United States Department of Labor
Employees' Compensation Appeals Board

M.D., Appellant	)	
and	)	**Docket No. 13-554**
	)	**Issued: August 13, 2013**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Philadelphia, PA, Employer	)	

Appearances:
Jason S. Lomax, 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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 9, 2013 appellant, through her attorney, filed a timely appeal from a July 16, 2012 merit decision of the Office of Workers' Compensation Programs. 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 the case.

ISSUE

The issue is whether appellant has met her burden of proof to establish that her carpal tunnel syndrome and brachial plexus condition are employment related.

FACTUAL HISTORY

This case has previously been before this Board. In a November 25, 2011 decision, the Board set aside a July 22, 2010 OWCP decision and remanded the claim for further medical

[1] 5 U.S.C. §§ 8101-8193.

development.[2] The Board found that there was a conflict in the medical opinion between Dr. Robert Draper, for OWCP, who found no evidence of brachial plexitis, carpal tunnel syndrome, thoracic neuritis or thoracic outlet syndrome and Dr. Scott Fried, an osteopath, and Dr. Steven Valentino, an osteopath, for appellant, who opined that her work duties included repetitive keying, which directly resulted in the development of the cervical strain, carpal tunnel syndrome of the median nerve, flexor tenosynovitis and brachial plexopathy. The Board instructed OWCP to secure a medical report from an impartial medical specialist to resolve the conflict in the medical opinions. The facts and circumstances of the case up to that point are set forth in the Board's prior decision and incorporated herein by reference.[3]

To resolve the conflict on December 12, 2011 OWCP referred appellant to a referee physician, Dr. Stuart L. Trager, a Board-certified orthopedist.

In a January 18, 2012 report, Dr. Trager noted that he reviewed the medical records provided and performed a physical examination of appellant. He noted a history of her work-related injury. On examination, Dr. Trager noted findings of normal biceps, triceps and brachioradialis reflexes bilaterally. Also normal was patellar and Achilles tendon reflexes. Shoulder range of motion was 100 degrees bilaterally and forward flexion was limited to 95 degrees bilaterally. Cervical spine flexion and extension was 20 degrees. There was no paraspinal muscle spasm. Abductor pollicis longus strength and ulnar innervated intrinsic strength was normal. Dr. Trager noted positive Tinel's and Phalen's signs bilaterally with positive Tinel's sign in multiple nonphysiological locations including the middle of the scapula, the acromion process and the supraclavicular and infraclavicular regions on the left.

Dr. Trager noted electromyograms (EMG) from appellant's treating physician, Dr. Fried, dated July 10, 2009 and July 19, 2011 revealed moderate to significant right brachial plexus level nerve compromise while a March 15, 2010 EMG from Dr. Joseph Moeller, a neurologist, revealed no abnormalities. Dr. Moeller noted objective findings of upper extremity tendinitis and brachial plexopathy were limited to a positive magnetic resonance imaging scan of the cervical spine and positive EMG's performed by Dr. Fried; however, a separate EMG dated March 15, 2010 revealed no abnormalities.

Dr. Trager diagnosed cervical radiculopathy/cervical strain superimposed on degenerative disc disease and herniated cervical disc. He noted examination evidence of nonphysiological findings with regard to Tinel's testing being positive in multiple nonanatomic locations. Based on the nonphysiologic findings as well as the negative electrodiagnostic testing Dr. Trager could not conclude with any degree of medical certainty that diagnoses of severe brachial plexopathy or carpal tunnel syndrome could be supported based upon the physical examination and contrary electrophysiologic testing. He stated that he did not recommend treatment through passive modalitites of therapy because appellant had not responded to this

[2] On September 9, 2008 appellant, a supervisory medical support assistant, filed an occupational disease claim alleging that she developed a cervical strain, herniated disc, bilateral carpal tunnel syndrome and brachial plexopathy as a result of performing repetitive duties at work. She did not initially stop work. On October 28, 2009 OWCP accepted the claim for cervical sprain/strain superimposed on degenerative disc disease and cervical herniated disc but it denied the claim for carpal tunnel syndrome and brachial plexus condition.

[3] Docket No. 11-494 (issued November 25, 2011).

treatment. Dr. Trager opined that she would be capable of performing sedentary work with the restriction of avoiding the use of arms over shoulder height as she demonstrated restrictions in shoulder range of motion above shoulder unrelated to the described cervical radiculopathy.

Appellant submitted a December 13, 2011 report from Dr. Fried, an osteopath, who performed a neuromusculoskeletal ultrasound procedure and diagnosed cervical radiculopathy, tendinitis, bilateral flexor tenosynovitis, bilateral radial neuropathy, bilateral brachial plexopathy/cervical radiculopathy with long thoracic neuritis, bilateral carpal tunnel median neuropathy of the upper extremities secondary to work activities with brachial plexus involvement.

On February 9, 2012 OWCP denied appellant's claim finding that Dr. Trager's report established that the diagnosed carpal tunnel syndrome and brachial plexus condition were not causally related to her employment.

On February 10, 2012 appellant requested an oral hearing which was held on April 30, 2012. She submitted reports from Dr. Fried dated January 25 and March 26, 2012, who noted she had a flare-up of symptoms in both shoulders and right pistol area of the upper extremities. Dr. Fried noted positive Tinel's and Phalen's signs, spasm of the upper trapezial area bilaterally and limited range of motion of the shoulders. He diagnosed bilateral flexor tenosynovitis, left radial neuropathy, brachial plexopathy, cervical radiculopathy and bilateral carpal tunnel median neuropathy secondary to work activities with brachial plexus involvement. Dr. Fried noted that appellant was not working due to her injuries.

