United States Department of Labor
Employees' Compensation Appeals Board

ALMA J. NOAKES, Appellant	)	
and	)	**Docket No. 05-389**
	)	**Issued: April 20, 2005**
DEPARTMENT OF AGRICULTURE, FARM SERVICE AGENCY, Stanford, KY, Employer	)	

Appearances:
Alma J. Noakes, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chairman
COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member

JURISDICTION

On December 1, 2004 appellant filed a timely appeal from a December 4, 2003 merit decision of a hearing representative of the Office of Workers' Compensation Programs affirming a finding that she failed to establish that she sustained an employment-related occupational disease. Pursuant to 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 has established that she sustained a bilateral wrist or arm condition causally related to factors of her federal employment.

FACTUAL HISTORY

On December 5, 2002 appellant, then a 47-year-old program technician, filed an occupational disease claim alleging that she sustained bilateral carpal tunnel syndrome causally related to factors of her federal employment. She sustained periods of intermittent temporary total disability from October 31 to December 26, 2002.

In a statement accompanying her claim, appellant related that she initially developed numbness and pain in her hands in 1998. She attributed her condition to "highly repetitive movements such as folding letters and stuffing them into envelopes, computer work, typing, filing, tearing notices apart and handwriting" during the course of her federal employment.[1]

In support of her claim, appellant submitted numerous disability certificates dated November 2002 and December 2002 from her attending chiropractors Dr. Vance N. True and Dr. Sterling L. Skipper.

By letter dated January 24, 2003, the Office requested additional factual and medical information from appellant, including a rationalized medical report from her attending physician.

In a report dated February 7, 2003, Dr. True noted that appellant attributed her complaints of "numbness in both hands and severe pain in her wrists, fingers, hands and arms" to repetitive work duties. He listed findings of kyphosis of the cervical spine and a disruption of George's Line at C2 to C6 by x-ray. Dr. True diagnosed cervical brachial radiculitis and carpal tunnel syndrome.

By decision dated March 3, 2003, the Office denied appellant's claim on the grounds that she did not establish an injury as alleged. The Office informed appellant of the limitations on chiropractors under the Federal Employees' Compensation Act.[2]

On March 30, 2003 appellant requested an oral hearing. She submitted a form report dated April 15, 2002 from Dr. Stan Sizemore, who is Board-certified in family practice. He diagnosed carpal tunnel syndrome and checked "yes" that the condition was caused or aggravated by employment, noting as a rationale "repetitive action -- too much workload."

In a report dated December 21, 2002, Dr. Jeremy W. Tarter, a Board-certified orthopedic surgeon, discussed appellant's symptoms of numbness and pain in both hands, right worse than left. He noted that she related that she had an exacerbation in October due to an increased workload. Dr. Tarter listed findings of a negative Tinel's sign bilaterally and "a positive Phalen's at about [five] seconds again bilaterally." He stated, "By her history alone, it does sound like she [has] got a straight-forward carpal tunnel syndrome."

In a follow-up report dated March 18, 2003, Dr. Tarter related:

> "[Appellant] returns with ongoing difficulties with her right more than her left hand. She has increased pain and numbness with increased activity at work such as writing or typing. She does both quite a bit."

On examination, he listed findings of a negative Tinel's sign and Phalen's test and negative median nerve compression. He found that her history was "supportive of carpal tunnel syndrome" and noted that her "pain was a little bit atypical in distribution in the palm and not as

[1] In a letter received by the Office on January 17, 2003, a supervisor with the employing establishment concurred with appellant's description of her job duties.

[2] 5 U.S.C. §§ 8101-8193.

much out into the fingers." He referred appellant to Dr. Shelby T. White, a Board-certified orthopedic surgeon, for an opinion regarding surgery.

In a report dated March 24, 2003, Dr. White discussed appellant's complaints of pain in the neck down to her elbow and in her wrists "especially in the palm and in the ulnar styloid area." On examination he listed findings of "a negative Tinel's and questionably positive median nerve compression." Dr. White diagnosed wrist pain of uncertain etiology. He stated, "It could be an atypical carpal tunnel but I doubt this. It seems to be more of a tendinitis or arthritis."

Dr. Cheryl A. McClain, who is Board-certified in family practice, completed a form report dated March 28, 2003. She noted that appellant had a negative electrodiagnostic studies and diagnosed bilateral radiculitis of the upper extremity of cervical etiology versus carpal tunnel syndrome. Dr. McClain checked "yes" that the condition was caused or aggravated by employment and provided as a rationale "repetitive movements daily."

In a form report dated March 27, 2003, Dr. Tarter diagnosed wrist pain of uncertain etiology which was "possibly tendinitis or arthritis." He checked "yes" that the condition was caused or aggravated by employment because of "overuse, repetitive and [hours] worked." Dr. Tarter indicated that she did not have work restrictions but "was advised to try cutting down on workload."

