United States Department of Labor
Employees' Compensation Appeals Board

A.W., Appellant	)	
and	)	**Docket No. 19-1857**
	)	**Issued: May 5, 2020**
DEPARTMENT OF VETERANS AFFAIRS, OVERTON BROOKS VA MEDICAL CENTER, Shreveport, LA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On September 8, 2019 appellant filed a timely appeal from a July 5, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 has met her burden of proof to establish bilateral carpal tunnel syndrome causally related to the accepted April 3, 2017 employment injury.

FACTUAL HISTORY

On April 4, 2017 appellant, then a 37-year-old nurse, filed a traumatic injury claim (Form CA-1) alleging that on April 3, 2017 she injured her wrist, back, arms, and neck as she was performing compressions on a mannequin while in the performance of duty. On the reverse side

[1] 5 U.S.C. § 8101 *et seq.*

of the claim form, her supervisor indicated that appellant's injury was caused by her own misconduct as she was using her backside to perform compressions on the mannequin. Appellant did not stop work.

In a development letter dated May 18, 2017, OWCP advised appellant of the factual and medical deficiencies of her claim. It informed her of the type of evidence necessary to establish her claim and provided a questionnaire for her completion regarding the circumstances of the injury. OWCP also requested a narrative medical report from appellant's treating physician which contained a detailed description of findings and diagnoses, explaining how the alleged incident caused, contributed to, or aggravated her medical conditions. It afforded her 30 days to submit the necessary evidence.

In response, appellant provided an April 3, 2017 statement from A.M., a registered nurse, who reported that she observed appellant sitting on top of a mannequin in order to perform compressions on it. A.M. told appellant that her technique was inappropriate and appellant explained to A.M. that she was unable to do the compressions with her arms because she was weak, had no strength, and was exhausted.

In an April 4, 2017 witness statement, J.D., a nursing staff development instructor, observed appellant having difficulty performing compressions on a voice-activated mannequin and that she was previously observed performing the compressions with her backside. After observing that appellant could not perform proper compressions on a cushion or on the floor after approximately 30 attempts, J.D. demonstrated the proper technique and allowed appellant to attempt the compressions again. Appellant informed J.D. that she was tired and that her wrists hurt. J.D. then informed appellant that she may need to get a waiver from her physician if she was having a physical issue.

In an e-mail of even date, Dr. Robert Lukeman, Board-certified in internal medicine, contacted appellant's supervisor and reported that he observed appellant performing compressions on a mannequin by repeatedly sitting on its chest, lifting up, and sitting down again. He immediately asked A.M. to address the technique with appellant.

In an April 4, 2017 incident report, N.B., appellant's supervisor, provided that appellant verbalized that she was unable to complete her compressions on a mannequin despite several attempts. Appellant was observed by another employee using her backside to perform the compressions on the mannequin. An education instructor attempted to assist appellant with her compressions, however, appellant was still unable to complete her training.

In a partially legible April 4, 2017 medical report, Dr. Sudarshan Tanga, Board-certified in pain medicine, recorded that appellant experienced pain in her arms, shoulders, back, and wrists while performing compressions on a mannequin at work. Appellant indicated that, because she was small, it was difficult for her to perform the compressions and that she was instructed to continue her compressions after she informed her instructor that she was experiencing pain. Dr. Tanga diagnosed sprains of her shoulders, back, and upper extremities and advised that she take an over-the-counter medication to treat her injuries. In a medical note of even date, he noted pain in appellant's shoulders, back, and wrists and recommended work restrictions until her next appointment on April 10, 2017.

In April 4, 2017 progress notes, Ramona Grant and Rachal Carter, registered nurses, and Helen Hall, a physician assistant, described appellant's injuries as a flare-up of her fibromyalgia, severe generalized pain, and musculoskeletal pain. Ms. Hall reported that appellant presented with a "fibromyalgia crisis" after attempting to perform repeated compressions on a mannequin.

In an April 10, 2017 medical note, Dr. Tanga noted pain in appellant's right arm and recommended additional work restrictions until she could be seen by an orthopedic physician.

In an April 17, 2017 medical report, Dr. Michael Acurio, a Board-certified orthopedic surgeon, reported that appellant experienced pain in her wrists, arms, neck, and shoulders as a result of repeatedly performing compressions on a mannequin. He also noted her history of fibromyalgia and that she was informed in an emergency room that her pain was due to a flare-up of her condition. Upon evaluation and review of x-rays of appellant's cervical spine and bilateral shoulders, Dr. Acurio diagnosed carpal tunnel syndrome and a cervical strain. In a medical note of even date, he explained that she would need to remain out of work until her next appointment where further recommendations could be made.

