

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

A.W., Appellant

and

**DEPARTMENT OF HOUSING & DEVELOPMENT,
REGION III, PHILADELPHIA, C/O LIFECARE
MANAGEMENT PARTNERS, Alexandria, VA,
Employer**

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) **Docket No. 09-2129**
) **Issued: August 24, 2010**
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Appearances:
Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 18, 2009 appellant filed a timely appeal from a May 19, 2009 merit decision of the Office of Workers' Compensation Programs. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of her claim.

ISSUE

The issue is whether appellant has established that she sustained bilateral upper extremity and cervical conditions causally related to her federal employment.

On appeal appellant's representative contends that the treating physician submitted sufficient evidence to establish appellant's claim. In the alternative, the medical evidence of record is in conflict and requires further development.

FACTUAL HISTORY

On January 3, 2007 appellant, a 54-year-old secretary, filed an occupational disease claim (Form CA-2) for right shoulder, arm, wrist and neck injuries as well as left arm, wrist and hand injuries. These conditions produced pain, a burning sensation as well as arm and wrist weakness which she alleges prevented her from lifting her arm, typing and writing.¹ Appellant attributed her condition to reaching, pulling and lifting activities she performs in furtherance of her employment duties. She also relates that because her computer workstation is not at a proper height she sustained shoulder and neck pain. Appellant first recognized her condition and that it was caused by her federal employment on August 23, 2004.

Appellant submitted a December 7, 2005 report in which Dr. Scott M. Fried, an orthopedic surgeon, reported findings on examination and diagnosed right ulnar and median neuropathy, right brachial plexopathy, right cervical radiculopathy, right shoulder capsulitis and right rotator cuff tear as well as a repetitive stress injury. Dr. Fried reviewed appellant's employment duties and course of treatment. He opined that repetitive reaching and an awkward typing posture produced a tear in appellant's rotator cuff, brachial plexus nerve injury and ulnar and medial nerve injury. Dr. Fried explained that inflammation of the shoulder and involvement of the surrounding nerve structures as they passed above the shoulder and axilla resulted in a fixed brachial plexus nerve injury. He also noted that repetitive reaching and lifting involved the ulnar and median nerves on a secondary basis. Dr. Fried recommended that appellant's job be modified so that reaching and lifting were no longer performed.

By decision dated April 3, 2007, the Office accepted that appellant identified employment factors she considered responsible for her condition but denied the claim, finding the evidence of record did not demonstrate that her claimed medical condition was caused by the established employment factors.

On April 5, 2007 appellant, through her attorney, requested an oral hearing.

On April 9, 2007 Dr. Fried again diagnosed right ulnar and median neuropathy, right brachial plexopathy and cervical radiculopathy, right neuritis, repetitive strain injury and possible bilateral median nerve carpal tunnel. He opined that appellant's condition is "directly and causally related to her work activity." Dr. Fried related that appellant's work injuries disabled her from work to the point that she "exacerbated with respect to her right shoulder and brachial plexus symptoms and had to leave work." He noted that appellant's repetitive employment activities "worsened her symptomology and also progressed her repetitive strain or cumulative traumas." Appellant continued to submit additional reports from Dr. Fried.

Following a hearing conducted on July 27, 2007 the Office, by decision dated October 2, 2007, vacated its April 3, 2007 decision and remanded appellant's claim for further development. It found Dr. Fried's opinion, particularly those contained in his December 7, 2005 and April 9, 2007 reports, sufficient to require the further development, including examination by an Office physician. On remand, the Office referred appellant, together with a list of questions and

¹ Appellant has another claim, No. xxxxxx429, that the Office accepted for right shoulder repetitive strain injury and right shoulder torn rotator cuff.

statement of accepted facts for examination by Dr. Kevin F. Hanley, a Board-certified orthopedic surgeon.

On November 30, 2007 Dr. Hanley diagnosed chronic pain syndrome “of unknown etiology.” He opined that appellant “is not suffering from a condition directly related to work activities” and that her chronic pain syndrome has a psychophysiological basis. In an addendum to this report dated February 25, 2008, Dr. Hanley opines that there is “no way in my mind that work exposure has led to the diagnosis I have outlined.”

On February 14, 2008 Dr. Steven J. Valentino, an orthopedic surgeon, reported that magnetic resonance imaging (MRI) scans of appellant’s right shoulder revealed hypertrophic changes of the supraspinatous tendon and a possible ganglion cyst, but no evidence of a rotator cuff tear. An MRI scan of appellant’s cervical spine revealed disc bulges at the C6-7, C7-T1 and T1-2 levels. Also present was an osteophyte complex at the C5-6 level. Dr. Valentino opined that findings from a cervical MRI scan were consistent with a syrinx. In a February 26, 2008 note, he reiterated the findings from his February 14, 2008 report.

By decision dated March 30, 2008, the Office denied the claim, finding that, based on Dr. Hanley’s November 30, 2007 report and subsequent addendum, the evidence of record did not demonstrate that the claimed medical conditions were caused by the identified employment factors.

On March 24, 2008 appellant, through her attorney, requested an oral hearing.

On May 14, 2008 Dr. Valentino reviewed appellant’s medical history, presented findings on examination and diagnosed right rotator cuff tear, brachial plexopathy, thoracic outlet syndrome, multiple peripheral neuropathies and aggravation of degenerative disc disease with facet syndrome.