In a report dated September 12, 2003, Dr. McClain diagnosed carpal tunnel syndrome. Regarding the question of causal relationship, she stated:

> "[T]here are certain activities that aggravate this particular condition. These are generally related to repetitive-type flexion and extension motions of the wrist joint. I am not aware of her current position and what she functions as or what her day job entails; however, one may infer that if she does have a position that requires repetitive motion of this wrist area or even sometimes the elbow and upper extremity, then this may aggravate her condition."

She stated that she had not restricted appellant's work activities but had described to her the types of activities that would aggravate her condition.

Appellant submitted numerous disability certificates from her physicians and chiropractors dated October 2002 through September 2003.

At the hearing, held on September 23, 2003, appellant described the types of work activities to which she attributed her condition. By decision dated December 4, 2003, the hearing representative affirmed the Office's March 3, 2003 decision. The hearing representative found that the medical evidence was insufficient to establish that appellant sustained a bilateral wrist condition causally related to factors of her federal employment.

LEGAL PRECEDENT

An employee seeking benefits under the Act 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 the Act; that the claim was filed within the applicable time limitation of the Act; that an injury was sustained while in the performance of duty as alleged; and that any disability or specific condition for which compensation is claimed is causally related to the employment injury. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[3]

To establish that an injury was sustained in the performance of duty in an occupational disease claim, appellant must submit the following: (1) medical evidence establishing the presence or existence of the condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the 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.[4] The medical evidence required to establish a causal relationship is rationalized medical opinion evidence. 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 diagnosed condition and the implicated employment factors.[5] Such an opinion of the physician 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]

Section 8101(2) of the Act[7] provides that the term "physician," as used therein, "includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulation by the Secretary."[8] Without a diagnosis of a subluxation from x-ray, a chiropractor is not a "physician" under the Act and his or her opinion on causal relationship does not constitute competent medical evidence.[9]

ANALYSIS

In this case, appellant has established that she performed repetitive duties with her hands during the course of her employment as a program technician. The issue, therefore, is whether the medical evidence establishes that these employment activities caused or contributed to any diagnosed condition.

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[3] *Rebecca LeMaste*r, 50 ECAB 254 (1999).

[4] *Charles E. Burke*, 47 ECAB 185 (1995).

[5] *Leslie C. Moore*, 52 ECAB 132 (2000).

[6] *Id*.

[7] 5 U.S.C. § 8101(2).

[8] *See* 20 C.F.R. § 10.311.

[9] *Jay K. Tomokiyo*, 51 ECAB 361 (2000).

Appellant submitted a report dated February 7, 2003 from Dr. True, a chiropractor, who listed findings of kyphosis of the cervical spine and a disruption of George's Line at C2 to C6 by x-ray. He diagnosed cervical brachial radiculitis and carpal tunnel syndrome. Section 8101(2) of the Act provides that the term "physician" "includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist."[10] Dr. True did not diagnose a subluxation.[11] In the absence of a diagnosis of subluxation based on x-rays, he is not a "physician" under the Act.[12] Further, a chiropractor providing an opinion on conditions other than subluxations of the spine, is not considered to be a physician under the Act.[13] The February 7, 2003 report from Dr. True, therefore, has no probative value.[14]

Appellant also submitted numerous disability certificates from her physicians dated October 2002 through September 2003. The certificates indicate only either that she received treatment on that date or list the dates that she was unable to work. As the disability certificates are devoid of a diagnosis, a discussion of the factors appellant implicated as causing her bilateral wrist condition, findings on examination or an opinion on causation, they are of little probative value.[15]

In a form report dated April 15, 2002, Dr. Sizemore diagnosed carpal tunnel syndrome and checked "yes" that the condition was caused or aggravated by employment due to repetitive action and "too much workload." A medical report in which a physician checks a box on a form "yes" with regard to whether a condition is employment related is, without supporting rationale, of diminished probative value.[16] Appellant's burden of proof includes the necessity of furnishing an affirmative medical opinion from a physician who supports his or her conclusion with sound medical reasoning.[17] As Dr. Sizemore did nothing more than check "yes" to a form question and provide a brief notation regarding repetitive action and overwork, his opinion on causal relationship is insufficient to discharge appellant's burden of proof.

In an unsigned report dated December 21, 2002, Dr. Tarter noted that the pain and numbness in appellant's hands increased in October when her workload increased. He found a

[10] 5 U.S.C. § 8101(2).

[11] The Office's implementing federal regulations define subluxation to mean an incomplete dislocation, off-centering, misalignment, fixation or abnormal spacing of the vertebrae which must be demonstrated on x-ray. *See* 20 C.F.R. § 10.5(bb).

