

FACTUAL HISTORY

On December 8, 2010 appellant, then a 56-year-old medical technologist, filed an occupational disease claim alleging that she sustained bilateral carpal tunnel syndrome and a right index trigger finger due to repetitive motion in the course of her federal employment. She became aware of her condition on April 1, 2004. Appellant did not stop work.

On October 31, 2006 appellant underwent a right carpal tunnel release. On November 19, 2009 she underwent a left carpal tunnel release and release of the right index finger.

By decision dated February 15, 2011, OWCP denied appellant's claim. It found that she had not submitted sufficient medical evidence to establish a causal relationship between a diagnosed condition and the established work factors.

On February 22, 2011 appellant requested a telephone hearing before an OWCP hearing representative. In a report dated May 10, 2011, Dr. Arthur M. Sharkey, a Board-certified orthopedic surgeon, related that she had a long history of carpal tunnel syndrome as a result of working for 30 years as a laboratory technician at the employing establishment. He diagnosed bilateral carpal tunnel syndrome and right index trigger finger with flexor tenosynovitis. Dr. Sharkey stated, "It is my unequivocal opinion that the causal relationship of her activities as a laboratory technologist which include repetitive pipefitting, repetitive removal of specimen tops and protracted computer use has a causal relationship to her diagnoses."

By decision dated August 18, 2011, an OWCP hearing representative set aside the February 15, 2011 decision. She found that the opinion of Dr. Sharkey was sufficient to warrant further development of the medical evidence and instructed OWCP to refer appellant for a second opinion examination.

On August 9, 2012 OWCP referred appellant to Dr. Steven J. Lancaster, a Board-certified orthopedic surgeon, for a second opinion examination. It requested that he address whether the 2006 and 2009 procedures to appellant's wrists and right index finger were warranted and causally related to her employment. The accompanying statement of accepted facts described appellant's work duties as a medical technologist beginning in 1992. OWCP also noted that she had a long history of preexisting or concurrent numbness and pain of the hands.

In a report dated September 28, 2012, Dr. Lancaster discussed appellant's history of surgeries for bilateral carpal tunnel syndrome and right index trigger finger. On examination, he found a negative Tinel's sign and Phalen's test bilaterally with no atrophy and no triggering of any digit. Dr. Lancaster diagnosed status post bilateral carpal tunnel releases and status post right index trigger finger release with residual tenosynovitis and pain. He attributed appellant's current symptoms of trigger finger and some symptoms from the carpal tunnel releases to "scar tissue from the surgeries for the accepted condition of carpal tunnel syndrome and trigger finger." Dr. Lancaster found that her current symptoms outweighed the objective findings. He stated that the prior surgeries were warranted to treat the accepted employment-related conditions of carpal tunnel syndrome and index trigger finger.

On October 4, 2012 OWCP advised Dr. Lancaster that it had not accepted any condition as employment related. It requested that he clarify whether appellant's work duties as a medical technologist caused or exacerbated her diagnosed conditions.

In a supplemental report dated October 10, 2012, Dr. Lancaster found that appellant's work duties did not cause or contribute to her carpal tunnel syndrome or trigger finger. He opined that pipefitting was not a "significant enough repetitive movement to cause a carpal tunnel syndrome. As such my opinion is that the claimant was going to develop her carpal tunnel syndrome independent of her activities as a medical technologist."

By decision dated November 2, 2012, OWCP denied appellant's claim on the grounds that she did not establish that she sustained a medical condition due to the identified work factors. It found that Dr. Lancaster's opinion represented the weight of the evidence and demonstrated that she did not have bilateral carpal tunnel syndrome or right trigger finger due to factors of her federal employment.

On November 11, 2012 appellant, through her representative, requested an oral hearing. Following a preliminary review, on January 7, 2013, an OWCP hearing representative set aside the November 2, 2012 decision. She found that the record contained a conflict in medical opinion between Dr. Sharkey and Dr. Lancaster.

