United States Department of Labor
Employees' Compensation Appeals Board

D.M., Appellant	)	
and	)	**Docket No. 08-721**
	)	**Issued: September 23, 2008**
U.S. POSTAL SERVICE, POST OFFICE, Bethpage, NY, Employer	)	

Appearances:
Thomas S. Harkins, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On January 14, 2008 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated November 2, 2007. 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 reflex sympathetic dystrophy and cutaneous neuroma causally related to her June 24, 2004 employment injury.

FACTUAL HISTORY

On September 24, 2004 appellant, then a 47-year-old mail handler, filed an occupational disease claim alleging that she sustained carpal tunnel syndrome in the performance of duty due to lifting heavy sacks and parcels. She first became aware of her condition on June 24, 2004. On December 13, 2004 the Office accepted appellant's claim for bilateral carpal tunnel syndrome.

The Office also accepted that appellant experienced a recurrence on November 24, 2004. On December 8, 2004 appellant underwent a left carpal tunnel release.[1]

On April 6, 2006 the Office denied authorization of a nerve block of the stellate ganglion finding that the evidence of record did not establish the procedure was required due to appellant's accepted employment injury.

In an April 25, 2006 letter, Dr. Harvey Finkelstein, Board-certified in pain medicine, diagnosed reflex sympathetic dystrophy in the left arm and requested authorization for a series of three cervical stellate ganglion blocks. He explained that based on the changes in appellant's skin color and the increased pain that she had the early stages of complex regional pain syndrome. Dr. Finkelstein stated that appellant reported burning and paresthesias through out on the palmar aspect of the hand from the previous carpal tunnel surgery as well as discoloration developing and dystrophic skin changes. In a May 22, 2006 report, Dr. Lewis B. Lane, Board-certified in orthopedic surgery and hand surgery, found appellant's arm pain to be of an uncertain basis. He stated that although appellant may have a neuroma of the palmar cutaneous branch of the median nerve, he did not feel confident exploring this area. In a June 1, 2006 note, Dr. Carlos Montero diagnosed right hand neuroma.

In a June 7, 2006 letter, the Office asked the district medical adviser to advise whether the three cervical stellate ganglion blocks were necessitated by appellant's accepted condition. The medical adviser opined that it appeared that appellant had reflex sympathetic dystrophy of the left hand but that it was a difficult diagnosis to make with certainty and that the series of cervical stellate ganglion blocks would be related to appellant's condition if it was actually present. The medical adviser opined that the symptoms and findings described seemed to fit reflex sympathetic dystrophy and that stellate ganglion blocks were often helpful. The medical adviser also noted that it is often a difficult condition to treat.

In a June 20, 2006 letter, the Office informed appellant that she was being sent for a second opinion examination to determine the diagnosis of her current condition, whether there was evidence of reflex sympathetic dystrophy in the left arm and possible cutaneous neuroma and if so if it was related or aggravated by her work injury and whether a series of three cervical stellate ganglion block or trigger point injections should be authorized.

On July 12, 2006 appellant was examined by Dr. Dwight C. Blum, Board-certified in orthopedic surgery. In his July 12, 2006 report, Dr. Blum reviewed appellant's medical history and records and performed a physical examination. Upon examination he noted that Tinel's sign tapping in the left palm caused pain radiating to the wrist, mild thenar atrophy on the left and increased pigmentation on the dorsum of the left hand compared to the right. Dr. Blum diagnosed chronic carpal tunnel syndrome, status post release on the left hand with left hand scar pain and opined that there was no evidence of reflex sympathetic dystrophy or possible cutaneous neuroma. He opined that appellant's condition was repetitive stress syndrome in the hands, which would probably be permanent. Dr. Blum found that neither cervical stellate ganglion blocks nor trigger point injections were indicated.

[1] There is no operative report in the file.

In a July 31, 2006 merit decision, the Office denied authorization for stellate ganglion blocks and trigger point injections finding that there was no medical evidence to support that appellant sustained a reflex sympathetic dystrophy or cutaneous neuroma related to her June 24, 2004 employment injury.

In an October 11, 2006 letter, the Office informed appellant that it had found a conflict in medical opinion between Dr. Montero and Dr. Blum and that she would be seen by a referee physician, Dr. Noah Finkel, Board-certified in orthopedic surgery, on October 23, 2006 to resolve the outstanding medical issues.

