United States Department of Labor
Employees' Compensation Appeals Board

G.H., Appellant	)	
	)	**Docket No. 07-323**
and	)	**Issued: May 4, 2007**
	)	
U.S. POSTAL SERVICE, POST OFFICE, Atlanta, GA, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 16, 2006 appellant filed a timely appeal from an Office of Workers' Compensation Programs' merit decision dated September 11, 2006 which affirmed the denial of her occupational disease claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue on appeal is whether appellant has met her burden of proof in establishing that she developed bilateral carpal tunnel syndrome while in the performance of duty.

FACTUAL HISTORY

On August 1, 2005 appellant, then a 52-year-old mail processor, filed an occupational disease claim alleging that she developed bilateral carpal tunnel syndrome while performing her

work duties. She became aware of her condition on April 16, 2003. Appellant stopped work on June 19, 2005 and did not return.[1]

Appellant submitted a statement noting that for the previous 20 years she worked for the employing establishment in jobs that involved repetitive use of her hands and wrists. She came under the treatment of Dr. Joseph E. Freschi, a Board-certified psychiatrist and neurologist, who noted on April 16, 2003 that appellant presented with right hand and right leg pain. Dr. Freschi stated that appellant's history was significant for several lumbar surgeries which failed to resolve persistent pain radiating down her right leg. He noted that an electromyogram (EMG) was performed which revealed mild right median entrapment at the wrist. Dr. Freschi diagnosed mild carpal tunnel syndrome, possible right hand arthritis and right L5 radiculopathy. In a March 30, 2005 report, he examined appellant for right lower extremity pain and noted that she had altered pin sensation over the L5 peroneal distribution of the right leg and diagnosed denervation in the L5 innervated muscles. A nerve conduction test dated May 2, 2005 revealed mild to moderate bilateral carpal tunnel syndrome, worse on the left. Dr. Freschi recommended a brace. A functional capacity evaluation dated June 10, 2005 determined that appellant could work at a sedentary position for two and a half hours per day with frequent breaks.

In a June 12, 2005 attending physician's report, Dr. Linton Cooke Hopkins, a Board-certified internist, diagnosed bilateral carpal tunnel syndrome and noted with a checkmark "yes" that appellant's condition was caused or aggravated by her work duties. Also submitted was a return to work slip from Dr. Andredell Hammond, a Board-certified internist, dated June 18, 2005. Dr. Hammond treated appellant for carpal tunnel syndrome since June 8, 2005 and advised that she could return to work on June 13, 2005. In an attending physician's report dated September 9, 2005, Dr. Nelson Oyesiku, a Board-certified neurologist, diagnosed bilateral carpal tunnel syndrome. He noted with a checkmark "yes" that appellant's condition was possibly related to her employment.

In a letter dated September 22, 2005, the employing establishment controverted the claim and noted that appellant waited two years to report her injury. The employing establishment advised that appellant had been off work for a work-related back injury and returned to a limited-duty position that did not require repetitive use of her hands. In an October 24, 2005 statement, the employing establishment noted that the CA-2 filed by appellant indicated that the first time she realized her disease or illness was caused or aggravated by her employment was April 16, 2003; however, appellant was not in a work status at that time.

By letter dated September 27, 2005, the Office advised appellant of the factual and medical evidence needed to establish her claim and requested that she submit such evidence. It requested that appellant submit a physician's reasoned opinion addressing the relationship of her claimed condition and specific employment factors. In a letter of the same date, the Office requested information from the employing establishment.

The employing establishment submitted appellant's job description for the period October 28, 2002 to January 24, 2003. Appellant was required to verify customer accounts,

[1] Appellant also has a claim for a back injury which was accepted by the Office, File No. 06-2051702.

write receipts for deposits, input customer receipts into the permit system, record the weight of mail, input postage statements into the permit system and answer telephones.

Appellant submitted a statement dated October 18, 2005, noting that she was aware that she had three years to file her claim and was being treated for another work-related injury when she developed a wrist condition. She indicated that her wrist symptoms subsided and then resurfaced in March 2005. Appellant indicated that she did not have any hobbies which involved repetitive use of her hands.

In a decision dated November 7, 2005, the Office denied appellant's claim on the grounds that the medical evidence was not sufficient to establish that her condition was caused by the her employment duties.

On December 5, 2005 appellant requested an oral hearing which was held on June 29, 2006. She testified that she performed duties which required repetitive use of her hands starting in 1981 until January 2003. Appellant advised that she was off work from January 2003 to April 2005 due to a back injury and back surgeries. She returned to work in a security monitoring position in April 2005 which did not involve repetitive use of her hands. Appellant submitted an operative report from Dr. Oyesiku dated July 11, 2005, who performed a left carpal tunnel release and diagnosed left carpal tunnel syndrome. In a September 12, 2005 report, Dr. Oyesiku noted that appellant was progressing well and her paresthesias had improved. In a January 10, 2006 report, he noted that appellant had a successful left carpal tunnel release in July 2005 and recently quit her job due to a back injury. Appellant submitted an August 24, 2005 nursing note indicating that she was progressing well. She also submitted an October 7, 2005 x-ray of the lumbar spine. In a February 9, 2006 report, Dr. Freschi noted treating appellant for numbness in both hands. He indicated that she underwent nerve conduction studies which revealed borderline slowing of the right motor distal latency, mild to moderate slowing of the median sensory and mixed nerve conduction across the wrist. Dr. Freschi diagnosed bilateral distal median entrapment neuropathies at the wrist with the right worse than the left.

