

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

D.A., Appellant)

and)

DEPARTMENT OF THE TREASURY,)
INTERNAL REVENUE SERVICE,)
Cheektowaga, NY, Employer)

Docket No. 11-736
Issued: November 10, 2011

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, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 31, 2011 appellant filed a timely appeal from a November 9, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP) which affirmed the denial of her claim. Pursuant to the Federal Employees' Compensation Act (FECA)¹ and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

ISSUE

The issue is whether appellant has met her burden of proof to establish that she sustained an injury in the performance of duty.

¹ 5 U.S.C. § 8101 *et seq.*

² The record also contains a December 16, 2010 decision denying appellant's request for a hearing. Appellant's attorney did not appeal from this decision.

FACTUAL HISTORY

On January 12, 2010 appellant, then a 59-year-old customer service representative, filed an occupational disease claim alleging that she developed carpal tunnel syndrome in the performance of duty. Her physician advised that the condition was work related. Appellant first became aware of the injury and its relation to her work on August 8, 2008. She stopped work on that date and returned on February 13, 2009.

In an August 11, 2008 report, Dr. Joseph Corigliano, a Board-certified family practitioner and osteopath, diagnosed carpal tunnel syndrome and placed appellant off work from August 11 to 18, 2008. A September 25, 2009 electromyography (EMG) scan, interpreted by Dr. Tomas Holmlund, a Board-certified neurologist, revealed left median neuropathy, distal to the wrist, consistent with carpal tunnel syndrome and chronic left C8 radiculopathy. The record contains an August 15, 2008 disability certificate from a physician's assistant.

In reports from October 30, 2008 to January 22, 2009, Dr. Xin Zhou, a Board-certified physiatrist and treating physician, diagnosed carpal tunnel syndrome status post recent surgery and left wrist sprain status following a fall two weeks prior. She noted that appellant worked in customer service full time which involved typing and answering telephone calls. Dr. Zhou related that appellant had a history of carpal tunnel syndrome secondary to a fall at work which occurred on August 7, 2006. She noted that appellant underwent left carpal tunnel surgery on September 15, 2008. Dr. Zhou noted that two weeks earlier, appellant fell and landed on the extended left hand and developed shooting pain in the left wrist after that fall. She advised that appellant related that she noticed left hand weakness but was unable to determine if the pain was old or new because she had not used the left hand because lifting two to three pounds would cause severe pain in the left wrist. In her December 16, 2008 report, Dr. Zhou reviewed the nerve conduction studies (NCS) and EMG summary and concluded that appellant had electrodiagnostic evidence of median nerve neuropathy, which was moderate to severe. She provided a January 17, 2009 report in which she repeated her previous findings and opined that appellant had a "history of carpal tunnel syndrome caused by a work-related injury." Dr. Zhou also provided appellant with disability certificates placing her off work from October 27, 2008 to January 22, 2009.

In a February 16, 2010 report, Dr. Timothy McGrath, a Board-certified orthopedic surgeon, noted that appellant was in for follow-up regarding left hand numbness and tingling symptoms. Appellant had been working for the employing establishment since January 2002 performing a significant amount of repetitive use of the left hand, including prolonged multiple mouse clicking. Dr. McGrath noted that appellant had a claim for her condition back in August 2008 and underwent a left carpal tunnel release on September 14, 2008. He related that she was "unsure of whether or not the claim has actually been accepted." Dr. McGrath noted that appellant had another separate injury at work in 2005 when she fell off of a chair at work landing on her left side. He advised that it caused some numbness and tingling symptoms in the hand. Dr. McGrath also noted that appellant had two previous two-level cervical discectomies and fusions related to a cervical spine injury from a motor vehicle accident. He noted that appellant also had persistent left hand numbness and tingling symptoms for which she had repeat NCS. Dr. McGrath diagnosed probable left recurrent carpal tunnel syndrome. He opined that appellant's original carpal tunnel problem, even prior to her carpal tunnel release surgery, was

related to the longstanding repetitive overuse of her hands. Dr. McGrath noted that this may represent a recurrent carpal tunnel problem and she has continued with repetitive use. He advised that “the ongoing repetitive overuse of the hand contributed to possible recurrent carpal tunnel syndrome.”

