

**United States Department of Labor
Employees' Compensation Appeals Board**

H.L., Appellant

and

**DEPARTMENT OF LABOR, MINE SAFETY &
HEALTH ADMINISTRATION, Belcher, KY,
Employer**

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**Docket No. 08-1221
Issued: September 25, 2008**

Appearances:
Michael Lucas, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 19, 2008 appellant filed a timely appeal of a December 17, 2007 decision of the Office of Workers' Compensation Programs, denying his claim for bilateral carpal tunnel syndrome. 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 is whether appellant's bilateral carpal tunnel syndrome was caused or aggravated by factors of his employment.

FACTUAL HISTORY

On August 3, 2006 appellant, then a 67-year-old former supervisory coal mine safety and health inspector, filed an occupational disease claim alleging that his bilateral carpal tunnel syndrome was caused or aggravated by repetitive use of his upper extremities over time. Beginning in the 1970's, he experienced numbness, burning, tingling and pain in his hands and arms and his symptoms progressively worsened. He attributed his bilateral carpal tunnel

syndrome to his job activities, including crawling on his hands and knees in narrow spaces in mines, climbing ladders and carrying equipment weighing up to 40 pounds performed six to eight hours a day, five days a week. The employing establishment advised that he retired on July 3, 1997, returned to work on November 21, 1999 and again retired on February 29, 2000, which was his last day at work.

On August 21, 2006 the Office requested additional evidence including a detailed description of the employment activities which contributed to his bilateral carpal tunnel syndrome and a comprehensive medical report containing a description of his symptoms, the results of examinations and tests and medical rationale explaining how his bilateral carpal tunnel syndrome was causally related to specific factors of his employment.

In a December 22, 2005 nerve conduction study and electromyography report, Dr. Curtis Zeiger, a neurologist, indicated that appellant had bilateral carpal tunnel syndrome, mild to moderate on the right and very mild on the left. No opinion on the cause of his condition was provided.

In a January 16, 2006 report, Dr. Danny A. Mullins, a Board-certified orthopedic surgeon, stated that appellant had experienced bilateral hand pain, numbness and weakness for several years. He provided findings on physical examination which included very mild thenar atrophy on the right, positive Phalen's sign and negative Tinel's sign. On January 26, 2006 Dr. Mullins performed a carpal tunnel release of appellant's right wrist.

In a September 12, 2006 report, Dr. David Sheppard, an osteopathic specialist in internal medicine, stated that appellant was a former federal mine inspector who retired on February 29, 2000. He noted that a May 18, 2001 electromyogram performed by Dr. Zeiger revealed minimal demyelinating lesions of each median nerve at the wrists consistent with mild bilateral carpal tunnel syndrome. Appellant continued to have symptoms of carpal tunnel syndrome and a repeat electromyogram on December 22, 2005 was consistent with bilateral carpal tunnel syndrome. A right carpal tunnel release performed by Dr. Mullins provided instant relief. Conservative treatment was continued for his left wrist with the possibility of a future left carpal tunnel release.

By decision dated September 26, 2006, the Office denied appellant's claim on the grounds that the evidence was insufficient to establish that his bilateral carpal tunnel syndrome was causally related to factors of his employment.

On September 20, 2007 appellant requested reconsideration and submitted additional evidence.

In nerve conduction study and electromyography reports dated May 18, 2001 and November 14, 2002, Dr. Zeiger stated that the findings were consistent with appellant having mild bilateral carpal tunnel syndrome.

In notes dated November 15, 2001 and April 22, 2002, Dr. Richard D. Grube, a Board-certified family practitioner, provided findings on physical examination and diagnosed bilateral carpal tunnel syndrome. He stated:

“[Appellant] presents with complaints of wrist pain in both wrists and states that his hands go numb, especially at night time. He does some work with his hands but not a lot. He has not had these problems before.”

In reports dated September 26 and October 15, 2007, Dr. Sheppard stated that appellant’s job duties with the employing establishment were a contributing factor in the development of his bilateral carpal tunnel syndrome. He stated:

“[Appellant] has been my patient since [May 27, 2004] and before that he was a patient of my previous partners. I have had and do have access to his medical records from at least [November 1, 2001]. I have reviewed the various [electromyography] studies on [appellant], as well as the medical records of the orthopedic surgeon, Dr. Danny Mullins, who performed [appellant’s] carpal tunnel surgery.

“I am in general familiar with the physical and exertional requirements of underground coal mining, being a grandson of a federal mine inspector myself. It is my reasonable medical opinion that the performance of his duties would require significant exertional use of the hands and wrists, as well as significant repetitive motions of his hands and wrists. [Appellant] has noted in his [claim] application ... that his employment with [the employing establishment], both as an inspector and as a supervisor, required him to make frequent trips to mine sites and perform [his] duties ... in close confinement, in and out of narrow spaces, and in dampness and low water conditions. He also had to crawl on his hands and knees and climb ladders. [Appellant] had to perform these duties six to eight hours per day, five days a week. [He], additionally, had to operate mining equipment, the vast majority of which is operated by levers based on hydraulic systems and manipulation and operation of levers involving the hands and wrists. [Appellant] also erected cinder block walls, and that type of work involves significant use of the hands and wrists as well.

“In my medical opinion, with his type of work, I feel that [appellant’s] bilateral carpal tunnel syndrome is a direct result of his employment. It is well known in the medical sciences that repetitive motions of the hands and wrists, particularly those encountered in the work environment, are the significant contributing factors in the development of carpal tunnel syndrome.”

