U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MONICA L. NICKENS and GENERAL ACCOUNTING OFFICE, HEHS/OACG, Washington, DC

Docket No. 97-2569; Submitted on the Record;
Issued November 18, 1999

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant met her burden to establish that she sustained an occupational disease causally related to factors of her federal employment.

On October 18, 1995 appellant, then a 43-year-old electronic publishing technician, filed a notice of occupational disease alleging that she suffered right wrist carpal tunnel syndrome, cervical disc syndrome, and right subscapular bursitis as a result of her federal employment. Appellant stated that she became aware of the disease or condition on September 6, 1995. She stated that she first realized the disease or illness was caused or aggravated by her employment on September 18, 1995. Appellant stated that she experienced increasing pain and numbness in her right hand, wrist and arm when using the computer keyboard and mouse. Appellant reported the condition to her supervisor on September 14, 1995 and stopped working on September 18, 1995.

In a separate statement, appellant stated that she had pain, weakness and numbness in her right hand. She stated that she had pain in her right wrist, arm and shoulder. Appellant indicated that her job entailed using a computer keyboard and mouse which involved repetitive motion of the right arm and wrist. She stated that she typed and used the mouse eight hours per day, five days per week.

On September 22, 1995 Dr. Rida N. Azer, appellant's treating physician and a Board-certified orthopedic surgeon, examined appellant and reviewed x-rays. Dr. Azer diagnosed supraspinatus, right shoulder; right subscapular bursitis traumatic; cervical disc syndrome; and traumatic tenosynovitis, flexor tendons, right wrist and hand. She stated that she could not rule out right carpal tunnel syndrome.

On September 26, 1995 Dr. Daniel R. Ignacio, a physician Board-certified in physical medicine and rehabilitation, performed a nerve conduction study (NCS). Dr. Ignacio found abnormal right median nerve conduction which revealed prolonged distal motor latencies of the

right median nerve with stimulation of this nerve above the wrist. He indicated that his electromyography (EMG) finding was consistent with right carpal tunnel syndrome.

On October 2, 1995 Dr. Azer noted that appellant's nerve conduction study and EMG showed right carpal tunnel syndrome. She treated appellant again on October 16, 1995 for pain, numbness and weakness in the right hand. Dr. Azer noted a positive Tinel's and Phalen's sign. She also found tenderness over C5-6 and C7 with pain and muscle spasm on movement.

On November 3, 1995 the Office informed appellant that the medical evidence was insufficient to establish her claim. The Office requested that appellant submit a medical opinion explaining how her work activities contributed to her condition. Appellant was given a "reasonable period" or approximately 30 days to respond.

On November 6, 1995 Dr. Azer noted tenderness over the volar carpal ligament with a positive Tinel's sign. She found that appellant had hypoesthesia to pinprick over the right median nerve distribution and that there was thickening in the synovium flexor tendons. Dr. Azer noted tenderness over C5-6 and, pain and muscle spasm with movement of the cervical spine. She found tenderness over the greater tuberosity of the right humerus. Dr. Azer stated that appellant had carpal tunnel syndrome based on the nerve conduction study and EMG performed on September 26, 1995.

On November 6, 1995 the Office requested a second opinion examination from Dr. Kenneth Eckmann, a Board-certified neurologist.

On November 8, 1995 Dr. Azer requested authorization for a surgical procedure. She wanted to perform a decompression right carpal tunnel syndrome and an excision biopsy synovium flexor tendons, right wrist and hand. Dr. Azer diagnosed right carpal tunnel syndrome with tenosynovitis, flexor tendons right wrist and hand.

On November 20, 1995 Dr. Azer again noted that appellant's NCS and EMG indicated right carpal tunnel syndrome. She stated that she continued to recommend surgery.

