

FACTUAL HISTORY

On January 2, 2009 appellant, then a 37-year-old mail handler, filed an occupational disease claim alleging that she became aware that pain and tingling symptoms from her right hand to her neck were caused by repetitive motion of light-duty rewrap. She did not stop work.

In support of her claim, appellant submitted a January 20, 2009 note from Dr. Thomas E. Shockley Jr., a Board-certified orthopedic surgeon, who noted that appellant was seen on September 9, 2008 “for her right extremity.”

By decision dated March 9, 2009, the Office denied appellant’s claim on the grounds that she did not establish that she sustained a medical condition causally related to the accepted factors of her federal employment.

The Office received additional medical evidence. On September 9, 2008 Dr. Shockley reported that appellant had pain in her right upper extremity, numbness in her hand and tingling up into her arm. He noted that she performed repetitive activities at work where she had to bundle mail with tape, wrap and tear. Dr. Shockley concluded that he would recommend an electromyogram (EMG) study to rule out radiculopathy or carpal tunnel. A September 12, 2008 EMG study of appellant’s right upper extremity was interpreted as within normal limits by Dr. Timothy Flenner, Board-certified in physical medicine.

In an April 3, 2009 progress report, Dr. Shockley noted that appellant’s right arm symptoms had increased. He recommended a repeat EMG evaluation, noting that he was concerned that appellant at least had a strain, which had persisted. Appellant underwent a repeat EMG evaluation on May 1, 2009 which was interpreted by Dr. Ayse L. Lee-Robinson, Board-certified in physical medicine, as revealing mild ulnar mononeuropathy at the right elbow, consistent with mild cubital tunnel syndrome and suspicious for overlying subacute cervical radiculopathy. On May 12, 2009 Dr. Shockley reported that the recent EMG evaluation revealed evidence of C7 greater than C6 cervical radiculopathy, with some changes in the ulnar nerve consistent with cubital tunnel syndrome of the right upper extremity. He also noted that x-rays of appellant’s cervical spine showed calcification of her cervical spine at C4-5, with disc narrowing.

On July 7, 2009 Dr. Shockley reported that a recent MRI scan was within normal limits, but that appellant had continuing pain over the medial epicondyle. Appellant performed repetitive work and he opined “I think that at this point if we can decrease the amount of repetitive activities at work that could help her.”

On August 26, 2009 appellant requested reconsideration and submitted additional medical reports. A May 28, 2009 MRI scan of her cervical spine was interpreted by Dr. Charles Henne Kuntz, a Board-certified radiologist, as a normal scan, with no change from a prior MRI scan dated September 7, 2007.

On September 23, 2009 the Office asked Dr. Shockley to provide further information. Dr. Shockley was asked to review a statement of accepted facts and submit a narrative report

which addressed all diagnosed medical conditions affecting appellant's right arm, detailing objective findings, and an opinion as to which diagnosed condition was causing her radicular symptoms. He was also asked to provide a well-reasoned opinion as to whether appellant's work exposure as a modified mail handler, which she performed for four hours a day, five days a week, caused or contributed to the development of each diagnosed condition.

On October 20, 2009 Dr. Shockley responded that, while appellant's May 28, 2009 MRI scan was reported as normal, a subsequent EMG did show changes within the C6-7 nerve root consistent with cervical radiculopathy. Appellant's symptoms of radicular-type pain radiating into her upper extremity were in line with the EMG findings. Regarding her work duties, Dr. Shockley noted that appellant continued to perform repetitive activities and the more she did, the worse she felt. He also noted that appellant had a component of lateral epicondyle tenderness as she had tenderness directly over the lateral epicondyle.

By decision dated November 17, 2009, the Office noted that the diagnosis of cervical radiculopathy had been established. It affirmed the denial of appellant's claim finding that the medical evidence did not establish causal relation between the diagnosed condition and appellant's work exposure.

LEGAL PRECEDENT

To establish that an injury was sustained in the performance of duty in a claim for occupational disease, an employee must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.¹

The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon a complete and accurate factual and medical background, showing a causal relationship between the claimed conditions and the identified factors. The belief of appellant that the condition was caused or aggravated by the identified factors is not sufficient to establish causal relation.²

ANALYSIS

The Office has accepted that appellant performed rewrap duties for four hours a day, five days a week and that she was diagnosed with cervical radiculopathy. The Board finds that appellant has not met her burden of proof to establish that her rewrap duties caused her diagnosed medical condition.

The medical evidence submitted in support of appellant's claim consists of EMG and MRI scan studies, and progress notes from Dr. Shockley. The MRI scan studies of appellant's

¹ See *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

² *Lourdes Harris*, 45 ECAB 545 (1994).

cervical spine on September 7, 2007 and May 28, 2009 were both within normal limits and showed no change from one study to the next. A September 12, 2008 EMG study of appellant's right extremity was normal, but on May 1, 2009 appellant underwent a repeat study which was interpreted by Dr. Shockley as revealing C6-7 cervical radiculopathy. On September 23, 2009 the Office prepared a statement of accepted facts and asked that Dr. Shockley state his diagnosis of appellant's condition, and explain with medical rationale how her work duties caused or contributed to the diagnosed condition. Dr. Shockley noted only that appellant continued to do repetitive activities and the more she did, the worse she felt. He did not offer any explanation as to how the specific duties outlined by the Office in the statement of accepted facts physiologically caused cervical radiculopathy. In lieu of a medical opinion, Dr. Shockley's report is of limited probative value.³

Regarding the condition of lateral epicondyle tenderness, the Board finds that Dr. Shockley did not support this diagnosis with objective findings and offered no explanation as to whether appellant's employment duties would cause this condition.

An award of compensation may not be based on surmise, conjecture or speculation. The Board has held that the fact that a condition manifests itself or worsens during a period of employment⁴ or that work activities produce symptoms revelatory of an underlying condition⁵ does not raise an inference of causal relationship between a claimed condition and employment factors.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish causal relationship between her right upper extremity conditions and factors of her federal employment.

³ See *Mary Lou Barragy*, 46 ECAB 781 (1995); *Henry Bond*, 35 ECAB 512 (1984).

⁴ *E.A.*, 58 ECAB 677 (2007); *Albert C. Haygard*, 11 ECAB 393, 395 (1960).

⁵ *D.E.*, 58 ECAB 448 (2007); *Fabian Nelson*, 12 ECAB 155, 157 (1960).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 17, 2009 be affirmed.

Issued: December 10, 2010
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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