United States Department of Labor
Employees' Compensation Appeals Board

A.M., Appellant	)	
and	)	**Docket No. 07-1226**
	)	**Issued: January 23, 2008**
SMITHSONIAN INSTITUTION, Washington, DC, 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 April 10, 2007 appellant filed a timely appeal from the January 11, 2007 decision of the Office of Workers' Compensation Programs denying modification of its August 1, 2006 decision, which denied her claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has established that she sustained an irritation of the Guyon's canal in her right wrist as a result of her accepted employment injury, thereby resulting in an ulnar release surgery.

FACTUAL HISTORY

On May 11, 2004 appellant, then a 58-year-old financial administrator, filed a traumatic injury claim alleging that on March 4, 2003 she tripped and fell on the sidewalk while walking from her office to another building of the employing establishment. She alleged that she broke

her right hand, arm, wrist and fingers and bruised her knee and hip. On August 12, 2004 the Office accepted her claim for fracture of the little finger of her right hand.

In a report dated August 7, 2004, Dr. Ricardo Pyfrom, a Board-certified orthopedic surgeon, provided an overview of appellant's right hand evaluation and treatment. He first saw appellant on May 15, 2003 for complaints of right hand pain. Appellant was in a splint for one week and a cast for two weeks following her accepted injury and felt pain and stiffness from the time of their removal. Her physical therapist noted that she had pain radiating from the small finger of her hand up to the shoulder and had swelling. A cortical steroid injection did not alleviate appellant's symptoms. Dr. Pyfrom's May 15, 2003 examination revealed that the proximal interphalangeal (PIP) joint of the small finger was tender and could flex only to 60 degrees. Radiographs showed a fracture at the right fifth metacarpal base and a comminuted displaced fracture of the right middle phalanx of fifth finger. Dr. Pyfrom recommended that appellant follow up with her original orthopedist for treatment options, including no intervention, arthroplasty and arthrodesis of the PIP joint.

On May 29, 2003[1] Dr. Pyfrom stated that appellant continued to have pain from her small finger to her forearm on the ulnar side of the hand and that flexion at the PIP joint was to 65 degrees. On June 30, 2003 he noted that the new x-rays showed that all of the fractures had healed. Dr. Pyfrom found that there was tingling and a positive Tinel's sign at Guyon's canal in the right wrist. He opined that appellant had a post-traumatic ulnar entrapment over the right wrist at Guyon's canal and recommended an electromyogram (EMG) and nerve conduction velocity test to confirm the nerve entrapment.

On October 16, 2003 Dr. Pyfrom reported that an EMG conducted on July 31, 2003 revealed no radiculopathy, plexopathy or entrapment neuropathy. He stated that appellant continued to have the same symptoms and had developed a Wartenberg sign in the right small finger. Dr. Pyfrom diagnosed post-traumatic ulnar neuropathy despite the EMG findings. On November 3, 2003 he stated that injections had not successfully treated the condition. A June 30, 2004 EMG revealed mild distal ulnar nerve irritation at Guyon's canal, but no evidence of carpal tunnel syndrome or nerve entrapment.

Reporting on his August 5, 2004 examination, Dr. Pyfrom stated that appellant continued to have symptoms of tingling, numbness and pain in the fingers and occasional swelling of the arm. He noted that the symptoms followed the ulnar nerve distribution and that appellant had a negative Tinel's sign at the cubital tunnel, but a positive Tinel's sign at Guyon's canal. Dr. Pyfrom diagnosed distal ulnar entrapment at Guyon's canal in the right wrist. He opined that the condition was related to her accepted employment injury because she had no similar symptoms prior to her fall. Dr. Pyfrom stated that it was "within a reasonable degree of medical certainty that this [condition was] etiologically related to the injury of March 4, 2003" and recommended a release of the nerve at the right wrist.

On November 24, 2004 Dr. Pyfrom sought authorization to perform ulnar release surgery, which was conducted on October 12, 2004. On December 6, 2004 the Office referred

[1] The report states that the date of the examination was in 2004, however, the context makes clear that it occurred in 2003.

appellant's file to the Office medical adviser for a determination of whether the surgery and resulting physical therapy should be authorized. The Office medical adviser found that appellant's ulnar nerve irritation was unrelated to the accepted employment injury. He stated that the accepted fracture of the right little finger was a bony injury and did not involve the wrist or nerves at the wrist. The medical adviser noted that there was no diagnostic evidence of neuropathy at the wrist and no indication for the surgical procedure to be performed. He found that appellant could work without restrictions as the accepted fracture had healed.