In a December 10, 2007 report, Dr. Daniel D. Zimmerman, a Board-certified internist and an Office medical adviser, noted that appellant retired from his federal employment on February 29, 2000. He stated:

“[Appellant] [first] presented with symptoms that [Dr.] Grube indicated were due to carpal tunnel syndrome on [November 15, 2001] -- 1¾ years after he ended his federal employment.

“The office note dated [November 15, 2001] by Dr. Grube conclusively indicates that the symptoms said to be due to carpal tunnel syndrome could not have been a consequence of [appellant’s] employment ... in that it was indicated ‘[appellant] presents with complaints of wrist pain in both wrists and states that his hands go numb, especially at night time. [Appellant] does some work with his hands but not a lot. He has not had those problems before.’

“If the symptoms and examination findings that caused Dr. Grube to consider the diagnosis of bilateral carpal tunnel syndrome were work related, the symptoms and signs would have occurred when [appellant] was working, not 1¾ years later.

“The other point in the note by Dr. Grube dated November 15, 2001 is that it was reported ‘he has not had these problems before.’

“With this historical information by Dr. Grube on [November 15, 2001], [the Office] has no basis to accept that the diagnosis of [right] or [left] carpal tunnel syndrome is work related.”

By decision dated December 17, 2007, the Office denied modification of its September 26, 2006 decision.

LEGAL PRECEDENT

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, generally, is rationalized medical evidence.¹ 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 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

¹ *Michael S. Mina, 57 ECAB 379 (2006).*

the relationship between the diagnosed condition and the specific employment factors identified by the claimant.²

An award of compensation may not be based on surmise, conjecture, speculation or upon appellant's own belief that there is a causal relationship between his claimed injury and his employment.³ To establish a causal relationship, appellant must submit a physician's report in which the physician reviews the employment factors identified by appellant as causing his condition and taking these factors into consideration, as well as findings upon physical examination of appellant and his medical history, state whether the employment factors caused or aggravated appellant's diagnosed conditions and present medical rationale in support of his or her opinion.⁴

ANALYSIS

Appellant alleged that his bilateral carpal tunnel syndrome was caused or aggravated by repetitive use of his upper extremities in his federal job. He indicated that his symptoms of numbness, burning, tingling and pain in his hands and arms began in the 1970's and progressively worsened. Appellant attributed his bilateral carpal tunnel syndrome to his job activities, including crawling on his hands and knees in narrow spaces in mines, climbing ladders and carrying equipment weighing up to 40 pounds performed six to eight hours a day, five days a week. His last day of work was February 29, 2000, the date of his retirement.

Although appellant indicated that his bilateral carpal tunnel syndrome began in the 1970's, he provided no medical reports from that period. The earliest medical report of record is dated subsequent to his February 29, 2000 retirement, the May 18, 2001 nerve conduction study and electromyogram report indicating findings consistent with mild bilateral carpal tunnel syndrome. This report and the other electrodiagnostic reports did not indicate the cause of appellant's condition. Therefore, they are not sufficient to establish that appellant's bilateral carpal tunnel syndrome was causally related to his federal employment.

On November 15, 2001 Dr. Grube provided findings on physical examination and diagnosed bilateral carpal tunnel syndrome. He noted that appellant had wrist and hand pain and numbness. The significant part of Dr. Grube's report is the history given by appellant that he "has not had these problems before." This history contradicts the allegation in his August 3, 2006 compensation claim that his bilateral carpal tunnel syndrome began in the 1970's and progressively worsened over time. This history from Dr. Grube indicates that appellant's condition began after his retirement on February 29, 2000 and is, therefore, not work related.

Dr. Mullins stated that appellant had experienced bilateral hand pain, numbness and weakness for several years. However, he does not date the presentation of these symptoms prior to appellant's February 29, 2000 retirement, nor does Dr. Mullins address the issue of causal

² *Gary J. Watling*, 52 ECAB 278 (2001); *Gloria J. McPherson*, 51 ECAB 441 (2000).

³ *Donald W. Long*, 41 ECAB 142 (1989).

⁴ *Id.*

relationship. Therefore, his report does not establish that appellant's bilateral carpal tunnel syndrome was causally related to his federal employment.

Dr. Sheppard stated that appellant's job duties with the employing establishment were a contributing factor in the development of his bilateral carpal tunnel syndrome. He described appellant's physical job requirements and duties and opined that the bilateral carpal tunnel syndrome was a direct result of his employment. However, Dr. Sheppard did not explain how appellant's condition could be work related in light of the fact that appellant told Dr. Grube in November 2001 that he had not experienced his carpal tunnel syndrome symptoms before that date. As noted, appellant retired from his federal job on February 29, 2000. Dr. Sheppard did not address this inconsistency in his opinion that appellant's bilateral carpal tunnel syndrome was work related. Therefore, his opinion on causal relationship is of diminished probative value and is not sufficient to establish that appellant's bilateral carpal tunnel syndrome was caused or aggravated by his federal employment.

For these reasons, appellant failed to meet his burden of proof to establish that his bilateral carpal tunnel syndrome was caused or aggravated by his federal employment.

CONCLUSION

The Board finds that appellant failed to meet his burden of proof in establishing that his bilateral carpal tunnel syndrome was causally related to factors of his employment.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 17, 2007 is affirmed.

Issued: September 25, 2008

Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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