

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

L.J., Appellant)
and) Docket No. 14-688
DEPARTMENT OF VETERANS AFFAIRS,) Issued: July 16, 2014
VETERANS ADMINISTRATION MEDICAL)
CENTER, New Orleans, LA, Employer)

)

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

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA HOWARD FITZGERALD, Acting Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 6, 2014 appellant filed a timely appeal from a January 10, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her occupational disease claim. Pursuant to the Federal Employees' Compensation Act¹ (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 sustained bilateral carpal tunnel syndrome causally related to factors of her federal employment.

FACTUAL HISTORY

On March 21, 2012 appellant, then a 65-year-old nurse, filed an occupational disease claim alleging carpal tunnel syndrome due to factors of her federal employment. She noted that

¹ 5 U.S.C. § 8101 *et seq.*

on February 27, 2012 she experienced swelling and pain in both her hands and wrists radiating into her back after typing all day. Appellant stopped work on February 28, 2012.

In a report dated February 29, 2012, Dr. Patrick H. Waring, a Board-certified anesthesiologist, discussed appellant's complaints of low back pain radiating into her extremities and new complaints of right upper extremity and neck pain with tenderness and swelling in the hand and wrists. Appellant returned to work in December 2011 performing mainly sedentary computer work. Dr. Waring diagnosed lumbar disc disease, lumbar radiculitis, lumbar disc displacement and cervical strain. He stated, “[Appellant] has synovitis and pain over the wrist and hand from repetitive use.” Dr. Waring found that appellant was unable to work.

In a report dated March 6, 2012, Dr. John G. Burvant, a Board-certified orthopedic surgeon, noted that appellant returned to employment “doing clerical work which required a lot of computer usage” after being off work for an extended period due to a low back condition. On examination, he found a mildly positive Tinel’s sign and Phalen’s test. Dr. Burvant diagnosed either carpal tunnel syndrome or a cervical condition and referred her for diagnostic studies.

On March 12, 2012 Dr. Waring found tenderness at C5 and C6 and a positive Tinel’s sign on the right side. He diagnosed right carpal tunnel syndrome, cervical sprain, lumbar radiculitis, lumbar disc displacement and lumbar spondylosis. Dr. Waring opined that appellant was disabled from employment.

By letter dated March 29, 2012, OWCP requested that appellant submit a comprehensive report from her attending physician addressing the causal relationship between any diagnosed condition and the work factors identified as giving rise to her condition.

On April 11, 2012 Dr. Burvant related that an electromyogram (EMG) and nerve conduction studies (NCS) revealed moderate bilateral carpal tunnel syndrome.² He stated that the symptoms of carpal tunnel syndrome “appear to be related to [appellant’s] return to work, based on the clerical type activities that she performed when she went back to work and based on her history of not having these symptoms prior to that.”

By letter dated May 1, 2012, the employing establishment controverted appellant’s claim, noting that she worked only two hours at a training session and had an ergonomic assessment performed at her location. It noted that she was out of work for five years under claim number xxxxx976 before returning to work as a clerk in December 2011 and as a modified nurse in February 2012.

In a decision dated May 8, 2012, OWCP denied appellant’s claim. It found that the evidence was insufficient to establish that she sustained an injury as alleged.

On May 15, 2012 appellant requested a review of the written record by an OWCP hearing representative.

² An EMG and NCS dated April 4, 2012 revealed moderate carpal tunnel syndrome on the right and mild carpal tunnel syndrome on the left with no cervical pathology.

In a report dated May 16, 2012, Dr. Waring related that he had provided pain management for appellant since 2009 due to a 2005 employment injury to her low back.³ Appellant returned to work for three months but experienced increased pain due to her work duties as a result of an aggravation of her April 27, 2005 work injury. Dr. Waring noted that she also had additional bilateral hand, neck and shoulder symptoms and that diagnostic testing showed carpal tunnel syndrome. He advised that appellant was totally and permanently disabled from employment.

By decision dated August 31, 2012, an OWCP hearing representative affirmed the May 18, 2012 decision, as modified to reflect that appellant's claim was denied because the medical evidence was insufficient to show a causal relationship between a diagnosed condition and the claimed work factors.

On January 8, 2013 appellant requested reconsideration. She related that she inputted computer data for seven hours a day beginning December 4, 2011 when she returned to work. On February 27, 2012 appellant worked on the computer for over seven hours. She attributed her carpal tunnel syndrome to "accumulated stress on [her] hands and wrists that occurred from December 2011 through February 27, 2012...."

Appellant submitted a May 11, 2012 report from Dr. Burvant, who found a negative Tinel's sign and Phalen's test. Dr. Burvant noted that she only experienced numbness when she did repetitive activities.

By decision dated January 10, 2014, OWCP denied modification of its August 31, 2012 decision.

