loading bundled mail onto transport equipment. She experienced bilateral arm pain beginning July 22, 1994. Appellant was off work October 6 to November 1, and December 6 to 12, 1994, and returned to modified duty on December 13, 1994. She stopped work on January 5, 1995 and did not return.[6]

The Office advised appellant by October 19 and November 19, 1994 letters of the additional evidence needed in support of her claim, in particular rationalized medical evidence addressing causal relationship. However, appellant did not submit sufficient medical evidence to establish her claim.

By decision dated December 15, 1994, the Office denied appellant's claim on the grounds that fact of injury was not established. Appellant then requested reconsideration and submitted additional evidence.[7]

In October 10 and November 10, 1994 forms, Dr. Eric J. Freeh, an attending osteopath, provided "working diagnos[e]s" of bilateral carpal tunnel syndrome and de Quervain's tendonitis, and prescribed bilateral wrist splints and physical therapy. He modified this opinion in a January 19, 1995 note, stating that electrodiagnostic studies indicated a repetitive stress condition as opposed to a compressive peripheral neuropathy. He noted that appellant's work duties caused a "flare, subjectively and objectively, of her symptoms," and recommended only nonrepetitive job tasks. Dr. Freeh again changed his diagnostic impression in a February 10, 1995 form, authorizing a TENS (trans-cutaneous electrical stimulation) unit to treat "bilateral carpal tunnel" with a September 1994 date of onset.[8] He submitted April 27, 1995 form reports indicating that appellant was totally disabled for work.[9]

By decision dated May 15, 1995, the Office denied modification on the grounds that the medical evidence did not contain a proper factual history, definitive diagnosis, or sufficient

[5] In a March 2, 1995 letter, the employing establishment stated that the maximum weight for trays of mail appellant loaded was less than 30 pounds, with an average of 12 to 25 pounds, and not 50 pounds as appellant had claimed.

[6] In a March 13, 1995 letter, in response to a telephone inquiry from appellant, the Office advised her of the additional evidence needed to establish her claim, and of the deficiencies in the record at that time.

[7] Prior to the December 15, 1994 decision, appellant submitted an October 10, 1994 form report from Dr. Freeh diagnosing carpal tunnel syndrome and de Quervain's tendonitis, without supporting medical rationale.

[8] In a February 13, 1995 statement, appellant alleged increasing symptoms, describing difficulty with housework and personal care tasks.

[9] Appellant also submitted November and December 1994 notes from a physical therapist. These notes are not considered as medical evidence as physical therapists are not considered physicians under the Act. 5. U.S.C. 8101(2).

medical rationale explaining how and why the alleged work factors would cause any medical condition.[10]

As Dr. Freeh's reports lack sufficient medical rationale discussing the pathophysiologic mechanism whereby appellant's job duties of lifting trays of mail, grasping and bundling mail and loading mail bundles onto transport equipment would cause or aggravate any medical condition, his opinion is of diminished probative value in establishing causal relationship in this case.[11] His January 19, 1995 recommendation that appellant avoid repetitive work tasks as they caused a "flare" of symptoms is not supported by an explanation of how and why such tasks would cause or aggravate any medical condition. Also, Dr. Freeh changed his diagnosis of appellant's wrist condition from carpal tunnel syndrome and de Quervain's tendonitis, to a noncompressive repetitive stress injury, then back to carpal tunnel syndrome. He thus failed to definitively diagnose appellant's wrist condition. The Board has held that speculative medical opinions are of diminished probative value.[12]

Consequently, appellant has not met her burden of proof, as she submitted insufficient rationalized medical evidence establishing that factors of her federal employment caused or aggravated any neck condition on or after July 22, 1994.

[10] The Board notes that in the May 15, 1995 decision, the claims examiner provided his own medical opinion on appellant's case, questioning the role of a clerical position in causing her condition, and why her symptoms increased after she stopped work in January 1995. There is not evidence of record that the claims examiner is a physician. The statement of a layperson regarding medical issues is not competent evidence on the issue of causal relationship; *see James A. Long*, 40 ECAB 538 (1989); *Susan M. Biles*, 40 ECAB 420 (1988). Therefore, the claims examiner's medical comments, while not dispositive, were improper and should be utterly disregarded.

[11] *Lucrecia M. Nielsen*, 42 ECAB 583 (1991).

[12] *See Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962) (where the Board held that medical opinions based upon an incomplete history or which are speculative or equivocal in character have little probative value).

The decision of the Office of Workers' Compensation Programs dated May 15, 1995 is hereby affirmed.[13]

Dated, Washington, D.C.
June 2, 1998

George E. Rivers
Member

David S. Gerson
Member

Bradley T. Knott
Alternate Member

[13] Accompanying her appeal, appellant submitted numerous medical reports, factual statements, patient questionnaires, and excerpts from medical literature. The record indicates that these documents were not of record at the time of the Office issued the final decision in this case, May 19, 1995. The Board may not consider evidence for the first time on appeal which was not before the Office at the time it issued the final decision in the case. 20 C.F.R. 501.2(c).