By letter dated March 15, 2013, OWCP referred appellant to Dr. Raul B. Zelaya, a Board-certified orthopedic surgeon, for an impartial medical examination to determine whether she sustained carpal tunnel syndrome due to factors of her federal employment. It advised that a conflict arose between Dr. Sharkey and Dr. Lancaster regarding whether her condition arose from work factors beginning April 1, 2004.

In a report dated April 18, 2013, Dr. Zelaya reviewed appellant's history of upper extremity symptoms and the medical reports of record, including the results of 2005 electrodiagnostic studies showing carpal tunnel syndrome. He noted that she underwent a right tunnel release in 2006 and a left carpal tunnel and right index finger release in 2009. Dr. Zelaya stated:

"On March 2, 2010 [appellant] underwent an MRI [magnetic resonance imaging] [study] of the right hand that shows degenerative changes of the proximal phalanx of the right index finger in addition to tenosynovitis as well as tendinosis of the flexor synovial sheet that more likely than not was a contributing factor to her previous CTS [carpal tunnel syndrome], already released and currently asymptomatic."

Dr. Zelaya noted that appellant's job duties included referral testing, preparing specimens, and capping and uncapping tubes. He stated that these actions did not put pressure on the carpal canal and noted that he had given her a test tube to cap and uncap during his examination.² On examination, Dr. Zelaya found normal two-point discrimination, a negative Tinel's sign and Phalen's test and a loss of sensation to light touch and pinwheel along the C4,

² Dr. Zelaya indicated that appellant's hobby of bicycle riding did increase pressure on the carpal canal.

C5, and C6 distribution, especially on the right side. He interpreted x-rays as showing discogenic disease at these levels which he indicated could be confused with symptoms of carpal tunnel syndrome. Dr. Zelaya diagnosed cervical radiculopathy with discogenic disease at C4, C5, and C6. He determined that appellant's cervical radicular symptoms were unrelated to her employment. Dr. Zelaya opined that she did not currently have carpal tunnel syndrome.

By decision dated May 3, 2013, OWCP denied appellant's claim. It found that Dr. Zelaya's opinion represented the weight of the evidence and established that she did not have a diagnosed condition due to factors of her federal employment.

On May 10, 2013 appellant, through her representative, requested an oral hearing. On October 29, 2010 counsel requested a review of the written record in lieu of an oral hearing.

In a report dated November 14, 2013, Dr. Sharkey discussed appellant's history of surgery for carpal tunnel syndrome and right trigger finger. He opined that her repetitive work duties, including pipefitting, removing specimen tops and computer use caused her condition. Dr. Sharkey also diagnosed *de Quervain's* syndrome and residual synovitis of the right index finger.

By decision dated January 16, 2014, an OWCP hearing representative affirmed the May 3, 2013 decision.

On appeal appellant's representative asserts that electromyogram (EMG) testing demonstrates that she has carpal tunnel syndrome. He notes that Dr. Zelaya failed to discuss the July 13, 2010 EMG which confirmed the diagnosis of carpal tunnel syndrome and instead relied on less objective findings on clinical examination. Counsel maintains that Dr. Zelaya based his opinion on x-rays that were not provided to her attending physician and failed to provide sufficient rationale explaining why the diagnosed cervical condition was unrelated to employment. He contends that Dr. Zelaya's opinion is insufficient to resolve the conflict in medical opinion.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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.⁴ 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.⁵

³ 5 U.S.C. § 8101 *et seq.*

⁴ *See Tracey P. Spillane*, 54 ECAB 608 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ *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;⁶ (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;⁷ 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.⁸

Section 8123(a) provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.⁹ The implementing regulations state that, if a conflict exists between the medical opinion of the employee's physician and the medical opinion of either a second opinion physician or an OWCP medical adviser, OWCP shall appoint a third physician to make an examination. This is called a referee examination and OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.¹⁰

