United States Department of Labor
Employees' Compensation Appeals Board

S.W., Appellant	)	
and	)	**Docket No. 10-2071**
	)	**Issued: July 11, 2011**
U.S. POSTAL SERVICE, POST OFFICE, Troy, MI, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On August 10, 2010 appellant filed a timely appeal from the July 13, 2010 merit decision of the Office of Workers' Compensation Programs. Pursuant to the Federal Employees' Compensation Act[1] and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUES

The issues are: (1) whether appellant has met her burden of proof in establishing that her cervical condition was employment related; and (2) whether appellant met her burden of proof in establishing that she had disability from June 24 to July 29, 2009 causally related to her accepted employment condition.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On January 15, 2009 appellant, then a 44-year-old mail processor, filed an occupational disease claim alleging that she developed a neck condition while performing her work duties. She became aware of her condition on September 18, 2008 and realized it was causally related to her employment on October 1, 2008.[2] Appellant stopped work on September 20, 2008.

Initial medical reports and diagnostic testing, including a January 4, 2008 electromyogram (EMG), indicated that appellant had mild right carpal tunnel syndrome, without radiculopathy, that was work related. A December 29, 2008 magnetic resonance imaging (MRI) scan of the cervical spine revealed multilevel degenerative disc disease of the cervical spine with hypertrophic degenerative changes and disc spur complex at C4-5 which resulted in significant encroachment into the left neural foramina and an extruded disc. Appellant was treated by Dr. Paul D. Croissant, a Board-certified neurologist, on January 12, 2009, for neck pain which began one year prior. Appellant reported that her neck pain was aggravated because she was required to work with her neck in flexion. Dr. Croissant noted findings of no atrophy, normal sensation, intact motor function, normal station and gait. He diagnosed degenerative disc disease at C4 to C7 with left foraminal spurring and disc herniation at C4-5 and recommended surgery. On January 14, 2009 Dr. Croissant saw appellant and she indicated that she was trying to determine whether her cervical condition was work related. Appellant was treated by Dr. Kenneth J. Richter, an osteopath, from November 3, 2008 to January 27, 2009, for a flare-up of neck pain with numbness. Dr. Richter diagnosed axial back pain, right shoulder problems and carpal tunnel syndrome. He noted that appellant was totally disabled. In a January 5, 2009 prescription note, Dr. Richter noted appellant was off work since October 24, 2008 due to her workers' compensation injury and diagnosed axial back pain and cervical radiculopathy. In a January 27, 2009 return to work slip, he diagnosed right C6 radiculopathy and noted appellant was totally disabled.

On December 4, 2008 appellant underwent an EMG which revealed moderately severe carpal tunnel syndrome. On June 5, 2009 the Office authorized right carpal tunnel surgery. On June 28, 2009 Dr. Firas Karmo, a Board-certified neurologist, performed a right carpal tunnel release and diagnosed right carpal tunnel syndrome.

Appellant filed several claims for compensation, Form CA-7, for total disability for the period June 24 to July 29, 2009. She also submitted physical therapy reports dated June 25, July 2, 7, 9 and 14, 2009, noting treatment for carpal tunnel syndrome.

[2] On April 13, 2004 appellant filed a claim for a right shoulder injury, claim number xxxxxx336, which was accepted for right shoulder rotator cuff tear and arthritis, temporary left shoulder strain, temporary neck strain and temporary lumbar strain. She had surgery on both shoulders. Appellant returned to modified work on October 25, 2007 for 6.5 hours per day. On August 20, 2008, claim number xxxxxx336, the Office granted her a schedule award for 32 percent right arm impairment. The period of the award was from May 7, 2008 to April 5, 2010. The Office accepted appellant's claim for right carpal tunnel syndrome and authorized right carpal tunnel release which was performed on June 28, 2009.

In a letter dated July 8, 2009, the Office requested Dr. Richter provide an opinion, supported by objective findings and medical rationale, addressing how the diagnosed cervical condition was related to the September 18, 2008 work incident.

