U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JANE L. ZALNO and U.S. POSTAL SERVICE, POST OFFICE, Clearfield, PA

Docket No. 98-243; Submitted on the Record; Issued January 3, 2000

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON, A. PETER KANJORSKI

The issues are: (1) whether appellant established that she developed carpal tunnel syndrome as a result of her December 18, 1992 employment injury and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration on the merits under 5 U.S.C. § 8128.

On December 18, 1992 appellant, then a 38-year-old postal clerk, was injured at work when an overhead letter case light fell and struck appellant on the head, causing her to twist her neck. Although appellant finished her work shift on the day of her injury, she stated on her CA-1 form, that she subsequently developed neck pain and a headache. She reported to the emergency room on December 23, 1992 where she was diagnosed with cervical spine muscle spasm. She next sought treatment from Dr. William L. Howe, a family practitioner, who prescribed physical therapy, medication and bed rest. The Office accepted the claim for a head contusion and cervical strain. Appellant was off work from December 18, 1992 to February 18, 1993 when she returned to light duty with restrictions.

Because appellant continued to complain of head and neck pain, Dr. Howe referred appellant to Dr. E.P. Roy, a Board-certified neurologist, for further treatment. Dr. Roy obtained a magnetic resonance imaing (MRI) of appellant's cervical spine on June 23, 1993, which showed multilevel degenerative changes and mild disc bulges at C5-6 and C6-7.

On July 12, 1993 appellant filed a claim alleging a recurrence of disability. Appellant stated she experienced increased pain in her neck and back as a result of having to lift packages that exceeded her lifting restrictions. She stopped work on June 15, 1993 and has not returned. The claim was later expanded by the Office to include a herniated disc.

The Office referred appellant for a second opinion evaluation with Dr. Lawrence Casale, an orthopedic surgeon, for the purpose of determining her capacity for work. In a report dated November 22, 1993, Dr. Casale opined that appellant's work-related, soft tissue injury of the

cervical spine had resolved. He also diagnosed cephalalgia and depression, but he opined that neither of those conditions were work related.

In an OWCP-5 work evaluation form dated January 14, 1994, Dr. Roy noted that appellant's cervical and spinal pain was not responding to conservative therapies. He opined, however, that appellant might be able to work four hours a day on very light duty.

During the next year, appellant was treated by Dr. Evans, an osteopath specializing in psychiatry, for chronic spine syndrome and probable depression. Appellant underwent counseling, chiropractic manipulation and a course of acupuncture at Dr. Evans request. Dr. Evans also referred appellant to Dr. Keith R. Kuhlengel, a Board-certified neurosurgeon, who, in a February 21, 1995 report, noted appellant's work injury and her multiple symptoms of neck and shoulder pain, headaches, burning sensations in the upper extremities, face and jaw and a tingling sensation in her left hand. He diagnosed a C5-6 disc herniation with nerve root compression based on a 1994 MRI report. Dr. Kuhlengel noted that appellant's film history indicated that the C5-6 level had worsened since appellant's original injury, which would explain why her pain and symptoms were chronic and progressive. He recommended a cervical discetomy, which was performed on March 20, 1995.

The Office next had appellant examined by Dr. Carroll P. Osgood, a Board-certified neurosurgeon. In her August 17, 1995 report, Dr. Osgood indicated that appellant still had a great deal of neck pain following her March 1995 discectomy and also complained of burning dysthesias in both arms. She stated that the etiology of appellant's symptoms was uncertain but suggested C5-6 cervical disc protrusion.

In a report dated February 16, 1996, Dr. Kuhlengel indicated that he saw appellant in follow-up to her surgery. He reported a normal lumbar spine, but noted appellant's continuing complaints of aching and numbness in the left extremity as well as burning sensation across her jaw, aching in her left ear and a popping sound in her right ear similar to fluid in the ear. Dr. Kuhlengel opined that appellant's myofascial syndrome was affecting her supraspinatus muscles and would account for her symptoms.

In a report dated February 26, 1996, Dr. Evans noted that appellant had a "post C5-6 fusion with continued radicular complaints." An electromyogram (EMG) performed on March 25, 1996 was reported to reveal "moderate bilateral median neuropathy at the wrist (*i.e.*, carpal tunnel syndrome) and probable right wrist neuropathy."

In a CA-20 attending physician's report dated April 29, 1996, Dr. John D. Newrick, a Board-certified plastic surgeon, noted that appellant complained of numbness and tingling in the fingers, cold sensitivity in both hands and an inability to pick up small objects. He stated that appellant's hand symptoms were "probably" aggravated by her neck pain and vice versa." Dr. Newrick diagnosed compression of the median and ulnar nerves at both wrists.

