

FACTUAL HISTORY

This case has previously been before the Board. OWCP accepted that on October 25, 2010 appellant, then a 42-year-old rural mail carrier, sustained a right thumb sprain when she jammed her thumb while putting a mail tray in a postal truck; master File No. xxxxxx799. Appellant stopped work and returned to full duty on November 12, 2010. In another claim, subsidiary File No. xxxxxx741, OWCP accepted that on June 7, 2011 she sustained right thumb tenosynovitis when she shifted mail trays in the performance of duty. Appellant stopped work and returned to full duty on June 29, 2011.

On January 26, 2012 appellant filed a notice of recurrence claim in File No. xxxxxx799, alleging that she continued to feel pain in her right thumb since the original October 25, 2010 employment injury. She stopped work. Appellant submitted a claim for disability compensation beginning January 26, 2012.

In a decision dated April 27, 2012, OWCP denied appellant's claim for recurrence of disability finding that the medical evidence failed to establish that she was unable to work beginning January 26, 2012 as a result of the October 25, 2010 employment injury.

On May 14, 2012 appellant, through counsel, requested an oral hearing, which was held on August 13, 2012. She described her duties as a rural carrier and the October 25, 2010 and June 7, 2011 injuries. Appellant stated that she returned to full duty but she still experienced pain and swelling in her right hand. She noted that she requested light duty but the employing establishment was unable to accommodate her request. Appellant explained that in the week leading up to January 26, 2012 the pain in the right hand and elbow increased. She described the medical treatment she received and stated that a hand specialist prescribed a brace for her to wear because a ligament in her right thumb had moved.

By decision dated September 26, 2012, an OWCP hearing representative affirmed the April 27, 2012 decision denying appellant's recurrence of disability claim. The Board reviewed this decision on June 19, 2013² and affirmed that appellant had not established a recurrence of disability on or after January 26, 2012 due to her accepted October 25, 2010 employment injury. The facts and circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference.

On November 19, 2013 appellant, then a 44-year-old rural carrier, filed an occupational disease claim alleging that her right hand, wrist, arm, shoulder, elbow, and neck conditions were due to her employment duties; OWCP File No. xxxxxx540.³ She noted that she sustained an injury to her right thumb on October 5, 2010 and thereafter wore a splint on her right hand and wrist. Appellant stated that she continued to perform her full duties as a rural carrier. She first became aware of her right upper extremity conditions on January 26, 2012 and first attributed it to her employment on November 6, 2012.

² Docket No. 13-711 (issued June 19, 2013).

³ Appellant's claim number on appeal, File No. xxxxxx540 is a subsidiary of File No. xxxxxx799.

Dr. George C. Alber, a Board-certified orthopedic surgeon, examined appellant on June 2, 2011 and noted her history of injury on October 25, 2010. He diagnosed osteoarthritis of the right hand, aggravation of joint arthritis, and sprain of carpometacarpal joint of the right hand and thumb. On June 14, 2011 Dr. Alber examined appellant's shoulder and stated that her range of motion was normal. He repeated his diagnoses.

Dr. Nikhil Parikh, a Board-certified internist, examined appellant on January 26, 2012 and diagnosed carpal tunnel syndrome and right lateral epicondylitis. He indicated with a checkmark "yes" that appellant's condition was due to her employment.

On January 31, 2012 Dr. Salvatore Pepe, a physician Board-certified in emergency medicine, examined appellant due to right thumb and hand pain since January 25, 2012. Appellant reported pain extending from her hand into her right shoulder.

Appellant underwent a magnetic resonance imaging (MRI) scan of her right hand on February 3, 2012 which did not demonstrate a ligament or tendon tear in the hand and did not demonstrate a recent fracture or bony lesion. She underwent a cervical MRI scan on February 3, 2012 which demonstrated multilevel disc desiccation and bulges, central disc protrusion at C4-5 and C5-6, and disc protrusion at C6-7.

Dr. Manish K. Singh, a Board-certified neurologist, examined appellant on July 10, 2012 and described her initial right thumb injury on October 25, 2010. He diagnosed cervico-brachial plexus traction injury, mechanical neck pain, and bilateral cervical pain worse on the right. Dr. Singh opined that appellant's work activities would aggravate her right upper extremity pain.

