

FACTUAL HISTORY

This case has previously been before the Board.¹ In an August 14, 2008 decision, the Board affirmed Office decisions of February 23, June 29 and October 11, 2007, finding that appellant did not establish that she sustained an occupational disease while in the performance of duty. The facts of the case are set forth in the Board's prior decision and are incorporated herein by reference.

Following the Office's October 11, 2007 decision, appellant submitted an August 27, 2007 attending physician's report from Dr. Alamelu Murugappan, a Board-certified neurologist. Dr. Murugappan noted treating appellant for bilateral carpal tunnel syndrome. Appellant reported no history of injury but indicated that she experienced neck pain and pain in both hands since 2005 while at work. Dr. Murugappan diagnosed bilateral carpal tunnel syndrome, C4-5 disc protrusions and a ganglion cyst on the right hand. He noted with a checkmark "yes" that appellant's condition was caused by her employment activity and indicated that repetitive movements of the hands aggravated and precipitated her conditions.²

On December 29, 2008 appellant requested reconsideration and submitted the December 12, 2008 report of Dr. Diana Roque, an attending Board-certified internist, who noted that she had treated appellant for over 10 years and stated that appellant's bilateral carpal tunnel syndrome and cervical spondylosis began in 2001 and was aggravated by her work duties which included repetitive use of the upper extremities, lifting and carrying. Dr. Roque based her opinion on an October 16, 2007 magnetic resonance imaging (MRI) scan of the left wrist which revealed degenerative and repetitive trauma changes and an MRI scan of the cervical spine which revealed moderate osteoarthritis, but no evidence of trauma. She noted that appellant was involved in a nonwork-related motor vehicle accident in 2004, but advised that this incident did not cause her cervical spondylosis or carpal tunnel syndrome because her symptoms predated the accident and the MRI scans did not reveal an onset of new trauma. Dr. Roque opined that the fast progression of appellant's carpal tunnel syndrome was indicative of the degree of stress on her neck and hands due to her work duties. She identified appellant's work activities of lifting and carrying heavy files, repetitive use of her hands typing, keying and making computer data entries as having caused bilateral carpal tunnel syndrome and aggravating the cervical spondylosis, which were permanent conditions and worsening.³

In a December 15, 2008 report Dr. Donna Saatman, a Board-certified neurologist, noted that she treated appellant since July 2005. She performed a right carpal tunnel release on January 9, 2006, and a left wrist release and C5-6 anterior cervical discectomy and fusion on December 6, 2006. Dr. Saatman reviewed her treatment records and advised that, to a reasonable degree of medical certainty, appellant's cervical spine and carpal tunnel conditions

¹ Docket No. 08-472 (issued August 14, 2008). On November 29, 2005 appellant, then a 49-year-old wage and hour compliance specialist, filed an occupational disease claim alleging carpal tunnel syndrome, arthritis and a low back condition from performing repetitive duties at work. She did not stop work.

² The Board has held that physician's opinion which consists of a checkmark on a form medical report is of diminished probative value. *See Sedi L. Graham*, 57 ECAB 494 (2006).

³ Appellant previously submitted a job description of her duties as a wage and hour compliance specialist.

were caused or exacerbated by her occupational duties. Appellant had a five-year history of cervical and wrist symptoms before Dr. Saatman treated her. Dr. Saatman stated that appellant experienced pain after working eight hours a day, repetitively using her hands, driving, carrying a briefcase or using a phone. She reported the onset of appellant's cervical and bilateral extremity complaints while she was performing her office duties. Dr. Saatman advised that appellant's 2004 motor vehicle accident temporarily exacerbated her preexisting cervical condition and opined that appellant's occupational duties beginning in 2000 caused a permanent aggravation of appellant's condition.

