United States Department of Labor
Employees' Compensation Appeals Board

E.Z., Appellant	)	
and	)	**Docket No. 14-309**
	)	**Issued: May 14, 2014**
U.S. POSTAL SERVICE, POST OFFICE, Pittsburgh, PA, Employer	)	

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

JURISDICTION

On November 25, 2013 appellant, through his attorney, filed a timely appeal from the October 17, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP), which denied his 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 his burden of proof to establish that he sustained cubital tunnel syndrome in the performance of duty causally related to factors of his federal employment.

FACTUAL HISTORY

This case has previously been before the Board. In a decision dated November 3, 2010, the Board found that the medical opinion of Dr. David A. Stone, appellant's treating physician,

[1] 5 U.S.C. § 8101 *et seq.*

was sufficient to require further development of the medical evidence as to whether he had cubital tunnel syndrome causally related to his federal employment. The facts of the case as set forth in the Board's prior decision are incorporated by reference.[2]

On June 29, 2011 OWCP referred appellant to Dr. Victoria Langa, a Board-certified orthopedic surgeon, for a second opinion. In a July 19, 2011 report, Dr. Langa diagnosed him as status post left cubital tunnel release (January 19, 2010) and right cubital tunnel syndrome. She found that appellant's bilateral cubital tunnel syndrome was not employment related. Dr. Langa noted that the absence of any specific trauma to the elbow and the fact that a majority of cubital tunnel syndromes were idiopathic in nature with no specific precipitating incident. She stated that appellant appeared to be an individual prone to peripheral nerve compression, as he was status post bilateral tarsal tunnel release in his feet.

In a decision dated August 15, 2011, OWCP determined that appellant did not establish that his cubital tunnel syndrome was causally related to the accepted work duties.

Appellant, through counsel, requested a telephonic hearing before an OWCP hearing representative.

In a November 7, 2011 letter, Dr. Stone disagreed with Dr. Langa. He contended that appellant's conditions were related to his employment and not a genetic predisposition. Dr. Stone noted that appellant could find no literature linking cubital tunnel syndrome and surgery to tarsal tunnel syndrome.

At the December 19, 2011 hearing, counsel contended that, if appellant had a predisposition for a disease, then any injury as a result of his employment was work related. He noted that appellant's tarsal tunnel condition was accepted under a prior claim. Appellant testified that his employment involved repetitive work with his hands and arms and that he worked in a chair that was positioned too low.

By decision dated March 8, 2012, the hearing representative found that the case was not in posture for decision due to an unresolved conflict in medical opinion between, Dr. Stone and Dr. Langa. The case was remanded for referral to an impartial medical referee.

OWCP referred appellant to Dr. Mark J. Langhans, a Board-certified orthopedic surgeon, for an impartial medical examination. In a report dated May 24, 2012, Dr. Langhans listed appellant's diagnoses as right cubital tunnel syndrome/ulnar nerve irritability and left cubital tunnel syndrome/ulnar nerve irritability. He noted that appellant was status post cubital tunnel release on January 19, 2010. Dr. Langhans noted that appellant's diagnoses were based on subjective findings and that the objective diagnostic support was lacking on physical examination and throughout appellant's treatment. While appellant's working for sustained periods with his elbows flexed greater than 90 degrees may have contributed in some manner to his subjective bilateral upper extremity complaints, his report of increased symptoms related to reaching to and above forehead height did not appear consistent with cubital tunnel syndrome.

[2] Docket No. 10-728 (issued November 3, 2010). On April 9, 2009 appellant, then a 39-year-old mail handler, filed an occupational disease claim for bilateral cubital tunnel syndrome and decreased muscle strength in his hands.

Dr. Langhans noted that he found no objective physical examination or electrodiagnostic evidence that appellant's work activities contributed to or caused any objective alteration in bilateral ulnar nerve functioning. He noted that appellant reported that he was asymptomatic in both upper extremities throughout his recent five-week vacation. Dr. Langhans found no indication that appellant had sustained an ulnar nerve injury of any degree in either upper extremity that rendered him fully or partially disabled.

By decision dated July 6, 2012, OWCP denied appellant's claim. It found that he had not established that the claimed medical conditions were related to the accepted employment-related events.

On July 16, 2012 appellant, through counsel, requested a telephonic hearing. At the hearing, he testified that he has been a mail handler since 1997 and described his employment duties. Appellant noted that he had some arm strength issues beginning in 2006 and reported an injury in 2008.