In a decision dated September 11, 2006, the hearing representative affirmed the November 7, 2005 decision.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act 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 the 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. 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.[2]

[2] *Gary J. Watling*, 52 ECAB 357 (2001).

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) 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 claimant. The medical evidence required to establish causal relationship is generally 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.[3]

ANALYSIS

It is not disputed that appellant's duties as a mail processor from 1981 to 2003 included performing repetitive activities using her hands and arms. However, she has not submitted sufficient medical evidence to support that it is causally related to the employment factors or conditions.

On September 27, 2005 the Office advised appellant of the medical evidence needed to establish her claim. Appellant did not submit a medical report from an attending physician addressing how specific employment factors may have caused or aggravated her claimed condition.

Appellant submitted a treatment note from Dr. Freschi dated April 16, 2003. Dr. Freschi noted that an EMG was performed which revealed evidence of mild right median entrapment at the wrist. Dr. Hopkins diagnosed mild carpal tunnel syndrome, possible right hand arthritis and right L5 radiculopathy. On February 9, 2006 Dr. Freschi treated appellant for bilateral upper extremity numbness. He indicated that she underwent nerve conduction studies which revealed borderline slowing of the right motor distal latency, mild to moderate slowing of the median sensory and mixed nerve conduction across the wrist and diagnosed bilateral distal median entrapment neuropathies at the wrist with the right worse than the left. However, these reports did not provide any history of the injury or the employment factors believed to have caused or contributed to appellant's condition.[4] Additionally, the reports do not provide a rationalized opinion regarding the causal relationship between appellant's condition and her employment

[3] *Solomon Polen*, 51 ECAB 341 (2000).

[4] *Frank Luis Rembisz*, 52 ECAB 147 (2000) (medical opinions based on an incomplete history have little probative value).

duties as a mail processor or explanation of how such duties caused or contributed to such condition.[5] Therefore, these reports are insufficient to meet appellant's burden of proof.

Appellant submitted an attending physician's report from Dr. Hopkins dated June 12, 2005. Dr. Hopkins diagnosed bilateral carpal tunnel syndrome. He indicated with a checkmark "yes" that appellant's condition was caused or aggravated by an employment activity. The Board has held that an opinion on causal relationship which consists only of a physician checking "yes" to a medical form report question on whether the claimant's condition was related to the history given is of little probative value. Without any explanation or rationale for the conclusion reached, such report is insufficient to establish causal relationship.[6]

Appellant submitted a September 9, 2005 attending physician's report from Dr. Oyesiku, a Board-certified neurologist. He diagnosed bilateral carpal tunnel syndrome and noted with a checkmark "yes" that appellant's condition was possibly related to an employment activity as carpal tunnel syndrome was associated with occupations. As noted, however, the Board has held that an opinion on causal relationship which consists only of a physician checking "yes" to a medical form report question on whether the claimant's condition was related to the history given is of little probative value. Without any explanation or rationale for the conclusion reached such report is insufficient to establish causal relationship.[7] Other reports from Dr. Oyesiku, dated July 11, 2005 to January 10, 2006, noted that appellant underwent a left carpal tunnel release on July 11, 2005 and was progressing well postoperatively with improved paresthesias. However, he did not address a history of the claimed injury[8] or provide a specific opinion explaining how appellant's employment caused or contributed to her condition.[9] Therefore, these reports are insufficient to meet appellant's burden of proof.

Appellant submitted a nursing note dated August 24, 2005; however, the Board has held that treatment notes signed by a nurse are not considered medical evidence as a nurse is not a physician under the Act.[10] Therefore, this report is insufficient to meet appellant's burden of proof.

The remainder of the medical evidence, including EMG's dated March 30 and May 2, 2005, a functional capacity evaluation dated June 10, 2005, an x-ray of the lumbar spine dated October 7, 2005 and a return to work slip from Dr. Hammond dated June 18, 2005, fail to provide an opinion on the causal relationship between appellant's job and her diagnosed bilateral

[5] *See Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

[6] *Lucrecia M. Nielson*, 41 ECAB 583, 594 (1991).

[7] *Id.*

[8] *Frank Luis Rembisz*, *supra* note 4.

[9] *Jimmie H. Duckett*, *supra* note 5.

[10] *See* 5 U.S.C. § 8101(2) (this subsection defines a "physician" as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law. *See also Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (where the Board has held that a medical opinion, in general, can only be given by a qualified physician).

carpal tunnel syndrome. For this reason, this evidence is not sufficient to meet appellant's burden of proof.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment, nor the belief that her condition was caused, precipitated or aggravated by her employment is sufficient to establish causal relationship.[11] Causal relationships must be established by rationalized medical opinion evidence. Appellant failed to submit such evidence and the Office, therefore, properly denied her claim for compensation.

CONCLUSION

The Board finds that appellant has not established that she sustained bilateral carpal tunnel syndrome causally related to her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the September 11, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 4, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

[11] *See Dennis M. Mascarenas*, 49 ECAB 215 (1997).