United States Department of Labor
Employees' Compensation Appeals Board

T.L. Appellant	)	
and	)	**Docket No. 09-1474**
	)	**Issued: April 20, 2010**
U.S. POSTAL SERVICE, PADUCAH PROCESSING & DISTRIBUTION FACILITY, Paducah, KY, Employer	)	

Appearances:
Alan J, Shapiro, Esq., for the appellant
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 May 26, 2009 appellant filed a timely appeal from an April 20, 2009 merit decision of the Office of Workers' Compensation Programs, which found that she failed to establish that she sustained an injury as alleged. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the issue in this case.

ISSUE

The issue is whether appellant established that she sustained an injury in the performance of duty.

FACTUAL HISTORY

On July 3, 2008 appellant, then a 47-year-old casual employee, filed an occupational disease claim alleging that she sustained left de Quervain's syndrome due to constant use of her hands at work. She first became aware of her condition and of its relation to her work on June 6, 2008. Appellant stopped work on June 10, 2008. The employing establishment

controverted the claim and advised the Office that she was terminated on June 1, 2008 due to insubordination with the plant manager.

In an undated statement, appellant alleged that, upon reporting to work on June 9, 2008, the plant manager, Loretta Kent, put her on the culling belt. She informed Ms. Kent that her physician had prescribed work limitations but Ms. Kent disregarded the restriction. Appellant advised that she worked the belt despite extreme pain and requested permission to leave work early. She was allowed to leave early but, the following day, she was directed to work the culling belt again. Appellant again informed Ms. Kent that she could not work the belt due to pain and she was told to go home. She was terminated the following day because of her injury.

In a June 23, 2008 report, Dr. Daniel M. Tkach, a Board-certified surgeon and plastic surgeon, noted that appellant reported pain in her left thumb, which was causing pain on and off for several years. Appellant related that the symptoms were exacerbated by her work to the point that she was having difficulty using her hand in any activity because of severe pain. Dr. Tkach diagnosed left de Quervain's syndrome.

On July 14, 2008 the Office advised appellant that additional factual and medical evidence was needed to support her claim.

In an August 4, 2008 attending physician's report, Dr. Tkach noted that appellant was seen for left thumb pain exacerbated by work. He diagnosed left de Quervain's syndrome and checked a box "yes" in response to whether the condition was caused or aggravated by employment activity. Dr. Tkach filled in "possibly caused definitely aggravated." He found that appellant was partially disabled commencing June 23, 2008 and indicated that she required de Quervain's release surgery.

In an August 11, 2008 statement, appellant noted that she had worked "almost every job … at the plant" and that most of the jobs required a great amount of hand movement. She had worked at the employing establishment for about 12 years as both a casual employee and a temporary employee, both of which required her to work for six days a week and seven to eight hours daily. Appellant advised the Office that she believed that her hand injury was caused by "working the dock and automation on tour 1." She described the activity required to perform automation and that there were two positions, the loader and the sweeper. Appellant explained that the sweeper position was comprised of "taking mail as it is run through the machine and sorted into individual pockets out of the pockets and placing it into trays." She moved cardboard sleeves and trays and placed them on a conveyor belt. Appellant explained that the loader position involved lifting heavy trays and tossing mail onto the machine's "jogger." She alleged that the combination of the two jobs resulted in her hand injury. Appellant denied any nonwork factors as a cause of her condition. She denied any previous injuries to the hand, wrist, elbow or shoulder. In a separate statement, also dated August 11, 2008, appellant refuted that she was terminated because of insubordination.

The employing establishment submitted an undated statement which concurred that almost every job required employees to use their hands but that no employee was required to lift more than they felt they were capable of moving safely. It noted that appellant was having

attendance and behavior issues. In an undated statement received by the Office on August 21, 2008, Steven Smith, a supervisor, contended that appellant did not report a work injury.

By decision dated October 2, 2008, the Office denied appellant's claim. It found that the medical evidence did not demonstrate that her left thumb condition was related to accepted work-related activities.

On October 7, 2008 appellant's representative requested a telephonic hearing, which was held on February 18, 2009. In an October 16, 2008 report, Dr. Tkach explained that de Quervain's syndrome was a repetitive stress injury and that appellant's condition was "certainly aggravated or at least partially caused by her repetitive activities which she does for her employment." He found that appellant's condition was related, at least in large part, to repetitive activities at work. Surgical intervention was the only option that would give her long-term relief of her problems.

In an undated statement received on December 9, 2008, appellant reiterated her employment history. She noted that her left thumb pain began to worsen over the years.

In a March 13, 2009 letter, Geta Gordon, an employing establishment human relations specialist, controverted the claim. She noted that appellant filed her claim several weeks after she was terminated for insubordination.

