

In a report dated April 29, 2002, Dr. Ahmed E. Elemam, a specialist in physical medicine and rehabilitation, stated that appellant was symptomatic for neck pain with radicular symptoms to bilateral upper extremities, tingling and numbness sensations in both hands. Dr. Elemam diagnosed bilateral tendinitis in her hands.

In a report dated April 6, 2002, Dr. Farrukh Chaudhry, a specialist in clinical neurophysiology, and Roy M. Shanon, Board-certified in internal medicine, stated that nerve conduction velocity studies of the bilateral upper extremities performed on appellant showed a normal bilateral ulnar sensory nerve result and normal bilateral median sensory nerve results. Drs. Chaudhry and Shanon concluded that the tests were consistent with bilateral mild carpal tunnel syndrome.

In a report dated May 9, 2002, Dr. Dinesh Shukla, a second opinion referral neurologist, noted that appellant had been experiencing pain in the right hand, right joint, elbow, in addition to intermittent numbness in her hands. Dr. Shukla noted that x-rays of the left hand and left wrist were reported to be normal. He indicated that appellant had been previously diagnosed with bilateral carpal tunnel syndrome, but advised that there was no indication for neurological intervention to the hand, cervical or lumbar area. Dr. Shukla further noted that appellant was currently working in a modified position for four hours per day since she sustained a lower back injury in March 1997, but was capable of working an eight-hour day with restrictions.

In a report dated May 23, 2002, Dr. Elemam stated:

“[Appellant] is known to me for a long time now because of her work injury which [affected] her neck [and] back, and now she was diagnosed with bilateral carpal tunnel syndrome, as well as tendinitis in both hands, which [appellant] claims is occupational[;] this has developed over time with repetition movement of both hands and wrists. She started to complain of wrist problems a long time ago, she works as a mail handler, and uses her hands in a continuous repetitious movement which aggravates her condition. She complains of tingling and numbness sensation in both hands, mainly in the outer three fingers, which is worse at night, sometimes she wakes up in the middle of the night shaking her hands because of the numbness and pain. She also has difficulty using her hands, the pain shoots up to the elbows sometimes.”

Dr. Elemam noted that an electromyogram and nerve conduction studies were performed on April 6, 2002 which indicated findings suggestive of mild bilateral carpal tunnel syndrome. He diagnosed bilateral carpal tunnel syndrome, and stated that the symptoms and findings appellant presented were causally related to her occupation as a mail handler, which developed throughout the years while working. Dr. Elemam advised appellant not to move her hands repetitively for any type of work in order to decrease her symptoms.

In a report dated July 9, 2002, an Office medical adviser indicated that there were no findings to support a diagnosis of bilateral carpal tunnel syndrome. He noted that nerve conduction studies and electromyograms performed on appellant were normal and that, based on the report of Dr. Shukla, the referral physician, appellant was able to work.

By letter dated April 15, 2003, the Office advised appellant that it required additional factual and medical evidence to determine whether she was eligible for compensation benefits. The Office asked appellant to submit a comprehensive medical report from her treating physician describing her symptoms and the medical reasons for her condition, and an opinion as to whether her claimed condition was causally related to her federal employment. The Office requested that appellant submit the additional evidence within 30 days. Appellant submitted physical therapy treatment notes dated April 9 through 16, 2003, but did not submit any additional medical reports from a physician.

By decision dated May 19, 2003, the Office denied appellant's claim on the grounds that the claimed medical condition was not causally related to factors or incidents of employment. The Office stated that, "given the discrepancy in the medical evidence received, the Office requested a review of the medical evidence" by an Office medical adviser who found that a diagnosis of bilateral carpal tunnel syndrome was not supported by the test results in the record.

By letter dated August 1, 2003, appellant requested reconsideration. Appellant submitted reports dated May 10 and June 28, 2003 from Dr. Elemam which essentially reiterated his previous findings and conclusions.

By decision dated October 31, 2003, the Office denied reconsideration.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing that 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 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.² These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³

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 medical evidence required to establish causal relationship is usually rationalized medical

¹ 5 U.S.C. § 8101 *et seq.*

² *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

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

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.⁴

ANALYSIS

In this case, there was disagreement between Dr. Shukla and Dr. Elemam regarding whether appellant's alleged bilateral carpal tunnel condition was sustained in the performance of duty -- disagreement noted by the Office in its May 19, 2003 decision, which erred by referring the case to an Office medical adviser. Dr. Elemam stated in his May 23, 2002 report that appellant had bilateral carpal tunnel syndrome which appellant believed had developed over time due to work-related repetitive movement of both hands and wrists. He noted that in appellant's job as a mail handler she was required to use both hands in a continuous repetitious movement, which aggravated her condition. Dr. Elemam advised that April 6, 2002 electromyogram and nerve conduction studies contained findings suggestive of mild bilateral carpal tunnel syndrome. He concluded that appellant had bilateral carpal tunnel syndrome and had symptoms and findings causally related to her job as a mail handler. Dr. Shukla stated in his referral opinion that although appellant had been previously diagnosed with bilateral carpal tunnel syndrome there was no indication for neurological intervention to the hand, cervical or lumbar area. He asserted that appellant was capable of working an eight-hour day with restrictions. When such conflicts in medical opinion arise, 5 U.S.C. § 8123(a) requires the Office to appoint a third or "referee" physician, also known as an "impartial medical examiner."⁵ It was therefore incumbent upon the Office to refer the case to a properly selected impartial medical examiner, using the Office procedures, to resolve the existing conflict. Accordingly, as the Office did not refer the case to an impartial medical examiner, there remains an unresolved conflict in medical opinion.

Accordingly, the case is remanded to the Office for referral of appellant, the case record and a statement of accepted facts to an appropriate impartial medical specialist selected in accordance with the Office's procedures, to resolve the outstanding conflict in medical evidence. The Office should, therefore, on remand, refer the case to an appropriate medical specialist to submit a rationalized medical opinion on whether appellant's claimed bilateral carpal tunnel syndrome was sustained in the performance of duty. After such development of the case record as the Office deems necessary, a *de novo* decision shall be issued.

⁴ *Id.*

⁵ Section 8123(a) of the Act provides in pertinent part, "[i]f there is a 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." See *Dallas E. Mopps*, 44 ECAB 454 (1993).

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the May 19, 2003 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to the Office for further action consistent with this decision of the Board.

Issued: April 22, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member