

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

S.B., Appellant

and

**U.S. POSTAL SERVICE, MAIN POST OFFICE,
Pine Bluff, AR, Employer**

)
)
)
)
)
)
)
)
)
)
)
)

**Docket No. 07-2348
Issued: March 13, 2008**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 17, 2007 appellant filed a timely appeal of the Office of Workers' Compensation Programs' merit decisions dated May 16 and August 9, 2007, finding that she did not sustain an injury while in the performance of duty. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this appeal.

ISSUE

The issue is whether appellant has established that she sustained an injury while in the performance of duty.

FACTUAL HISTORY

On April 5, 2007 appellant, then a 43-year-old modified clerk, filed a claim for an occupational disease. On April 25, 2006 she first became aware of a sharp pain in her left hand and wrist, which radiated up to her elbow and down to her left knee. Appellant realized that the pain was caused by her work activities which caused her to seek medical attention. In an April 5, 2007 statement, she described her work duties which included reaching above the shoulders,

pulling, pushing, retrieving and placing mail from and onto a cart, repetitive motion in operating a delivery point sequence machine and constant stooping, standing and walking.

An April 25, 2006 medical report of Dr. James A. Pollard, an attending Board-certified orthopedic surgeon, noted appellant's complaint of left knee pain. He stated that she did not sustain any specific precipitating trauma. Dr. Pollard noted appellant's work duties as a mail clerk which, included prolonged standing and walking. He reported essentially normal findings on physical examination. Dr. Pollard also reported essentially normal findings on x-ray, with the exception of the possible development of very early osteophyte forming from the mediotibial condyle and medial-tibial plateau but there were no dramatic degenerative changes. He opined that appellant had left knee pain and that the etiology of her condition was unclear. Dr. Pollard stated that the possibilities included early osteoarthritis of the left knee versus internal derangement. In a February 6, 2007 report, he noted appellant's left hand and knee pain. Dr. Pollard reported essentially normal findings on physical examination and reiterated his prior x-ray findings. He diagnosed left hand pain and stiffness which he believed may have been secondary to overuse tendinitis. Dr. Pollard stated that appellant may have sustained some element of de Quervain's tenosynovitis. In addition, appellant possibly sustained left carpal tunnel syndrome. Dr. Pollard stated that appellant developed left knee pain from early osteoarthritis of the medial compartment and patellofemoral joint. He ruled out a degenerative meniscus tear.

In reports dated January 29, 2007, Dr. Gerald C. Morris, an internist, reviewed a history that appellant repetitively used her hands with frequent standing and walking at work. Dr. Morris noted that she primarily experienced left knee pain. On physical examination, he reported pain in the left hand and knee. Dr. Morris stated that appellant's knee locked, popped and gave away on her. He diagnosed left knee strain and left wrist tendinitis with repetitive use syndrome. Dr. Morris opined that appellant could perform light-duty work with restrictions.

By letter dated April 13, 2007, the Office requested that the employing establishment respond to appellant's claim, provide the precautions it took to minimize the effects of her activities and submit a copy of her position description, including the physical requirements. By letter of the same date, the Office advised appellant that the evidence submitted was insufficient to establish her claim. It addressed the additional factual and medical evidence she needed to submit. Regarding the medical evidence, the Office requested a rationalized medical report from appellant's attending physician which described her symptoms, results of examination and tests, diagnosis, treatment provided, the effect of treatment and opinion with medical reasons on whether exposure or incidents in appellant's federal employment contributed to her condition.

In a March 29, 2007 report, Dr. Pollard noted normal findings on physical examination with regard to appellant's left hand, knee and foot. On neurological examination, he reported essentially normal findings with the exception of a positive Phalen's test in the left hand. A February 12, 2007 magnetic resonance imaging (MRI) scan showed severe carpal tunnel syndrome of the left upper extremity. Dr. Pollard reviewed a February 12, 2007 MRI scan of appellant's left knee which demonstrated a cyst in the lateral femoral condyle and a small cyst in the proximal central tibia in the metaphyseal region which both appeared to be benign. Appellant also had a small osteophyte from the medial femoral condyle on the coronal images. Dr. Pollard stated that these were indicators of early osteoarthritis of the medial compartment of

the left knee. He stated that appellant had minimal effusion of the left knee. Dr. Pollard noted some increase signal in the medial tibial plateau. The medial meniscus showed some signal within the body of the posterior horn of the meniscus, but Dr. Pollard did not see an obvious tear extending to the articular surface. He suspected that this represented intrameniscal degeneration. Dr. Pollard stated that the lateral meniscus and abdominal/perineal cruciate ligaments were intact. Based on the MRI scan findings, he reiterated his prior finding that appellant had early osteoarthritis in the medial compartment of the left knee. Dr. Pollard did not think that she sustained a definite medial meniscus tear but that she more likely sustained intrameniscal degeneration. Appellant appeared to have a benign cyst in the lateral femoral condyle and proximal tibia that were likely degenerative in origin. Dr. Pollard diagnosed left carpal tunnel syndrome and recommended surgical release.