In a letter dated February 24, 2010, OWCP advised appellant that the evidence submitted was insufficient to establish her claim.³ It requested that she submit additional supportive factual and medical evidence. A copy of the letter was also provided to the employing establishment.

In a March 25, 2010 statement, appellant indicated that she believed that she had an open claim because after she fell on September 16, 2005 which was on her left side, she had pain and numbness to her left side which she believed was the onset of the carpal tunnel syndrome. She indicated that she was advised by her physicians that this could have brought on her condition. Furthermore, when appellant started work in January 2002, she did not have any pain, numbness or any other issues. She related that she would be off from work for a bit, and her hands would recover “a little” but, as soon as she returned to work and did the “repetitive mouse clicking and typing,” the pain returned and precluded her from using her hands. Appellant explained that she was “not sure what Dr. Zhou was referring to when using the date of August 7, 2006 -- I believe she is referring to the September 16, 2005 date but inserted the incorrect date.” She also noted that she purchased her own keyboard supports and described her job duties, which included numerous keyboard clicks comprised of an average of 40 to 60 mouse clicks ever three to five minutes. Appellant included a description of the keyboard strokes she used.

In a March 9, 2010 statement, James D. Bialy, a team manager, confirmed that the description appellant provided for her job duties was possible and provided a position description.

By decision dated April 15, 2010, OWCP denied appellant’s claim on the grounds that the medical evidence did not establish that specific job duties caused her claimed condition.

On April 21, 2010 counsel requested a telephonic hearing, which was held on August 11, 2010. During the hearing, appellant testified that she had an injury to her left arm and side in 2005 when she fell off a chair. She testified about her carpal tunnel syndrome diagnosis and her work duties. Appellant also provided an ergonomic survey dated March 2, 2010, which was performed on her behalf. She indicated that, afterwards, she was assigned to a new cubical with a touch screen instead of a mouse, which was very helpful. Appellant confirmed that she had worked on the old equipment for approximately nine years. She also advised that she had right carpal tunnel surgery while working for a previous employer in 1996. Appellant testified that she had worked for the employing establishment since 2002.

In a September 1, 2009 report, Dr. McGrath noted that appellant was seen for left shoulder and hand pain. He noted her 2005 work incident stating that appellant fell out of a chair and landed on her left arm and hand. Dr. McGrath indicated that appellant had previously

³ OWCP noted that appellant had a previous claim for a September 16, 2005 injury when she fell over backwards from a chair. Claim No. xxxxxx837. The claim was denied by OWCP and the Board affirmed OWCP’s denial of the claim. Docket No. 08-2122 (issued May 4, 2009). This claim is not before the Board on the present appeal.

undergone a cervical decompression and fusion in 2005 and that she subsequently underwent a left open carpal tunnel release. He advised that she was doing well until two weeks following the 2005 incident at work, when she fell out of a chair, landing on her left side and her hand and shoulder. Dr. McGrath noted that appellant was seen at that time and had x-rays which were interpreted as normal. He indicated that she continued to experience persistent tenderness at the wrist at the base of her carpal tunnel incision, as well as persistent left shoulder pain which was intermittent in nature and gradually worsened. Dr. McGrath opined that appellant was “status post left open carpal tunnel release, with aggravation of the wrist following an aggravating work-related injury, as well as left shoulder rotator cuff impingement which has been aggravated by her work-related fall. Since appellant was previously asymptomatic for this, I believe that this causally related to her above-described work injury.” Dr. McGrath reiterated that the problems with the left side were causally related to her aggravating work injury.

In a November 9, 2010 decision, OWCP’s hearing representative affirmed the April 15, 2010 decision.

LEGAL PRECEDENT

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 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.⁴

The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician’s rationalized medical 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 upon 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

ANALYSIS

Appellant attributed her bilateral carpal tunnel syndrome to “repetitive mouse clicking and typing,” as a customer service representative. OWCP accepted the occurrence of the claimed employment factors. The issue, therefore, is whether the medical evidence establishes a causal relationship between the claimed conditions and the identified employment factors.

