United States Department of Labor
Employees' Compensation Appeals Board

D.D., Appellant	)	
and	)	**Docket No. 14-1119**
	)	**Issued: September 9, 2014**
U.S. POSTAL SERVICE, POST OFFICE, Kearny, NJ, Employer	)	

Appearances:
Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 14, 2014 appellant, through her attorney, filed a timely appeal from an Office of Workers' Compensation Programs (OWCP) decision dated November 4, 2013. Pursuant to the Federal Employees' Compensation Act[1] 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 or cervical radiculopathy conditions in the performance of duty.

FACTUAL HISTORY

Appellant, a 55-year-old mail clerk, filed a Form CA-2 claim for benefits on August 22, 2011. She alleged that she developed wrist, hand and forearm conditions causally

[1] 5 U.S.C. § 8101 *et seq.*

related to 35 years of repetitive activities at her usual job as a mail clerk. Appellant retired on March 2, 2012.

Appellant submitted a statement, received by OWCP on November 14, 2011, in which she described her work duties which she alleges resulted in the development of her claimed conditions. She advised that through the years she had worked on numerous letter sorting machines, in addition to manually sorting mail; she alleged that during the course of her 35 years at the employing establishment the constant, repetitive activity involved with working these machines, in addition to manual sorting techniques, placed a strain on her tendons, ligaments, joints and muscles. Appellant indicated that she currently experienced pain in both wrists, severe at times tingling and numbness in her forearms and fingers and a weakened grip.

In a report dated September 7, 2011, received by OWCP on October 24, 2011, Dr. Mark Filippone, a specialist in physical medicine and rehabilitation and appellant's treating physician, advised that appellant had complaints of pain, numbness and tingling in both hands, in the cervical paraspinal area and in both shoulders; appellant believed that these symptoms were causally related to her employment. He indicated that based on his examination, appellant's medical records, her September 7, 2011 statement and a colored print of her letter sorting machine that she had repetitive stress disorder of the upper extremities secondary to overuse from work. Dr. Filippone opined that these conditions were directly and solely the result of repetitive stress she experienced while working for the employing establishment. He also noted that he was attempting to rule out carpal tunnel syndrome; ulnar neuropathy; cervical double crush syndrome; cervical radiculopathy; brachioplexopathy; and lumbosacral derangement, radiculitis and radiculopathy. Dr. Filippone stated that he would obtain x-rays of both wrists, both hands and the cervical spine; he also advised that he seek authorization to perform electromyelogram (EMG) and nerve conduction (NCS) studies of the upper extremities.

Dr. Filippone submitted a September 7, 2011 Form CA-20 on which he checked a box indicating that appellant's conditions were caused or aggravated by her employment activities.

On October 11, 2011 OWCP advised appellant that it required factual and medical evidence to determine whether she was eligible for compensation benefits. It asked appellant to submit a comprehensive report from her treating physician describing her symptoms and the medical reasons for her condition in addition to an opinion as to whether her claimed condition was causally related to her federal employment. OWCP requested that appellant submit this evidence within 30 days.

Dr. Filippone subsequently submitted reports dated September 29 and October 20, 2011 in which he stated findings on examination and essentially reiterated his previous findings and conclusions. In his October 20, 2012 report he opined that appellant's neck, upper and lower extremity radicular and low back complaints were directly and solely the result of working for the employing establishment.

By decision dated November 23, 2011, OWCP denied appellant's claim. It accepted that appellant performed duties as a letter carrier but found that she failed to submit sufficient medical evidence to establish that her claimed conditions were causally related to her work duties.

By letter dated December 6, 2011, appellant, through her attorney, requested an oral hearing.

On December 14, 2011 Dr. Filippone administered EMG/NCS testing. Dr. Filippone opined that there was EMG and nerve conduction evidence of bilateral carpal tunnel syndrome based on EMG evidence of partial denervation in muscles innervated by the mid and lower right cervical dorsal rami and in the muscles innervated by the mid left cervical dorsal rami. He also stated that there was EMG evidence of a right C5-6 cervical radiculopathy. Dr. Filippone advised that all of these findings were directly and solely the result of work-related activities.

By decision dated February 13, 2012, an OWCP hearing representative set aside the November 23, 2011 decision. She found that the medical evidence appellant submitted did not establish a causal relationship between her work and her claimed conditions[2] but was sufficient to require further development of the medical evidence. OWCP's hearing representative remanded the case and referred appellant for a second opinion examination; and directed that a statement of accepted facts be prepared for review by the second opinion examiner.

