United States Department of Labor
Employees' Compensation Appeals Board

NOEMI SANTIAGO, Appellant	)	
and	)	**Docket No. 05-1992**
	)	**Issued: February 3, 2006**
U.S. POSTAL SERVICE, POST OFFICE, Long Island, NY, Employer	)	

Appearances:
Paul Kalker, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On September 27, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated July 11, 2005 which denied modification of a July 6, 2004 decision, finding that she failed to establish an injury as alleged. 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 met her burden of proof in establishing that she sustained an injury in the performance of duty.

FACTUAL HISTORY

On May 5, 2004 appellant, then a 49-year-old mail handler, filed an occupational disease claim alleging that she developed carpal tunnel syndrome in both hands due to pushing and pulling heavy equipment while in the performance of her federal employment. She first became aware of her condition and its relation to her work on May 2, 2004. Appellant stopped work on May 5, 2004. She submitted light-duty slips dated April 12, 16 to May 5, 2004 from a nurse practitioner and a May 12, 2004 disability certificate from Dr. Anthony Adamo, a Board-certified neurologist, who diagnosed carpal tunnel syndrome.

By letter dated June 1, 2004, the Office advised appellant that additional factual and medical evidence was needed. The Office requested additional information regarding her activities outside her federal employment as well as any previous injuries to her hands, arms or wrists. The Office explained that a physician's opinion on causal relation was crucial to her claim. It subsequently received an April 12, 2004 radiograph of the right and left hands which was normal, several disability slips and a May 24, 2004 attending physician's report from Dr. Adamo, who diagnosed bilateral carpal tunnel syndrome.

In a May 12, 2004 report, Dr. Adamo advised that appellant presented with a one month history of left hand pain, which was "present for a much more prolonged period of time, but it became more noticeable in the past month." He indicated that she used her hand regularly and that her mail handler duties exacerbated her pain. Regarding appellant's right hand, she experienced similar symptoms, but they were "less noticeable." He opined that "most likely we are dealing with chronic bilateral carpal tunnel syndrome, worse in the left." He recommended an electromyogram (EMG) scan and nerve conduction velocity (NCV) studies. In a May 12, 2004 EMG/NCV study, Dr. Adamo determined that the electrophysiological findings were consistent with bilateral moderately severe carpal tunnel syndrome.

In a June 3, 2004 disability certificate, Dr. Ray A. Haag, a Board-certified orthopedic surgeon, diagnosed carpal tunnel syndrome, opined that appellant was partially disabled and prescribed light duty.

In a June 21, 2004 statement, appellant alleged that she was enrolled part time in a community college from August 1999 to May 2004 and that she was not currently attending school. She did not participate in any sports activities, nor did she play an instrument. Regarding computer classes, she noted that in 1999 she took a three-hour computer class once a week for a total of 42 hours for the calendar year. Regarding 2000, appellant reported a total of 68 computer hours. She alleged that her computer use was limited to word processing and some volunteer work which required writing invoices for approximately 33 hours. Appellant referred to her carpal tunnel syndrome and alleged that the pain and numbness worsened while working and decreased when not working.

In reports dated June 18 and 22, 2004, Dr. Richard A. Rogachefsky, a Board-certified orthopedic surgeon, advised that appellant presented with a five-month history of bilateral hand numbness and tingling. He noted that she worked for the employing establishment, diagnosed bilateral carpal tunnel syndrome and left trigger thumb and requested authorization for left endoscopic, possible open, carpal tunnel release and possible left trigger thumb release. Dr. Rogachefsky prescribed restrictions and advised that appellant could return to light duty.

By decision dated July 6, 2004, the Office denied appellant's claim. The Office found that she had not established that her condition was caused by factors of her federal employment.