By decision dated June 17, 2008, the Office found the case not in posture for decision because Dr. Hanley’s opinion was not sufficiently rationalized such that it could be afforded the weight of the medical opinion evidence. It vacated its March 30, 2008 decision and remanded appellant’s claim for further development, including a new second opinion evaluation.

The Office referred appellant for examination by Dr. Zohar Stark, a Board-certified orthopedic surgeon. On September 23, 2008 Dr. Stark reviewed appellant’s history of injury, presented findings on examination noting that he found no objective findings which demonstrated appellant sustained any condition associated with her cervical spine or bilateral upper extremities. He reported that examination of appellant’s cervical spine revealed no tenderness over the spinous process of the cervical vertebrae, no tenderness over the supramedial aspect of the right trapezius with no spasm, normal range of motion of the cervical spine. Regarding appellant’s upper extremities, Dr. Stark found no apparent sensory or motor deficit, and no tenderness of the left shoulder or loss of range of motion. He did find a scar over the proximal aspect of appellant’s right shoulder and provided range of motion findings for the right shoulder. Dr. Stark found no aggravation, either permanent or temporary, of appellant’s accepted employment injuries. He found no basis for appellant’s claim that she has a cervical and bilateral upper extremity condition that was caused or aggravated by her federal employment

duties. Dr. Stark opined that appellant is not disabled from performing her work as a secretary and does not require any further medical treatment for her accepted medical conditions.

By decision dated October 16, 2008, the Office denied the claim, finding that the evidence of record did not demonstrate appellant's claimed medical condition was caused by the established employment factors.

On October 22, 2008 Dr. Valentino presented findings on examination and diagnosed right rotator cuff tear.

On October 22, 2008 appellant, through her attorney, requested an oral hearing.

Following a hearing, conducted February 25, 2009, the Office, by decision dated May 19, 2009, affirmed its October 16, 2008 decision, finding the evidence of record did not demonstrate that appellant's claimed medical condition was caused by the established employment factors.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of proof to establish the essential elements of his claim by the weight of the evidence,³ including that he sustained an injury in the performance of duty and that any specific condition or disability for work for which he claims compensation is causally related to that employment injury.⁴ As part of his burden, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background showing causal relationship.⁵ The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of the analysis manifested and the medical rationale expressed in support of the physician's opinion.⁶

To establish that an injury was sustained in the performance of duty in a claim for occupational disease, an employee must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.⁷

² 5 U.S.C. §§ 8101-8193.

³ *J.P.*, 59 ECAB ___ (Docket No. 07-1159, issued November 15, 2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

⁴ *G.T.*, 59 ECAB ___ (Docket No. 07-1345, issued April 11, 2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁵ *Id.*; *Nancy G. O'Meara*, 12 ECAB 67, 71 (1960).

⁶ *Jennifer Atkerson*, 55 ECAB 317, 319 (2004); *Naomi A. Lilly*, 10 ECAB 560, 573 (1959).

⁷ *See Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors. The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.⁸

Section 8123 (a) of the Federal Employees' Compensation Act⁹ provides that, 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.

ANALYSIS

The Board finds this case not in a posture for decision because an unresolved conflict of medical opinion exists between appellant's attending physician, Dr. Fried, on one side, and the Office's examination physician, Dr. Stark, on the other.

Dr. Fried, in his multiple reports over the years, reviewed appellant's medical history and employment activities, and based upon his examination findings diagnosed right ulnar and median neuropathy, right brachial plexopathy and cervical radiculopathy, right neuritis, repetitive strain injury, possible bilateral median nerve carpal tunnel, right shoulder capsulitis and partial thickness of the right rotator cuff. He opined that repetitive reaching and an awkward typing posture produced a tear in appellant's rotator cuff, brachial plexus nerve injury and ulnar and medial nerve injury. Dr. Fried opined that appellant's condition is "directly and causally related to her work activity." He related that appellant's work injuries disabled her from work to the point that she "exacerbated with respect to her right shoulder and brachial plexus symptoms and had to leave work." Dr. Fried noted that appellant's repetitive employment activities worsened her symptomatology and also progressed her repetitive strain or cumulative traumas.

Dr. Stark reviewed appellant's history of injury, presented findings on examination and reported he found no objective findings that appellant has any problem with her cervical or bilateral upper extremities. He further found no aggravation, either permanent or temporary, of appellant's accepted employment injuries. Dr. Stark found no basis for appellant's claim that she has a cervical and bilateral upper extremity condition caused or aggravated by her federal employment duties. He opined that appellant was not disabled from performing her work as a secretary and does not require any further medical treatment for her accepted medical conditions.

The Board finds that the opinion of Dr. Stark, the Office's examining physician, conflicts with that of appellant's attending physician, Dr. Fried, concerning the existence and extent of

⁸ *I.J.*, 59 ECAB ___ (Docket No. 07-2362, issued March 11, 2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁹ 5 U.S.C. § 8123(a).

appellant's condition. Accordingly, the case will be remanded for further medical development. On remand, the Office should refer appellant to an appropriate specialist, along with the case record and a statement of accepted facts. After such development of the case record as the Office deems necessary, a *de novo* decision shall be issued.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the May 19, 2009 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further development consistent with this decision of the Board.

Issued: August 24, 2010
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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