Appellant was referred for a second opinion examination with Dr. Kenneth Heist, Board-certified in orthopedic surgery. In a report dated April 26, 2012, he reviewed the medical history and statement of accepted facts and discussed her exposure to repetitive activities at the employing establishment. Dr. Heist confirmed and agreed that Dr. Filippone's December 14, 2011 EMG/NCS of her upper extremities revealed bilateral carpal tunnel syndrome and C5-6 cervical radiculopathy. He stated, however, that his examination of the cervical spine showed a normal lordotic curve; normal range of motion; a negative Spurling's sign; negative Median, Tinel's and Phalen's signs bilaterally; no evidence of cervical radiculopathy, gross muscular weakness, atrophy, circulatory difficulty involving the cervical spine or upper extremities, paravertebral muscle guarding, bilateral carpal tunnel syndrome or peripheral neuropathy of the upper extremities. Dr. Heist further advised that grip strength was five out of five in the right and left wrists. He noted previous diagnoses by her treating physician of bilateral wrist sprains, bilateral carpal tunnel syndrome and right C5-6 cervical radiculopathy but stated that his objective findings at the time of examination were negative for carpal tunnel syndrome and cervical radiculopathy. Dr. Heist concluded based on his physical examination that appellant was capable of performing her duties as a mail processing clerk for the employing establishment.

In an August 31, 2012 supplemental report, Dr. Heist again reiterated that his objective findings were negative for carpal tunnel syndrome as median and ulnar Tinel's signs were negative bilaterally, and Phalen's sign was negative bilaterally. Also as the spurling test was negative, appellant had no signs of cervical radiculopathy. Dr. Heist stated that appellant had no current disability and required no further treatment. He advised that based on his April 26, 2012 examination he did not believe that the diagnoses of bilateral carpal tunnel syndrome and cervical radiculopathy C5-6 were causally related to her employment with the employing establishment and that she was capable of performing her duties as a mail processing clerk.

[2] The Board notes that appellant initially filed a claim based on bilateral hand, wrist and shoulder conditions, in addition to a cervical condition. The medical evidence presented focused on whether she had bilateral carpal tunnel syndrome and cervical radiculopathy. OWCP adjudicated the case on this basis.

By decision dated October 24, 2012, OWCP found that Dr. Heist's referral opinion represented the weight of medical evidence and that based on his opinion appellant's claimed bilateral carpal tunnel and cervical radiculopathy conditions were not causally related to employment factors.

By letter dated December 6, 2012, appellant, through her attorney, requested an oral hearing.

By decision dated December 17, 2012, an OWCP hearing representative set aside the October 24, 2012 decision, finding that there was a conflict in medical opinion between Dr. Heist, the second opinion examiner, and Dr. Filippone, appellant's treating physician regarding whether her claimed bilateral carpal tunnel and cervical radiculopathy conditions were causally related to employment factors. She remanded the case to the district office and instructed that appellant be referred for a referee medical examination to resolve the conflict in the medical evidence.

OWCP referred appellant to Dr. Robert I. Dennis, Board-certified in orthopedic surgery, for a referee medical examination. In a March 14, 2013 report, he opined that none of appellant's claimed conditions were causally related to employment factors. Dr. Dennis reviewed diagnostic tests and found that cervical and lumbar MRI scans showed some mild degenerative changes but no disc herniations; X-rays of the wrists showed a small degree of arthritis; bony structures of the carpal and metacarpal bones were quite normal; and X-rays of the cervical spine were normal. Dr. Dennis stated that his examinations for carpal tunnel syndrome and cervical radiculopathy were negative. He indicated that she had normal pinch, normal grip strength, normal sensation and no evidence of clinical objective findings for carpal tunnel syndrome or radiculopathy. He asserted that her physical examination was very conclusive in regard to the normal exam of the upper extremities. Dr. Dennis related that appellant denied ever having a problem with her neck or with pain radiating from the shoulder to the hand; her only problem entailed pain radiating from the top of the forearm toward the wrist.