In a June 3, 2004 report, Dr. Adamo diagnosed bilateral carpal tunnel syndrome and trigger finger of the left thumb and referred appellant to Dr. Rogachefsky. In a June 11, 2004 report, Dr. Adamo advised that she presented with a one month "history of left hand pain and to a lesser extent, right hand pain." He related that she believed that working at her job loading and unloading sacks, parcels, trays and buckets of mail and other repetitive hand activity,

exacerbated her symptoms. Dr. Adamo diagnosed bilateral carpal tunnel syndrome, worse on the left and recommended a hand surgery evaluation. He indicated that carpal tunnel syndrome could "probably be exacerbated by a variety of conditions and activities, including repetitive stereotypical hand activity."

In a July 13, 2004 report, Dr. Haag indicated that appellant related that she had carpal tunnel syndrome in both hands, with the left worse than the right, which was diagnosed a few months ago. He noted that she had numbness in the tips of the fingers on and off with pain and that the left thumb had a trigger finger. Dr. Haag conducted a physical examination and diagnosed bilateral carpal tunnel syndrome and trigger finger of the left thumb.

In a September 8, 2004 report, Dr. Rogachefsky noted that appellant presented with bilateral hand numbness and had bilateral carpal tunnel syndrome. He opined that her condition was due to her repetitive work as a mail handler for the employing establishment, pushing and pulling heavy equipment on a daily basis. Dr. Rogachefsky stated that he performed a right carpal tunnel release on August 26, 2004 and advised that appellant was being prepared for a left endoscopic carpal tunnel release and would continue with a "no work status." In an October 1, 2004 report, he noted that she had a left trigger thumb release on September 23, 2004 and opined that she was totally disabled.

By letter dated February 4, 2005, appellant's representative requested reconsideration and submitted additional evidence.

In a report, Dr. Michael W. Torelli, a Board-certified family practitioner, noted appellant's history of injury and treatment dating from December 27, 1999. On January 7, 2004 appellant had complaints of bilateral hand pain and numbness for two weeks and related that she was in a motor vehicle accident on December 22, 2003 and felt that may "be relative." Dr. Torelli advised that she was diagnosed at that time with paresthesias of the hand. He determined that appellant had "bilateral carpal tunnel syndrome, which was a condition that was not preexisting." Dr. Torelli explained that there was a "clear delineation over each of appellant's visits." He also advised that there was prior negative testing and a worsening of her disease followed by a positive EMG. Dr. Torelli noted that she had a "somewhat positive response to light duty" and that she used her hands for lifting and pulling, which exacerbated her pain. He opined that "any repetitive stress injury would be worsened by persistent hand manipulation and repetitive work with appellant's hands," and that appellant's "employment played a significant amount of causality to her carpal tunnel syndromes." Dr. Torelli explained that because appellant had "no prior preexisting or outside forces played a role on developing her carpal tunnel." He explained that she used her hands daily and that the car accident had no bearing on appellant's carpal tunnel syndrome. Dr. Torelli felt strongly that her employment played a significant part in developing her bilateral carpal tunnel syndrome, which required surgery.

By decision dated July 11, 2005, the Office denied modification of the July 6, 2004 decision.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[1] 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 timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.[2] 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, 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 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. 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.[4]

ANALYSIS

Appellant alleged that her bilateral carpal tunnel syndrome was caused by the constant pushing and pulling of heavy equipment and using both hands in the performance of her duties as a mail handler. It is not disputed that she pushed and pulled objects as part of her job. The Office denied the claim finding that there was insufficient medical evidence to establish that appellant's bilateral carpal tunnel syndrome was caused or aggravated by the identified employment factors of pushing and pulling.

In support of her claim, appellant's representative submitted several arguments. They included that appellant's version of the facts should stand. The Board notes that the Office

[1] 5 U.S.C. §§ 8101-8193.

[2] *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[3] *Victor J. Woodhams*, 41 ECAB 345 (1989).

[4] *Id.*

accepted the employment factors identified by appellant. Counsel also alleged that the employing establishment's controversion of the claim was adversarial. However, there is nothing in the Act, Office's regulations or Board precedent, finding that submission of a statement of controversion of a claim by the employing establishment necessarily affects the Office's nonadversarial role in adjudicating claims. Instead, Office procedures contemplate that the employing establishment may sometimes controvert claims.[5] In any event, as noted above, the Office accepted that appellant performed the duties alleged. As such, the issue in this matter is medical in nature. The Board finds that the medical evidence is insufficient to establish that she sustained an injury in the performance of duty.