When OWCP secures an opinion from an impartial medical specialist for the purpose of resolving a conflict in the medical evidence and the opinion from the specialist requires clarification or elaboration, it has the responsibility to secure a supplemental report from the specialist for the purpose of correcting a defect in the original report.¹¹ When the impartial medical specialist's statement of clarification or elaboration is not forthcoming or if the specialist is unable to clarify or elaborate on the original report or if the specialist's supplemental report is also vague, speculative or lacks rationale, OWCP must submit the case record and a detailed statement of accepted facts to a second impartial specialist for a rationalized medical opinion on the issue in question.¹² Unless this procedure is carried out by OWCP, the intent of section 8123(a) will be circumvented and the impartial medical examiner's report is insufficient to resolve the conflict in medical evidence.¹³

⁶ See *Michael R. Shaffer*, 55 ECAB 386 (2004).

⁷ See *Marlon Vera*, 54 ECAB 834 (2003); *Roger Williams*, 52 ECAB 468 (2001).

⁸ See *Beverly A. Spencer*, 55 ECAB 501 (2004).

⁹ 5 U.S.C. § 8123(a).

¹⁰ 20 C.F.R. § 10.321.

¹¹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.11(d)(2) (September 2010).

¹² See *D.T.*, Docket No. 14-332 (issued May 14, 2014); *Talmadge Miller*, 47 ECAB 673 (1996); see also Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.11(e) (September 2010).

¹³ See *D.T.*, *id.*

ANALYSIS

Appellant attributed her wrist and trigger finger conditions to repetitive work as a medical technologist. 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.

OWCP found that a conflict arose between Dr. Sharkey, an attending physician, who found that appellant sustained bilateral carpal tunnel syndrome and right index trigger finger due to her employment duties; and Dr. Lancaster, an OWCP referral physician, who found that her work duties did not cause her carpal tunnel syndrome and trigger finger. It referred her to Dr. Zelaya, a Board-certified orthopedic surgeon, for an impartial medical examination.

When a case is referred to an impartial medical examiner for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a prior factual and medical background, must be given special weight.¹⁴ The Board finds, however, that Dr. Zelaya's opinion is insufficient to resolve the conflict in medical opinion as he did not adequately address the causation issue. In a report dated April 18, 2013, Dr. Zelaya described appellant's work duties, noting that the laboratory procedures that she performed did not increase the pressure on her carpal canal. On examination, he found a negative Tinel's sign and Phalen's test but reduced sensation to touch and pinwheel in the C4, C5 and C6 distribution. Dr. Zelaya diagnosed cervical radiculopathy and discogenic disease at C4, C5 and C6 unrelated to employment. He determined that appellant did not currently have carpal tunnel syndrome. Dr. Zelaya, however, discussed only her current condition and its relationship to her federal employment. He noted that a March 2, 2010 MRI scan study showed degenerative changes of the right index finger and tenosynovitis and tendinosis of the flexor synovial sheet. Dr. Zelaya found that these conditions most likely contributed to appellant's previous bilateral carpal tunnel syndrome that was no longer symptomatic and had been treated with releases. He did not adequately address whether appellant's history of bilateral carpal tunnel syndrome and right index trigger finger and resulting surgeries were due to factors of her federal employment. Consequently, Dr. Zelaya's opinion is insufficient to resolve the conflict in medical opinion.

When OWCP secures an opinion from an impartial medical specialist for the purpose of resolving a conflict in the medical evidence and the opinion from the specialist requires clarification or elaboration, it has the responsibility to secure a supplemental report from the specialist for the purpose of correcting a defect in the original report.¹⁵ On remand, OWCP should ask Dr. Zelaya to clarify whether appellant sustained bilateral carpal tunnel syndrome or right index trigger finger as a result of her work duties. Following such further development as deemed necessary, OWCP should issue a *de novo* decision on her claim.

CONCLUSION

The Board finds that the case is not in posture for decision.

¹⁴ *L. W.*, 59 ECAB 471 (2008).

¹⁵ *See K.C.*, Docket No. 14-791 (issued August 8, 2014); *Guiseppe Aversa*, 55 ECAB 164 (2003).

ORDER

IT IS HEREBY ORDERED THAT the January 16, 2014 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: November 25, 2014
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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