On appeal, appellant asserts that her case record was comingled with that of another case.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ 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 filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged; and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.⁵ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁶

³ In a report dated March 29, 2012, received by OWCP on August 13, 2012, Dr. Waring diagnosed lumbar disc disease and disc displacement and found that it was not likely that appellant could return to work.

⁴ 5 U.S.C. § 8101 *et seq.*

⁵ *Tracey P. Spillane*, 54 ECAB 608 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁶ See *Ellen L. Noble*, 55 ECAB 530 (2004).

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;⁷ (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;⁸ and (3) medical evidence establishing the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.⁹

The medical evidence required to establish causal relationship generally is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the claimant,¹⁰ must be one of reasonable medical certainty¹¹ explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹²

ANALYSIS

Appellant alleged that she sustained bilateral carpal tunnel syndrome due to performing repetitive computer work and data entry. 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 Board finds that the medical evidence of record is insufficient to establish that appellant sustained employment-related bilateral carpal tunnel syndrome. On February 29, 2012 Dr. Waring noted that appellant complained of swelling and tenderness in both hands and pain in her neck and right upper extremity. He discussed her return to sedentary computer work after being off work due to a low back injury. Dr. Waring diagnosed lumbar disc disease, lumbar radiculitis, lumbar disc displacement and cervical strain. He further found wrist and hand pain and synovitis due to repetitive usage. Dr. Waring did not, however, specifically relate the bilateral hand pain or synovitis to appellant's repetitive work duties. Thus his report is of diminished probative value.¹³

In a report dated March 12, 2012, Dr. Waring found tenderness at C5 and C6 and a positive Tinel's sign on the right side. He diagnosed right carpal tunnel syndrome, cervical sprain, lumbar radiculitis, lumbar disc displacement and lumbar spondylosis and determined that

⁷ *Michael R. Shaffer*, 55 ECAB 386 (2004).

⁸ *Marlon Vera*, 54 ECAB 834 (2003); *Roger Williams*, 52 ECAB 468 (2001).

⁹ *Beverly A. Spencer*, 55 ECAB 501 (2004).

¹⁰ *Tomas Martinez*, 54 ECAB 623 (2003); *Gary J. Watling*, 52 ECAB 278 (2001).

¹¹ *John W. Montoya*, 54 ECAB 306 (2003).

¹² *Judy C. Rogers*, 54 ECAB 693 (2003).

¹³ See *K.W.*, 59 ECAB 271 (2007).

appellant was disabled from employment. On May 16, 2012 Dr. Waring advised that her work duties aggravated an April 27, 2005 employment injury. He also related that appellant now had symptoms in her hands, neck and shoulder. Dr. Waring determined that she was totally disabled. In the reports, however, the physician did not address the cause of appellant's bilateral hand condition. As noted, 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.¹⁴

In a report dated March 6, 2012, Dr. Burvant related that appellant performed computer work when she returned to work after being off due to a back injury. He diagnosed either carpal tunnel syndrome or a cervical condition and referred her for diagnostic studies. Dr. Burvant, however, did not provide a firm diagnosis or specifically attribute any condition to appellant's repetitive work duties. Consequently, his report is insufficient to meet her burden of proof.¹⁵

On April 11, 2012 Dr. Burvant diagnosed moderate bilateral carpal tunnel syndrome based on the results of diagnostic testing. He found that the carpal tunnel syndrome appeared to be related to appellant's work duties as she did not have symptoms prior to performing clerical employment. Dr. Burvant's opinion that her carpal tunnel syndrome appeared due to her employment is speculative in nature and thus of little probative value.¹⁶ Moreover, an opinion that a condition is causally related to employment because the employee was asymptomatic before the work factors is insufficient, without supporting rationale, to establish causal relationship.¹⁷

In a progress report dated May 11, 2012, Dr. Burvant found that appellant's condition had improved and that she only had numbness with repetitive actions. He found a negative Tinel's sign and Phalen's test. Dr. Burvant, however, did not address causation and thus his opinion is of little probative value.¹⁸

On appeal, appellant generally advised that the evidence in her case was combined with another case, but did not specify any evidence that was combined or the other case. As discussed, the record on appeal is insufficient to establish that she sustained carpal tunnel syndrome due to factors of her federal 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 and 20 C.F.R. §§ 10.605 through 10.607.

¹⁴ See S.E., Docket No. 08-2214 (issued May 6, 2009); *Conrad Hightower*, 54 ECAB 796 (2003).

¹⁵ *Id.*

¹⁶ See D.D., 57 ECAB 710 (2006).

¹⁷ See *Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996).

¹⁸ See A.D., 58 ECAB 149 (2006); *Jaja K. Asaramo*, 55 ECAB 200 (2004) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of little probative value on the issue of causal relationship).

CONCLUSION

The Board finds that appellant has not established that she sustained bilateral carpal tunnel syndrome causally related to factors of her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the January 10, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 16, 2014
Washington, DC

Patricia Howard Fitzgerald, Acting Chief Judge
Employees' Compensation Appeals Board

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

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