On March 2, 2005 the Office referred appellant for a second opinion on her right hand condition. On March 31, 2005 Dr. Taghi Kimyai-Asadi, a Board-certified neurologist, examined appellant and reviewed the results of a prior electrodiagnostic study.[2] He noted that the study revealed normal distal latencies and conduction velocities, but that the needle examination showed denervation in the small muscle of the right hand at the thenar and hypothenar eminences. Dr. Kimyai-Asadi reported that appellant had tenderness over the right hand and forearm and inconsistent sensory deficit to pinprick on the first three digits and the thenar eminence muscle of the palm. He also noted that appellant could not bend the distal interphalangeal (DIP) joint of the right little finger. Dr. Kimyai-Asadi stated that appellant's fractures had healed, but noted that there was evidence of injury to the long flexor tendon of the fifth finger because she was unable to bend it. He stated that appellant's sensory losses on her fingers were subjective and that he could not find any evidence of active or residual nerve injury to the hand. Dr. Kimyai-Asadi stated that there was a "possibility of axonal injury to palmar branches of the ulnar and median [nerves] at the time of injury." He did not have enough information to explain appellant's surgery as there was no nerve conduction or distal latency abnormality in her previous electrodiagnostic studies and he did not have a copy of the operating report. However, Dr. Kimyai-Asadi also stated that "the operation was consequent to hand injury and should be accepted as resulting from it." He found no objective evidence to substantiate appellant's forearm, arm, shoulder or knee pains. Dr. Kimyai-Asadi ordered a nerve conduction study and an electromyographic study of the upper right extremity and found that there was no evidence of ulnar neuropathy and that the studies were normal except for "reduced interference pattern in all muscles due to poor activation." He stated that the clinical results indicated that appellant had "recovered from the reported axonal injuries."

On August 17, 2005 the Office updated appellant's claim to include fifth metacarpal fracture and right shoulder biceps strain. On October 4, 2005 the Office asked the Office medical adviser for his opinion on whether the condition of Guyon's canal irritation was related to appellant's accepted employment injury. On October 12, 2005 the Office medical adviser opined that the Guyon's canal irritation was not related to the work injury. He stated that the June 30, 2004 EMG, which revealed nerve irritation at the wrist, was not sufficient to establish a causal relationship with the injury that occurred in March 2003, especially given the normal EMG results obtained in July 2003. The Office medical adviser stated that the nerve release surgery should not be authorized.

On November 23, 2005 EMG and nerve conduction studies revealed moderate chronic C7, C8 and T1 radiculopathy bilaterally.

[2] It is unclear whether he reviewed the July 2003 or the June 2004 study.

By decision dated December 1, 2005, the Office denied appellant's claim for her Guyon's canal condition. The Office found that Dr. Pyfrom had not provided a well rationalized and detailed report establishing the causal relationship between her wrist condition and resultant ulnar release and the accepted employment injury.

On March 20, 2006 appellant requested reconsideration of the Office's December 1, 2005 decision. She stated that her fall injured her shoulder and caused nerve damage that affected her arm and fingers. Appellant attached an October 6, 2005 magnetic resonance imaging (MRI) scan of her cervical spine, which revealed spondylitic and discogenic changes at C5-6 and C6-7 with encroachment on the neural foramina bilaterally.

On March 8, 2004 Dr. Pyfrom stated that the EMG of July 31, 2003 may have been conducted to soon after the injury to document the problem with the nerve, but that the June 30, 2004 EMG clearly showed the irritation. He stated that an initially negative EMG was not conclusive because it can take some time before a nerve test will show a problem and nerve tests yield false negatives as much as 15 percent of the time even in commonly tested areas. Dr. Pyfrom stated that appellant had nerve symptoms from the first time he saw her and that the June 30, 2004 EMG only confirmed what had been clinically diagnosed from the beginning. He noted that the fractured fifth metacarpal was adjacent to the ulnar nerve in the hand. Dr. Pyfrom opined that the nerve problems were the result of her fall on her hand and wrist. An MRI scan conducted on March 30, 2006 revealed no abnormalities in appellant's right elbow.

On June 8, 2006 the Office asked Dr. Kimyai-Asadi to clarify his opinion. The Office noted that Dr. Kimyai-Asadi found both that the surgery was related to the employment injury and that he did not have enough information to explain the need for the 2004 surgery. The Office also asked whether the Guyon's canal condition was causally related to the accepted conditions and whether the October 2004 surgery was warranted. It provided Dr. Kimyai-Asadi the statement of accepted facts, which did not include the new accepted conditions, the operation report and other medical documents.