In an April 2, 2009 decision, the Office denied modification of its October 11, 2007 decision on the grounds that medical evidence of record was insufficient to establish that appellant's cervical or bilateral carpal tunnel conditions were caused or worsened by her accepted work duties.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act 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 timely filed within the applicable time limitation period of the Act, that the injury was sustained 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. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon 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; (2) 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 employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by claimant. The medical evidence required to establish causal relationship is generally rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician 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 specific employment factors identified by the claimant.⁵

⁴ Gary J. Watling, 52 ECAB 357 (2001).

⁵ Solomon Polen, 51 ECAB 341 (2000).

ANALYSIS

It is not disputed that appellant's duties as a wage and hour compliance specialist included repetitive activities using her hands including typing, keyboarding, transcribing and sitting for long periods of time. The Office denied her claim finding that the medical evidence submitted from her attending physicians provided insufficient medical rationale in support of their stated opinions on causal relation. The Board finds that the case is not in posture for decision.

In the prior appeal, the Board noted deficiencies in the medical reports from Dr. Roque and Dr. Saatman. The Board noted that the opinion of Dr. Saatman was speculative in nature as to the cause of appellant's cervical and carpal tunnel conditions. On December 15, 2008 she provided an addendum report addressing her treatment of appellant since 2005. Dr. Saatman discussed the surgeries performed and concluded to a reasonable degree of medical certainty that appellant's cervical condition at C5-6 and bilateral carpal tunnel was caused or exacerbated by her duties at work. She provided a description of the duties performed by appellant and addressed the nonemployment-related automobile accident of 2004 as causing an exacerbation of appellant's preexisting pathology. Dr. Saatman concluded that appellant's work duties since 2000 had resulted in a permanent aggravation to her cervical spine and both wrists.

Dr. Roque also reviewed her treatment of appellant since 2001 for bilateral carpal tunnel and cervical spondylosis. She reiterated that appellant's symptoms preexisted the 2004 motor vehicle accident and that an MRI scan performed two months following the accident showed already moderate osteoarthritis with no evidence of trauma to the cervical spine. Dr. Roque attributed appellant's condition on diagnostic testing to degeneration from repetitive activities at work rather than the motor vehicle accident. She attributed the fast progression of appellant's conditions to the stress on her neck and hands at work and the duties she performed. Dr. Roque noted that appellant continued to perform the same work activities. She characterized the nature of appellant's condition as permanent and described the nature of the work performed. Dr. Roque noted that she incorporated her prior reports and that her opinion was made to a reasonable degree of medical certainty.

The Board notes that appellant has submitted medical evidence from two attending physicians that cure deficiencies noted in their prior reports of record. Both physicians advised that to a reasonable degree of medical certainty appellant's work duties of lifting files, keying and typing and data entry caused or exacerbated her cervical spondylosis and bilateral carpal tunnel condition. The nature of the relationship was described as an aggravation of her conditions, which both physicians stated was permanent. Both physicians addressed the history of treatment, with Dr. Roque noting symptoms of the claimed conditions since 2001 and Dr. Saatman addressing treatment of appellant since 2005 and the surgeries performed. Both physicians addressed the 2004 nonemployment-related automobile accident and advised that it caused a temporary exacerbation of appellant's preexisting conditions. The Board finds that appellant has submitted sufficient medical evidence to support further development of the claim.⁶ The case will be remanded to the Office to refer appellant for examination by a second opinion

⁶ See Phillip L. Barnes, 55 ECAB 426 (2004); John J. Carlone, 41 ECAB 354 (1989).

specialist and opinion on whether her claimed cervical and bilateral wrist conditions were caused or aggravated by her work as a wage and hour compliance specialist. The Office should prepare a statement of accepted facts that sets forth the nature and extent of appellant's accepted work duties. After such further development as necessary, it should issue an appropriate decision on her claim for compensation.

CONCLUSION

The Board finds that the case is not in posture for decision on whether appellant developed an occupational disease condition due to factors of her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the April 2, 2009 decision of the Office of Workers' Compensation Programs be set aside. The case is remanded to the Office for further action in conformance with this decision.

Issued: September 27, 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