In a decision dated July 16, 2012, an OWCP hearing representative affirmed OWCP's decision date February 9, 2012.

LEGAL PRECEDENT

Where an employee claims that a condition not accepted or approved by OWCP 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.[4]

Causal relationship is a medical issue that must be established by rationalized medical opinion evidence.[5] 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.[6] The weight of medical evidence is determined by its reliability, its

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

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

[6] *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.[7]

ANALYSIS

Appellant alleges that she developed bilateral carpal tunnel syndrome and a brachial plexus condition as a result of performing repetitive keying, data entry and lifting duties at work. OWCP accepted the claim, as noted, for cervical sprain/strain superimposed on degenerative disc disease and cervical herniated disc but did not accept bilateral carpal tunnel syndrome or a brachial plexus condition. Following the Board's November 25, 2011 decision finding that there was a conflict in medical opinion between Dr. Draper, an OWCP referral physician, and Drs. Fried and Valentino, appellant's treating physicians, regarding whether her carpal tunnel syndrome or her brachial plexus condition were causally related to her employment, OWCP referred appellant to Dr. Trager to resolve the conflict.

The Board finds that, under the circumstances of this case, the opinion of Dr. Trager is sufficiently well rationalized and based upon a proper factual background such that it is entitled to special weight and establishes that neither the diagnosed bilateral carpal tunnel syndrome nor the brachial plexus condition was causally related to appellant's employment. Where there exists a conflict of medical opinion and the case is referred to an impartial specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, is entitled to special weight.[8]

In a January 18, 2012 report, Dr. Trager reviewed appellant's history, reported findings and noted an essentially normal examination. He diagnosed cervical radiculopathy/cervical strain superimposed on degenerative disc disease and herniated cervical disc. Dr. Trager noted EMG's from Dr. Fried dated July 10, 2009 and July 19, 2011 revealed moderate to significant right brachial plexus level nerve compromise while, a March 15, 2010 EMG from Dr. Moeller revealed no abnormalities. He found that the relationship of the brachial plexopathy or carpal tunnel syndrome to appellant's supervisory medical support technician was not established. Dr. Trager explained that Tinel's test was positive at multiple nonphysiologic locations. Based on the nonphysiologic findings as well as the negative electrodiagnostic testing, he found no basis on which to support a diagnosis of brachial plexopathy or carpal tunnel syndrome. Dr. Trager noted that appellant failed to respond to passive modalitites of therapy and therefore he did not recommend additional treatment. He opined that she would be capable of performing sedentary-type work with the restriction of avoiding the use of arms over the shoulder due to an unrelated cervical radiculopathy condition.

The Board finds that Dr. Trager had full knowledge of the relevant facts and evaluated the course of appellant's condition. He is a specialist in the appropriate field. Dr. Trager clearly opined that appellant did not develop bilateral carpal tunnel syndrome or a brachial plexus condition causally related to her employment. His opinion as set forth in his report of

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

[8] *Solomon Polen*, 51 ECAB 341 (2000). *See* 5 U.S.C. § 8123(a).

January 18, 2012 is found to be probative evidence and reliable. The Board finds that Dr. Trager's opinion constitutes the weight of the medical evidence and establishes that appellant did not develop bilateral carpal tunnel syndrome or a brachial plexus condition causally related to her accepted employment duties.

After Dr. Trager's examination appellant submitted reports from Dr. Fried dated January 18 to March 26, 2012 who noted her symptoms in the bilateral shoulders and right pistol area of the upper extremity. Dr. Fried noted positive Tinel's and Phalen's signs, spasm of the upper trapezial area bilaterally and limited range of motion of the shoulders. He diagnosed cervical radiculopathy, tendinitis, bilateral flexor tenosynovitis, bilateral radial neuropathy, bilateral brachial plexopathy/cervical radiculopathy with long thoracic neuritis, bilateral carpal tunnel median neuropathy of the upper extremities secondary to work activities with brachial plexus involvement. Dr. Fried noted that appellant was not working secondary to the documented injuries. The Board finds that, although he supported causal relationship, he did not provide medical rationale explaining the basis of his conclusory opinion regarding the causal relationship between appellant's bilateral carpal tunnel syndrome or brachial plexus condition and the factors of employment.[9] Additionally, Dr. Fried was on one side of a conflict resolved by Dr. Trager and his reports do not otherwise provide new findings or medical rationale sufficient to establish that any bilateral carpal tunnel syndrome or a brachial plexus condition was causally related to the September 9, 2008 work injury.[10] Therefore, these reports are insufficient to meet appellant's burden of proof.

On appeal, appellant through his attorney asserts that OWCP's decision relied on erroneous findings of fact and conclusions of law. As noted above, Dr. Trager had full knowledge of the relevant facts and evaluated the course of her condition and clearly opined that she did not develop bilateral carpal tunnel syndrome or a brachial plexus condition causally related to the accepted employment activities.

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 did not meet her burden of proof to establish that her claimed conditions were causally related to her employment.

[9] *See 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).

[10] *See Michael Hughes*, 52 ECAB 387 (2001); *Howard Y. Miyashiro*, 43 ECAB 1101, 1115 (1992); *Dorothy Sidwell*, 41 ECAB 857 (1990).

ORDER

IT IS HEREBY ORDERED THAT the July 16, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 13, 2013
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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