

ANN MARIE O'HAGAN )  
 )  
 Claimant-Petitioner )  
 )  
 v. )  
 )  
 NAVY EXCHANGE SERVICE COMMAND ) DATE ISSUED:  
 )  
 Self-Insured )  
 Employer-Respondent ) DECISION and ORDER

Appeal of the Decision and Order of Paul H. Teitler, Administrative Law Judge, United States Department of Labor.

Joseph F. Manes (Manes & Manes), Millwood, New York, for claimant.

Francis M. Womack III (Lawrie, Cozier and Vivenzio), Mount Arlington, N.J., for self-insured employer.

Before: HALL, Chief Administrative Appeals Judge, BROWN and DOLDER, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (95-LHC-0766) of Administrative Law Judge Paul H. Teitler rendered on a claim filed pursuant to the provisions of the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901 *et seq.* (the Act). We must affirm the findings of fact and conclusions of law of the administrative law judge which are rational, supported by substantial evidence, and in accordance with law. *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3).

In 1985, claimant began working at the Navy Exchange as a collections clerk. In this position, her duties included collecting on bad checks, entering checks on the computer, and filing. Thereafter, she subsequently held various other positions with employer in which her duties included bookkeeping, logging, clerical work, typing on a desktop computer, and operating a check signing machine, which required manual cranking at times. In her position as travel clerk, claimant entered data into a computer and used an adding machine.

Claimant alleges that in 1991 she began experiencing tingling in her right fingers,

numbness, pain in the palm of her right hand and up her arm, and a lack of strength. In September 1992, she consulted Dr. Patel, who diagnosed carpal tunnel syndrome and performed a right carpal tunnel release on May 11, 1993. Cl. Ex. B. In September 1993, claimant began experiencing symptoms in her left hand. Claimant declined surgery on that hand because she felt the right carpal tunnel release did not provide relief. Tr. at 43. Claimant did not return to work after the surgery and sought temporary total disability benefits under the Act from May 11, 1993, until September 21, 1993, and either permanent total or permanent partial disability compensation thereafter, alleging she was disabled due to work-related carpal tunnel syndrome.

The administrative law judge denied the claim, finding that claimant failed to establish that she presently suffers, or has ever suffered from, carpal tunnel syndrome. He further determined that although claimant may at one time have suffered from, or may currently suffer from some impairment to her hands and/or wrists other than carpal tunnel syndrome, he need not consider whether such impairment is compensable, because under *U.S. Industries/Federal Sheet Metal, Inc. v. Director, OWCP*, 455 U.S. 608, 14 BRBS 631 (1982), the Section 20(a), 33 U.S.C. §920(a), presumption is only applicable to claims actually made. The administrative law judge further determined that even if claimant were to establish some other impairment to her wrists, she would have had to produce medical evidence of a causal relationship between that impairment and her employment, whereas the medical reports in this case only address the relationship between carpal tunnel syndrome and her employment. Claimant appeals the denial of benefits, arguing that there is overwhelming evidence that she has carpal tunnel syndrome, that she is entitled to the Section 20(a) presumption that her condition is work-related, and that she is permanently and totally disabled as a result of this condition. Employer responds, urging affirmance.

After review of the administrative law judge's Decision and Order in light of the evidence of record, we affirm his denial of benefits based on claimant's failure to establish that she currently suffers, or ever suffered from, carpal tunnel syndrome. Claimant has the burden of proving the existence of an injury, *i.e.*, physical harm, and that a work-related accident occurred or that working conditions existed which could have caused the harm, in order to establish a *prima facie* case and invoke the Section 20(a) presumption. *Obert v. John T. Clark and Son of Maryland*, 23 BRBS 157 (1990); *Kelaita v. Triple A Machine Shop*, 13 BRBS 326 (1981). As carpal tunnel syndrome is the "injury" claimant alleged as the basis for her claim, the administrative law judge properly weighed the evidence to determine whether, in fact, claimant had this condition, as only the condition claimed can establish a *prima facie* case under Section 20(a). See *U.S. Industries*, 455 U.S. at 608, 14 BRBS at 631; *Darnell v. Bell Helicopter, Inc.*, 16 BRBS 98 (1984), *aff'd sub nom. Bell Helicopter, Inc. v. Jacobs*, 746 F.2d 1342, 17 BRBS 13 (CRT) (8th Cir. 1984).

After considering the relevant evidence, the administrative law judge credited the medical reports of Drs. Maniscalco and Vigman, indicating that claimant did not have carpal tunnel syndrome, Emp. Exs. 2, 4. The administrative law judge reasoned that both are board-certified neurologists, who provided detailed explanations of their conclusions in light of the neurologic testing evidence, specifically the EMG and Nerve Conduction Velocities (NCV)<sup>1</sup> performed on May 25, 1994. Both Dr. Maniscalco and Dr. Vigman were of the opinion that the results of the objective testing were not consistent with claimant's symptoms, which Dr. Vigman stated were "non-organic and non-anatomical." Tr. at 72; Emp. Exs. 1, 2. Dr. Vigman further described the findings of the electrodiagnostic testing as random, inconsistent, and not indicative of carpal tunnel syndrome. Tr. at 153. By contrast, the administrative law judge afforded little weight to Dr. Head's "preliminary diagnosis" of carpal tunnel syndrome, because Dr. Head did not have the results of the EMG and NCV tests at his disposal when he made this diagnosis, and he made no final diagnosis after these tests, which he had recommended, were performed. Emp. Ex. 6. The administrative law judge found the opinions of Drs. Patel and Slotwiner similarly unavailing; they too never reconciled their carpal tunnel syndrome diagnosis with the results of the later neurological testing. Decision and Order at 6; Tr. at 70-72. He also reasoned that Dr. Slotwiner noted that he had expected a full recovery and for claimant to be able to return to work within 60 days after surgery, but was not given a chance to reassess this diagnosis after claimant's recovery did not progress as expected. The administrative law judge also observed that the lack of recovery after claimant had been removed from the work environment had been cited by both Drs. Maniscalco and Vigman as a factor in their diagnoses.

Inasmuch as the medical opinions of Drs. Maniscalco and Vigman provide substantial evidence to support the administrative law judge's finding that claimant does not have, and has never had, carpal tunnel syndrome, and claimant has failed to establish any reversible error made by the administrative law judge in evaluating the conflicting medical evidence and making credibility determinations, we affirm this determination. See *Cordero v. Triple A Machine Shop*, 580 F.2d 1331, 8 BRBS 744 (9th Cir. 1978), cert. denied 440 U.S. 911 (1979). Consequently, as claimant failed to establish the harm claimed, an essential element of her *prima facie* case, we affirm the administrative law judge's denial of benefits in this case. See *Goldsmith v. Director, OWCP*, 838 F.2d 1079, 21 BRBS 27 (CRT)(9th Cir. 1988); *Bolden v. G.A.T.X. Terminals Corp.*, 30 BRBS 71 (1996).<sup>2</sup>

---

<sup>1</sup>The EMG revealed bilateral C7-8 radiculopathy and the nerve conduction survey was normal.

<sup>2</sup>As claimant has failed to establish that the injury claimed is work-related, we need

---

not address claimant's contention that she is permanently totally disabled because of this condition.

Accordingly, the administrative law judge's Decision and Order Denying Benefits is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief  
Administrative Appeals Judge

JAMES F. BROWN  
Administrative Appeals Judge

NANCY S. DOLDER  
Administrative Appeals Judge