United States Department of Labor
Employees' Compensation Appeals Board

VELMA M. HILL, Appellant	)	
and	)	**Docket No. 04-947**
	)	**Issued: September 28, 2004**
U. S. POSTAL SERVICE, POST OFFICE, St. Louis, MO, Employer	)	

Appearances:
Velma M. Hill, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On February 27, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated January 6, 2004 which denied modification of an October 8, 2003 decision denying her request to expand her accepted conditions to include brachial plexus nerve compression and thoracic outlet syndrome. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of these decisions.

ISSUE

The issue is whether appellant has met her burden of proof to establish that her conditions of brachial plexus nerve compression and thoracic outlet syndrome are causally related to her federal employment.

FACTUAL HISTORY

On September 22, 2000 appellant, then a 39-year-old part-time flexible clerk, filed an occupational disease claim alleging that the constant pain in her neck and down her left shoulder

and arm was causally related to her federal employment.[1] In an October 9, 2000 report, Dr. Robert Schultz, Board-certified in neurosurgery, stated that she presented with interscapular pain over the prior month, more prominent on the left, with a radicular component that went down the left side and into her hand. On examination, he noted that appellant's neck had a full range of motion with some interscapular pain on extension. Dr. Schultz also noted medial scapular tenderness, bilateral pain and an unremarkable thoracic spine. He diagnosed neck pain, possible thoracic outlet syndrome on the left with doubts about cervical instability.

In December 26, 2000 letter, the Office denied appellant's claim due to insufficient medical evidence. Appellant requested a review of the record by the Branch of Hearings and Review. In a December 26, 2000 report, Dr. Schultz, stated that the repetitive turning of her head and reaching high and low caused cervical myofascitis, but ruled out any root nerve irritation. In a February 19, 2001 report, Dr. Schultz stated that appellant could return to work in a light-duty, sedentary capacity with no repetitive lifting over 10 pounds, no continuous twisting of her neck or stretching over her head.

In a March 2, 2001 decision, an Office hearing representative remanded the case for further development of the medical evidence.

On April 13, 2001 the Office accepted appellant's claim for cervical myofascitis. On April 23, 2001 appellant returned to light-duty work stamping envelopes. On August 11, 2001 she stopped work and filed a recurrence of disability claim, stating that her condition flared up again. In a September 5, 2001 report, Dr. William Sprich, a neurosurgeon, stated that appellant presented with complaints of radiculopathy with numbness and tingling at the C8 distribution of the upper left extremity. He noted that the results of a magnetic resonance imaging (MRI) scan were unremarkable, though she had decreased sensation to pinprick at the C7-8 level and percussion tenderness along the supraclavicular region along the left hand and the medial scapular border of the left hand. Dr. Sprich diagnosed thoracic outlet syndrome and recommended further testing.

In an October 17, 2001 decision, the Office denied the recurrence of disability claim due to insufficient medical evidence.

Appellant requested reconsideration and submitted a March 27, 2002 report from Dr. Schultz who continued to treat her for pain due to cervical myofascitis. He also noted degenerative changes in her neck that did not require surgery. In a May 9, 2002 decision, the Office accepted continued coverage for medical treatment, but denied appellant wage-loss compensation effective August 8, 2001, noting that the medical evidence did not support that she was totally disabled.

On June 7, 2002 appellant was referred for a second opinion medical examination to determine if she had a cervical condition and, if so, her diagnosis and for an opinion on her work restrictions. In a June 25, 2002 report, Dr. Kyu Cho, an orthopedic surgeon and Office referral

[1] On September 14, 2000 appellant actually filed a traumatic injury claim that was later consolidated with her occupational disease claim.

physician, stated that appellant presented with neck and left shoulder pain since September 2000. On examination, he found that the cervical spine was normal and that she had a full rotation of motion in her shoulders. Dr. Cho found no muscle atrophy and stated that x-rays revealed no abnormality. He diagnosed neck pain associated with left upper extremity pain, etiology unknown. In a July 5, 2002 supplemental report, Dr. Cho stated that he had reviewed the results of an MRI scan and could find no evidence of disc herniation or spur formation. He noted a minimal disc bulging at C6-7 and some loss of lordotic curve and opined that these findings were compatible with a strain of the cervical spine with subsequent development of chronic pain. Dr. Cho stated that there was no need for further treatment and appellant could work four hours a day at light duty.