On November 30, 1995 Dr. Eckmann provided the results of his second opinion examination. He reviewed appellant's work history, symptomology and course of medical treatment. Dr. Eckmann also reviewed the x-rays, NCS and EMGs. He opined that there were minimal findings of carpal tunnel syndrome. Dr. Eckmann stated that he was not persuaded that these mild findings explained appellant's symptoms. He stated that her current activities, mainly of using a computer mouse, stressed her wrist less than previous keyboard work. Dr. Eckmann noted that an extensive period of rest and splinting produced little improvement. He stated that appellant's previous history of surgery for tendinitis raised the question of underlying, intrinsic wrist disease. Dr. Eckmann stated that the September 26, 1995 EMG produced a forearm medial nerve conduction finding that was impossible and therefore rendered the study invalid. Moreover, he noted that a repeat EMG was normal. He characterized appellant as having wrist and hand pain of uncertain etiology. Dr. Eckmann opined that there was no evidence of carpal tunnel syndrome. He stated that he could not state with more than a 50 percent certainty that appellant's symptoms were employment related.

On December 19, 1995 Dr. Eckmann stated appellant should limit flexion/extension of her wrist and use a wrist splint during her employment activities. He stated appellant could work eight hours per day. Dr. Eckmann indicated that appellant should avoid repetitive motions of the wrist. He again stated that he was uncertain whether these limitations were employment related.

On December 26, 1995 Dr. Peter S. Trent, a Board-certified orthopedic surgeon, diagnosed carpal tunnel syndrome.

By decision dated January 26, 1996, the Office rejected appellant's claim because fact of injury was not established. In an accompanying memorandum, the Office noted that the reports of Dr. Azer failed to explain how the claimed condition was due to factors of her federal employment. The Office noted that the weight of the medical evidence rested with the opinion of Dr. Eckmann who found no objective evidence of abnormalities of the right wrist/hand and, as such, no diagnosed condition due to factors of employment.

On January 27, 1997 appellant's representative requested reconsideration.

In support, appellant submitted a February 13, 1996 report from Dr. William R. Leahy, a Board-certified psychiatrist and neurologist, who stated that given the EMG and magnetic resonance imaging (MRI) scan findings from the neurology center, there was little evidence of carpal tunnel disease. He indicated that appellant might have an overuse syndrome because relief from her work alleviated her symptoms.

Appellant also submitted a February 21, 1996 report from Dr. David Dorin, a Board-certified orthopedic surgeon, who reviewed appellant's work history and symptoms. He also performed a physical examination and reviewed x-rays. Dr. Dorin concluded that appellant's symptoms were clinically related to a neuropathy of the median nerve in both the right and left wrist which is causally related to a repetitive accumulative trauma injury to the median nerve as a result of her work activities. He further stated that appellant did use the keyboard and mouse several hours a day for the last several years and that activity is consistent with the cause of the accumulative repeated trauma to the median nerve. On March 8, 1996 Dr. Dorin reported that appellant was doing quite well and that she was using a wrist brace with good improvement of her symptoms.

On March 22, 1996 Dr. Richard N. Norris, a physician Board-certified in physical medicine and rehabilitation, examined appellant and reviewed appellant's work history and her symptomology. He reported normal findings on physical examination and with neurological testing. Dr. Norris' impression was that appellant had right forearm flexor pain as well as bilateral trapezius tenderness and strain. He found no evidence of carpal tunnel syndrome, but stated that the pain in the right upper extremity is "most likely" related to performing appellant's work activities, especially the prolonged usage of the mouse.

On October 16, 1996 Dr. Dorin noted that appellant continued to have symptoms in both hands. He noted that appellant had a positive Tinel's test, a positive Phalen's test, numbness and tingling to the medial nerve, innervated digits and retrograde pain to the forearm. Dr. Dorin felt the symptoms were causally related to appellant's work activities and the result of repetitive motion of the wrist and hand.

On December 11, 1996 Dr. Laura Isensee, a Board-certified psychiatrist and neurologist, performed a normal NCS and EMG and found no electrophysical evidence of carpal tunnel syndrome.