On June 12, 2006 Dr. Kimyai-Asadi stated that he had been unable to review the electrodiagnostic studies that were suggestive of irritation of the ulnar nerve, but noted that this was "not an actual electrodiagnostic finding or diagnosis." He stated that Guyon's canal syndrome is a specific neurological entrapment syndrome with clear electrodiagnostic findings. Without seeing electrodiagnostic reports comparing the right ulnar nerve with other nerves, Dr. Kimyai-Asadi could not state whether there was ulnar nerve entrapment. He offered to review the 2003 and 2004 studies to determine the objective presence of ulnar nerve entrapment at those times. Dr. Kimyai-Asadi explained that he previously found that the ulnar release surgery was related to the hand injury because Dr. Pyfrom conducted the operation after appellant had fractured her fifth metacarpal and phalanx, which were injuries sufficient to cause "local ulnar nerve injuries distal to Guyon's canal." He stated that, if the electrodiagnostic studies showed ulnar nerve injuries, the surgery should be accepted. If they did not show objective nerve injury, Dr. Kimyai-Asadi could not reach a conclusion himself and Dr. Pyfrom's opinion should be accepted.

By decision dated August 1, 2006, the Office denied modification of the December 1, 2005 decision. It found that the record failed to establish a causal relationship between the

diagnosed Guyon's canal syndrome and ulnar release and the employment injury. The Office noted that Dr. Kimyai-Asadi stated in his amended report that the syndrome had "clear electrodiagnostic findings" and that he could not base any findings on "vague reports of nerve irritation" without seeing the actual studies. The Office found that the record did not contain the diagnostic findings Dr. Kimyai-Asadi indicated.

On September 1, 2006 appellant submitted a request for reconsideration. In response to the Office's finding that the record did not contain the electrodiagnostic evidence sought by Dr. Kimyai-Asadi she attached EMG and nerve conduction study reports that were previously of record.

By decision dated January 11, 2007, the Office denied modification of its August 1, 2006 decision. On review of the evidence, the Office found that the diagnostic studies of July 31, 2003, June 30, 2004 and November 23, 2005 were normal for her claimed condition. It noted that the November 2005 study indicated chronic cervical and thoracic radiculopathy, but found that there was no evidence of cervical or thoracic injury related to her accepted employment injury. The Office found that the weight of the medical evidence rested with Dr. Kimyai-Asadi, who found appellant's objective condition to be normal. It stated that Dr. Pyfrom's opinion did not explain why appellant's condition was related to her employment injury as opposed to other possible causes.

LEGAL PRECEDENT

The Office is not a disinterested arbiter but rather performs the role of adjudicator on the one hand and gatherer of the relevant facts and protector of the compensation fund on the other, a role that imposes an obligation on the Office to see that its administrative processes are impartially and fairly conducted.[3] Although the claimant has the burden of establishing entitlement to compensation, the Office shares responsibility in the development of the evidence.[4] Once the Office starts to procure medical opinion, it must do a complete job.[5] The Office has the responsibility to obtain from its referral physician an evaluation that will resolve the issue involved in the case.[6]

ANALYSIS

The Office referred appellant to Dr. Kimyai-Asadi, a Board-certified neurologist, for the purpose of determining the condition of her right hand and whether her October 2004 ulnar nerve release surgery was causally related to her employment injury. In Dr. Kimyai-Asadi's first report, dated March 31, 2005, he noted that an electrodiagnostic study revealed normal distal latencies and conduction velocities and denervation in the small muscle of the right hand at the

[3] *Thomas M. Lee*, 10 ECAB 175 (1958).

[4] *William J. Cantrell*, 34 ECAB 1233 (1983); *Gertrude E. Evans*, 26 ECAB 195 (1974).

[5] *William N. Saathoff*, 8 ECAB 769 (1956).