In support of her claim, appellant submitted reports from Dr. John M. Bednar, a Board-certified orthopedic surgeon, dated August 6 and 27, 2012 diagnosing chronic ulnar collateral ligament injury, metacarpal phalangeal joint right thumb, and pain in right upper extremity. Dr. Bednar opined that her symptoms were the result of compression at her cervical spine.

OWCP requested additional factual and medical evidence in support of appellant's claim by letter dated December 6, 2012. Appellant described her employment duties of casing mail, small parcels, and big parcels including constant use of her right hand to reach above her head. She stated that the big parcels weighed between 2 to 70 pounds, that buckets of small parcels could weigh up to 25 pounds and that she lifted three or four a day. Appellant also lifted trays of mail weighing approximately 20 pounds. She then loaded her truck and delivered the mail. Appellant stated that it took her approximately seven hours to complete her route.

By decision dated January 9, 2013, OWCP denied appellant's claim because she had not submitted sufficient medical evidence to establish a causal relationship between her conditions and her employment. Counsel requested an oral hearing before an OWCP hearing representative on January 16, 2013.

In a report dated November 6, 2012, Dr. Scott Fried, an osteopath, described appellant's employment duties and noted her October 25, 2010 employment injury to her thumb. He stated that she worked with a splint and developed pain in the arm, forearm, and neck. Dr. Fried diagnosed ulnar collateral ligament injury right thumb, sympathetically-mediated pain syndrome -- right upper extremity, disc bulges C4-5, C5-6, and C6-7 with radiculopathy, right

shoulder rotator cuff tendinitis and capsulitis, cervical radiculopathy, and median and radial neuropathy. He stated that appellant's use of the splint resulted in abnormal use injury in the right upper extremity which exacerbated her underlying carpal tunnel and median nerve problems and caused overuse at the elbow and forearm resulting in strain through the elbow and upper arm. Dr. Fried stated that abnormal posturing of the arm, head, and neck exacerbated an underlying cervical degenerative process which caused a cervical radicular injury. He stated that appellant was disabled and had developed moderate sympathetic pain syndrome.

Dr. Fried examined appellant on February 18, and 27, 2013 and repeated his diagnoses. On March 13 and 19, 2013 he again examined her.

Counsel appeared at the oral hearing before an OWCP hearing representative on April 10, 2013 and argued that Dr. Fried's reports established appellant's claim. Appellant underwent a functional capacity evaluation on December 28, 2012 which found that she could perform sedentary work lifting up to 10 pounds and walking and standing on occasion.

By decision dated June 12, 2013, the hearing representative reviewed appellant's prior claim and found that Dr. Fried's reports were sufficient to warrant further development, including referral to a second opinion physician to determine if appellant's work activities from June 29, 2011 until January 25, 2012 caused or contributed to her current condition.

Dr. Fried performed a neuromusculoskeletal ultrasound on April 25, 2013 and found perineural scarring about the brachial plexus with evidence of a traction fixation neuropathy, substantial swelling, and hypoechoic changes.

OWCP referred appellant for a second opinion evaluation with Dr. Stanley R. Askin, a Board-certified orthopedic surgeon, on June 26, 2013. In a report dated July 19, 2013, Dr. Askin noted appellant's history of injury on October 25, 2010. He noted that she reported pain in her right thumb with sporadic pain in her right elbow and shoulder that spread up to her neck. Dr. Askin found that appellant did not have a frozen shoulder based on her range of motion and stated that scapulothoracic motion was without winging and crepitance. He noted that her claim was accepted for right thumb sprain and opined that she had no objective condition from her work activities or prior injury. Dr. Askin opined that appellant had no objective determinable reason for her complaints and no objective findings of a condition. He stated that there were no physical limitations from her work-related injury and that she had no disability.

By decision dated September 9, 2013, OWCP denied appellant's claim based on the weight of the medical evidence as represented by Dr. Askin's report. Counsel requested an oral hearing on September 12, 2013.