By decision dated May 1, 1997, the Office reviewed the merits of the claim and denied it because the evidence submitted in its support was not sufficient to warrant modification of the prior decision. In an accompanying memorandum, the Office indicated that the February 13, 1996 report of Dr. Leahy lacked probative value because it failed to contain a definitive diagnosis. The Office further found that Dr. Dorin's February 21, 1996 report lacked probative value because he failed to provide an affirmative diagnosis and only listed symptoms. It further found that his March 8, 1996 report contained no new evidence and that his October 16, 1996 report failed to contain a diagnosis. Finally, the Office discredited Dr. Norris' March 22, 1996 report because he failed to provide a diagnosis and he rendered an equivocal opinion.

The Board finds that this case is not in posture for a decision.

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.[1] The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence.[2] 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,[3] must be one of reasonable medical certainty,[4] 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]

In the instant case, the Office initially relied on the opinion of Dr. Eckmann, a Board-certified neurologist and the second opinion physician, to find that appellant failed to meet her

[1] *See Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[2] The Board held that, in certain cases, where the causal connection is obvious, expert testimony may not be necessary; *see Naomi A. Lilly*, 10 ECAB 560, 572-73 (1959). The instant case, however, is not one of obvious casual connection.

[3] *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

[4] *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

[5] *See James D. Carter*, 43 ECAB 113 (1991); *George A. Ross*, 43 ECAB 346 (1991); *William E. Enright*, 31 ECAB 426, 430 (1980).

burden to establish that she sustained an occupational disease causally related to factors of her federal employment. Dr. Eckmann conducted a complete neurological examination which included a physical examination, x-rays, NCS and EMGs. He opined that he found no evidence of carpal tunnel syndrome and that, therefore, appellant did not need a carpal tunnel release.

Dr. Eckmann's opinion, however, is contradicted by the numerous opinions of physicians diagnosing employment-related hand conditions and recommending surgery. In this regard, Dr. Leahy, a Board-certified psychiatrist and neurologist, conducted an examination and diagnosed overuse syndrome which was alleviated by relief from work. In addition, Dr. Dorin, a Board-certified orthopedic surgeon, conducted an examination and diagnosed a neuropathy of the median nerve of both wrists causally related to repetitive cumulative trauma from appellant's work activities. Moreover, Dr. Azer, appellant's treating physician and a Board-certified orthopedic surgeon, also conducted examinations. She stated that appellant demonstrated positive Phalen's and Tinel's signs, and indicated that appellant's NCS and EMG showed right carpal tunnel syndrome. Dr. Azer recommended that appellant undergo surgery to resolve the problem. Dr. Ignacio, a physician Board-certified in physical medicine and rehabilitation, also indicated that his objective testing was consistent with carpal tunnel syndrome. Finally, Dr. Norris, a physician Board-certified in physical medicine and rehabilitation, conducted an examination and indicated that appellant's pain in her right upper extremity was most likely related to her work activities, especially the prolonged use of a mouse.

Consequently, there is a conflict in the medical opinion evidence between the opinion of Dr. Eckmann, diagnosing no evidence of an employment-related condition requiring surgery, and the contrary opinions of Drs. Leahy, Dorin, Azer, Ignacio and Norris. When there are opposing medical reports of virtually equal weight and rationale, the case must be referred to an impartial medical specialist, pursuant to section 8123(a) of the Act,[6] to resolve the conflict in the medical opinion.

As an unresolved conflict exists in the medical opinion evidence, this case must be remanded to the Office for referral to an impartial medical specialist. After such further development as necessary, the Office shall issue a *de novo* decision.

[6] 5 U.S.C. § 8123(a); *see Martha A. Whitson (Joe D. Whitson)*, 36 ECAB 370 (1984).

The decision of the Office of Workers' Compensation Programs dated May 1, 1997 is hereby set aside and the case is remanded to the Office for further development consistent with this opinion.

Dated, Washington, D.C.
November 18, 1999

George E. Rivers
Member

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member