

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

T.L., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Santa Barbara, CA, Employer**

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**Docket No. 10-1737
Issued: March 24, 2011**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 18, 2010 appellant filed a timely appeal from a December 28, 2009 merit decision of the Office of Workers' Compensation Programs that denied her claim of occupational disease. 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 this appeal.

ISSUE

The issue is whether appellant established that she sustained bilateral carpal tunnel syndrome causally related to her federal employment.

FACTUAL HISTORY

On February 24, 2009 appellant, then a 61-year-old mail clerk, filed an occupational disease claim alleging bilateral carpal tunnel syndrome related to her employment duties in

¹ 5 U.S.C. § 8101 *et seq.*

processing mail and as a sales associate. The claim was adjudicated under File No. xxxxxx673.² The employer noted that appellant had last worked on November 13, 2008 and had been on sick leave for personal reasons. The record reflects that she retired as of May 1, 2009, her last day in a pay status.

In a March 24, 2009 letter, the Office advised appellant to submit additional factual and medical evidence in support of her claim. It requested that she address the work duties or factors she believed contributed to her condition and submit a narrative medical report from a physician addressing how her claimed condition was caused or contributed to by her federal employment.

On April 13, 2009 appellant provided a response addressing her work activities from 1978 to 1998 working on a computer forwarding system. She was required to lift trays of mail weighing up to 45 pounds and key or label mail. From 1996 to 2004, appellant was assigned to drop mail in collection boxes, which required stamping envelopes, affixing postage and entering information in a computer. From 2004 to 2008, she worked as a sales associate and passport acceptance agent clerk. Appellant was required to lift packages of various sizes, write notices and enter information.³

Appellant submitted treatment records from Dr. Lorenzo Walker, an attending Board-certified orthopedic surgeon. As of November 10, 2008, Dr. Walker noted that radiographs of her wrists and hands were within normal limits. He listed an impression of symptomatic bilateral volar ganglia, bilateral radial ulnar interphalangeal thumb joint mucous cysts and questionable bilateral carpal tunnel syndrome. Dr. Walker noted that appellant wanted surgery to have the masses excised and that further diagnostic studies would be obtained.⁴ On December 18, 2008 he noted that an ultrasound did not reveal evidence of cystic masses in the wrist. Dr. Walker advised that an electromyogram and nerve conduction studies revealed bilateral carpal tunnel syndrome and moderate cubital tunnel syndrome. He noted that appellant wanted to undergo surgical intervention. On January 21, 2009 Dr. Walker performed surgery for an endoscopic

² On March 16, 1987 appellant filed a claim under File No. xxxxxx575 for a right wrist condition that was accepted by the Office for tendinitis with median nerve compression. On October 28, 1987 she filed a claim for a cervical disc condition with radiculopathy. The claim was not accepted by the Office. Based on her cervical and left upper extremity complaints, appellant was referred to Dr. Gerry J. Blacker, a Board-certified orthopedic surgeon. On January 22, 1991 Dr. Blacker found that she had right flexor carpi radialis tendinitis with minimal spinal stenosis of the cervical spine without evidence of a herniated disc or degenerative disc disease. He also reported there was no evidence for carpal tunnel syndrome. Based on the recommendation of an Office medical adviser, a neck sprain was accepted and appellant received intermittent leave buyback for periods of disability related to treatment of her accepted conditions. On February 19, 2000 appellant received a schedule award for 10 percent impairment of her right arm. As of June 15, 2001, she accepted a modified automated markup clerk position.

³ The description of appellant's modified duties as of 2001 noted that weight would be limited to approximately one to five pounds, with one to four hours of simple grasping a day and intermittent fine manipulation including keyboarding up to two hours a day.

⁴ A November 21, 2008 ultra sound was reported as showing bilateral osteoarthritis (cystic lesions), a ganglion cyst and old injury of the right small finger. Testing on November 24, 2008 did not show electric evidence of cervical radiculopathy but nerve conduction velocities were found to satisfy the criteria for right carpal tunnel syndrome, left mild carpal tunnel syndrome with a severe grade sensory nerve block and bilateral moderate cubital tunnel syndrome.

carpal tunnel release and excision of a thumb cyst.⁵ Postsurgery he noted some residual swelling on February 12, 2009.

In a June 18, 2009 letter to Dr. Walker, the Office noted that he had treated appellant for bilateral carpal tunnel on a nonindustrial basis. It asked him to address whether her condition was medically related to her work as a mail processing clerk and, if so, to state reasons for his conclusion. Dr. Walker was asked to also address appellant's cervical symptoms, the evidence of osteoarthritis and multiple cystic lesions and provide an opinion as to whether these conditions were contributed to by work factors. He did not respond.

In an August 4, 2009 decision, the Office denied appellant's claim. It accepted the performance of job duties as described in her April 13, 2009 statement but found that the medical evidence was not sufficient to establish that her employment activities caused or contributed to her diagnosed bilateral carpal tunnel syndrome.

On September 2, 2009 appellant filed a request for a review of the written record by an Office hearing representative.

In an August 31, 2009 treatment note, Dr. Walker advised that appellant continued to have difficulty with her hand. He noted that she wanted to get the hand that had been operated on covered through workers' compensation and also get compensation for the hand not yet surgically treated. Dr. Walker stated: "I have had an opportunity to review some information from the Department of Labor. [Appellant] was apparently involved in mail processing and is also a sales associate.... Given the information available to me and my familiarity with her position, in my opinion, there is certainly adequate medical reasoning to allow treatment on a workers' compensation basis." He noted that his conclusion was made with reasonable medical certainty.

