United States Department of Labor
Employees' Compensation Appeals Board

M.F., Appellant	)	
and	)	**Docket No. 09-2279**
	)	**Issued: July 8, 2010**
U.S. POSTAL SERVICE, POST OFFICE, Thousand Oaks, CA, Employer	)	

Appearances:
Appellant, pro se
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 September 15, 2009 appellant filed a timely appeal from the March 19, 2009 merit decision of the Office of Workers' Compensation Programs, which denied compensation for bilateral carpal tunnel syndrome. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(e), the Board has jurisdiction to review the merits of the case.

ISSUE

The issue is whether appellant developed bilateral carpal tunnel syndrome causally related to her federal employment.

FACTUAL HISTORY

On January 30, 2001 appellant, then a 41-year-old letter carrier, filed a claim alleging that her rotator cuff tear or tendinitis was a result of her federal employment. Her duties included such repetitive activities as rolling mail into small bundles and reaching to push mail into small apartment boxes. Appellant noticed right shoulder pain while casing mail each day. The Office initially accepted her claim for right shoulder strain. It subsequently accepted right rotator cuff

tear and right shoulder impingement with arthroscopies on July 27, 2001 and May 15, 2003. Appellant did not return to work following the second surgery.[1]

On May 23, 2006 appellant was on her way to see her physician for the accepted right shoulder conditions when she was involved in a motor vehicle accident. The Office accepted cervical sprain and right elbow and wrist sprains as consequential injuries.

A conflict in medical opinion arose between an Office referral orthopedic surgeon and two of appellant's treating orthopedic surgeons as to whether appellant had bilateral carpal tunnel syndrome causally related to her duties as a letter carrier. The Office referred her, together with the medical record and a statement of accepted facts, to Dr. Lorenzo G. Walker, a Board-certified orthopedic surgeon with a subspecialty in hand surgery, for an impartial medical evaluation.

On March 30, 2008 Dr. Walker reported that he evaluated appellant on March 13, 2008. He stated that he spent 20 hours reviewing her medical records, an hour with her face-to-face, listed her job activities as a letter carrier, noting that she had not worked since May 13, 2003. On examination, the cervical spine revealed full range of motion without evidence of radiculopathy or crepitation. The right shoulder revealed well-healed scars from previous surgery with no evidence of ongoing adhesive capsulitis but some reduction in range of motion. At the right elbow there was also reduced range of motion in extension but no evidence of medial or lateral collateral instability with adequate sensation in the ulnar nerve distribution. Carpal tunnel examination in the median nerve distribution revealed no evidence of diminished sensation except for decreased sensation on the left thenar eminence. Tinel's and Phalen's signs were negative bilaterally without evidence of any upper extremity atrophy. Dr. Walker noted that appellant complained all during the provocative testing for carpal tunnel which was not anatomic in nature.

Dr. Walker noted that, at the time appellant last left work in May 2003, she underwent a negative electrodiagnostic study and repeat electrodiagnostic studies in August 2004 were also negative. He noted, however, that her findings on physical examination were negative for carpal tunnel syndrome and much of her symptomatology was not anatomic. Dr. Walker advised that appellant did not sustain carpal tunnel syndrome based on her former federal employment. Given the fact that her last employment was in May 2003 and she did not convert to electropositive carpal tunnel until diagnostic testing in 2005, this occurred due to nonindustrial exposure subsequent to her last day of employment.

In a July 29, 2008 decision, the Office denied appellant's claim for bilateral carpal tunnel syndrome based on Dr. Walker's report. It found that the medical evidence was insufficient to establish that she developed bilateral carpal tunnel syndrome as a result of her duties as a letter carrier.

[1] The Office further accepted appellant's claim for consequential lacerations to the left index and ring fingers, moderate single-episode major depressive disorder, chronic pain syndrome and fibromyalgia. The record indicates that in a separate case, OWCP File No. xxxxxx556, the Office accepted cubital tunnel syndrome.

On August 5, 2008 Dr. Kenneth R. Sabbag, an attending orthopedic surgeon, who participated in the creation of the conflict in medical opinion, disagreed with the finding by Dr. Walker. He reiterated that appellant developed carpal tunnel with the passage of time, contending that the fact she had a prior negative study in 2003 did not completely rule out carpal tunnel at that time because electronegative carpal tunnel syndrome did exist, particularly in young people and studies often become positive over time. Dr. Sabbag believed that this is what happened to appellant, although he noted that of the eight medical specialists who had treated her since 2003, half found carpal tunnel syndrome and half did not.