In an April 24, 2017 electromyography and nerve conduction velocities report, Dr. David Adams, a Board-certified neurologist, saw appellant due to the onset of numbness and tingling in both of her hands after performing compressions on a mannequin on April 3, 2017. He found bilateral carpal tunnel syndrome, but no evidence of radiculopathy, brachial plexopathy, or ulnar neuropathy in either upper extremity.

In a medical report of even date, Dr. Acurio recorded appellant's complaints of upper extremity numbness and tingling. Based on her diagnostic studies and evaluation, he diagnosed bilateral carpal tunnel syndrome, a cervical strain, and cervical radiculopathy. Dr. Acurio opined that appellant would need a carpal tunnel release to treat her condition. In an April 24, 2017 medical note, he informed the employing establishment that she was in the process of scheduling a magnetic resonance imaging (MRI) scan and would need to remain out of work until further notice.

In an April 27, 2017 diagnostic report, Dr. Kurt Grozinger performed an MRI scan of appellant's cervical spine due to her history of right arm pain and numbness. He found an impression of a small central disc bulge at C5-6 and reported that her MRI scan was otherwise normal.

In a May 22, 2017 medical report, Dr. Acurio noted appellant's complaints of numbness and tingling in her hands, as well as pain in her neck and back. Upon consultation with her, he scheduled a carpal tunnel release procedure for May 26, 2017 to treat her condition. In a medical note of even date, Dr. Acurio informed the employing establishment that appellant would need nine weeks off from work following the procedure.

In a June 5, 2017 medical report, Dr. Acurio updated appellant's condition after her May 26, 2017 right carpal tunnel release and scheduled her left carpal tunnel release for June 23, 2017.

In response to OWCP's questionnaire, appellant, through counsel, submitted a June 13, 2017 statement in which she described the April 3, 2017 employment incident. Appellant asserted that she used all of the strength in her arms, hands, and upper body to perform compressions, but

the compressions were not registered by the mannequin. Sometime after her instructor moved the mannequin to the ground to assist her, she began to experience pain in her wrists, neck, arms, and shoulders with numbness and tingling going into her hands. The next day, appellant sought care from the emergency department and eventually from Dr. Acurio as her pain continued. She also noted that she had been diagnosed with fibromyalgia in October 2016 and that she had previously experienced neck and back pain that came and went prior to the April 3, 2017 employment incident.

By decision dated June 19, 2017, OWCP denied appellant's traumatic injury claim finding that the evidence of record was insufficient to establish that the injury and/or events occurred as she described. It explained that the circumstances of her injury were not consistent and therefore failed to support that her injury occurred in the manner she alleged. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

OWCP continued to receive evidence. In a June 20, 2017 medical note, Dr. Acurio noted that appellant suffered an injury while performing cardiopulmonary resuscitation (CPR) and that he believed that this worsened her carpal tunnel syndrome due to the repetitive compressions.

In a July 18, 2017 letter, the employing establishment controverted appellant's claim. It argued that the evidence of record failed to establish fact of injury and causal relationship.

In a July 31, 2017 medical report, Dr. Acurio updated appellant's condition and advised that she attend physical therapy and remain off work for a month until her next appointment.

In an August 28, 2017 medical report, Dr. Acurio noted that appellant was experiencing some popping in her left hand, but therapy had helped her conditions. He recommended that she continue her therapy sessions and remain off work.

On December 13, 2017 appellant, through counsel, requested reconsideration. Counsel explained that appellant performed several rounds of CPR using her arms, hands, and upper body strength and experienced increased pain in her wrists, neck, arms, and shoulders, as well as numbness and tingling in her hands. He asserted that the totality of the evidence was sufficient to establish her claim.

In a September 25, 2017 narrative medical report, Dr. Acurio discussed the nature of appellant's carpal tunnel syndrome. He explained that repetitive motions, such as performing CPR, and extension of the wrists, can cause swelling and inflammation in the carpal canal, putting pressure on the median nerve. Dr. Acurio opined that the chest compressions appellant performed on the mannequin had increased the swelling and pressure on her median nerve which subsequently resulted in her carpal tunnel syndrome. He concluded that the April 3, 2017 employment incident had both caused and exacerbated her carpal tunnel syndrome.

