United States Department of Labor
Employees' Compensation Appeals Board

B.P., Appellant	)	
	)	**Docket No. 09-1510**
and	)	**Issued: February 18, 2010**
	)	
U.S. POSTAL SERVICE, POST OFFICE, Newnan, GA, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On May 11, 2009 appellant filed a timely appeal from an October 29, 2008 merit decision of the Office of Workers' Compensation Programs denying her occupational disease 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 has established that she sustained a bilateral upper extremity condition causally related to factors of her federal employment.

FACTUAL HISTORY

On March 5, 2008 appellant, then a 49-year-old letter carrier, filed an occupational disease claim alleging that she sustained increased numbness of both hands due to factors of her federal employment. She attributed her condition to using her hands delivering mail and pulling the brake on her work vehicle over the past 19 years. Appellant noted that her condition had worsened since she filed a claim in 2004. She did not stop work.

In a report dated March 12, 2008, Dr. Stephen M. McCollam, a Board-certified orthopedic surgeon, discussed appellant's history of bilateral hand pain and intermittent numbness for the past 19 years. He noted that she received a diagnosis of carpal tunnel syndrome in 2004 and that following her diagnosis she "changed letter routes." Appellant also received injections in the right lateral elbow for epicondylitis. Dr. McCollam reviewed her complaints of a recent increase in pain, numbness and tingling in both hands. On examination he found a positive dorsiflexion test of the right forearm, positive median nerve compression of the wrists bilaterally, and a negative Phalen's test and Tinel's sign. In an accompanying form report also dated March 12, 2008, Dr. McCollam diagnosed bilateral carpal tunnel syndrome and right tennis elbow. He checked "yes" that the history of injury provided by appellant corresponded to that provided on the form of an injury due to repetitive motion, pulling mail and braking a vehicle. Dr. McCollam opined that appellant could perform her usual employment.[1]

By decision dated April 21, 2008, the Office denied appellant's claim on the grounds that the medical evidence did not establish that she sustained a condition causally related to factors of her accepted work factors.

In a report dated May 14, 2008, a physician's assistant, dictating for Dr. McCollam, diagnosed right carpal tunnel syndrome after a right carpal tunnel release on April 28, 2008 and left carpal tunnel syndrome. The physician's assistant stated:

> "I shared with [appellant] today at this point it would be reasonable to proceed with a carpal tunnel release on the left side under IV [intravenous] sedation. To review, [she] states that her symptoms started on the job and continue to be aggravated by the job. I discussed [appellant] again with Dr. McCollam today and he is in agreement that this is a work[-]related injury."

On August 13, 2008 appellant requested reconsideration. She submitted an April 28, 2008 report from Dr. McCollam indicating that she underwent a right carpal tunnel release. In a progress report dated June 11, 2008, Dr. McCollam evaluated appellant following her left carpal tunnel release. He diagnosed a probable small stitch abscess.

By decision dated October 29, 2008, the Office denied modification of its April 12, 2008 decision. It found that appellant had not submitted rationalized medical evidence supporting that she sustained carpal tunnel syndrome due to factors of her federal employment.

On appeal appellant discussed the work factors to which she attributed her condition. She noted that she had previously filed a claim in 2004 which was denied by the Office. Appellant related that after her surgeries she was not provided with light duty. She maintained that her physician provided an opinion that her condition was due to her occupation.

[1] Appellant also submitted a portion of an electromyogram obtained on March 17, 2008.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[2] 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 filed within the applicable time limitation; that an injury was sustained while 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.[3] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[4]

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;[5] (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;[6] and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.[7] The medical opinion 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.[8]

ANALYSIS

Appellant attributed her bilateral hand condition to her work duties, including delivering mail and pulling the brake on her vehicle. The Office accepted the occurrence of the claimed employment factors. The issue, therefore, is whether the medical evidence establishes a causal relationship between the claimed conditions and the identified employment factors.

