

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SYLVIA SCHNEIDER and U.S. POSTAL SERVICE,
SANDLAKE STATION BRANCH, Orlando, FL

*Docket No. 98-1656; Submitted on the Record;
Issued January 4, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant has met her burden of proof to establish that she sustained an injury while in the performance of the duty.

The Board has duly reviewed the case record in this appeal and finds that appellant has failed to meet her burden of proof to establish that she sustained an injury while in the performance of the duty.

On January 17, 1997 appellant, then a 34-year-old part-time flexible letter carrier, filed a claim for an occupational disease (Form CA-2) assigned number 06-0670864 alleging that she first became aware of her bilateral carpal tunnel syndrome on June 1, 1995.¹ Appellant also alleged that she realized that her condition was caused or aggravated by her employment on September 23, 1995.² Appellant stated that she sorted out mail and handled mail 8 to 10 hours per day, pushed and pulled hampers, lifted trays and buckets of mail and performed a lot of hand and arm manipulation. On the reverse of the claim form, Michael Vazquez, an employing establishment customer service supervisor, indicated that appellant's injury first occurred due to an accident, which happened off the clock with her personal vehicle. He further indicated that this was not work related to the best of his knowledge.

In a February 27, 1997 decision, the Office of Workers' Compensation Programs found the evidence of record insufficient to establish that appellant sustained an injury while in the performance of duty. In an October 21, 1997 letter, appellant requested reconsideration of the Office's decision.

¹ Previously, on July 29, 1996, appellant filed a traumatic injury claim (Form CA-1) assigned number 06-658038 alleging that she sustained bruises on her knee, neck and back and sore hands due to an automobile accident.

² In an October 21, 1997 letter requesting reconsideration, *see* discussion *infra*, appellant indicated that she realized her carpal tunnel syndrome was employment related on September 23, 1996 rather than September 23, 1995.

By decision dated January 20, 1998, the Office denied appellant's request for modification based on a merit review of the claim.

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.³ The medical evidence required to establish a causal relationship, generally, 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,⁴ must be one of reasonable medical certainty,⁵ 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.⁶

In this case, appellant has failed to submit sufficient rationalized medical evidence establishing that she sustained an injury causally related to factors of her federal employment. In support of her claim, appellant submitted an October 12, 1995 electrodiagnostic report of Dr. William H. Noran, a Board-certified neurologist, revealing that she presented with left cervical radicular pain secondary to a June 14, 1995 automobile accident. Dr. Noran diagnosed bilateral carpal tunnel syndrome of moderate severity noting that the left was much greater than the right. Dr. Noran's report is insufficient to establish appellant's burden because he failed to address whether appellant's bilateral carpal tunnel syndrome was caused by factors of her federal employment.

In further support of her claim, appellant submitted a March 13, 1996 report from Dr. Kurt A. Engel, a chiropractor, revealing that she presented herself for treatment on June 30, 1995 for an examination and treatment of injuries she sustained in an automobile accident on June 14, 1995. Dr. Engel provided a history of the automobile accident, which occurred while appellant was a passenger and appellant's medical treatment. He further provided his findings on physical examination. On x-ray examination, Dr. Engel indicated, *inter alia*, that there was no evidence of any fracture, dislocation or other osseous pathology of appellant's cervical and lumbar spine. Dr. Engel also provided a review of medical records. He initially diagnosed a

³ See *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁴ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

⁵ See *Morris Scanlon*, 11 ECAB 384, 385 (1960).

⁶ See *James D. Carter*, 43 ECAB 113 (1991); *George A. Ross*, 43 ECAB 346 (1991); *William E. Enright*, 31 ECAB 426, 430 (1980).

cervical hyperextension injury, post-traumatic lumbar sprain/strain, lower extremity radiculopathy and post-traumatic thoracic sprain/strain. Dr. Engel's final diagnosis included cervical segmental dysfunction resulting from traumatic hyperextension injury, post-traumatic cervical curve reversal, chronic lumbar sprain/strain and exacerbation of a preexisting lumbar complaint and bilateral post-traumatic carpal tunnel syndrome. Dr. Engel opined that appellant had sustained a permanent injury affecting the cervical spine and upper extremities secondary to the June 14, 1996 automobile accident. He then explained why appellant's conditions were caused by the June 14, 1996 automobile accident. Appellant also submitted Dr. Engel's October 23, 1996 report indicating that upon initial examination, she did not report any prior history of symptomatology in the hands and forearms. Dr. Engel noted that this complaint was first reported by appellant on July 27, 1996 and was recorded in appellant's office notes. Dr. Engel further noted that the electrodiagnostic findings revealed bilateral carpal tunnel syndrome. Under section 8101(2) of the Federal Employees' Compensation Act,⁷ "[t]he term 'physician' includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation of the spine as demonstrated by x-ray to exist and subject to regulation by the Secretary."⁸ If a chiropractor's reports are not based on a diagnosis of subluxation as demonstrated by x-ray to exist, they do not constitute competent medical evidence to support a claim for compensation.⁹ Because Dr. Engel failed to diagnose subluxation as demonstrated by x-ray in either report, they do not constitute competent medical evidence under the Act. Thus, his reports are insufficient to establish appellant's burden.

