United States Department of Labor
Employees' Compensation Appeals Board

L.D., Appellant	)	
and	)	**Docket No. 12-342**
	)	**Issued: July 6, 2012**
DEPARTMENT OF HOMELAND SECURITY, TRANSPORTATION SECURITY ADMINISTRATION, Kenner, LA, 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
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On December 5, 2011 appellant, through his representative, filed a timely appeal from the Office of Workers' Compensation Programs' September 22 and November 7, 2011 merit decisions denying her occupational disease claim. Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met her burden of proof to establish that she sustained an injury causally related to factors of her federal employment.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On February 15, 2011 appellant, a 53-year-old screener, filed an occupational disease claim (Form CA-2) alleging that she developed bilateral carpal tunnel syndrome (CTS) due to repetitive employment duties.

In a letter dated March 2, 2011, OWCP informed appellant that the evidence submitted was insufficient to establish her claim. It advised her to submit details regarding the employment duties she believed caused or contributed to her claimed condition, as well as a comprehensive medical report from a treating physician, which contained symptoms, a definitive diagnosis and an opinion with an explanation as to the cause of her diagnosed condition.

Appellant provided an undated statement of her work history reflecting that she had worked at the employing establishment for six years as a screener. She worked at "check point" three days a week where her duties included loading and pushing bins, patting people down, pushing wheelchairs, placing strollers on the conveyor belt and operating the x-ray machine. In the baggage area, where she worked two days a week, appellant's duties included loading approximately 100 bags per day, each weighing 20 to 50 pounds, on a conveyor belt and searching those bags so designated. She contended that her duties caused numbness and pain in her hands and wrists.

In a February 18, 2011 report, Dr. J.L. Fambrough, a Board-certified orthopedic surgeon, stated that he first examined appellant on October 3. 2007 for right wrist and left knee contusions sustained during a fall four days earlier. On October 10, 2007 she was unable to pronate and supinate her forearm without pain and had tenderness in the muscles of the forearm and both the extensor and flexor side from the wrist up to the elbow. Electrical diagnostic studies dated November 30, 2010 revealed moderately severe bilateral CTS, the left slightly worse than the right. On November 22, 2010 appellant was still complaining of pain in both of her arms, primarily in the forearm, with numbness in her fingers. On December 1, 2010 she was scheduled for surgery, which occurred on December 9, 2010. Follow-up examinations on January 6 and 27, 2011 revealed a complete return of all sensation in the median nerve distribution; a good range of motion of appellant's wrist with no pain; and negative Phalen's test. On February 7, 2011 appellant complained of a burning sensation along the volar aspect of her wrist going all the way up to her elbow and sharp pains over the hand, which she opined that were not related to her carpal tunnel since they did not fall within the dermatome of the median nerve.

On March 16, 2011 appellant responded to OWCP's request for additional information, stating that she first noticed the pain in her wrists on November 18, 2010.

In an undated statement, Supervisor Adam Reed provided a description of appellant's duties. At the screening station, where she worked three days a week, appellant was required to physically pat down passengers from head to toe, lift and search carry-on bags and monitor the x-ray machine. He noted that those actions might require multiple wrist movements. Appellant was also required to carry the "to be searched" property over to a table, where she performed the search. At the baggage station, where she worked two days a week, her duties included lifting luggage onto an x-ray conveyor belt, retrieving it in order to search its contents and, ultimately,

lifting it into an airline conveyor belt. The process was repeated for all flights during appellant's shift. Appellant was required to single-handedly lift and carry bags weighing up to 70 pounds.

By decision dated April 7, 2011, OWCP denied appellant's claim, finding that the medical evidence was insufficient to establish that she developed a diagnosed medical condition as a result of her claimed employment activities.

On April 20, 2011 appellant, through her representative, requested a telephonic hearing.

Appellant submitted reports from Dr. Fambrough dated October 3 through 31, 2007, pertaining to a September 30, 2007 nonwork incident during which she allegedly fell, catching herself with her right hand and falling on her knee. X-rays revealed no fracture. Dr. Fambrough diagnosed probable contusion of the hand, wrist and knee.

In a November 22, 2010 report, Dr. Fambrough stated that appellant was experiencing numbness in both arms down to her fingers. He had not seen her for three years. On December 1, 2010 Dr. Fambrough related the results of nerve conduction study, which revealed severe bilateral CTS. Appellant underwent a left carpal tunnel release surgery on December 9, 2010. The record contains disability slips and follow-up reports monitoring appellant's postsurgical condition dated December 16, 2010 to March 14, 2011. On January 27, 2011 Dr. Fambrough discharged appellant to normal work activities, but noted that her right wrist was symptomatic.

The record contains occupational therapy notes dated December 10, 2010 through February 10, 2011 and physical therapy notes dated January 30, 2008. Appellant also submitted a copy of Dr. Fambrough's February 18, 2011 report.

In an undated statement, appellant noted that she had experienced soreness in her wrists since 2006 but did not file a claim because she thought it would subside. On March 14, 2011 she repeated her history of treatment by Dr. Fambrough for diagnosed CTS.

During the July 7, 2011 telephonic hearing, appellant testified that she injured her right wrist in September 2007 during a nonwork-related fall. She stated that she was diagnosed with bilateral CTS in October 2007 but that her condition worsened due to repetitive work activities.

