U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SUSAN D. SHUMAN and U.S. POSTAL SERVICE,
POST OFFICE, Grand Rapids, MI

Docket No. 01-1493; Submitted on the Record;
Issued August 20, 2002

DECISION and ORDER

Before MICHAEL J. WALSH, COLLEEN DUFFY KIKO,
A. PETER KANJORSKI

The issue is whether appellant met her burden of proof to establish that she sustained a right arm injury causally related to her federal employment

On January 25, 2000 appellant, then a 49-year-old postal clerk, filed a notice of traumatic injury, alleging that on November 6, 1999 she suffered an injury to her right arm when she was handling sacks on the workroom floor and felt like something in her right arm had ripped inside.[1]

By decision dated May 15, 2000, the Office denied appellant's claim as the evidence of record failed to establish a causal relationship between the claimed work event and any medical diagnosis. She requested reconsideration. In merit decisions dated September 5, 2000 and February 1, 2001, the Office denied modification of its May 15, 2000 decision.

The Board finds that appellant did not meet her burden of proof to establish that she sustained a right arm injury causally related to her federal employment.

An employee seeking benefits under the Federal Employees' Compensation Act[2] has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was

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[1] On March 1, 1999 appellant had filed a claim (case # 09-0457445) for a pulled muscle in her left arm which occurred while she was working a 115 belt on February 15, 1999. Her claim was accepted for medial epicondylitis of the left elbow. The Office of Workers' Compensation Programs additionally accepted bilateral carpal tunnel syndrome (case # 09-20038887); bilateral carpal tunnel syndrome with left carpal tunnel release (case # 09-0345784); and tendinitis of the right arm (case # 09-0297352). By letter dated May 25, 2000, the Office combined appellant's current claim (case # 09-345784) with case # 09-462338 (which is denied neck injury) under the master file 09-345784.

[2] 5 U.S.C. §§ 8101-8193.

sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.[3] These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[4]

To determine whether an employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.[5] Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.[6] An employee may establish that an injury occurred in the performance of duty as alleged but fail to establish that his or her disability and/or a specific condition for which compensation is claimed are causally related to the injury.[7]

The medical evidence required to establish a causal relationship 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, must be one of reasonable medical certainty 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.[8]

The Board finds that the medical reports submitted by appellant do not contain a well-rationalized medical opinion relating her right arm condition to her employment.

The medical evidence in support of appellant's claim consists of disability and work restriction slips along with medical reports, an electromyogram (EMG) and follow-up examination reports. The Board notes that all medical evidence prior to the date of injury of November 6, 1999 has no probative value and, thus, will not be considered.

In a medical report dated November 29, 1999, Dr. Gary A. Brooks, a Board-certified family practitioner with the Blue Care Network, noted that appellant presented him with right arm pain as well as complaints of carpal tunnel syndrome. Findings on examination were

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[3] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[4] *Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

[5] *John J. Carlone*, 41 ECAB 354 (1989).

[6] *Id*. For a definition of the term "injury," *see* 20 C.F.R. § 10.5(a)(14).

[7] As used in the Act, the term "disability" means incapacity because of an injury in employment to earn wages the employee was receiving at the time of the injury, *i.e.*, a physical impairment resulting in loss of wage-earning capacity. *Frazier V. Nichol*, 37 ECAB 528 (1986).

[8] *Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

provided with an assessment of carpal tunnel. Appellant was referred to neurology for an EMG and work restrictions were continued.

In a medical report dated December 6, 1999, Dr. Jose Mari G. Jurado, a physician who specializes in physical medicine and rehabilitation, noted that appellant was being seen for an evaluation of exacerbation of pain in the right upper limb that started on November 6, 1999. The pain started in the right elbow and down to the hand while hanging empty sacks of mail repetitively. Similar symptoms are noted on the left side, but he reported were not as bothersome. Appellant was noted to have a known history of rheumatoid in 1982. She has had these symptoms for several years since back in the 80's and has had several EMG's which confirm that she has neuropathy with carpal tunnel and cubital tunnel or ulnar neuropathy. Appellant was last seen on February 24, 1999 still showing carpal tunnel with cubital tunnel polyneuropathy and cervical radiculopathy. No treatment had been provided since this latest episode of her exacerbating pain. Findings on physical examination were provided. An EMG examination of the right upper limb and corresponding paraspinal muscles revealed no denervation or complex repetitive discharges with recruitment patterns within normal limits. Dr. Jurado opined that the findings revealed right carpal tunnel syndrome, mild, no denervation; right early C6, C7 and C8 radiculopathy, no denervation; no cubital tunnel syndrome; no radical neuropathy or brachial plexopathy; and focal neuropathy. Dr. Jurado recommended that restrictions were necessary if appellant was to work with her hands and arms as no restrictions could only aggravate her conditions.