In a July 10, 2009 report, Dr. Richter noted appellant presented without numbness or tingling after the carpal tunnel release; however, she still had significant pain in her neck. He noted that appellant had a shoulder injury in 1998 and she reported flexing at work which aggravated her neck. Dr. Richter noted an MRI scan of the neck revealed multiple levels of degeneration. He noted that the neurologic examination was normal with no cervical radicular findings and decreased motion in the neck. Dr. Richter opined that "it is certainly probable that the neck has been aggravated by the positioning that she did for years at work and there may be a causal relationship." In a July 10, 2009 disability certificate, he advised that appellant was unable to work due to cervical pain.

In a letter dated July 21, 2009, the Office requested that appellant submit medical evidence establishing total disability from June 24 to July 17, 2009.

On July 17, 2009 the Office referred appellant to Dr. Zachary J. Endress, a Board-certified orthopedist, for a second opinion. In a July 29, 2009 report, Dr. Endress indicated that he reviewed the records provided and examined appellant. He diagnosed resolved right carpal tunnel syndrome and cervical radiculopathy. Dr. Endress noted examination of the right hand revealed a well-healed surgical scar, intact sensation in the medial nerve distribution and negative Phalen's and Tinel signs. He noted normal range of motion of the cervical spine, normal neurological testing of both arms, with intact motor, sensory and reflexes. Dr. Endress noted that appellant had subjective findings but no objective findings of cervical radiculopathy other than an MRI scan which revealed nerve root compression. He found no objective findings with regard to the right carpal tunnel syndrome and opined that that condition resolved shortly after surgery. Dr. Endress further noted that it was difficult to ascertain whether appellant's diagnosed cervical degenerative disc disease was caused by her work duties and noted appellant did not relate an actual neck injury; rather she indicated that her condition was due to the position of her neck during work activities. He was unaware of whether the position of the neck could cause cervical radiculopathy. Dr. Endress opined that there was an aggravation of a preexisting cervical radiculopathy and opined that appellant was able to return to work with restrictions.

On December 4, 2009 the Office requested Dr. Endress clarify his opinion as to whether appellant's work activities caused the diagnosed cervical radiculopathy. In a report dated December 23, 2009, Dr. Endress noted that appellant had a cervical condition; however, he opined that the condition was not directly caused, aggravated, accelerated or precipitated by her employment. He further opined that appellant's work factors did not contribute to her diagnosed condition. Dr. Endress indicated that he was not aware of any objective evidence that the employment factors resulted in a continuing and irreversible change in the underlying cervical condition. He noted that he was not sure if the condition was temporary but believed appellant was capable of performing her job duties as a modified clerk with the same restrictions she was under previously.

Appellant submitted a January 8, 2010 report from Dr. Richter who treated her for chronic pain and noted that her condition was unchanged. Appellant reported that she had no specific injury but that her pain came from performing her work duties. Dr. Richter noted no findings of radicular problems and diagnosed chronic complicated pain syndrome. He noted appellant would need a favored work position to return to work.

In a February 5, 2010 decision, the Office denied appellant's request to accept the claim for cervical radiculopathy, degenerative disc disease at C4-C7, left foraminal spurring, and disc herniation at C4-C5. It found that the evidence was insufficient to establish that the additional cervical spine diagnoses were causally related to the accepted work injury. In a separate February 5, 2010 decision, the Office denied appellant's claim for wage-loss compensation from June 24 to July 29, 2009 as he was in receipt of schedule award compensation for right arm impairment during the claimed period.

On February 10, 2010 appellant requested an oral hearing which was held on May 10, 2010.

In a decision dated July 13, 2010, the hearing representative affirmed the February 5, 2010 decisions denying appellant's claim for acceptance of the additional diagnoses of cervical radiculopathy, degenerative disc disease at C4-C7, left foraminal spurring, and disc herniation at C4-C5 and for compensation for the period June 24 to July 29, 2009. He noted that for the period June 24 to July 29, 2009 appellant received schedule award compensation for 32 percent right arm impairment under claim number xxxxxx336. The hearing representative advised that the Office procedures provide that a schedule award for one injury may not be paid concurrently with compensation for wage loss for another injury involving the same part of the body.