In a July 31, 2002 report, Dr. Schultz stated that appellant could return to work four hours a day with restrictions due to her conditions of chronic thoracic outlet syndrome and cervical myofascitis. In an October 28, 2002 report, Dr. Schultz stated that he treated appellant quarterly for neck and left arm pain caused by a brachial plexus compression on the left secondary to muscle spasm and cervical myofascitis. He added that these conditions were secondary to her work as a letter carrier.

In a November 14, 2002 report, Dr. Susan Mackinnon, a specialist in plastic and reconstructive surgery, stated that appellant showed marginal progress with physical therapy. On examination, Dr. Mackinnon noted evidence of brachial plexus nerve compression, but did not recommend surgery.

In a January 18, 2003 report, Dr. Cho stated that the results of the latest MRI scan were unremarkable. He added that on examination he found no muscle atrophy in her arms and opined that appellant could return to work without any physical restrictions.

In a January 31, 2003 report, the Office referred appellant to Dr. Patrick Hogan, a Board-certified neurologist, who stated in a February 18, 2003 report that his examination of appellant was unremarkable. He added that he could find no evidence of brachial plexus compression, noting that tapping the brachial plexus did not produce pain or paresthesias and that Tinel's sign was negative.

The Office found a conflict of medical opinion and, on April 14, 2003, referred appellant for an impartial medical examination to resolve the issues of which conditions were work related and whether she required any work restrictions. In a May 19, 2003 report, Dr. Joseph Black, a Board-certified neurologist selected as the impartial medical specialist, stated that appellant presented with pain in the left side of her neck and tingling at the back of her neck, with stiffness and tightness, which had been present for two and one-half years. He noted that appellant had depression from this pain. On examination Dr. Black found pain where ever he palpated, but could find no objective basis for her complaints. He added that he could find no evidence of thoracic outlet syndrome, brachial plexopathy, neuropathy, radiculopathy or nerve compression syndrome. In a June 18, 2003 supplemental report, Dr. Black stated that appellant had cervical myofascial pain, but he did not know why she experienced such pain. He noted that there were no objective findings consistent with her pain complaints and that, in his opinion, the complaints had nothing to do with her federal employment injury as she had performed light duty since

May 2001. Dr. Black added that cervical myofascial pain characterized appellant's symptoms, but it was not a disease entity and there was no evidence of neuralgic or muscular disease as she had only subjective complaints of pain.

In a July 7, 2003 letter, the Office found the medical evidence insufficient to support thoracic outlet syndrome or brachial plexus nerve compression as work-related conditions. The Office added that the medical evidence did suggest she might have an emotional condition related to her work injury and referred appellant for a second opinion.

In an August 4, 2003 report, Dr. Scott Arbaugh, a psychiatrist, diagnosed major depressive disorder, single episode, as a consequential condition of appellant's accepted condition. In a September 8, 2003 report, Dr. Arbaugh explained that pain could clearly cause or aggravate depression.

In an October 8, 2003 decision, the Office accepted major depression, single episode, but denied authorization for surgery as the medical evidence was insufficient to establish brachial plexus nerve compression or thoracic outlet syndrome as work-related conditions. The Office found the weight of the medical evidence represented by Dr. Black as the independent medical examiner.

Appellant requested reconsideration and argued that Dr. Black only saw her for 10 minutes and therefore could not carry the weight of the medical evidence. Appellant also submitted an August 25, 2003 report from Dr. Kosit Prieb, a vascular surgeon, who diagnosed possible left thoracic outlet syndrome with no vascular compromise. In a September 30, 2003 report, Dr. Schultz stated that appellant had a diagnosis of thoracic outlet syndrome and of brachial plexus compression. He opined that appellant was getting the run-around and was being mistreated.