In a December 28, 2009 decision, an Office hearing representative affirmed the August 4, 2009 denial of appellant's claim.

LEGAL PRECEDENT

An employee seeking benefits under the Act has the burden of establishing the essential elements of her claim, including the fact that an injury was sustained in the performance of duty as alleged,⁶ and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.⁷ These are the essential elements of every

⁵ Appellant's statement clarified that surgery was performed on the left wrist and thumb.

⁶ *Joseph W. Kripp*, 55 ECAB 121 (2003); *see also Leon Thomas*, 52 ECAB 202, 203 (2001). When an employee claims that he sustained injury in the performance of duty he must submit sufficient evidence to establish that he experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. He must also establish that such event, incident or exposure caused an injury. *See also* 5 U.S.C. § 8101(5) that defines the term "injury"; and 20 C.F.R. § 10.5(q) and (ee) (2010) that define the terms "occupational disease or illness" and "traumatic injury."

⁷ *Dennis M. Mascarenas*, 49 ECAB 215, 217 (1997).

compensation claim regardless of whether it is predicated upon a traumatic injury or an occupational disease.⁸

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) a factual statement identifying those 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 employment factors identified by the claimant.⁹

The evidence required to establish causal relationship, generally, is rationalized medical opinion evidence that provides a physician's well-reasoned explanation on how the employment duties caused or contributed to the claimant's diagnosed condition. To be of probative value, the opinion of the physician must be based on a complete factual and medical background of the claimant, be one of reasonable medical certainty, and be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹⁰ The mere fact that a condition manifests itself or worsens during a period of employment does not raise an inference of causal relation between the two.¹¹

ANALYSIS

Appellant attributes bilateral carpal tunnel syndrome to the repetitive activities required in her federal employment as a mail clerk and sales associate. The Office accepted that she performed such duties as listed in her April 13, 2009 description of record. The Board finds that appellant did not submit sufficient medical evidence to establish that her carpal tunnel syndrome condition was caused or contributed to by factors of her federal employment.

The medical evidence consists of treatment records from Dr. Walker, an attending orthopedic surgeon who performed surgery on January 21, 2009. While Dr. Walker stated generally that he supported "treatment on a workers' compensation basis," his notes do not provide adequate information addressing prior medical treatment of appellant's upper extremities. There is no narrative medical report from Dr. Walker which addresses her history of right and left wrist complaints since 1987 or the medical treatment records that previously found no support for carpal tunnel. The Board notes that, under a separate file number, appellant's prior claim was accepted for right wrist tendinitis and a neck sprain. It does not appear that Dr. Walker had any medical records for review such that it can be said that he provided a full and accurate history of injury or medical treatment.

⁸ *Gary J. Watling*, 52 ECAB 357 (2001).

⁹ *Michael R. Shaffer*, 55 ECAB 386 (2004). *See also Solomon Polen*, 51 ECAB 341, 343 (2000).

¹⁰ *Leslie C. Moore*, 52 ECAB 132, 134 (2000); *see also Ern Reynolds*, 45 ECAB 690, 695 (1994).

¹¹ *See Louis T. Blair, Jr.*, 54 ECAB 348 (2003).

Dr. Walker obtained additional diagnostic testing of both upper extremities in November 2008 but did not adequately address how appellant's work as a modified-duty markup clerk would cause or contribute to the diagnosed bilateral carpal tunnel syndrome or other listed conditions. The Board notes that the physician was requested by the Office to address her carpal tunnel condition and provide an opinion with reasons why he attributed it to her federal employment; but he did not respond. The Office also asked Dr. Walker to address appellant's osteoarthritis, cervical symptoms and the multiple cystic lesions and explain whether her employment had contributed to these conditions. The treatment notes currently of record are deficient as Dr. Walker did not adequately identify the extremity on which surgery was performed in January 2009. It is only through appellant's statement that the Board can identify the surgically treated wrist and thumb as those on her left side. The treatment records provide only limited findings pertaining to any physical examination of appellant and fail to explain how any specific finding documented support for the diagnosis of bilateral carpal tunnel.

As to causal relationship, Dr. Walker's August 31, 1989 report noted appellant's wish to have her treatment reimbursed through workers' compensation. He provided brief reference to the Office's June 18, 2009 letter to state that she "was apparently involved" in mail processing and as a sales associate. This is not an accurate history of the duties performed by appellant as a modified clerk, nor is it cured by his statement: "Given the information available to me and my familiarity with her position." Rather than clarifying the nature or extent of any specific duty performed, this comment begs the question of what information was made available for Dr. Walker to review in addressing appellant's work. Based on the evidence currently of record, the Board finds that the opinion of Dr. Walker on causal relation is speculative at best and insufficient to establish appellant's claim.¹²

CONCLUSION

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

¹² A medical opinion not fortified with medical rationale is of diminished probative value. *See Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006). Moreover, medical opinions that are speculative or equivocal in character are of little probative value. *See Kathy A. Kelley*, 55 ECAB 206 (2004).

ORDER

IT IS HEREBY ORDERED THAT the December 28, 2009 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: March 24, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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