[12] She further submitted disability certificates from Dr. True and Dr. Skipper, a chiropractor; however, as the disability certificates also contain no diagnosis of a subluxation by x-ray, they are of no probative value. 5 U.S.C. § 8101(2).

[13] *Jay K. Tomokiyo, supra* note 9.

[14] *Michelle Salazar*, 54 ECAB ___ (Docket No. 03-623, issued April 11, 2003).

[15] *See generally Arlonia B. Taylor*, 44 ECAB 591 (1993).

[16] *Calvin E. King*, 51 ECAB 394 (2000).

[17] *Lee R. Haywood*, 48 ECAB 145 (1996).

positive Phalen's test bilaterally and opined that she had carpal tunnel syndrome. The Board has held, however, that unsigned medical reports are of no probative value.[18]

Dr. Tarter, in a report dated March 18, 2003, noted that appellant had a negative Tinel's sign and Phalen's test and indicated that her history was "supportive of carpal tunnel syndrome."[19] Dr. Tarter, however, did not provide a specific opinion on the cause of the diagnosed condition of carpal tunnel syndrome. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[20]

In a form report dated March 27, 2003, Dr. Tarter diagnosed wrist pain of uncertain etiology which might be tendinitis or arthritis. He checked "yes" that the condition was caused or aggravated by employment because of "overuse, repetitive and [hours] worked." Dr. Tarter, however, did not provide a firm diagnosis of appellant's condition or fully explain how employment factors caused or aggravated her claimed condition. Without a firm diagnosis supported by medical rationale, his report is of little probative value.[21]

In a report dated March 24, 2003, Dr. White listed findings of a negative Tinel's sign and possible "positive median nerve compression."[22] He diagnosed wrist pain of uncertain etiology which appeared to be tendinitis or arthritis. As Dr. White did not provide a definite diagnosis or address causation, his opinion is insufficient to meet appellant's burden of proof.[23]

Dr. McClain, in a form report dated March 28, 2003, diagnosed bilateral radiculitis of the upper extremity with a possible cervical etiology and possible carpal tunnel syndrome. She checked "yes" that the condition was due to or aggravated by employment because of "repetitive movements daily." Dr. McClain's opinion, however, is of diminished probative value as she did not provide a firm diagnosis or a detailed opinion on causation explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by appellant.[24] Appellant has the burden of establishing by the weight of the reliable, probative and substantial medical evidence a firm diagnosis of her condition and a rationalized opinion that the condition is causally related to factors of her federal employment.[25]

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[18] *Merton J. Sills*, 39 ECAB 572 (1988).

[19] Dr. Tarter completed a signed disability certificate on March 18, 2003.

[20] *Willie M. Miller*, 53 ECAB 697 (2002).

[21] *See Samuel Senkow*, 50 ECAB 370, 377 (1999) (finding that, because a physician's opinion of Legionnaires' disease was not definite and was unsupported by medical rationale, the report was insufficient to establish a causal relationship).

[22] Dr. White completed a signed disability certificate on that date.

[23] *See Samuel Senkow*, *supra* note 21; *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

[24] *See O. Paul Gregg*, 46 ECAB 624 (1995).

[25] *Thomas S. Miceli*, 40 ECAB 1322 (1989).

In a report dated September 12, 2003, Dr. McClain diagnosed carpal tunnel syndrome. She stated that she was unaware of appellant's job requirements but that "if she does have a position that requires repetitive movements of [the] wrist area or even sometimes the elbow and upper extremity, then this may aggravate her condition." Dr. McClain's opinion, however, is speculative in nature as she finds only that appellant's employment duties, of which she is unaware, "may aggravate" her carpal tunnel syndrome. The Board has held that medical opinions based on an incomplete history or which are speculative or equivocal in nature have little probative value.[26]

On appeal, appellant notes that she has numerous carpal tunnel diagnoses from various physicians. In order to establish causal relationship, however, she must submit a physician's report in which the physician reviews those factors of employment identified by appellant as causing her condition and, taking these factors into consideration as well as findings upon examination and her medical history, explain how these employment factors caused or aggravated any diagnosed condition and present medical rationale in support of his or her opinion.[27] Appellant failed to submit such evidence and therefore failed to discharge her burden of proof.

CONCLUSION

The Board finds that appellant has not established that she sustained a bilateral wrist or arm condition causally related to factors of her federal employment.

[26] *Vaheh Mokhtarians*, 51 ECAB 190 (1999).

[27] *Robert Broome*, 55 ECAB ___ (Docket No. 04-93, issued February 23, 2004).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 4, 2003 is affirmed.

Issued: April 20, 2005
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member