In a January 6, 2004 decision, the Office denied modification of the October 8, 2003 decision finding that the medical evidence rested with Dr. Black as the impartial medical specialist.

LEGAL PRECEDENT

The claimant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or factors of employment. As part of this burden the claimant must present rationalized medical opinion evidence, based upon a complete and accurate factual and medical background establishing a causal relationship.[2]

In situations where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving

[2] *Brian E. Flescher* 40 ECAB 532 (1989).

the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.[3]

ANALYSIS

In the present case, the Office properly determined that there was a conflict in the medical evidence between Drs. Schultz and Mackinnon, appellant's attending Board-certified physicians, and Dr. Cho, a Board-certified orthopedist, and Dr. Hogan, a neurologist, acting as Office referral physicians, regarding whether she had work-related brachial plexus nerve compression or a thoracic outlet syndrome. In order to resolve the conflict, the Office properly referred appellant, pursuant to section 8123(a) of the Federal Employees' Compensation Act, to Dr. Black for an impartial medical examination.[4]

The Board finds that the weight of the medical evidence is represented by the thorough, well-rationalized opinion of Dr. Black, the impartial medical specialist, selected to resolve the conflict in the medical opinion. In reports dated May 19 and June 18, 2003, Dr. Black found that appellant did not have brachial plexus nerve compression or thoracic outlet syndrome. The Board has carefully reviewed the opinion of Dr. Black and notes that it has reliability, probative value and convincing quality with respect to its conclusions regarding the relevant issue of the present case. Dr. Black's opinion is based on a proper factual and medical history in that he had the benefit of an accurate and up-to-date statement of accepted facts, provided a thorough factual and medical history and accurately summarized the relevant medical evidence. He demonstrated knowledge of appellant's work history, including the time she spent on light- and part-time duty. Dr. Black provided a proper analysis of the factual and medical history and the findings on examination, including the results of diagnostic testing, and reached conclusions regarding appellant's condition which comported with this analysis.[5] Dr. Black provided medical rationale for his opinion by explaining that he found pain any where he palpated but could find no objective basis for the pain. He stated that he could find no evidence of thoracic outlet syndrome, brachial plexopathy, neuropathy, radiculopathy or nerve compression syndrome. Dr. Black diagnoses cervical myofascial pain, but he did not know why she experienced pain stating that there were no objective findings consistent with her complaints and that her complaints had nothing to do with her employment. Dr. Black added that cervical myofascial pain fits appellant's symptoms, but it was not a disease entity and there was no evidence of neuralgic or muscular disease. Dr. Black's report is entitled to special weight such that appellant has not established that she has thoracic outlet syndrome or brachial plexus nerve compression which is work related.

[3] In situations where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight. *Jack R. Smith*, 41 ECAB 691, 701 (1990); *James P. Roberts*, 31 ECAB 1010, 1021 (1980).

[4] Section 8123(a) of the Act provides in pertinent part: "If there is 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." 5 U.S.C. § 8123(a).

[5] *See Melvina Jackson*, 38 ECAB 443, 449-50 (1987); *Naomi Lilly*, 10 ECAB 560, 573 (1957).

On reconsideration appellant submitted an August 25, 2003 report from Dr. Prieb, and a September 30, 2003 report from Dr. Schultz. Dr. Prieb diagnosed possible left thoracic outlet syndrome with no vascular compromise. This report is insufficient to meet appellant's burden as it is speculative and does not causally relate her condition to her work. Dr. Schultz's again diagnosed thoracic outlet syndrome and of brachial plexus compression report and is essentially the same as his earlier reports. This report is insufficient as it lacks rationale and because Dr. Schultz was on one side of the conflict that Dr. Black was chosen to resolve.[6]

CONCLUSION

The Board finds appellant has not established that she has thoracic outlet syndrome or brachial plexus nerve compression which are causally related to her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the decisions by the Office of Workers' Compensation Programs dated January 6, 2004 and October 8 and July 7, 2003 are affirmed.

Issued: September 28, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

[6] See *Dorothy Sidwell*, 41 ECAB 857 (1990).