The Board notes that the Office received reports dated May 12 and June 11, 2004 from Dr. Adamo, who advised that appellant presented with a one-month history of left hand pain which was "present for a much more prolonged period of time, but it became more noticeable in the past month." He also indicated that she used her hand regularly and noticed that her mail handler duties exacerbated her pain and related that appellant believed that working at her job loading and unloading sacks, parcels, trays and buckets of mail and other repetitive hand activity, has exacerbated her symptoms." Dr. Adamo diagnosed bilateral carpal tunnel syndrome and opined that it could "probably be exacerbated by a variety of conditions and activities including repetitive stereotypical hand activity." The Board finds that these reports do not contain any discussion of impact of appellant's outside employment activities, which include attending college and her discussion of her use of the computer, nor does he address the December 2003 automobile accident. Furthermore, they are speculative. The Board has held that medical opinions based upon an incomplete history or which are speculative or equivocal in character have little probative value.[6]

In a September 8, 2004 report, Dr. Rogachefsky diagnosed bilateral carpal tunnel syndrome and opined that it was due to appellant's repetitive work as a mail handler, which included pushing and pulling heavy equipment on a daily basis. He advised that she was being prepared for a left endoscopic carpal tunnel release and would continue with a "no work status." However, this report did not contain any discussion of appellant's outside employment activities such as her computer activities for college, nor did he indicate an awareness of her automobile accident. As noted above, the Board has held that medical opinions based upon an incomplete history or which are speculative or equivocal in character have little probative value.[7] Dr. Rogachefsky also did not, otherwise, explain the medical reasons by which employment activities would cause or aggravate the claimed conditions.

The Office also received an undated report on February 8, 2005, in which Dr. Torelli, noted appellant's history of injury and treatment which included a motor vehicle accident on December 22, 2003. He noted that lifting and pulling exacerbated her pain and opined that "any repetitive stress injury would be worsened by persistent hand manipulation and repetitive work

[5] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Development of Claims*, Chapter 2.800.2(i) (April 1993).

[6] *Valeh Mokhtarians*, 51 ECAB 190 (1999).

[7] *Id.*

with her hands." Dr. Torelli opined that appellant's "employment played a significant amount of causality to her carpal tunnel syndromes" and further noted that there were no prior preexisting or outside forces which played a role in developing her carpal tunnel syndrome. While he explained that appellant's motor vehicle accident had no bearing on appellant's carpal tunnel syndrome, he did not address the impact on appellant's condition of nonemployment factors such as using a computer for college classes. As noted above, medical opinions based upon an incomplete history or which are speculative or equivocal in character have little probative value.[8] Furthermore, Dr. Torelli did not provide medical rationale to explain the process by which specific employment activities would cause or aggravate the claimed carpal tunnel syndrome.

Other medical reports submitted do not specifically address whether employment factors caused or aggravated the claimed condition. The record also contains a nurse's note. Health care providers such as nurses, acupuncturists, physician's assistants and physical therapists are not physicians under the Act. Their opinions on causal relationship do not constitute rationalized medical opinions and have no weight or probative value.[9]

The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.[10] Neither the fact that the condition became apparent during a period of employment nor the belief that the condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[11] Causal relationship must be substantiated by reasoned medical opinion evidence, which is appellant's responsibility to submit.

As there is insufficient probative, rationalized medical evidence addressing and explaining why appellant's carpal tunnel syndrome was caused and/or aggravated by factors of her employment, she has not met her burden of proof in establishing that she sustained a medical condition in the performance of duty causally related to factors of employment.

CONCLUSION

The Board finds that appellant has not met her burden of proof in establishing that she sustained an injury in the performance of duty.

[8] *Id.*

[9] *Jan A. White*, 34 ECAB 515, 518 (1983).

[10] *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

[11] *Id.*

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 11, 2005 is affirmed.

Issued: February 3, 2006
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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