The medical evidence includes several reports from Dr. Zhou. In an October 30, 2008 report, Dr. Zhou diagnosed carpal tunnel syndrome status post recent surgery and left wrist

⁴ *Solomon Polen*, 51 ECAB 341 (2000); *see also Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁵ *Id.*

sprain status post fall two weeks ago. Although she noted that appellant worked in customer service “full time” with duties comprised of typing and answering telephone calls, she related the history of carpal tunnel syndrome secondary to a fall at work which occurred on August 7, 2006. Dr. Zhou does not attribute the condition to the repetitive duties alleged by appellant in the present occupational disease claim or otherwise provide rationale regarding how appellant’s repetitive work duties caused or aggravated her condition.⁶ Her January 17, 2009 report advised that appellant had a “history of carpal tunnel syndrome caused by a work-related injury” but did not provide any medical reasoning to explain how appellant’s particular repetitive work duties caused or aggravated her condition. Without any explanation as to how Dr. Zhou arrived at this conclusion, the report is of limited probative value.⁷ Her December 16, 2008 report noted findings from diagnostic testing but did not address whether appellant had a work-related condition. The other notes and disability certificates from Dr. Zhou did not address the cause of appellant’s condition. Medical evidence that does not offer any opinion regarding the cause of an employee’s condition is of limited probative value on the issue of causal relationship.⁸ Thus, evidence from Dr. Zhou is insufficient to establish appellant’s claim.

In a September 1, 2009 report, Dr. McGrath noted appellant’s 2008 left carpal tunnel release and opined that appellant had aggravation of the wrist following an aggravating work-related injury, as well as left shoulder rotator cuff impingement which was aggravated by her work-related fall in 2005. He opined that she was previously asymptomatic for this and stated that he believed that this was causally related to her work injury. Dr. McGrath reiterated in this report, as well as in his February 16, 2010 report, that appellant’s problems with the left side were due to her previously claimed injury in 2005. However, as explained, matters relating to the September 16, 2005 incident were denied by OWCP in a separate claim and are not presently before the Board.⁹ Moreover, the mere fact that a condition manifests itself during a period of employment does not raise an inference of causal relation.¹⁰ On February 16, 2010 Dr. McGrath noted appellant’s repetitive hand use including prolonged mouse clicking at work since January 2002. He also noted that appellant had two previous cervical spine surgeries related to a motor vehicle accident. Dr. McGrath concluded that appellant’s original carpal tunnel problem was due to longstanding repetitive overuse of her hands. However, he did not explain in either of his reports the reasons why particular repetitive duties caused or aggravated her carpal tunnel condition. The need for reasoning, or rationale, is particularly important as the record indicates that appellant had nonwork-related right carpal tunnel and cervical spine conditions.

⁶ Appellant advised that Dr. Zhou gave an incorrect date of the fall noting that the fall occurred on September 16, 2005. The Board notes that OWCP separately adjudicated, in claim number xxxxxx837, whether the September 16, 2005 incident caused an injury. Should appellant wish to further address whether the September 16, 2005 incident caused an injury, she should pursue the matter through OWCP claim number xxxxxx837. *See supra* note 3.

⁷ *T.M.*, Docket No. 08-975 (issued February 6, 2009) (a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale.

⁸ *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

⁹ *See supra* notes 3, 6.

¹⁰ *A.C.*, Docket No. 08-1453 (issued November 18, 2008).

Dr. McGrath gave no reasoned explanation as to why her current conditions were due to work factors, such as clicking a mouse with her left hand, and not attributable to her nonwork-related conditions. Thus, his opinion on causal relationship is of limited probative value.

Other medical evidence submitted by appellant is insufficient to establish the claim because it does not address whether particular work factors caused or aggravated appellant's claimed condition.¹¹ Additionally, appellant submitted evidence from a physician's assistant. However, lay individuals such as physicians' assistants are not competent to render a medical opinion under FECA.¹² Consequently, this evidence cannot be considered as medical evidence in evaluating whether she established her claim.

The Board therefore finds that as appellant did not submit sufficient medical evidence to establish that her carpal tunnel syndrome is causally related to factors of employment.

CONCLUSION

Appellant did not meet her burden of proof in establishing her claim.

¹¹ *See supra* note 8.

¹² *E.K.*, Docket No. 09-1827 (issued April 21, 2010). *See* 5 U.S.C. § 8101(2). *See also Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (where the Board has held that a medical opinion, in general, can only be given by a qualified physician).

ORDER

IT IS HEREBY ORDERED THAT the November 9, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 10, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

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