By decision dated September 22, 2011, an OWCP hearing representative affirmed the April 7, 2011 decision finding that the medical evidence of record was insufficiently rationalized to establish that appellant's carpal tunnel condition was causally related to her employment activities.

On October 10, 2011 appellant, through her representative, requested reconsideration.

Appellant submitted notes and disability slips dated November 6, 2007 through April 27, 2009 from Dr. Joe A. Morgan, a Board-certified orthopedic surgeon, who stated that she fell in a parking lot on September 28, 2007, injuring her shoulders, elbows, right wrist at the base of the thumb and the left wrist. Dr. Morgan diagnosed impingement syndrome of both shoulders, lateral epicondylitis of both elbows, arthritis of the basilar joint of the right thumb and left CTS. On November 26, 2007, January 4 and February 4, 2008 he noted that appellant was

experiencing pain in her shoulder and elbows. On March 18, 2008 Dr. Morgan indicated that appellant had pain and numbness in her hands and some tenderness in the carpal tunnels. He diagnosed bilateral shoulder impingement syndrome and probable bilateral CTS. On April 15, 2008 Dr. Morgan stated that appellant had no pain in her neck, shoulders, elbows or hands. On March 27, 2009 he diagnosed bilateral CTS and prescribed cortisone injections.

By decision dated November 7, 2011, OWCP denied modification of its prior decisions. The claims examiner found that appellant had not submitted rationalized medial evidence establishing a causal relationship between her employment duties and the diagnosed CTS.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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[2] and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.[3]

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 the 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, *i.e*., medical evidence presenting a physician's well-reasoned opinion on how the established factor of employment caused or contributed to 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, 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]

An award of compensation may not be based on appellant's belief of causal relationship. Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents, is sufficient to establish a causal relationship.[6]

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[2] *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) ("injury" defined); 20 C.F.R. § 10.5(q) and (ee) (2002) ("Occupational disease or Illness" and "Traumatic injury" defined).

[3] *Dennis M. Mascarenas*, 49 ECAB 215, 217 (1997).

[4] *Michael R. Shaffer*, 55 ECAB 386 (2004); *see also Solomon Polen*, 51 ECAB 341, 343 (2000).

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

[6] *Phillip L. Barnes*, 55 ECAB 426 (2004); *see also Dennis M. Mascarenas*, *supra* note 3 at 218.

ANALYSIS

The medical evidence submitted by appellant is insufficient to establish that her diagnosed CTS is causally related to established employment activities. Therefore, she has failed to meet her burden of proof.

The record contains numerous reports from Dr. Fambrough, appellant's treating physician. His 2007 reports document a September 30, 2007 nonwork-related incident during which appellant fell on her right wrist and left knee. The Board finds that these reports are not directly relevant to her claim for compensation based on work-related activities; therefore, they lack probative value. In reports dated November 22, 2010 through March 14, 2011, Dr. Fambrough provided examination findings and a diagnosis of bilateral CTS. In his February 18, 2011 report, he described appellant's treatment and progress related to her diagnosed CTS condition. None of Dr. Fambrough's reports, however, contained an opinion as to the cause of her condition. He did not discuss appellant's work duties or explain how they might have caused or exacerbated her CTS condition. Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value.[7]

Dr. Morgan's notes are similarly deficient. He described appellant's September 2007 nonwork-related injury and diagnosed impingement syndrome of her shoulders, lateral epicondylitis of both elbows, arthritis of the basilar joint of the right thumb and bilateral CTS. Dr. Morgan did not, however, offer any opinion on the cause of her diagnosed conditions. Therefore, Dr. Fambrough's reports are of diminished probative value and insufficient to establish appellant's claim.[8]

Appellant submitted notes signed by physical and occupational therapists. As physical and occupational therapists do not qualify as "physicians" under FECA, these reports do not constitute probative medical evidence.[9] The remaining medical evidence of record including disability slips, x-rays and test results, which do not contain an opinion as to the cause of appellant's diagnosed CTS condition, are of limited probative value.

Appellant expressed her belief that her alleged condition resulted from her employment duties. The Board has held, however, that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.[10] Neither the fact that the condition became apparent during a period of employment, nor the belief that the condition was caused or aggravated by employment factors or incidents, is

[7] *Michael E. Smith*, 50 ECAB 313 (1999).

[8] *Id*.

[9] A medical report may not be considered as probative medical evidence if there is no indication that the person completing the report qualifies as "physician" as defined in 5 U.S.C. § 8101(2). Section 8101(2) of FECA provides as follows: "(2) 'physician' includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law." *See Merton J. Sills*, 39 ECAB 572, 575 (1988).

[10] *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

sufficient to establish causal relationship.[11] Causal relationship must be substantiated by reasoned medical opinion evidence, which it is appellant's responsibility to submit. Therefore, appellant's belief that her condition was caused by the alleged work activities is not determinative.

OWCP advised appellant that it was her responsibility to provide a comprehensive medical report, which described her symptoms, test results, diagnosis, treatment and the physician's opinion, with medical reasons, on the cause of her condition. Appellant failed to do so. As there is no probative, rationalized medical evidence addressing how her claimed condition was caused or aggravated by her employment, she has not met her burden of proof to establish that she sustained an occupational disease in the performance of duty causally related to factors of employment.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP 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.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that she sustained an injury in the performance of duty.

[11] *Id.*

ORDER

IT IS HEREBY ORDERED THAT the November 7 and September 22, 2011 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: July 6, 2012
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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