On August 4, 2008 Dr. Jacob E. Tauber, the other attending orthopedic surgeon who created the conflict in medical opinion, reiterated his opinion from November 20, 2007. He explained that patients with carpal tunnel syndrome do not always have positive Tinel's and Phalen's signs and that he confirmed his diagnosis with an ultrasonic study. Dr. Tauber further noted that many individuals have clinically diagnosed nerve entrapment and that it may take time for some to become positive or abnormal by electrodiagnostic study. He stated that many individuals with carpal tunnel syndrome never had positive electrical studies and still another group became positive after they had been negative. "This does not mean that a subsequent injury takes place or that something has occurred."[2]

In a March 19, 2009 decision, an Office hearing representative affirmed the denial of appellant's claim for bilateral carpal tunnel syndrome. The hearing representative found that Dr. Walker's opinion represented the special weight of the medical evidence. The Office hearing representative found that Dr. Tauber's August 4, 2008 report provided no new findings or rationale.

On appeal, appellant contends that the issue was not whether bilateral carpal tunnel syndrome was medically connected to her employment; but that her motor vehicle accident aggravated her wrist conditions. She added that her bilateral wrist condition was triggered by repetitive motion, which she implicated on her January 30, 2001 claim form.

LEGAL PRECEDENT

The Federal Employees' Compensation Act provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.[3] An employee seeking benefits under the Act has the burden of proof to establish the essential elements of her claim. When an employee claims that she sustained an injury in the performance of duty, 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. She must also establish that such event, incident or exposure caused an injury.[4]

[2] On September 19, 2008 appellant was diagnosed with adult-onset diabetes mellitus.

[3] 5 U.S.C. § 8102(a).

[4] *John J. Carlone*, 41 ECAB 354 (1989).

Causal relationship is a medical issue[5] 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 of the physician must be based on a complete factual and medical background of the claimant,[6] must be one of reasonable medical certainty[7] 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.[8]

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.[9] When there exist opposing medical reports of virtually equal weight and rationale 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.[10]

ANALYSIS

The Office accepted that appellant sustained a right shoulder strain and torn right rotator cuff with impingement for which she underwent several surgeries. Appellant subsequently contended that she sustained bilateral carpal tunnel syndrome causally related to her employment activities as a letter carrier. To resolve a conflict in medical opinion, the Office properly referred her to Dr. Walker, a Board-certified orthopedic surgeon with a subspecialty in hand surgery. It provided him with appellant's medical record and a statement of accepted facts to base his opinion on a proper factual and medical history.

Dr. Walker provided a report setting forth his findings on examination of appellant, her medical records and the results of prior diagnostic testing. On examination, he noted that there was no diminished sensation in the median nerve distribution and that Phalen's test and Tinel's sign were negative bilaterally without evidence of any upper extremity atrophy. Dr. Walker noted that appellant's complaints on provocative testing were not anatomic. He concluded that she did not have carpal tunnel associated with her federal employment. Dr. Walker noted that appellant was electronegative for carpal tunnel syndrome when she last worked in May 2003 and was again electronegative in August 2004. Thus, if appellant later became electropositive, it was a result of nonindustrial exposure subsequent to her last day of employment. The Board finds that the report of Dr. Walker is well rationalized and constitutes the special weight of medical

[5] *Mary J. Briggs*, 37 ECAB 578 (1986).

[6] *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

[7] *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

[8] *See William E. Enright*, 31 ECAB 426, 430 (1980).

[9] 5 U.S.C. § 8123(a).

[10] *Carl Epstein*, 38 ECAB 539 (1987); *James P. Roberts*, 31 ECAB 1010 (1980).

opinion as the impartial medical specialist.[11] The Office properly relied on his medical opinion to find that appellant's bilateral carpal tunnel condition was not employment related.

Appellant's attending orthopedic surgeons, Dr. Sabbag and Dr. Tauber, submitted additional reports in which they reiterated their prior opinions that appellant had bilateral carpal tunnel syndrome related to her federal employment. They explained that a negative electrodiagnostic study in 2003 or 2004 would not necessarily rule out carpal tunnel syndrome because the disease was progressive and many individuals with a clinical diagnosis only become electropositive over time. Further, Drs. Sabbag and Tauber noted that patients with carpal tunnel syndrome do not always have positive Tinel's and Phalen's signs. They were on one side of the conflict that the Office asked Dr. Walker to resolve. Their arguments were not new. Dr. Tauber raised these points in his November 20, 2007 report. Dr. Sabbag noted that half the specialists examining appellant had found carpal tunnel while the other half did not. Their additional reports are not sufficient to rebut Dr. Walker's opinion that appellant did not sustain employment-related carpal tunnel syndrome. The Board therefore finds that their opinions are insufficient to overcome the special weight accorded Dr. Walker's opinion as the impartial medical specialist.

CONCLUSION

The Board finds that appellant did not establish that she sustained bilateral carpal tunnel syndrome due to her federal employment.

[11] *See Bernadine P. Taylor*, 54 ECAB 342 (2003).

ORDER

IT IS HEREBY ORDERED THAT the March 19, 2009 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: July 8, 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