In a note dated June 9, 2014, Dr. Fried opined that appellant had ongoing symptoms in her right plexus, hand, wrist, and thumb. He stated that her ultrasound findings were consistent with ongoing work-related thumb and tendon sheath injuries on the right. Dr. Fried opined that appellant was disabled from her regular duties.

Counsel appeared at the oral hearing before the hearing representative on June 12, 2014 and argued that Dr. Fried's November 6, 2012 report was entitled to the weight of the medical evidence.

By decision dated August 29, 2014, the hearing representative affirmed OWCP's September 9, 2013 decision finding the Dr. Askin's report was entitled to the weight of the medical evidence.

LEGAL PRECEDENT

OWCP's regulations define an occupational disease as "a condition produced by the work environment over a period longer than a single workday or shift."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 evidence required to establish causal relationship is rationalized medical opinion evidence, based upon a complete factual and medical background, showing a causal relationship between the claimed condition and identified factors. The belief of a claimant that a condition was caused or aggravated by the employment is not sufficient to establish causal relation.⁵

When there are opposing reports of virtually equal weight and rationale, the case will be referred to an impartial medical specialist pursuant to section 8123(a) of FECA which provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination and resolve the conflict of medical evidence.⁶ This is called a referee examination and OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.⁷

ANALYSIS

Appellant alleged that following her return to work in June 2011 following her second hand injury. The record reflects that she worked full duty wearing a brace. Appellant submitted a series of reports from Dr. Fried diagnosing ulnar collateral ligament injury right thumb, sympathetically-medicated pain syndrome -- right upper extremity, disc bulges C4-5, C5-6, and C6-7 with radiculopathy, right shoulder rotator cuff tendinitis and capsulitis, cervical radiculopathy and median, and radial neuropathy. Dr. Fried listed her employment duties and in a report dated November 6, 2012, he described her employment duties and prior employment injuries. He stated that appellant's use of the splint resulted in abnormal use injury in the right upper extremity which exacerbated her underlying carpal tunnel and median nerve problems and

⁴ 20 C.F.R. § 10.5(q).

⁵ *Lourdes Harris*, 45 ECAB 545, 547 (1994).

⁶ 5 U.S.C. §§ 8101-8193, 8123; *B.C.*, 58 ECAB 111 (2006); *M.S.*, 58 ECAB 328 (2007).

⁷ *R.C.*, 58 ECAB 238 (2006).

caused overuse at the elbow and forearm resulting in strain through the elbow and upper arm. Dr. Fried stated that abnormal posturing of the arm, head, and neck exacerbated an underlying cervical degenerative process which caused a cervical radicular injury. He stated that appellant was disabled and had developed moderate sympathetic pain syndrome.

OWCP referred appellant for a second opinion examination with Dr. Askin. In his report dated July 19, 2013, Dr. Askin noted appellant's history of injury, her employment duties, and her reports of pain in her right thumb with sporadic pain in her right elbow and shoulder that spread up to her neck. He found no positive physical findings and found that she had no objective condition from her work activities or prior injury. Dr. Askin opined that appellant had no objective determinable reason for her complaints and no objective findings of a condition. He stated that there were no physical limitations from her work-related injury and that she had no disability.

The Board finds that there is a conflict of medical opinion evidence between appellant's attending physician, Dr. Fried, who identified several conditions as related to her employment duties and explained the process by which these conditions developed, and the second opinion physician, Dr. Askin, who stated that appellant had no objective findings, condition or disability related to her employment. Due to the disagreement between these findings and conclusions of these physicians, the Board finds that the case must be remanded to OWCP for referral to an appropriate Board-certified physician to determine if appellant's employment activities on or after June 2011 resulted in a diagnosed condition and if so, any period of disability. After this and such other development as OWCP deems, necessary OWCP should issue an appropriate decision.

CONCLUSION

The Board finds that appellant's claim is not in posture for a decision due to an unresolved conflict of medical opinion evidence.

ORDER

IT IS HEREBY ORDERED THAT the August 29, 2014 decision of the Office of Workers' Compensation Programs is set aside and remanded for further development consistent with this decision of the Board.

Issued: April 28, 2015
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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