United States Department of Labor
Employees' Compensation Appeals Board

J.M., Appellant	)	
and	)	**Docket No. 09-1399**
	)	**Issued: February 22, 2010**
U.S. POSTAL SERVICE, POST OFFICE, Philadelphia, PA, Employer	)	

Appearances:
Thomas R. Uliase, 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 May 6, 2009 appellant filed a timely appeal from the Office of Workers' Compensation Programs' February 19, 2009 merit decision, denying her traumatic injury 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 sustained a traumatic injury while in the performance of duty on January 15, 2003.

FACTUAL HISTORY

This case is before the Board for the third time. On May 11, 2005 the Office denied appellant's March 26, 2003 traumatic injury claim.[1] In a decision dated December 9, 2005, the

[1] The Office accepted that two bundles fell on appellant's hands on January l5, 2003 but found that she failed to establish that her wrist condition was due to the accepted incident.

Board remanded the case to the Office for further development of the medical evidence.[2] On June 3, 2008 the Board found that the case was not in posture for a decision due to a conflict in the medical evidence and remanded the case for a referral to an impartial medical examiner.[3] The facts and law contained in those decisions are incorporated herein by reference.[4]

On remand, the Office referred appellant, together with a statement of accepted facts and the medical record, to Dr. Mark Rekant, a Board-certified orthopedic surgeon, in order to resolve the conflict in medical opinion between her treating physician, Dr. Arnold S. Lincow, and the Office's second opinion physician, Dr. Kevin F. Hanley, as to whether she developed a medical condition involving her wrists as a result of the accepted January 15, 2003 incident, when bundles of mail fell on her hands.[5] In a report dated June 26, 2008, Dr. Rekant noted appellant's complaints of bilateral hand pain, numbness and tingling, which she had allegedly been experiencing for five years. Appellant alleged that, while she had been experiencing "symptoms" prior to the January 15, 2003 traumatic event, they were aggravated by the incident.

Physical examination revealed preserved shoulder, elbow, wrist and digital range of motion. Provocative testing of the elbows and wrists was negative. Appellant exhibited a positive Tinel's sign at both carpal tunnels, as well as a positive Phalen's test bilaterally. There was no evidence of thenar atrophy or clawing. Froment's, Wartenberg's and Cross Finger were negative. Motor testing was 5/5 throughout. Based upon his examination and review of the entire medical record, Dr. Rekant diagnosed bilateral carpal tunnel syndrome. He opined, however, that there was no indication by history, physical examination or a review of the medical records that appellant's current condition was at all related to the traumatic work incident of January 15, 2003 or to repetitive tasks performed while working. Rather, Dr. Rekant attributed her present symptoms to "idiopathic carpal tunnel syndrome." He stated:

> "There is no direct correlation between postal workers having an increased incidence of carpal tunnel syndrome as compared to the general population. Carpal tunnel syndrome is seen equally in all forms of a workplace including physicians, lawyers, laborers and the like. While it is reasonable for [appellant] to seek medical treatment or medical and surgical treatment for her stated symptoms,

[2] Docket No. 05-1949 (issued December 9, 2005).

[3] Docket No. 08-274 (issued June 3, 2008).

[4] The Board notes that appellant filed an occupational disease claim (File No. xxxxxx342) on March 5, 2005, alleging that she developed carpal tunnel syndrome as a result of repetitive employment duties. By decision dated March 20, 2007, the Board affirmed the Office's March 31, 2006 denial of appellant's claim, finding that she failed to establish that she developed carpal tunnel syndrome as a result of her federal employment duties. Docket No. 07-218 (issued March 20, 2007).

[5] On June 10, 2008 the Office advised appellant that she was being referred to Dr. Rekant for an impartial medical examination in order to resolve the conflict identified by the Board. By letter dated June 10, 2008, but received by the Office on June 19, 2008, appellant's representative asked to participate in the selection of the referee physician. On June 19, 2008 the Office informed the representative that an impartial medical examination had been scheduled for June 26, 2008 in accordance with proper Office procedures. The record contains a medical conflict statement dated June 5, 2008, which was sent to Dr. Rekant together with "Questions to the Referee Physician" and statement of accepted facts, as well as a memorandum of referral to a specialist due to a conflict (CA-19) dated June 5, 2008.