In a May 4, 2007 letter, appellant stated that in approximately March 2006, she first noticed pain and popping in her left knee. She sought medical treatment on April 25, 2006. Appellant had not sustained any prior injury or treatment for a lower extremity condition. In August 2006, she noticed that her left hand was sore and numb. Appellant stated that her hand and wrist were aggravated by prolonged use and her repetitive work duties. Other than surgical removal of a cyst from her left hand, she did not sustain any other injuries to her left hand and wrist.

By decision dated May 16, 2007, the Office found that appellant did not sustain an injury while in the performance of duty. The medical evidence failed to establish a causal relationship between the alleged left hand and knee conditions and her employment duties.¹

Appellant submitted an illegible medical report form. In a June 13, 2007 report, Dr. Pollard provided his essentially normal findings on physical examination with the exception of localized tenderness to palpation over the radial styloid over the first dorsal compartment and a positive Finkelstein's maneuver. He further reported normal findings on neurological examination and noted that prior x-ray findings were also normal. Dr. Pollard diagnosed carpal tunnel syndrome and de Quervain's tenosynovitis of the left wrist. He believed that the repetitive nature of the work appellant performed for many years at the employing establishment was the etiology of her carpal tunnel syndrome.

On July 10, 2007 appellant requested reconsideration of the Office's May 16, 2007 decision. By decision dated August 9, 2007, the Office denied modification of the May 16, 2007 decision, finding that the medical evidence was insufficient to establish a causal relationship between the alleged left hand and knee conditions and her work duties.

¹ The Board notes that on appeal appellant has submitted new evidence. The Board, however, 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). Appellant can submit this evidence to the Office and request reconsideration. 5 U.S.C. § 8128; 20 C.F.R. § 10.606.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing the essential elements of 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.³ These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

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. 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.⁵ Neither the fact that appellant's condition became apparent during a period of employment nor her belief that the condition was caused by her employment is sufficient to establish a causal relationship.⁶

ANALYSIS

The Board finds that appellant has failed to establish a causal relationship between her left hand and knee conditions and the accepted factors of her federal employment. Appellant submitted several reports of Dr. Pollard. In an April 25, 2006 report, Dr. Pollard listed essentially normal findings on physical and x-ray examination. He diagnosed left knee pain and stated that the etiology of this condition was not clear. Dr. Pollard's diagnosis of pain, without

² 5 U.S.C. §§ 8101-8193.

³ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁴ *See Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

⁵ *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

⁶ *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

more by way of an explanation, does not constitute a basis for payment of compensation.⁷ Further, his report did not provide any medical rationale explaining how or why appellant's condition was caused or aggravated by her employment duties.⁸ Dr. Pollard's February 6, 2007 report also noted his essentially normal findings on physical and x-ray examination. He stated that appellant suffered from left hand pain and stiffness which he believed "may" have been secondary to overuse tendinitis. Dr. Pollard also stated that appellant "may" have sustained some element of de Quervain's tenosynovitis and "possibly" left carpal tunnel syndrome. He opined that appellant's left knee pain was due to early osteoarthritis of the medial compartment and patellofemoral joint. Dr. Pollard provided an opinion that is speculative as to the issue of causal relationship.

Dr. Pollard's March 29, 2007 report failed to adequately address whether the diagnosed condition was caused or aggravated by factors of appellant's employment. He reiterated his prior diagnosis of early osteoarthritis in the medial compartment of the left knee. Dr. Pollard did not think appellant had a definite medial meniscus tear but more "likely" she sustained intrameniscal degeneration. He stated that she "appeared" to have a benign cyst in the lateral femoral condyle and proximal tibia that were likely degenerative in origin. Dr. Pollard also stated that appellant sustained left carpal tunnel syndrome. Again his report is not clear as to the nature of appellant's conditions or how they relate to her duties as a mail clerk.

Dr. Pollard's June 13, 2007 report provided essentially normal findings on physical, neurological and x-ray examination. He stated that appellant sustained carpal tunnel syndrome and de Quervain's tenosynovitis of the left wrist. Dr. Pollard opined that the repetitive nature of her work was the etiology of her carpal tunnel syndrome. The Board finds that his report is insufficient to establish appellant's burden of proof as he failed to provide sufficient medical rationale explaining how or why her left wrist conditions were caused or aggravated by her employment factors.⁹

Dr. Morris' January 29, 2007 reports stated that appellant sustained left knee strain and left wrist tendinitis with repetitive use syndrome. He, however, did not address whether her left knee and wrist conditions were caused or aggravated by factors of her employment. The Board finds that Dr. Morris' reports are insufficient to establish appellant's burden of proof.

The Board finds that there is insufficient rationalized medical evidence of record to establish that appellant sustained left hand and knee conditions causally related to the accepted factors of her federal employment as a modified clerk. She did not meet her burden of proof.

CONCLUSION

The Board finds that appellant has failed to establish that she sustained an injury while in the performance of duty.

⁷ *Robert Broome*, 55 ECAB 493 (2004).

⁸ See *Frederick H. Coward, Jr.*, 41 ECAB 843 (1990); *Lillian M. Jones*, 34 ECAB 379 (1982).

⁹ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the August 9 and May 16, 2007 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: March 13, 2008
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board