

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

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B.C., Appellant)	
)	
and)	Docket No. 09-1575
)	Issued: February 18, 2010
DEPARTMENT OF VETERANS AFFAIRS,)	
MEDICAL CENTER, Brecksville, OH, Employer)	
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Appearances:
Alan J. Shapiro, 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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 3, 2009 appellant filed a timely appeal of the May 6, 2009 merit decision of the Office of Workers' Compensation Programs, which affirmed the denial of her occupational disease claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant's bilateral thumb condition is employment related.

FACTUAL HISTORY

Appellant, a 58-year-old dental laboratory technician, filed an occupational disease claim (Form CA-2) on July 7, 2008 for bilateral carpometacarpal (CMC) degenerative joint disease. She attributed her bilateral thumb condition to 20 years of working with her hands and

performing repetitive tasks.¹ Appellant identified May 8, 2008 as the date she first became aware of her condition.

Dr. John W. Shaffer, a Board-certified orthopedic surgeon, saw appellant on June 3, 2008 and diagnosed CMC degenerative joint disease and lateral epicondylitis of the right elbow.² In a report dated June 18, 2008, he indicated that appellant's primary concern at the time was her right elbow. The previous winter appellant reportedly was shoveling snow when she experienced a pop in her right elbow. Dr. Shaffer noted that since then she had lateral elbow pain suggestive of lateral epicondylitis. He also noted that appellant mentioned "unrelated issues of both hands." On physical examination, Dr. Shaffer reported tenderness between the lateral epicondyle of the right elbow and pain with full extension. He also noted pain with forced extension of appellant's finger and wrist extensors, and a positive grind test in the CMC joint of both thumbs. X-rays of the hands and wrists revealed end-stage arthritis at the basal joint of the thumbs, with more advanced arthritis on the left. Dr. Shaffer recommended a corticosteroid injection to treat appellant's right elbow condition and reconstructive surgery for the left thumb, which was more symptomatic than the right.³

With respect to the cause of appellant's bilateral thumb condition, Dr. Shaffer indicated that appellant was employed as a dental technician and that she showed him pictures of her "work circumstance (sic)." He explained that there was occupational trauma that occurred to the basal joints of both thumbs, and in his opinion the "work traumas" aggravated appellant's degenerative joint disease. Dr. Shaffer further explained that this included the "wear and tear on the basal joint and the direct trauma as [appellant] attempts to perform her tests."

On July 29, 2008 the Office requested that appellant submit additional information regarding her employment duties as well as additional medical evidence. It indicated that Dr. Shaffer's opinion was not well reasoned on the issue of causal relationship. Specifically, Dr. Shaffer did not explain how appellant's work aggravated her degenerative hand condition. The Office afforded appellant 30 days to submit the requested information.

While appellant subsequently submitted a statement describing her various employment duties and outside activities, the Office did not receive any additional medical evidence regarding the etiology of her bilateral thumb condition.

In a decision dated October 9, 2008, the Office denied appellant's claim because she failed to demonstrate that her bilateral thumb condition was employment related. It noted, *inter alia*, that Dr. Shaffer's June 18, 2008 report did not discuss the specific work activities which over time had reportedly aggravated appellant's degenerative medical condition.

¹ Appellant's employment duties reportedly included breaking plaster from models, cleaning flasks and using various dental instruments such as a pneumatic chisel, hand lathe, grinder and electric handpiece. She also reported having recently struck her left hand with a hammer while cleaning a dental articulator.

² Dr. Shaffer's report was initially submitted in relation to a claim for a May 8, 2008 traumatic injury, which the Office ultimately denied.

³ Appellant underwent a left thumb CMC joint arthroplasty on June 9, 2008.