> this is not related to her activities as a post worker and certainly not related to her trauma of January 15, 2003. In summary, there is no causal relation between [her] symptoms and her work activities or supposed work injury. As there is no relation, [appellant] is capable of full work activity presently without restriction as it relates to her [w]orkers' [c]ompensation claim. Presently, she has reached maximum medical improvement as she is no longer complaining of contusion type injuries that might have occurred from the mail bundles hitting her hands."

By decision dated July 29, 2008, the Office denied appellant's claim finding the report of the impartial medical examiner thorough and well rationalized and that it represented the weight of the medical evidence. On July 31, 2008 appellant, through her representative, requested an oral hearing.

At a December 2, 2008 hearing, appellant's representative contended that Dr. Rekant's report was insufficient to carry the weight of the medical evidence, as it was speculative and failed to resolve the conflict in medical opinion. He also contended that there was no evidence that the Office properly utilized the Physician's Directory System (PDS) system in the selection of the referee physician.

By decision dated February 19, 2009, the Office hearing representative affirmed the Office's July 29, 2008 decision, finding that the evidence failed establish that appellant's carpal tunnel syndrome was causally related to the accepted January 15, 2003 work incident. The hearing representative also found that the Office properly utilized the PDS system in the selection of the impartial medical examiner.

LEGAL PRECEDENT

The Federal Employees' Compensation Act[6] provides for payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.[7] The phrase "sustained while in the performance of duty" is regarded as the equivalent of the coverage formula commonly found in workers' compensation laws, namely, "arising out of and in the course of employment."[8]

An employee seeking benefits under the Act has the burden of proof to establish that 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 or specific condition for which compensation is claimed is

[6] 5 U.S.C. § 8101 *et seq.*

[7] *Id.* at 8102(a).

[8] This construction makes the statute effective in those situations generally recognized as properly within the scope of workers' compensation law. *Charles E. Mc.Andrews*, 55 ECAB 711 (2004); *see also Bernard D. Blum*, 1 ECAB 1(1947).

causally related to the employment injury.[9] When an employee claims that she sustained a traumatic injury in the performance of duty, she must establish the "fact of injury," namely, she must submit sufficient evidence to establish that she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged and that such event, incident or exposure caused an injury.[10]

The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of employment.[11] An award of compensation may not be based on appellant's belief of causal relationship. Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.[12]

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 that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion 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 established incident or factor of employment.[13]

Section 8123(a) 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 evaluation.[14] The implementing regulations states that, if a conflict exists between the medical opinion of the employee's physician and the medical opinion of either a second opinion physician or an Office medical adviser, the Office shall appoint a third physician to make an examination. This is called a referee examination and the Office will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.[15] Where there exist opposing medical reports of virtually equal weight and rationale

[9] *Robert Broome*, 55 ECAB 339 (2004); *see also Elaine Pendleton*, 40 ECAB 1143 (1989). *See also* 5 U.S.C. § 8101(5) ("injury" defined); 20 C.F.R. § 10.5(q) and (ee) (2000) ("Occupational disease or illness means a condition .produced by the work environment over a period longer than a single workday or shift.") ("Traumatic injury" means a condition of the body caused by a specific event or incident, or a series of events or incidents, within a single workday or shift.")

[10] *Tracey P. Spillane*, 54 ECAB 608 (2003); *see also Betty A. Smith*, 54 ECAB 174 (2002). The term "injury" as defined by the Act, refers to a disease proximately caused by the employment. 5 U.S.C. § 8101(5). *See* 20 C.F.R. § 10.5(q), (ee).

[11] *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

[12] *Dennis Al. Mascarenas*, 49 ECAB 215, 218 (1997).

[13] *John W. Montoya*, 54 ECAB 306(2003).

[14] 5 U.S.C. § 8123(a).

[15] 20 C.F.R. § 10.321.

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.[16]

When the Office obtains an opinion from an impartial medical specialist for the purpose of resolving a conflict in the medical evidence and the specialist's opinion requires clarification or elaboration, the Office must secure a supplemental report from the specialist to correct the defect in his original report.[17] However, when the impartial specialist is unable to clarify or elaborate on his original report or if his supplemental report is also vague, speculative or lacking in rationale, the Office must submit the case record and a detailed statement of accepted facts to a second impartial specialist for the purpose of obtaining his rationalized medical opinion on the issue.[18] Unless this procedure is carried out by the Office, the intent of section 8123(a) of the Act will be circumvented when the impartial specialist's medical report is insufficient to resolve the conflict of medical evidence.[19]

ANALYSIS

The Board finds that this case is not in posture for a decision as to whether appellant sustained a wrist injury in the performance of duty, as there remains an unresolved conflict in the medical evidence.