Dr. Dennis found no clinical objective pathology that would support a diagnosis of repetitive activities producing carpal tunnel or radiculopathy, particularly with her benign history regarding neck activities at work. He advised that there were no repetitive issues or problems with her neck and no definitive relationship between appellant's diffuse complaints of arm pain and hand pain to her work activities. Dr. Dennis noted that Dr. Filippone's December 14, 2011 EMG tests showed appellant had bilateral carpal tunnel syndrome and cervical radiculopathy at C5-6; he opined, however, that these findings were in such contrast with his clinical findings and appellant's medical history that they should be discarded. He stated appellant's work duties entailed repetitive activities but asserted that based on the manner in which she presented her symptoms her claimed cervical radiculopathy was not caused by those activities, as she had no neck complaints and no findings of cervical radiculopathy on examination.

With regard to her bilateral wrist complaints, Dr. Dennis opined that her work activities could have produced strains to the wrist and crowding of the carpal tunnel; he found that they did not, however, because she would have had a more demonstrative history of pain and paresthesias and would have shown some clinical findings at that time. He further opined that the fact that her complaints of pain did not subside after a year of rest indicated that her work activities were

not the cause of her discomforts or else she would have shown some improvement during this period.

By decision dated April 15, 2013, OWCP denied appellant's claim, finding that she failed to submit sufficient medical evidence to establish that her claimed bilateral carpal tunnel and cervical radiculopathy conditions were causally related to her work duties. It was found that Dr. Dennis' impartial opinion represented the weight of the medical evidence.

On April 19, 2013, appellant's attorney requested an oral hearing, which was held on August 23, 2013.

In an April 18, 2013 report, received by OWCP on May 15, 2013, Dr. Filippone advised that he reexamined appellant on March 12, 2013, at which time he stated that her medical history and his review of her systems were unchanged. He stated that there was interval or intercurrent history of trauma or injury and that she continued with her previous symptoms and complaints of pain, including bilateral hand pain, numbness, tingling and weakness. Dr. Filippone advised that she still experienced clicking in her neck and low back; she had persistent pain, guarding and spasm in the cervical and lumbar paraspinals, with bilaterally positive Tinel's and Phalen's sign and Finkelstein maneuver. He did not present an opinion as to whether these findings were attributable to employment factors.

By decision dated November 4, 2013, an OWCP hearing representative affirmed the April 15, 2013 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] has the burden of establishing that 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 the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained 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 upon a traumatic injury or an occupational disease.[5]

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; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that 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

[3] 5 U.S.C. §§ 8101-8193.

[4] *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

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

diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish causal relationship is usually rationalized medical evidence. 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]

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between her claimed bilateral wrist, hand, shoulder and neck condition and her federal employment. This burden includes providing medical evidence from a physician who concludes that the condition is causally related to employment factors and supports that conclusion with sound medical reasoning.[7]

Section 8123(a) provides that, if there is a 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.[8] It is well established that, when a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.[9]

ANALYSIS

OWCP properly determined that a conflict existed in the medical opinion evidence between appellant's treating physician, Dr. Filippone, and the OWCP second opinion physician, Dr. Heist, as to whether appellant had bilateral carpal tunnel syndrome or cervical radiculopathy causally related to factors of her federal employment. Appellant was therefore properly referred to Dr. Dennis for an impartial medical evaluation.

On appeal, appellant's attorney argues that Dr. Dennis' impartial medical report was not sufficiently rationalized and presented inaccurate conclusions regarding the work relatedness of appellant's claimed bilateral carpal tunnel and cervical radiculopathy conditions. He argues that Dr. Dennis' opinion is deficient because although he noted that EMG testing showed bilateral carpal tunnel syndrome and right C5-6 cervical radiculopathy on December 2011, he did not discuss the significance of these tests and indicated, contrary to the results of this EMG test, that appellant did not have carpal tunnel syndrome or cervical radiculopathy. Counsel asserts that this opinion conflicts with the opinions of Dr. Filippone and Dr. Heist and that Dr. Dennis gave insufficient reasons for "discarding" the EMG test results. He further argues that Dr. Dennis did

[6] *Id.*

[7] *See Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

[8] *Regina T. Pellecchia*, 53 ECAB 155 (2001).

[9] *Jacqueline Brasch (Ronald Brasch)*, 52 ECAB 252 (2001).

not describe what neurologic testing he performed in finding that appellant did not have carpal tunnel syndrome or cervical radiculopathy and in finding the nerves of the brachial plexus and ulnar distributions were normal. Counsel asserts that, absent an explanation as to why the EMG tests had to be "discarded," Dr. Dennis' report is not well reasoned and did not merit the special weight of a referee medical examiner.