In an October 23, 2017 medical report, Dr. Acurio diagnosed bilateral carpal tunnel syndrome and early chronic regional pain syndrome in appellant's left upper extremity.

In a November 27, 2017 medical note, Dr. Acurio recommended that appellant remain off work until her next appointment on December 26, 2017.

In a January 26, 2018 letter, the employing establish again controverted appellant's claim arguing that the evidence of record failed to establish fact of injury and causal relationship.

On March 1, 2018 OWCP referred appellant to Dr. Robert Holladay IV, a Board-certified orthopedic surgeon, for a second opinion evaluation to determine the nature and extent of her employment-related conditions.

In his April 3, 2018 report, Dr. Holladay reviewed the statement of accepted facts (SOAF), history of injury, and the medical evidence of record. He conducted a physical examination and found that appellant had full range of motion of all areas with some complaints of discomfort with certain movements. Dr. Holladay did not find objective evidence of swelling, deformity, neurological loss, or motor loss. On clinical examination of appellant's lower back, he found no objective evidence of an acute structural problem associated with the lumbar spine complaints. Dr. Holladay explained that, at most, he could associate the April 3, 2017 mechanism of injury to a temporary soft tissue strain/sprain of the wrists and a strain/sprain of the scapula and upper thoracic spine posteriorly. He opined that the one-time incident on April 3, 2017 would not be consistent with known medical literature regarding the cause of carpal tunnel syndrome and that it was most likely a preexisting condition. Dr. Holladay discussed that the "American Medical Association, *Guides to the Evaluation of Disease and Injury Causation*" provide that the activity of CPR would not meet the criteria of force, repetition, and posture necessary to have a causal association. He also asserted that the objective evidence in the medical record did not support the concept of an aggravation or acceleration of appellant's preexisting bilateral carpal tunnel syndrome. Dr. Holladay concluded that she sustained a soft tissue sprain/strain in both wrists and the upper thoracic spine and scapular area that have long since resolved.

By decision dated April 18, 2018, OWCP affirmed in part and modified in part the June 19, 2017 decision. It accepted and closed appellant's traumatic injury claim for a strain of other muscles, facias, and tendons at the shoulder and upper arm level in the right and left arms, sprains of the right and left wrists, and a sprain of the ligaments of the thoracic spine. OWCP also determined, however, that the evidence of record did not support that her bilateral carpal tunnel syndrome was causally related to the April 3, 2017 employment injury.

OWCP continued to receive evidence. In a September 18, 2018 medical report, Dr. Acurio disagreed with Dr. Holladay's report, explaining that the chest compressions appellant performed on the mannequin increased the swelling and pressure on the median nerve and subsequently resulted in carpal tunnel syndrome. He opined that the April 3, 2017 employment incident caused and certainly exacerbated her carpal tunnel syndrome. With regard to Dr. Holladay's report, Dr. Acurio noted that appellant had symptoms prior to the April 3, 2017 employment injury and that she had more symptoms afterwards, meaning the injury was an exacerbation of a preexisting condition.

In November 12 and December 8, 2018 medical reports, Dr. Jeffrey Fritz, Board-certified in internal medicine, noted that appellant noted pain in her neck, back, and bilateral wrists due to a work incident in which she was performing compressions on a mannequin repeatedly. He diagnosed sprains of her wrists and hands, the thoracic spine, and her upper arms.

On April 11, 2019 appellant, through counsel, requested reconsideration of OWCP's April 18, 2018 decision.

Appellant attached a March 27, 2019 medical report, in which Dr. Fritz opined that, per his review of her medical history, evaluation, and surrounding circumstances, the April 3, 2017[2] employment incident exacerbated her preexisting bilateral carpal tunnel syndrome. Dr. Fitz disagreed with Dr. Holladay's conclusion that her conditions were preexisting and therefore were not caused by her April 3, 2017 work injury. He further explained that carpal tunnel is caused by pressure on the median nerve in the carpal canal and that in a person with preexisting carpal tunnel, repetitive motions of the wrists in a short period of time can increase swelling and inflammation, putting more pressure on the median nerve and exacerbating the condition. Dr. Fritz opined that performing CPR on the mannequin required repetitive motions and extension of the wrists which increased the swelling and pressure on appellant's median nerves and thus exacerbated her bilateral carpal tunnel syndrome.