In a March 12, 2008 narrative report, Dr. McCollam noted that appellant complained of a recent worsening of her bilateral hand pain and numbness. He discussed her prior diagnoses of carpal tunnel syndrome and right elbow epicondylitis. Dr. McCollam found positive median nerve compression of the nerves bilaterally and a negative Phalen's test and Tinel's sign. In a form report of the same date, he diagnosed bilateral carpal tunnel syndrome and right tennis elbow. Dr. McCollam checked "yes" that the history of injury appellant provided corresponded to that on the form of an injury due to repetitive motion, pulling mail and braking a vehicle. The

[2] 5 U.S.C. §§ 8101-8193.

[3] *Tracey P. Spillane*, 54 ECAB 608 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[4] *See Alvin V. Gadd*, 57 ECAB 172 (2005); *Ellen L. Noble*, 55 ECAB 530 (2004).

[5] *Michael R. Shaffer*, 55 ECAB 386 (2004).

[6] *Marlon Vera*, 54 ECAB 834 (2003); *Roger Williams*, 52 ECAB 468 (2001).

[7] *D.D.*, 57 ECAB 734 (2006); *Roy L. Humphrey*, 57 ECAB 238 (2005).

[8] *Id*.

Board has held, however, that an opinion on causal relationship which consists only of a physician checking "yes" to a medical form question on whether the claimant's condition was related to the history given is of little probative value. Without any explanation or rationale for the conclusion reached, such report is insufficient to establish causal relationship.[9]

On April 28, 2008 Dr. McCollam noted that appellant had a right carpal tunnel release. In a June 11, 2008 progress report, he diagnosed a possible small abscess following a left carpal tunnel release. Dr. McCollam, however, did not address causation and thus his opinion is of little probative value.[10]

In a report dated May 14, 2008, a physician's assistant indicating that she was dictating the report for Dr. McCollam. She noted that appellant related that her symptoms began at work and were aggravated by her work duties. The physician's assistant stated, "I discussed [her] again with Dr. McCollam today and he is in agreement that this is a work[-]related injury." There is no evidence, however, that Dr. McCollam signed or reviewed the May 14, 2008 report. A report from a physician's assistant is entitled to no weight as a physician's assistant is not a "physician" as defined by section 8102(2) of the Act.[11]

On appeal appellant described the work factors to which she attributed her condition and asserted that her physician found her condition employment related. An award of compensation, however, may not be based on surmise, conjecture, speculation, or upon appellant's own belief that there is a causal relationship between her claimed condition and her employment.[12] Appellant must submit a physician's report in which the physician reviews those factors of employment identified by her as causing his condition and, taking these factors into consideration as well as findings upon examination and the medical history, explain how employment factors caused or aggravated any diagnosed condition and present medical rationale in support of his or her opinion.[13] Appellant failed to submit such evidence and therefore failed to discharge her burden of proof.[14]

CONCLUSION

The Board finds that appellant has not established that she sustained a bilateral upper extremity condition causally related to factors of her federal employment.

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[9] *Sedi L. Graham*, 57 ECAB 494 (2006); *Deborah L. Beatty*, 54 ECAB 334 (2003) (the checking of a box "yes" in a form report, without additional explanation or rationale, is insufficient to establish causal relationship).

[10] Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship. *Conard Hightower*, 54 ECAB 796 (2003).

[11] *See* 5 U.S.C. § 8101(2); *J.M.*, 58 ECAB 303 (2007); *Allen C. Hundley*, 53 ECAB 551 (2002).

[12] *George H. Clark*, 56 ECAB 162 (2004); *Patricia J. Glenn*, 53 ECAB 159 (2001).

[13] *D.D.*, 57 ECAB 734 (2006); *Robert Broome*, 55 ECAB 339 (2004).

[14] Appellant submitted new medical evidence with her appeal. The Board has no jurisdiction to review new evidence on appeal; *see* 20 C.F.R. § 501.2(c). Appellant can submit this evidence to the Office and request reconsideration under 5 U.S.C. § 8128.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 29, 2008 is affirmed.

Issued: February 18, 2010
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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