LEGAL PRECEDENT -- ISSUE 1

Where an employee claims that a condition not accepted or approved by the Office was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.[3]

Causal relationship is a medical issue that must be established by rationalized medical opinion evidence.[4] 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] The weight of medical evidence is determined by its reliability, its

[3] *Jaja K. Asaramo*, 55 ECAB 200 (2004).

[4] *Elizabeth H. Kramm (Leonard O. Kramm)*, 57 ECAB 117 (2005).

[5] *Leslie C. Moore*, 52 ECAB 132 (2000).

probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.[6]

ANALYSIS -- ISSUE 1

Appellant alleges that she developed cervical radiculopathy, degenerative disc disease at C4-C7, left foraminal spurring, and disc herniation at C4-C5 as a result of performing her limited-duty position. She became aware of her condition on September 18, 2008. The Office accepted the claim, as noted, for right carpal tunnel syndrome.

The Board finds that the medical evidence is insufficient to establish that appellant developed cervical radiculopathy, degenerative disc disease at C4-C7, left foraminal spurring, and disc herniation at C4-C5 causally related to her accepted condition or work duties on and around September 18, 2008.

The Office referred appellant for a second opinion evaluation by Dr. Endress, an orthopedist. In his report dated July 29, 2009, Dr. Endress diagnosed right carpal tunnel syndrome, resolved and cervical radiculopathy. He noted examination of the right hand revealed intact sensation in the medial nerve distribution, normal range of motion of the cervical spine, normal motor and sensory function and intact reflexes. Dr. Endress noted that appellant had subjective findings but no objective findings of cervical radiculopathy. He found no objective findings with regard to the right carpal tunnel syndrome and opined that that condition resolved shortly after surgery. Dr. Endress further noted that it was difficult to ascertain whether appellant's diagnosed cervical degenerative disc disease was caused by her work duties and noted appellant did not relate an actual neck injury. He opined that there was an aggravation of a preexisting cervical radiculopathy and noted that appellant could return to work with restrictions. The Office requested clarification and, on December 23, 2009, Dr. Endress noted that appellant had a cervical condition. However, he opined that the condition was not directly caused, aggravated, accelerated or precipitated by her employment. Dr. Endress further opined that appellant's work factors did not contribute to her diagnosed cervical condition. He believed that appellant was capable of performing her job duties as a modified clerk with the same restrictions she was under previously.

The Board finds that the opinion of Dr. Endress represents the weight of the evidence and establishes that appellant's diagnosed cervical conditions were not causally related to employment factors. Dr. Endress noted that appellant had a cervical condition; however, he opined that the condition was not caused or aggravated by her employment. There is no contemporaneous medical evidence of equal weight supporting appellant's claim that her diagnosed cervical condition was due to factors of employment.

Appellant submitted reports from Dr. Croissant dated January 12 and 14, 2009 who treated appellant for neck pain which she reported was aggravated because she was required to work with her neck in a flexion position. He diagnosed degenerative disc disease at C4 to C7, left foraminal spurring and disc herniation at C4-C5. However, Dr. Croissant appears merely to

[6] *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

be repeating the history of injury as reported by appellant without providing his own opinion regarding whether the cervical conditions were due to employment factors. To the extent that the physician is providing his own opinion, the physician does not provide a well-reasoned discussion explaining how appellant's cervical condition was causally related to appellant's employment. Without any explanation or rationale for the conclusion reached, such report is insufficient to meet appellant's burden of proof.[7]