In an April 16, 2009 report, Dr. Tkach noted that appellant was seen on June 23, 2008 with complaints of right wrist pain that she related were present for three to four months. Appellant alleged that the "discomfort she was having was aggravated and worsened whenever she would perform the activities involved in her work." Dr. Tkach explained that appellant related that she "noticed a sudden flare up of the low level pain she had been having after she had spent a great deal of time working at a particular repetitive job she refers to as Tour 1. That job required some lifting of some fairly heavy objects with her hands stressing her wrists. Once that particular increase in appellant's pain occurred she was transferred to another job which she calls Tour 111. This job also required some fine motor dexterity of the wrists and fingers with almost constant movement." Dr. Tkach related that appellant noted that her pain became intolerable and she went to the emergency room on June 6, 2008, where she was diagnosed with tendinitis and told to see a specialist. Physical examination at the time of her first appointment revealed tenderness at the first dorsal compartment of the right wrist, which was exacerbated by pressure on that area as well as any restricted extension of the thumb. Dr. Tkach stated that these findings were consistent with de Quervain's syndrome. He opined that it was caused by repetitive fine motor activity. Dr. Tkach explained that it was "caused by repetitive motion requiring fine motor movement of the hands particularly of the thumb, such as the activity she described involved in her work. Appellant's job may not have been the only cause but given the timeline of development and its proximal relationship to her activities at work that would certainly be the logical conclusion." Dr. Tkach recommended a de Quervain's release as conservative treatment did not provide significant relief.

By decision dated April 20, 2009, the Office hearing representative affirmed the October 2, 2008 decision.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[1] 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 an 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.[2] 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.[3]

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 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.[4]

ANALYSIS

The Board finds that this case is not in posture for decision. Further, development of the medical evidence is warranted.

The evidence establishes that appellant has left de Quervain's syndrome in the left hand and that she engaged in repetitive activities at work using her hands. There is no dispute in this case concerning the duties she performed as a casual employee which involved lifting and hand movement throughout each workday, including loading and sweeping mail. The question for determination is whether the performance of these duties caused or accelerated her left de Quervain's syndrome.

---

[1] 5 U.S.C. §§ 8101-8193.

[2] *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[3] *Victor J. Woodhams*, 41 ECAB 345 (1989).

[4] *Id.*

The Board finds that Dr. Tkach's reports are generally supportive of appellant's claim. For example, in his June 23, August 4 and October 16, 2008 reports, Dr. Tkach diagnosed left de Quervain's syndrome and noted that appellant's symptoms in her left hand were exacerbated by her repetitive activities at work to the point that she was having difficulty using her hand in any activity because of the severe pain. On April 16, 2009 he explained that appellant noticed a sudden flare up of low level pain after she had spent a great deal of time working on Tour 1. Dr. Tkach noted that the job required some lifting of some heavy objects with her hands. He also noted that appellant also referred to another job called Tour 111, which involved fine motor dexterity of the wrists and fingers "with almost constant movement." Dr. Tkach opined that de Quervain's syndrome was caused by repetitive fine motor activity. He explained that it was "caused by repetitive motion requiring fine motor movement of the hands particularly of the thumb, such as the activity appellant described involved in her work. Appellant's job may not have been the only cause but given the timeline of development and its proximal relationship to her activities at work that would certainly be the logical conclusion." Although Dr. Tkach's reports are insufficiently rationalized to establish that she sustained de Quervain's syndrome while in the performance of her duties, the Board finds that they are sufficiently supportive of her claim that further development of the evidence is warranted.[5]

Proceedings under the Act are not adversarial in nature nor is the Office a disinterested arbiter.[6] While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.[7] The Board will set aside the Office's April 20, 2009 decision and remand the case for further development of the medical evidence. Following such further development of the case record as it deems necessary, the Office should issue a *de novo* decision.

CONCLUSION

The Board finds that this case is not in posture for decision.

[5] *John J. Carlone*, 41 ECAB 354 (1989); *see also Cheryl A. Monnell*, 40 ECAB 545 (1989); *Bobby W. Hornbuckle*, 38 ECAB 626 (1987); *Horace Langhorne*, 29 ECAB 820 (1978); (if medical evidence establishes that residuals of an employment-related impairment are such that they prevent an employee from continuing in the employment, he is entitled to compensation for any loss of wage-earning capacity resulting from such incapacity).

[6] *Phillip L. Barnes*, 55 ECAB 426 (2004).

[7] *Donald R. Gervasi*, 57 ECAB 281(2005); *William B. Webb*, 56 ECAB 156 (2004).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 20, 2009 is set aside and remanded for further action consistent with this opinion.

Issued: April 20, 2010
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