

constant lifting of trays of mail weighing 15 to 35 pounds, working on a sweeper/loader position eight hours a day, five days a week and placing trays on top of a pie cart. Appellant indicated that she was casing letters and constantly reaching over her shoulder with her right arm. She noted that the pain was in both arms with the right greater than the left and she had acute aches and pains in the right shoulder, elbow, arm, wrist and hand. Appellant indicated that she became aware of her condition on or about January 14, 2008 and realized that it was caused or aggravated by her work on May 21, 2008.

The employing establishment controverted the claim and noted that appellant had been off work for over a year and indicated that she stopped work in April 2008.

Appellant provided a statement with her claim, describing her condition and her other claim, which had been accepted for bilateral carpal tunnel syndrome.² She explained that she had filed several previous requests to expand her claim to include bilateral brachial plexus, bilateral ulnar, radial and median nerve syndrome.

In a February 6, 2008 report, Dr. Richard Rosenstein, an osteopath Board-certified in rehabilitation medicine, noted appellant's history. He stated that appellant had an abnormal electrodiagnostic evaluation. Dr. Rosenstein determined that appellant had mild median neuropathy affecting both wrists consistent with mild bilateral carpal tunnel syndrome. He indicated that appellant's symptoms were inconsistent with her physical examination. Appellant had mild bilateral carpal tunnel syndrome with no motor or axonal changes. She received treatment from Dr. Scott Fried, an osteopath and orthopedic hand surgeon.

On August 4, 2008 OWCP referred appellant for a second opinion to Dr. Steven Valentino, a Board certified orthopedic surgeon and osteopath, regarding her 2003 injury. In a September 9, 2008 report, Dr. Valentino described appellant's history and noted a positive Tinel's sign. He diagnosed bilateral carpal tunnel syndrome and opined that the injury had not resolved. Dr. Valentino stated that appellant could work with restrictions. He stated that appellant's tendinitis, epicondylitis, de Quervain's syndrome, as well as injuries to the brachial plexus, ulnar and radial nerve, were not due to the work injury.

In a September 13, 2008 report, Dr. Fried noted appellant's history and her ongoing evidence of flexor tenosynovitis and carpal tunnel median neuropathy in both hands and wrists. He determined that she had significant sympathetic reactivity with involvement of her median nerve at the carpal tunnel. Appellant also had sympathetic fibers of the median nerve causing vascular instability and swelling and a ligament injury at the left wrist as well as proximal injury with evidence of a double crush or two-level nerve injuries. Dr. Fried opined that she was not capable of her regular work and noted significant evidence of repetitive strain and cumulative traumas to her hands and wrists since the work injury of June 1, 2003. He continued to treat appellant.

² Appellant's accepted claim for bilateral carpal tunnel syndrome, with a June 1, 2003 date of injury, was developed in claim number xxxxxx320. That claim has been doubled with the claim that she filed on February 24, 2009, number xxxxxx446.

In a November 17, 2008 report, Dr. John Fenlin, a Board-certified orthopedic surgeon, and treating physician examined appellant and provided findings. X-rays of appellant's shoulders were normal. A magnetic resonance imaging (MRI) scan on the right demonstrated evidence of rotator cuff tendinitis but no evidence of significant cuff tearing. Dr. Fenlin diagnosed nonspecific shoulder pain. He opined that appellant's symptoms were more pronounced than one would expect from her objective findings and indicated that appellant was deconditioned. Dr. Fenlin recommended exercise and physical therapy.

On January 27, 2009 OWCP referred appellant to Dr. William Kirkpatrick, a Board-certified orthopedic hand surgeon, for an impartial medical evaluation to resolve the conflict in opinion between Dr. Valentino and Dr. Fried to determine the extent of disability related to appellant's accepted 2003 injury. Dr. Kirkpatrick was also asked to provide an opinion with regard to whether appellant's current medical conditions were related to the accepted conditions.

In a February 11, 2009 report, Dr. Kirkpatrick noted appellant's history of injury and treatment. He determined that she continued to have symptoms and findings suggestive of ongoing bilateral carpal tunnel syndrome which were directly related to her injury of June 1, 2003. Dr. Kirkpatrick indicated that appellant could not perform her preinjury job without restrictions. He explained that she had other pain complaints in both arms that were not part of her accepted bilateral carpal tunnel syndrome. Dr. Kirkpatrick indicated that appellant had not worked since May 2008 but continued to remain symptomatic without improvement or resolution. He opined that this suggested a nonwork-related condition. Dr. Kirkpatrick advised that he suspected "some element of symptom magnification in this patient. Appellant's grip strengths were not physiologic and were not consistent with a Bell Curve."

By letter dated May 27, 2009, appellant was advised to submit detailed factual and medical evidence to support her claim for a bilateral upper extremity condition.