Other reports from Dr. Richter from November 3, 2008 to January 27, 2009 diagnosed axial back pain, right shoulder problems and carpal tunnel syndrome. In a January 5, 2009 prescription note, Dr. Richter noted appellant was off work since October 24 due to her workers' compensation injury and diagnosed axial back pain and cervical radiculopathy. Similarly, a January 27, 2009 return to work slip noted appellant was totally disabled and diagnosed right C6 radiculopathy. However, Dr. Richter did not specifically address how any axial back pain and cervical radiculopathy were due to the employment factors.[8] In a July 10, 2009 report, Dr. Richter noted appellant had a shoulder injury in 1998 and noted multiple levels of degeneration on the MRI scan of the neck. Dr. Richter opined that "it is certainly probable that the neck has been aggravated by the positioning that she did for years at work and there may be a causal relationship." The Board notes that Dr. Richter's report provides some support for causal relationship but is insufficient to establish the claimed cervical condition was causally related to her employment duties. However, at best, this report provides only speculative support for causal relationship as the physician qualifies his support by noting that it was "probable" that appellant's employment caused her condition. Dr. Richter provided no medical reasoning to support his opinion on causal relationship. Therefore, this report is insufficient to meet appellant's burden of proof.

Appellant has not submitted any medical opinion supporting that cervical radiculopathy, degenerative disc disease at C4-C7, left foraminal spurring and disc herniation at C4-C5 are employment related. Neither the fact that a claimant's conditions became apparent during a period of employment, nor the belief that the conditions were caused, precipitated or aggravated by the employment is sufficient to establish causal relationship.[9] Thus, appellant did not meet her burden of proof to establish that the cervical radiculopathy, degenerative disc disease at C4-C7, left foraminal spurring, and disc herniation at C4-C5 were causally related to employment factors or her accepted condition.

Appellant may submit new evidence or argument with a written request for reconsideration to the Office within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

[7] *Lucrecia M. Nielson*, 41 ECAB 583, 594 (1991).

[8] *A.D.*, 58 ECAB 149 (2006) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

[9] *D.I.*, 59 ECAB 158 (2007).

LEGAL PRECEDENT -- ISSUE 2

The Act pays compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.[10] Section 8107 of the Act[11] authorizes the payment of schedule awards for the loss or loss of use, of specified members, organs or functions of the body. Such loss or loss of use is known as permanent impairment.[12]

A schedule award is payable consecutively but not concurrently with an award for wage loss for the same injury.[13] Office procedures provided that a schedule award for one injury may be paid concurrently with compensation for wage loss paid for another injury, as long as the two injuries do not involve the same part of the body or extremity. The procedures state:

> "For example, a claimant is currently receiving a schedule award for 10 percent permanent partial impairment of the right arm due to a work-related right rotator cuff tear. The claimant files for temporary total disability under another claim for the same period due to undergoing right carpal tunnel surgery. Compensation claimed for temporary total disability cannot be paid since compensation involves the same extremity, the right arm."[14]

ANALYSIS -- ISSUE 2

After the Office accepted appellant's September 18, 2008 claim for right carpal tunnel syndrome, appellant had right carpal tunnel surgery on June 28, 2009 and thereafter filed a claim for wage-loss compensation for the period June 24 to July 29, 2009. The record indicates, however, that she was receiving compensation for a schedule award covering this period in file number xxxxxx336. The record shows that, in an August 20, 2008 decision, the Office granted appellant a schedule award for 32 percent permanent impairment of the right arm and that the period of the award was from May 7, 2008 to April 5, 2010. As both injuries involved the right upper extremity, the Board finds that the Office may not pay compensation for wage loss resulting from appellant's September 18, 2008 injury concurrently with the schedule award for her April 13, 2004 injury, which covered the period May 7, 2008 to April 5, 2010.

CONCLUSION

The Board finds that appellant failed to meet her burden of proof to establish that she developed cervical radiculopathy, degenerative disc disease at C4-C7, left foraminal spurring,

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[10] *S.F.*, 59 ECAB 525 (2008).

[11] 5 U.S.C. § 8107

[12] 20 C.F.R. § 10.404

[13] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5(a)(3) (January 2010).

[14] *Id.* at Chapter 2.808.5(a)(4). *See also Michael J. Biggs*, 54 ECAB 595, 596-97 (2003); *J.B.*, Docket No. 08-1178 (issued December 22, 2008).

and disc herniation at C4-C5 causally related to employment factors. The Board also finds that the Office properly denied compensation for wage loss for her right carpal tunnel syndrome condition during a period in which she was also in receipt of schedule award compensation involving the same extremity.

ORDER

IT IS HEREBY ORDERED THAT the July 13, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 11, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board