In an October 23, 2006 report, Dr. Finkel reviewed appellant's medical history and records. He noted that appellant reported ongoing tenderness at the site of the surgery in the left hand, which occasionally radiated up her arm into her shoulder and armpit. Dr. Finkel also noted that appellant reported occasional paresthesias. He found appellant to have a negative Tinel's sign on the left with a questionably positive one on the right with pain radiating to the third finger. Dr. Finkel found no clinical evidence to suggest reflex sympathetic dystrophy. He noted that appellant had no significant color changes although the dorsal surface of the left hand appeared to be darker but he did not believe there to be any correlation with the prior surgery, disuse or evidence of reflex sympathetic dystrophy. Dr. Finkel opined that there was no evidence of nerve compression in the left hand and noted that there was no atrophy, sensory or motor deficit. He also found that it was not clear that appellant's initial onset of bilateral acute pain and numbness and tingling in both hands was solely causally related to her employment. Dr. Finkel concluded that the etiology of appellant's symptomatology was unclear. He opined that the subjectivity of appellant's examination and inconsistency of her symptomatolgy did not support the diagnosis of either reflex sympathetic dystrophy or cutaneous neuroma.

On July 23, 2007 appellant, through his representative, requested reconsideration of the July 31, 2006 merit decision. Additional medical reports were submitted. In a June 25, 2007 letter, Dr. Finkelstein noted that appellant had been a patient since March 20, 2006 and the diagnosis at that time was postsurgical complex regional pain syndrome. He reported that appellant had cervicothoracic sympathetic block/stellate ganglion block on October 6, 2006, which provided significant relief of pain in her hand. Dr. Finkelstein stated that appellant was cleared to return to work full time with a weight restriction of 20 pounds as of her last visit on June 11, 2007. In a June 26, 2007 letter, Dr. Montero provided a narrative statement of his treatment and physical findings of appellant's left wrist and arm from December 5, 2005 through October 12, 2006. He concluded that appellant had a chronic pain condition of the left upper extremity and left hand since her carpal tunnel release in 2004.

In a November 2, 2007 merit decision, the Office modified the July 31, 2006 decision and denied appellant's claim that reflex sympathetic dystrophy and cutaneous neuroma were employment related. It found that Dr. Finkel's report constituted the weight of the medical evidence and that Dr. Finkel properly based his medical opinion that the additional conditions were not work related on his examination of appellant and review of the medical record.

LEGAL PRECEDENT

An employee who claims benefits for a work-related condition has the burden of establishing by the weight of the medical evidence a firm diagnosis of the condition claimed and a causal relationship between that condition and factors of federal employment.[2] An employee seeking compensation under the Federal Employees' Compensation Act has the burden of establishing her claim by the weight of the reliable, probative and substantial evidence.[3]

Section 8123(a) of the Act provides in 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.[4] When 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.[5]

ANALYSIS

To resolve the conflict between appellant's attending physicians and the Office referral physician, the Office properly referred appellant to an impartial medial specialist under 5 U.S.C. § 8123(a). The Office provided Dr. Finkel with appellant's records and a statement of accepted facts so he could base his opinion on a complete and accurate history. Dr. Finkel found no clinical evidence to suggest reflex sympathetic dystrophy. He noted that there was no evidence of nerve compression in the left hand nor any atrophy or any sensory or motor deficit. Based on his physical examination of appellant and her symptoms Dr. Finkel determined that there was no support for a diagnosis of either reflex sympathetic dystrophy or cutaneous neuroma. As Dr. Finkel did not find that appellant had either reflex sympathetic dystrophy or cutaneous neuroma neither of these conditions could not be found to be related to her employment injury. Medical reports from Dr. Montero and Dr. Finkelstein were submitted with appellant's request for reconsideration however neither of the reports addressed the issue at hand, whether she had reflex sympathetic dystrophy or cutaneous neuroma related to her employment injury, as neither of the reports diagnosed either condition.

The Board finds that the opinion of the impartial medical specialist is based on a proper factual and medical history and is sufficiently well rationalized that it is entitled to special weight. The weight of the medical opinion evidence establishes that appellant did not sustain reflex sympathetic dystrophy or cutaneous neuroma consequential to her accepted carpal tunnel syndrome on June 24, 2004.

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[2] *See Roy L. Humphyrey*, 57 ECAB 238 (2005); *see Naomi A Lilly*, 10 ECAB 560, 574 (1959).

[3] *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968).

[4] 5 U.S.C. § 8123(a).

[5] *Carl Epstein*, 38 ECAB 539 (1987); *James P. Roberts*, 31 ECAB 1010 (1980).

CONCLUSION

The Board finds that appellant did not establish that she sustained reflex sympathetic dystrophy or cutaneous neuroma caused by her June 24, 2004 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the November 2, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 23, 2008
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board