The Board does not accept counsel's contentions. In his March 14, 2013 report Dr. Dennis acknowledged that Dr. Filippone's December 14, 2011 EMG tests indicated bilateral carpal tunnel syndrome and cervical radiculopathy at C5-6 but discounted these findings because they were outweighed by his clinical findings and appellant's medical history, which provided insufficient evidence that she had sustained these conditions. He stated that appellant engaged in repetitive work activities but advised that, based on the manner in which she presented her symptoms on examination, her claimed cervical radiculopathy and bilateral carpal tunnel syndrome were not caused by those activities. Dr. Dennis opined that her work activities could have produced strains to both wrists and crowding of the carpal tunnel but found that this did not occur given the lack of pain, paresthesias and clinical findings manifested in her medical history. He opined that the fact that appellant's complaints of pain did not subside after a year of rest showed that her work activities were not the cause of her discomforts; otherwise they would have shown some improvement during this period.

Dr. Dennis found no clinical objective pathology to support a diagnosis of repetitive activities producing carpal tunnel or cervical radiculopathy. He advised that cervical and lumbar MRI scans of the cervical and lumbar spine showed some mild degenerative changes but no disc herniations, that X-rays of the wrists showed a small degree of arthritis, that bony structures of the carpal and metacarpal bones and x-rays of the cervical spine were normal. Dr. Dennis asserted that his examination for carpal tunnel syndrome and cervical radiculopathy was negative. He advised that appellant had no repetitive issues or problems with her neck and that there was no definitive connection between her diffuse complaints of arm pain and hand pain and her work activities. Dr. Dennis concluded that appellant's bilateral wrist, hand, shoulder and neck conditions were essentially due to arthritis, not causally related to her work activities. OWCP relied on Dr. Dennis' opinion in its April 15, 2013 decision, finding that appellant had not established that she had bilateral carpal tunnel and cervical radiculopathy conditions causally related to her employment.

The Board finds that Dr. Dennis' impartial opinion finds that appellant does not have carpal tunnel syndrome or cervical radiculopathy causally related to her employment. Dr. Dennis' opinion is sufficiently probative, rationalized, and based upon a proper factual background. Therefore, OWCP properly accorded Dr. Dennis' opinion the special weight of an impartial medical examiner.[10] The Board therefore finds that Dr. Dennis' opinion constituted the weight of medical opinion and supports the OWCP's April 15, 2013 decision finding that appellant did not sustain bilateral carpal tunnel and cervical radiculopathy conditions in the performance of duty.

[10] *Gary R. Seiber*, 46 ECAB 215 (1994).

Appellant subsequently requested an oral hearing and submitted the April 18, 2013 report from Dr. Filippone. This report merely reiterates his previous findings and conclusions. Dr. Filippone stated that appellant's medical history and his review of her symptoms were unchanged. He advised that she continued with her previous symptoms and complaints of pain, including bilateral hand pain, numbness, tingling and weakness, in addition to persistent pain, guarding and spasm in the cervical and lumbar paraspinals. His report, however, did not contain an opinion as to whether these findings were attributable to employment factors. Dr. Filippone's report merely restates one side of the conflict in medical evidence which was resolved by Dr. Dennis' opinion. He did not provide a sufficiently reasoned and factually supported opinion that would vitiate OWCP's April 15, 2013 determination that appellant's claimed bilateral carpal tunnel and cervical radiculopathy conditions were not causally related to her employment.[11] Thus the Board will affirm the OWCP hearing representative's November 5, 2013 decision.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that her condition was caused, precipitated or aggravated by her employment is sufficient to establish causal relationship.[12] Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence.

Appellant has not met her burden of proof in establishing that her claimed bilateral carpal tunnel and cervical radiculopathy conditions were causally related to her employment. For this reason, she has not discharged her burden of proof to establish her claim that these conditions were sustained in the performance of duty.

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 has failed to meet her burden of proof to establish that she sustained bilateral carpal tunnel and cervical radiculopathy conditions in the performance of duty.

[11] Furthermore, the form report from Dr. Filippone which supports causal relationship with a check mark is insufficient to establish the claim, as the Board has held that without further explanation or rationale, a checked box is not sufficient to establish causation. *Debra S. King*, 44 ECAB 203 (1992); *Salvatore Dante Roscello*, 31 ECAB 247 (1979).

[12] *See Seiber, supra.*

ORDER

IT IS HEREBY ORDERED THAT the November 4, 2013 decision of the Office of Workers' Compensation Programs' be affirmed.

Issued: September 9, 2014
Washington, DC

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

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

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