In a July 16, 2009 report, Dr. Fried opined that appellant sustained injuries to the bilateral radial tunnel, and brachial plexus thoracic outlet nerve secondary to the repetitive reaching, grasping, pulling, pushing and other work-related activities. He indicated that the brachial plexus involvement and right shoulder rotator cuff tendinitis were also work related. Dr. Fried stated that diagnostic and examination findings were consistent with appellant's clinical complaints. He opined:

"[There was] a direct cause and effect relationship between the work injuries ... and the work exposures and [her] ongoing clinical complaints and injuries. The objective evidence is clear that these are documented and substantial injuries.... Even without continuing to work since May of 2008, [appellant] still has ongoing injury. Once the nerve scarring has occurred and it passes the inflammation phase, there is permanent nerve injury and even daily activities exacerbate and continue to worsen these involvements."

By decision dated July 31, 2009, OWCP denied the claim. It found that the medical evidence did not establish that the claimed conditions were related to appellant's work duties.

On August 4, 2009 appellant's representative requested a hearing, which was held on November 17, 2009. At the hearing, appellant described her work history and DBCS operator duties, which included dispatching, loading, pulling and lifting mail trays. She alleged that her shoulder condition and other conditions were related to her work.

Also received were medical records, treatment notes and diagnostic test results. In a June 2, 2009 electrodiagnostic report, Dr. Ernest M. Baran, a Board-certified internist, determined that the peripheral median and ulnar sensory conduction parameters were normal and symmetrical. OWCP also received copies of intermittent reports dating from June 2 to July 16, 2009 from Dr. Fried.

By decision dated February 4, 2010, the hearing representative affirmed the July 31, 2009 decision. She determined that there was no rationalized medical evidence to support that appellant's shoulder condition was causally related to factors of her federal employment.

In a letter dated January 31, 2011, appellant's representative requested reconsideration and submitted additional medical evidence. In a January 27, 2011 report, Dr. Fried noted appellant's history and advised that she began having bilateral upper extremity symptoms after beginning to work on the DBCS machine. He explained that despite not working since May 2008 she continued to have ongoing injury. Dr. Fried opined that appellant had evidence of the rotator cuff tendinitis and evidence of the second level of nerve injury or double crush syndrome, with her carpal tunnel involving the median nerve all the way up to the brachial plexus and neck level. He advised that her objective findings and evidence were overwhelming. Dr. Fried indicated that objective findings included nerve scarring and permanent nerve injury. He opined:

“[In further support of appellant's ongoing problems and the direct cause and effect relationship to the same,] it is noted above that she came out of work and when she ceased her work activities the symptoms calmed down. When appellant returned to the same work activities which caused her problems, she had recurrence of the symptoms and aggravation of the same. This essential ‘testing in combat’ approach is another form of real life functional capacity testing and is consistent again with the fact that there is a direct cause and effect relationship between her work activities and the rotator cuff and brachial plexus involvement at the shoulders as well as her median nerve carpal tunnel involvements.”

Dr. Fried continued to treat appellant and submit reports. OWCP also received a functional capacity evaluation dated December 10, 2010.

By decision dated May 9, 2011, OWCP denied modification of the February 4, 2010 decision.

On July 27, 2011 appellant appealed to the Board. The Board in a June 12, 2012 order found that the case was not in posture for a decision. The Board remanded the case to OWCP to

double File Nos. xxxxxx320 and xxxxxx446 as there was frequent cross referencing between appellant's upper extremity claims.³

In a July 5, 2012 decision, after doubling the claims, OWCP denied modification of its prior decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period, that an injury was sustained in the performance of duty as alleged, and that any disabilities and/or specific conditions for which compensation is claimed are causally related to the employment injury.⁴ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁵

Whether an employee actually sustained an injury in the performance of duty begins with an analysis of whether fact of injury has been established.⁶ To establish fact of injury in an occupational disease claim, an employee must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.⁷

Rationalized medical opinion evidence is generally required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, 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.⁸

Once an employee establishes an injury in the performance of duty, he or she has the burden of proof to establish that any subsequent medical condition or disability for work, which the employee claims compensation, is causally related to the accepted injury.⁹

³ Docket No. 11-1836 (issued June 12, 2012).

⁴ *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁶ *See S.P.*, 59 ECAB 184, 188 (2007).

⁷ *See R.R.*, Docket No. 08-2010 (issued April 3, 2009); *Roy L. Humphrey*, 57 ECAB 238, 241 (2005).

⁸ *I.J.*, 59 ECAB 408 (2008); *Woodhams*, *supra* note 5.

⁹ *See Leon Thomas*, 52 ECAB 202 (2001).

ANALYSIS

Appellant attributed her shoulder condition, bilateral brachial plexus, bilateral ulnar, radial and median nerve syndrome conditions to pushing all-purpose containers, working on DBCS machines and casing mail. The employing establishment controverted the claim and indicated that she had not worked since April 2008. OWCP accepted the incident and found that there was insufficient medical evidence to support that these conditions were causally related to work factors. The issue, therefore, is whether the medical evidence establishes a causal relationship between the claimed conditions and the identified employment factors.