In a report dated December 15, 1999, Dr. Brooks noted the results of the December 6, 1999 EMG and presented his findings on physical examination. A mild radiculopathy of the C6, C7 and C8 was diagnosed. Appellant was referred for physical therapy with possible traction. In a medical report dated January 24, 2000, Dr. S. Cribbs PA-C, also of the Blue Care Network, noted the history of the November 6, 1999 work injury and appellant's medical treatment to date. After a physical evaluation, appellant was diagnosed with right carpal tunnel syndrome and cervical radiculopathy C5, C7 and C8 with no denervation. Physical therapy was to continue. A note dated January 24, 2000 requested the employing establishment to allow appellant to take Thursday off for the next three weeks so that she could finish physical therapy. A Form CA-17 dated January 24, 2000, provided the diagnoses of right-sided cervical radiculopathy and right-sided carpal tunnel syndrome along with restrictions for a part-time work. Other reports from the Blue Care Network dealt with appellant's tendinitis.

In a medical report and EMG examination of February 23, 1999, Dr. Jurado noted that appellant was being seen for an electrodiagnostic evaluation of pain in both upper limbs which aggravated her elbow and arm pains while lifting at work a few days ago, more especially in the left arm but both arms and shoulders and fingers are all with pain and all fingers are swollen, especially the left side. Neck pain on the right side was also noted. A physical examination and EMG evaluation were conducted. Dr. Jurado stated that the findings revealed bilateral carpal tunnel syndrome, mild, no denervation; bilateral cubital tunnel syndrome, mild, no denervation; bilateral early C6, C7 and C8 radiculopathy, no denervation; no radial neuropathy or brachial plexopathy. Dr. Jurado opined that appellant's changes in her neuropathy were most likely from her rheumatoid arthritis. A disability certificate was issued.

In a February 4, 2000 report, Dr. Jurado provided his findings on physical and EMG examinations and diagnosed progressive pain on both upper limbs with pain in the lower back and legs. In a February 21, 2000 report, Dr. Jurado noted his findings on the physical and EMG examinations. Findings revealed paraspinal denervation from L4-5 and left S1, which coupled with the nerve conduction study, indicated a bilateral L4-5 and S1 radiculopathy. Further testing was recommended for appellant's back and work restrictions were provided.

In a medical report dated April 12, 2000, Dr. Jurado noted that appellant was experiencing lower back pain. A physical examination was conducted and results provided. Dr. Jurado diagnosed right carpal tunnel, bilateral cubital, bilateral cervical radiculopathy and lumbar radiculopathy with superimposing neuropathy, obesity and a questionable history of rheumatoid arthritis. The restrictions provided on February 21, 2000 were continued noting that appellant was now working three times a week. Dr. Jurado advised that he was awaiting radiological studies which were requested of the cervical, lumbar, shoulders, pelvis and hips along with a magnetic resonance imaging (MRI) scan of the cervical spine. A disability certificate rendering appellant partially disabled from April 13 to June 30, 2000 along with restrictions were provided.

In a May 9, 2000 report, Dr. Jurado provided the results of his examination and diagnosed status post bilateral carpal tunnel syndrome with recurrence of both as evidenced by EMG, cubital tunnel syndrome, cervical radiculopathy, lumbar radiculopathy and bulging disc mid cervical area C5-6 by the MRI scan and disc protusion L5-S1 and neuropathy. Dr. Jurado advised that appellant's disability was partial as the findings were not surgical but stated that appellant's nerve entrapments and mild cervical and lumbar changes needed to be watched. Appellant additionally has cubital tunnel syndromes on the elbows aside from the carpal tunnel. Dr. Jurado advised that appellant could continue with her work restrictions as she was not severe enough for surgical intervention. He cautioned against a return to a job which required manual work, heavy lifting, continuous repetitive motions, twisting and turning as her conditions could be aggravated. Dr. Jurado noted that appellant claimed that the upper limb problems are due to work-related injury and she disclaimed work-related injury from her lower back. He opined, however, that although appellant disclaimed work-related injury to the lower back, work restrictions would have to factor in her lower back needs.