Additionally, appellant submitted a January 27, 1997 disability certificate from the office of Dr. Ashraf Ghaly, a family practitioner, which was signed by Sandra Saint. The certificate revealed a diagnosis of carpal tunnel syndrome and tendinitis, appellant's physical restrictions and that appellant could return to light-duty work for two weeks on January 28, 1997. The record does not indicate that Ms. Saint is a physician and the disability certificate is not signed by a physician. Inasmuch as this disability certificate is not signed by a physician,¹⁰ it does not constitute competent medical evidence.

Further, appellant submitted Dr. Ghaly's January 27, 1997 medical report indicating the diagnoses of carpal tunnel syndrome and tendinitis. He noted that appellant wanted to know whether her tendinitis was caused by her carpal tunnel syndrome. Dr. Ghaly stated that he told appellant he did not think that the tendinitis could be a result of her carpal tunnel syndrome in her wrist. Dr. Ghaly opined that "I have no idea if it is work related or not, but I do believe that [appellant] has some pain in the right elbow due to tendinitis and she has an injury of carpal tunnel that is work related." The Board finds that Dr. Ghaly's medical report is insufficient to establish appellant's burden because he did not believe there was a causal relationship between

⁷ 5 U.S.C. §§ 8101-8193.

⁸ 5 U.S.C. § 8101(2); *see also* 20 C.F.R. § 10.400(a); *Robert J. McLennan*, 41 ECAB 599 (1990); *Robert F. Hamilton*, 41 ECAB 431 (1990).

⁹ *Loras C. Dignann*, 34 ECAB 1049 (1983).

¹⁰ *Jerre R. Rinehart*, 45 ECAB 518 (1994).

appellant's tendinitis and factors of her employment. Further, Dr. Ghaly failed to explain how or why appellant's carpal tunnel syndrome was work related.

Appellant submitted an April 24, 1997 medical report from Dr. Hector D. Barreto, an internist, revealing a history of an automobile accident she was involved in several years ago, as well as, a subsequent automobile accident that occurred while she was at work, a history of appellant's medical treatment for carpal tunnel syndrome and a review of appellant's job description which involved repetitive motion. Dr. Barreto stated he told appellant that he was unable at that time to conclude her injury was work related since she had the two automobile accidents. He stated, however, that repetitive motion was a detriment to her condition and that she needed to adjust her position while working. He then noted that appellant was willing to undergo additional testing. The Board finds that Dr. Barreto failed to opine that appellant's condition was caused by her work duties. Therefore, his medical report is insufficient to establish appellant's burden.

In a May 9, 1997 medical report, Dr. Barreto indicated a review of medical records, his findings on physical examination and a diagnosis of carpal tunnel syndrome documented by nerve conduction study. He stated that "[i]t is most likely aggravated by her work." He noted that he reviewed appellant's job description and appellant's medical treatment. The Board has held that while the medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute certainty,¹¹ neither can such opinion be speculative or equivocal. The opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to federal employment and such relationship must be supported with affirmative evidence explained by medical rationale and be based upon a complete and accurate medical and factual background of the claimant.¹² Because Dr. Barreto's opinion is speculative regarding the causal relationship between appellant's bilateral carpal tunnel syndrome and her employment factors and he failed to provide any medical rationale in support of his opinion, the Board finds his medical report insufficient to establish appellant's burden.

In a July 15, 1997 medical report, Dr. Thomas P. Panzella provided his findings on physical examination, a diagnosis of carpal tunnel syndrome and a review of medical records. Dr. Panzella, however, failed to address whether appellant's diagnosed condition was caused by factors of her federal employment. Thus, it is insufficient to satisfy appellant's burden.

In support of her request for reconsideration, appellant submitted hospital treatment notes dated July 29, 1996 regarding the treatment she received after her employing establishment vehicle was involved in an automobile accident on that date. The treatment notes indicated that appellant sustained multiple contusions and sprains. In further support of her request for reconsideration, appellant submitted a May 3, 1997 electromyogram report of Dr. Jose Luis

¹¹ See *Kenneth J. Deerman*, 34 ECAB 641 (1983).

¹² *Phillip J. Deroo*, 39 ECAB 1294 (1988); *Margaret A. Donnelly*, 15 ECAB 40 (1963); *Morris Scanlon*, 11 ECAB 384 (1960).

Prendes, a Board-certified neurologist, confirming the previous diagnosis of carpal tunnel syndrome. Appellant also submitted a May 8, 1997 medical report of Dr. Scott Gordon, a Board-certified orthopedic surgeon, revealing a history of her two automobile accidents, his findings on physical and objective examination and a diagnosis of bilateral carpal tunnel syndrome, noting that the left was greater than the right. Because the hospital treatment notes and the medical reports of Drs. Prendes and Gordon failed to address a causal relationship between appellant's condition and factors of her federal employment, they are insufficient to establish appellant's burden.

Additionally, appellant submitted Dr. Barreto's handwritten notes on a May 9, 1997 notice required in support of claim work-related carpal tunnel syndrome (Form CA-35H) revealing a diagnosis of carpal tunnel syndrome. Dr. Barreto stated that "I cannot determine that carpal tunnel syndrome is caused by [appellant's] job, I can say that her job is aggravating and contributing to her carpal tunnel syndrome." He failed to provide any medical rationale explaining how or why appellant's condition was aggravated by factors of her employment. Therefore, his medical report is insufficient to establish appellant's burden.

Inasmuch as appellant has failed to submit sufficient rationalized medical evidence establishing that she sustained an injury while in the performance of duty, the Board finds that she has failed to satisfy her burden of proof in this case.

The January 20, 1998 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, D.C.
January 4, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member