In an August 16, 2012 letter, Dr. Stone disagreed with Dr. Langhans' opinion. He stated that cubital tunnel syndrome had long been associated with a group of conditions referred to as repetitive motion disorders that were associated with work activities. Dr. Stone noted that appellant's symptoms affected him while at work and this association was well documented in medical literature.

On November 2, 2012 appellant submitted a summary of his jobs. Starting in 2003, he worked in the held postage section and repaired damaged letters and magazines. In March 2008, appellant was moved to patching and repairing mail to scan key for one week. In April 2008, he was moved to making label packets. Appellant was off duty from July 2, 2008 to January 31, 2009 for surgeries to his feet. In February 2009, he returned to work as a high speed tray sorter. On August 24, 2010 appellant was moved from patch and repairing mail to Netflix 010, which involved repetitive work. He currently worked repairing and patching letters. Appellant experienced pain in his elbows and weakness in his hands and found it hard to hold the steering wheel to drive.

By decision dated January 22, 2013, the hearing representative affirmed the July 6, 2012 decision.

On March 1, 2013 appellant, through his attorney, requested reconsideration. Counsel contended that the claim should be accepted as an aggravation of a preexisting condition. By letter dated July 24, 2013, he noted that more than 90 days had elapsed since appellant requested reconsideration and requested a merit review.

By decision dated October 17, 2013, OWCP denied modification of the January 22, 2013 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] 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 of FECA and that an injury[4] was sustained in the performance of duty. These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[5]

To establish that an injury was sustained in the performance of duty in a claim for an occupational disease claim, an employee must submit the following: (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.[6]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical evidence. The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.[7]

Where there are opposing medical reports of virtually equal weight and rationale, the case must be referred to an impartial medical specialist, pursuant to section 8123(a), to resolve the conflict in the medical evidence.[8] In situations where there are opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.[9]

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[3] 5 U.S.C. §§ 8101-8193.

[4] OWCP's regulations define an occupational disease or illness as a condition produced by the work environment over a period longer than a single workday or shift. 20 C.F.R. § 10.5(q).

[5] *See O.W.*, Docket No. 09-2110 (issued April 22, 2010); *Ellen L. Noble*, 55 ECAB 530 (2004).

[6] *See D.R.*, Docket No. 09-1723 (issued May 20, 2010). *See also Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

[7] *See T.W.*, Docket No. 13-1125 (issued August 27, 2013).

[8] *K.S.*, Docket No. 12-43 (issued March 12, 2013).

[9] *Anna M. Delaney*, 53 ECAB 384 (2002).

ANALYSIS

OWCP accepted that appellant performed repetitive work duties in his federal employment. It denied his claim as it found that he did not establish that his cubital tunnel syndrome was causally related to the accepted work activities.

Dr. Stone, appellant's treating physician, opined that appellant's cubital tunnel syndrome was causally related to the duties of his federal employment. The second opinion physician, Dr. Langa, found that appellant's bilateral cubital tunnel syndrome was not employment related. In order to resolve the conflict in medical opinion between appellant's treating physician and OWCP's physician, it properly referred appellant to Dr. Langhans pursuant to 5 U.S.C. § 8123(a).

Dr. Langhans examined appellant and conducted a review of appellant's records. He diagnosed bilateral cubital tunnel syndrome/ulnar nerve irritability. Dr. Langhans found support for these diagnoses entirely subjective and noted that objective support was lacking. He acknowledged that a clinical diagnosis of cubital tunnel syndrome can be made without positive electrodiagnostic test results or objective signs of ulnar nerve compression, but found that the absence of objective findings suggests that appellant's symptoms most likely represent intermittent ulnar nerve irritation or, at most, relatively mild cubital tunnel syndrome. Dr. Langhans opined that working for sustained periods with his elbows flexed greater than 90 degrees may have contributed in some manner to appellant's subjective bilateral upper extremity complaints, but stated that his reports of increased symptoms related to reaching to and above forehead height do not appear consistent with cubital tunnel syndrome. He also noted, more importantly, that he saw no objective physical examination or electrodiagnostic evidence that appellant's work activities have contributed to or caused any object alternation in bilateral ulnar nerve functioning. The Board finds that the report of Dr. Langhans is well rationalized and established that appellant did not sustain cubital tunnel syndrome causally related to the accepted duties of his federal employment. As Dr. Langhans' opinion is detailed, well rationalized and based on a proper factual background, his opinion is entitled to the special weight accorded an impartial medical examiner.[10]

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.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that he sustained cubital tunnel syndrome in the performance of duty causally related to factors of his federal employment.

[10] *R.A.*, Docket No. 13-1650 (issued February 10, 2014).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 17, 2013 is affirmed.

Issued: May 14, 2014
Washington, DC

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

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

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