In its June 3, 2008 decision, the Board found a conflict in medical opinion between appellant's treating physician, Dr. Lincow, and the Office's second opinion physician, Dr. Hanley, as to whether appellant developed carpal tunnel syndrome as a result of the accepted January 15, 2003 incident, when bundles of mail fell on her hands. In accordance with the Board's instructions, the Office referred appellant to Dr. Rekant in order to resolve the conflict. The Board finds, however, that his June 26, 2008 report is insufficient to resolve the conflict. Therefore, the case must be remanded for further development of the medical evidence.

Dr. Rekant provided a review of appellant's medical treatment and examination findings. Based upon his examination and review of the entire medical record, he diagnosed bilateral carpal tunnel syndrome. Dr. Rekant opined, however, that there was no indication by history, physical examination or a review of the medical records that her current condition was causally related to the traumatic work incident of January 15, 2003 or to repetitive tasks performed while working. He did not provide sufficient rationale for his opinion. Dr. Rekant did not describe the development of appellant's carpal tunnel syndrome condition; nor did he explain why the accepted January 15, 2003 traumatic incident would not have been competent to cause or

[16] *Barry Neutuch*, 54 ECAB 313 (2003); *David W Pickett*, 54 ECAB 272 (2002).

[17] *Nancy Lackner (Jack D. Lackner)*, 40 ECAB 232 (1988); *Ramon K. Ferrin, Jr.*, 39 ECAB 736 (1988).

[18] *Roger W. Griffith*, 51 ECAB 491 (2000); *Talmadge Miller*, 47 ECAB 673 (1996).

[19] *Roger W. Griffith*, *supra* note 18; *Harold Travis*, 30 ECAB 1071 (1979).

aggravate her condition, as Dr. Lincow opined. Medical conclusions unsupported by rationale are of little probative value.[20]

Dr. Rekant attributed appellant's symptoms to "idiopathic carpal tunnel syndrome," stating that there was "no direct correlation between postal workers having an increased incidence of carpal tunnel syndrome as compared to the general population" and that "carpal tunnel syndrome was seen equally in all forms of a workplace including physicians, lawyers, laborers and the like." His opinion that the carpal tunnel syndrome condition is of unknown origin is, by definition, vague and speculative. Moreover, Dr. Rekant's blanket statements regarding carpal tunnel syndrome in the general population are unsupported and do not address the specific facts of this case, in which bundles of mail fell on appellant's hands on January 15, 2003.

The Board finds that Dr. Rekant's June 26, 2008 report requires clarification and elaboration. As the Office referred appellant to Dr. Rekant, it has the duty to obtain a report sufficient to resolve the issues raised and the questions posed to the specialist.[21] The case, consequently, is remanded to the Office to obtain a supplemental report from Dr. Rekant. Following this and such further development deemed necessary, the Office should issue an appropriate decision.[22]

CONCLUSION

The Board finds that the case is not in posture for decision. The case shall be remanded for further development of the medical evidence, to be followed by an appropriate merit decision.

[20] *Willa M. Frazier*, 55 ECAB 379.

[21] Once the Office undertakes to develop the medical evidence further, it has the responsibility to do in a manner that will resolve the relevant issues in the case. *Melvin James*, 55 ECAB 406 (2004).

[22] The Federal (FECA) Procedure Manual provides that the selection of referee physicians is made through a strict rotational system using appropriate medical directories. The procedure manual provides that the PDS should be used for this purpose wherever possible. Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Examinations*, Chapter 3.500.4b (May 2003). The PDS is a set of stand-alone software programs designed to support the scheduling of second opinion and referee examinations. Federal (FECA) Procedure Manual at Chapter 3.500.7 (September 1995, May 2003). The PDS database of physicians is obtained from the ABMS which contains the names of physicians who are Board-certified in certain specialties. The Board finds that there is no evidence in the record supporting the allegation made by appellant's representative that Dr. Rekant was not appropriately selected through the PDS. There is no documentation suggesting that any improper methods were used in selecting him. The record establishes that he was selected on the rotational basis as required by the Board and the Office's procedure manual.

ORDER

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

Issued: February 22, 2010
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