By decision dated July 5, 2019, OWCP affirmed its previous decision finding that the new medical evidence was of insufficient probative value to establish that appellant's preexisting condition of carpal tunnel was temporarily or permanently aggravated as a result of her accepted April 3, 2017 employment injury.

LEGAL PRECEDENT

When an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.[3] To establish causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence sufficient to establish such causal relationship.[4] 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.[5]

In a case where a preexisting condition involving the same part of the body is present and the issue of causal relationship therefore involves aggravation, acceleration, or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.[6]

Section 8123(a) of FECA provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary

[2] The Board notes that Dr. Fritz' report includes that the date of the employment injury was April 3, 2018, but this appears to be a typographical error as the date of the accepted employment injury was April 3, 2017.

[3] *J.G.*, Docket No. 19-1303 (issued February 6, 2020); *F.L.*, Docket No. 17-1613 (issued August 15, 2018).

[4] *K.V.*, Docket No. 18-0723 (issued November 9, 2018).

[5] *I.J.*, 59 ECAB 408 (2008).

[6] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); *N.C.*, Docket No. 19-1191 (issued December 19, 2019); *R.D.*, Docket No. 18-1551 (issued March 1, 2019).

shall appoint a third physician who shall make an examination.[7] 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 a DMA, OWCP shall appoint a third physician to make an examination.[8] When there exist 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 upon a proper factual background, must be given special weight.[9]

ANALYSIS

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

In his April 3, 2018 medical report, Dr. Holladay opined that the one-time incident on April 3, 2017 would not be consistent with known medical literature regarding the cause of carpal tunnel syndrome and that it was most likely a preexisting condition. He noted that the "A.M.A., *Guides on Disease and Injury Causation*" provide that the activity of CPR would not meet the criteria of force, repetition, and posture necessary to have a causal association. Dr. Holladay also asserted that the objective evidence in the medical record did not support the concept of an aggravation or acceleration of appellant's preexisting bilateral carpal tunnel syndrome. He summarized by stating that she sustained a soft tissue sprain/strain in both wrists and the upper thoracic spine and scapular area that have long since resolved.

In his September 25, 2017 and September 18, 2018 medical reports, Dr. Acurio explained that repetitive motions, such as performing CPR and extension of the wrists, can cause swelling and inflammation in the carpal canal, putting pressure on the median nerve. He disagreed with Dr. Holladay's findings, asserting that the April 3, 2017 employment incident exacerbated appellant's preexisting bilateral carpal tunnel syndrome. Further, in his March 27, 2019 medical report, Dr. Fritz explained that in a person with preexisting carpal tunnel, repetitive motions of the wrists in a short period of time can increase swelling and inflammation, putting more pressure on the median nerve and exacerbating the condition. Both Drs. Acurio and Fritz opined that the repetitive motions and extension of the wrists involved in performing CPR on the mannequin increased the swelling and pressure on appellant's median nerves and thus exacerbated her preexisting bilateral carpal tunnel syndrome.

The Board finds that a conflict in medical opinion has been created between appellant's attending physicians and that of the second opinion physician regarding whether her preexisting bilateral carpal tunnel syndrome was aggravated by the accepted April 3, 2017 employment injury.[10] Section 8123 of FECA provides that, if there is a disagreement between the physician

[7] 5 U.S.C. § 8123(a); *see Y.A.*, 59 ECAB 701 (2008).

[8] 20 C.F.R. § 10.321.

[9] *K.S.*, Docket No. 19-0082 (issued July 29, 2019); *V.G.*, 59 ECAB 635 (2008).

[10] *See S.M.*, Docket No. 19-0397 (issued August 7, 2019).

making the examination for the United States and the employee's physician, OWCP shall appoint a third physician who shall make an examination.[11]

As there remains an unresolved conflict in medical opinion regarding whether appellant's diagnosed bilateral carpal tunnel syndrome condition is causally related to, or a consequence of, the accepted April 3, 2017 employment injury the case shall be remanded to OWCP for creation of an updated SOAF and referral to an appropriate specialist to obtain an impartial medical opinion regarding whether the acceptance of her claim should be expanded to include his diagnosed bilateral carpal tunnel syndrome condition. Following this and any other development deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the July 8, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: May 5, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

[11] *Supra* note 7.