The Board notes that a conflict of medical opinion existed in the accepted bilateral carpal tunnel syndrome claim regarding the nature and extent of any ongoing residuals of the work injury of June 1, 2003. OWCP referred appellant to Dr. Kirkpatrick to resolve the conflict in opinion between Dr. Valentino and Dr. Fried regarding the resolution of appellant's accepted 2003 injury and work restrictions. Although it asked Dr. Kirkpatrick to also provide an opinion regarding whether appellant's other conditions were related to the accepted conditions, he was not an impartial specialist under section 8123(a) with regard to these conditions.¹⁰ Dr. Kirkpatrick's report, however, may be considered for its own intrinsic value with regard to nonaccepted conditions.¹¹ His February 11, 2009 report provided an extensive review of appellant's history, reported findings and determined that appellant had no other upper extremity conditions that were attributable to her accepted condition. Dr. Kirkpatrick indicated that appellant had not worked since May 2008 but continued to be symptomatic without improvement. He opined that this suggested a nonwork-related condition. Dr. Kirkpatrick also suspected "some element of symptom magnification" as her "grip strengths were not physiologic and were not consistent with a Bell Curve." Thus, his opinion does not support that any shoulder or other upper extremity condition is employment related.

Appellant provided reports from Dr. Fried, who provided opinions that the bilateral brachial plexus, bilateral ulnar, radial and median nerve syndrome were work related. Dr. Fried attempted to explain the relationship of these conditions to her employment in his February 16, 2009 and January 27, 2011 reports. In his January 27, 2011 report, he attributed her conditions to her employment despite not working since May 2008. In his February 16, 2009 report, Dr. Fried opined that the objective evidence supported the "documented and substantial injuries.... Even without continuing to work since May of 2008, [appellant] still has ongoing injury. Once the nerve scarring has occurred and it passes the inflammation phase, there is permanent nerve injury and even daily activities exacerbate and continue to worsen these involvements." The Board notes that Dr. Kirkpatrick did not indicate that he found any nerve scarring. Furthermore, Dr. Fried did not explain why specific work activities caused such scarring occurred. This is especially important in light of the fact that in the February 6, 2008 report, Dr. Rosenstein noted that appellant's evaluation was abnormal and her symptoms were inconsistent with her physical examination and electrodiagnostic findings.

¹⁰ See 5 U.S.C. § 8123(a).

¹¹ See *Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996).

In a report dated July 16, 2009, Dr. Fried stated that appellant had injuries to the bilateral radial tunnel, and brachial plexus thoracic outlet nerve secondary to the repetitive reaching, grasping, pulling, pushing and other work-related activities. He indicated that the brachial plexus and right shoulder rotator cuff tendinitis were also work related. Dr. Fried opined that there was “a direct cause and effect relationship between the work injuries and the work exposures and [appellant’s] ongoing clinical complaints and injuries. The objective evidence is clear that these are documented and substantial injuries.... Even without continuing to work since May of 2008, [appellant] still has ongoing injury. Once the nerve scarring has occurred and it passes the inflammation phase, there is permanent nerve injury and even daily activities exacerbate and continue to worsen these involvements.” However, Dr. Fried again did not explain the reasons why specific work activities, that occurred no later than May 2008, caused or aggravated any of the diagnosed conditions.

Other reports submitted by appellant did not offer any opinion regarding the cause of appellant’s condition. Medical evidence that does not offer any opinion regarding the cause of an employee’s condition is of diminished probative value on the issue of causal relationship.¹²

An award of compensation may not be based on surmise, conjecture, speculation or upon appellant’s own belief that there is causal relationship between his claimed condition and his employment.¹³ To establish causal relationship, he must submit a physician’s report in which the physician reviews the employment factors identified as causing his condition and, taking these factors into consideration as well as findings upon examination, state whether the employment injury caused or aggravated the diagnosed conditions and present medical rationale in support of his or her opinion.¹⁴ Appellant failed to submit such evidence in this case and, therefore, has failed to discharge her burden of proof to establish that she sustained an employment-related shoulder condition.

On appeal, appellant’s representative argued that OWCP refused to expand the prior claim, which was accepted for carpal tunnel syndrome. He explained that a new claim for an occupational disease was filed. Counsel argued that the report of the impartial medical examiner should not be given special weight as he was not asked to address conditions other than the carpal tunnel syndrome. As explained, Dr. Kirkpatrick is not an impartial specialist with regard to the nonaccepted conditions and, while his opinion is not entitled to special weight on these conditions, his opinion may still be considered. Appellant’s representative argued that Dr. Fried’s report should carry the weight of the evidence. However, as noted above, Dr. Fried’s reports are insufficient to establish that any additional conditions are work related.

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

¹² *Conard Hightower*, 54 ECAB 796 (2003).

¹³ *Robert A. Boyle*, 54 ECAB 381 (2003); *Patricia J. Glenn*, 53 ECAB 159 (2001).

¹⁴ *Calvin E. King*, 51 ECAB 394 (2000).

CONCLUSION

The Board finds that appellant did not meet her burden of proof in establishing her claim.

ORDER

IT IS HEREBY ORDERED THAT the July 5, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 8, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board