Appellant's counsel requested an oral hearing, which was held on February 17, 2009. The Office received additional medical evidence, including treatment notes from Dr. Shaffer and June 3, 2008 bilateral hand x-rays that revealed mild to moderate hypertrophic arthritic changes. Dr. Shaffer's June 3, 2008 office notes were consistent with the information included in the previously submitted June 18, 2008 report, except that the June 3, 2008 office notes did not address the cause of appellant's bilateral thumb condition. He also provided his notes from appellant's June 9, 2008 left CMC joint arthroplasty, as well as postsurgery follow-up notes dated June 11 and 18, July 8 and 30, 2008. None of the recently submitted information specifically addressed appellant's employment duties and whether her work caused or contributed to her bilateral thumb condition.

By decision dated May 6, 2009, the Office hearing representative affirmed the October 9, 2008 decision.

LEGAL PRECEDENT

A claimant seeking benefits under the Federal Employees' Compensation Act⁴ has the burden of establishing the essential elements of her claim by the weight of the reliable, probative and substantial evidence, including that an injury was sustained in the performance of duty as alleged and that any specific condition or disability claimed is causally related to the employment injury.⁵

To establish that an injury was sustained in the performance of duty, a claimant must submit: (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 diagnosed condition is causally related to the identified employment factors.⁶

ANALYSIS

Appellant has satisfied two of the three criteria necessary for establishing that she sustained an injury in the performance of duty. First, she submitted medical evidence supporting her claimed condition of bilateral CMC degenerative joint disease. Second, appellant provided a factual statement identifying employment factors alleged to have caused or contributed to her

⁴ 5 U.S.C. §§ 8101-8193.

⁵ 20 C.F.R. § 10.115(e), (f) (2009); see *Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996). Causal relationship is a medical question, which generally requires rationalized medical opinion evidence to resolve the issue. See *Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factors must be based on a complete factual and medical background. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors. *Id.*

⁶ *Victor J. Woodhams*, *supra* note 5.

condition. What she failed to provide is credible medical evidence establishing that her diagnosed bilateral thumb condition is causally related to her identified employment factors.

Dr. Shaffer's June 18, 2008 report is the only medical evidence of record linking appellant's bilateral thumb condition to her employment as a dental laboratory technician. However, this report is not well reasoned on the issue of causal relationship, which the Office advised appellant of as early as July 29, 2008. Dr. Shaffer stated that appellant's "work traumas" aggravated her degenerative joint disease. He reportedly viewed some pictures of appellant's "work circumstance." Noticeably absent from Dr. Shaffer's report is any description of either appellant's particular work activities or the so-called "work circumstance" he viewed from some pictures. Dr. Shaffer also referenced "occupational trauma," "work traumas," and "wear and tear," but he provided no context for these otherwise general descriptions. He also mentioned "direct trauma as [appellant] attempts to perform her tests." However, the question remains as to what was the "direct trauma" and what "tests" did appellant perform.

Some of Dr. Shaffer's language is confusing and the June 18, 2008 report lacks sufficient detail and explanation to support a finding that appellant's employment duties aggravated her degenerative condition. Appellant's counsel argued before the hearing representative that Dr. Shaffer's opinion was sufficient to establish a *prima facie* case for entitlement to benefits, thus placing the onus for further development of the record on the Office. The hearing representative clearly disagreed as does the Board. Appellant has a degenerative arthritic condition in both hands that may or may not have been aggravated by her federal employment. The burden remains with appellant to demonstrate that her employment activities aggravated her arthritic condition. Appellant has been provided ample opportunity to supplement the record and substantiate her claim. Dr. Shaffer's June 18, 2008 report does not satisfy appellant's burden nor does this report establish a *prima facie* case of entitlement. He provided absolutely no insight regarding his purported understanding of appellant's regular employment duties. Accordingly, the Office properly denied appellant's occupational disease claim based on her failure to establish a causal connection between her diagnosed condition and her employment.

CONCLUSION

Appellant has not demonstrated that her bilateral thumb condition is employment related. As such, she failed to establish that she was injured in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the May 6, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 18, 2010
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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