[6] *Mae Z. Hackett*, 34 ECAB 1421, 1426 (1983); *Richard W. Kinder*, 32 ECAB 863, 866 (1981) (noting that the report of the Office referral physician did not resolve the issue in the case).

thenar and hypothenar eminences. He reported that appellant had tenderness over the right hand and forearm and inconsistent sensory deficit to pinprick on the first three digits and the thenar eminence muscle of the palm. Dr. Kimyai-Asadi found that she could not bend the DIP joint of the right little finger, which was evidence of injury to the long flexor tendon of the fifth finger, as all of the fractures had healed. He stated that appellant's sensory losses on her fingers were subjective and that he could not find any evidence of active or residual nerve injury to the hand, but also found that there was a "possibility of axonal injury to palmar branches of the ulnar and median [nerves] at the time of injury." Dr. Kimyai-Asadi stated that he did not have enough information to explain appellant's surgery. Because there was no nerve conduction or distal latency abnormality in the electrodiagnostic study he reviewed and he did not have a copy of the operating report. However, he also stated that "the operation was consequent to hand injury and should be accepted as resulting from it." Dr. Kimyai-Asadi found that there was no objective evidence to substantiate appellant's current forearm, arm, shoulder or knee pains and that the clinical results indicated that she had "recovered from the reported axonal injuries." His nerve conduction and electromyographic studies found that there was no current evidence of ulnar neuropathy and that the studies were normal except for "reduced interference pattern in all muscles due to poor activation."

On June 8, 2006 the Office asked Dr. Kimyai-Asadi to clarify his opinion. It noted that he stated that he did not have enough information to explain the need for the 2004 surgery but then found that the surgery was related to the employment injury. The Office asked whether the Guyon's canal condition was causally related to the accepted conditions and whether the October 2004 surgery was warranted. It provided Dr. Kimyai-Asadi the statement of accepted facts, the operation report and other medical documents. The Board notes that the only statement of accepted facts in the record does not contain the updated accepted conditions.[7]

On June 12, 2006 Dr. Kimyai-Asadi explained that he previously found that the surgery was related to the hand injury because Dr. Pyfrom conducted the operation after appellant had fractured her fifth metacarpal and phalanx, injuries that were sufficient to cause "local ulnar nerve injuries distal to Guyon's canal." He stated that, if the electrodiagnostic studies showed ulnar nerve injuries, the surgery should be accepted and if they did not show objective nerve injury the Office would have to rely on Dr. Pyfrom's opinion as he would be unable to reach a conclusion himself. Dr. Kimyai-Asadi stated that he had not been provided the actual electrodiagnostic studies that were referenced in the medical reports. He noted, however, that irritation of the ulnar nerve is "not an actual electrodiagnostic finding or diagnosis" as Guyon's canal syndrome is a specific neurological entrapment syndrome with clear electrodiagnostic findings. Dr. Kimyai-Asadi stated that he could not provide an opinion on the presence of ulnar nerve entrapment without seeing electrodiagnostic reports that compared the right ulnar nerve with other nerves. He offered to review the 2003 and 2004 studies to determine the objective presence of ulnar nerve entrapment at those times.

The Board finds that, while Dr. Dr. Kimyai-Asadi's reports do establish that appellant does not currently have Guyon's canal syndrome symptoms related to her accepted employment

[7] *See Bertha J. Soule*, 48 ECAB 314 (1997) (noting the importance of an accurate and up-to-date statement of accepted facts).

injury, they do not resolve the issue of whether appellant had this condition prior to her October 2004 surgery. In his first report, Dr. Kimyai-Asadi found that there was a possibility of axonal injury as a result of her fall in March 2003, but he did not provide a firm diagnosis. Because this statement is speculative and equivocal in nature, it is of little probative value.[8] In Dr. Kimyai-Asadi's supplemental report, he stated that he could not provide a diagnosis of Guyon's canal syndrome without seeing the 2003 and 2004 EMG and nerve conduction studies. However, the Office did not provide him with the opportunity to review these reports, so he did not make any final determinations. The Board notes that Dr. Kimyai-Asadi did review one electrodiagnostic study as part of his first report and found that it presented no evidence of ulnar entrapment. However, this is not necessarily probative as it is unclear which report he reviewed and it is uncontested that the 2003 report showed no evidence of ulnar entrapment. Dr. Kimyai-Asadi's supplemental report stated that the Office should accept Dr. Pyfrom's opinion on causal relation if the electrodiagnostic tests were negative. However, he provided no medical explanation for this opinion and so it is of no probative value.[9] The Board finds that the second opinion reports did not resolve the issue of whether appellant has Guyon's canal syndrome and whether it is causally related to her accepted injury.

CONCLUSION

The Board finds that this case is not in posture for a decision on the merits of the case. Additional development of the medical evidence is warranted. After such development as may be necessary, the Office shall issue an appropriate final decision on appellant's claim for Guyon's canal irritation.

[8] *Kathy A. Kelley*, 55 ECAB 206 (2004).

[9] *Brenda DuBuque*, 55 ECAB 212 (2004).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 11, 2007 is set aside and the case is remanded for further action consistent with this opinion.

Issued: January 23, 2008
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