In a medical report also dated May 8, 2000, Dr. Brooks summarized appellant's medical visits and the findings on examination. His final impression was that appellant had some definite neurological deficits since both EMG and MRI scan showed some pathology. Dr. Brooks opined that the work restrictions were still realistic. He continued to recommend no lifting, pushing or pulling greater than 20 pounds. No repetitive wrist and elbow motions. Appellant was also to continue with wrist splints. Dr. Brooks indicated that he was awaiting the final impression from Dr. Jurado.

In a May 24, 2000 report, Dr. Jurado summarized appellant's medical history, wherein he noted that appellant had preexisting pain conditions which started in February 1990 to the present. He additionally noted that appellant first related a history of work-related pain on February 24, 1999. Diagnoses were: bilateral carpal tunnel syndrome, s/p release 1991, recurrent 1992; bilateral cubital tunnel syndrome; bilateral cervical radiculopathy;

superimposing multifocal neuropathy; bilateral lumbosacral radiculopathy; MRI scan findings of cervical spine on March 12, 2000 showed bulging annulus at C4-C6 and lumbosacral disc protrusion at L5-S1; and history of rheumatoid arthritis, nonactive. Dr. Jurado addressed the causal relationship of the diagnosis of carpal tunnel and lumbar radiculopathy. He noted that the work injury history of November 6, 1999 as the period of time appellant claimed her present period of disability began. Dr. Jurado stated:

> "[A]s far as the medical condition relationship between her disability and her employment-related injury is concerned, the interrelationship is quite firmly established from the history revealed by appellant of an aggravated condition of having a preexisting condition of carpal tunnel syndrome. The continuous repetitive motion, frequent pushing and pulling, continuous grasping, continuous lifting could aggravate her preexisting condition. The disability that she is claiming here is of partial disability and not a total one for which she still can work under appropriate work restrictions and accommodations…."

In medical reports of June 7, 20, August 29, September 26, July 17, October 25 and November 6, 2000, Dr. Jurado reiterated essentially the same findings on examinations as in his previous reports. In his report of June 7, 2000, Dr. Jurado provided additional diagnoses of MRI scan findings of cervical spine bulging disc and lumbar disc protrusion with plantar fascititis on the left and bilateral rotator cuff impingement syndrome. He stated that appellant continues to suffer from bilateral cervical and lumbar radiculopathy, carpal tunnel, cubital tunnel, bilateral rotator cuff impingement syndrome and rheumatoid arthritis. Dr. Jurado further continued to opine that appellant could work in a restricted capacity. Work restrictions are provided.

The Board finds that the medical reports submitted by appellant do not contain a well-rationalized medical opinion discussing the traumatic event of November 6, 1999 or how the current diagnosed conditions relate to the traumatic event of November 6, 1999. The Board notes that the only report which attempts to address the causal relationship between appellant's injury and her employment factors is the May 24, 2000 report from Dr. Jurado. He reports that appellant claimed that her present period of disability began on November 6, 1999. However, in his first report of December 6, 1999, Dr. Jurado referenced a medical history of neuropathy with carpal tunnel and cubital tunnel or ulnar neuropathy, which was still active when appellant was seen on February 24, 1999. Dr. Jurado did not provide any medical rationale in either his December 6, 1999 or May 24, 2000 reports as to why the specific incident of November 6, 1999 would cause the onset of appellant's right arm pain or aggravate her preexisting condition of carpal tunnel syndrome. Although Dr. Jurado stated in his report of May 24, 2000 that "the continuous repetitive motion, frequent pushing and pulling, continuous grasping, continuous lifting could aggravate her preexisting condition," Dr. Jurado does not mention the specific work factors claimed in the incident of November 6, 1999 and only seems to address appellant's general occupational complaints. Even though Dr. Jurado's reports of December 6, 1999 and May 24, 2000 hint at a specific incident at work, it creates inconsistencies with appellant's claim that she experienced a traumatic injury on November 6, 1999. In addition, none of the medical reports of record provide a fully rationalized medical opinion of how the specific incident of November 6, 1999 caused the onset of appellant's current medical conditions which arose subsequent to November 6, 1999.

Since the medical evidence submitted does not establish a causal relationship between appellant's November 6, 1999 claimed traumatic injury and her current medical conditions, appellant has not met her burden of proof in establishing her claim.

The February 1, 2001, September 5 and May 15, 2000 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
August 20, 2002

Michael J. Walsh
Chairman

Colleen Duffy Kiko
Member

A. Peter Kanjorski
Alternate Member