In an April 30, 1996 report, Dr. Newrick recommended that appellant undergo carpal tunnel release surgery. He stated that he could not say with accuracy that appellant's carpal tunnel syndrome was causally related to her December 18, 1992 work injury. He noted only that

it was possible that appellant's peripheral nerve compression was making the symptoms in her neck worse.

The Office next referred appellant for a second opinion evaluation with Dr. David Cooper, a Board-certified neurologist. In a July 22, 1996 report, Dr. Cooper discussed appellant's medical history and work injury. He indicated that he did not have the results of appellant's EMG but opined that based on his clinical examination, she did not present with evidence of carpal tunnel syndrome. Nonetheless, he indicated that even if she required surgery for that condition it would not be work related. Dr. Cooper specifically stated that even if appellant's work injury resulted in a herniated disc, the work injury would not have resulted in carpal tunnel syndrome or an ulnar neuropathy since those conditions were associated with overuse and repetitive motion. He noted that appellant had a tremendous amount of functional overlay and considered it a disservice to keep operating on her. Dr. Cooper approved appellant for work with medical restrictions such as no extreme neck motions and no lifting more than 20 pounds.

On July 3, 1996 the employing establishment offered appellant a modified position as clerk in accordance with Dr. Cooper's work restrictions. Appellant returned to work on August 19, 1996, worked a couple of hours and left, complaining that the job increased her symptoms.

Appellant subsequently filed a claim for a recurrence of disability beginning August 19, 1996.

Dr. Roy obtained an EMG on August 26, 1996, which he interpreted as showing borderline evidence for slight ulnar neuropathies but no carpal tunnel syndrome.

In a September 12, 1996 treatment note, Dr. Evans indicated that appellant was concerned because Dr. Roy told her she did not have carpal tunnel syndrome.[1] Dr. Evans noted, however, that appellant had right carpal tunnel syndrome based on Dr. Roy's figures, which recorded "a greater than one millisecond difference between the distal motor latency of the median and ulnar nerve on the right and borderline so on the left."

Dr. Evans apparently referred appellant for a consultation with Dr. James M. Hunter, a Board-certified neurosurgeon, who, in a report dated May 12, 1997, noted that EMG studies performed on March 13, 1997 showed "bilateral median neuropathy carpal tunnel level problems" which he attributed to appellant's December 12, 1992 work injury. He stated:

> "This information clearly removes this entity from the diagnosis of carpal tunnel syndrome. [Appellant] had a traction neuropathy of the median nerve secondary to injury it implies scar fixation of the median nerve at the wrist hand and it implies traction aspects in the forearm, which are registered to the brain as pain because the nerve is no longer able to glide. This pathogenic has no bearing on a

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[1] Dr. Roy obtained an EMG on August 26, 1996 which he interpreted as showing borderline evidence for slight ulnar neuropathies but no carpal tunnel syndrome.

carpal tunnel syndrome. There is a bearing, however, in that it relates to the area of the anatomy called the [c]arpal [t]unnel. The carpus of the wrist and of the tunnel system where the flexor tendons move and house the median nerve."

Dr. Hunter concluded that appellant's condition would not respond to the traditional open release of a carpal tunnel and would most likely be made worse by that procedure. He alternatively recommended a fasciectomy of the median nerve, which was conducted on August 8, 1997.

In order to resolve the conflict in the medical record, the Office referred appellant along with a copy of the medical record and a statement of accepted facts to Dr. Robert P. Durning, a Board-certified orthopedist, for an impartial medical evaluation, who, in a report dated April 24, 1997, noted appellant's medical history, the history of injury and physical findings. He indicated that appellant had not fully recovered from her work injury of December 18, 1992 as she continued to experience neck pain with limited motion. Dr. Durning agreed that appellant suffered from carpal tunnel syndrome but he stated that it was not caused by the work injury. He concluded that the employment "injury did not lead to the necessity for median nerve decompression."

In a decision dated May 27, 1997, the Office determined the evidence to be insufficient to establish that appellant's carpal tunnel syndrome was causally related to her accepted work injury on December 18, 1992. The Office, therefore, refused to pay medical benefits related to that condition. Appellant continued to receive compensation benefits related to her accepted back and neck conditions.

Appellant filed a request for reconsideration on June 10, 1997.

In support of her reconsideration request, appellant submitted several medical articles, an EMG report dated March 13, 1997, which revealed bilateral, median nerve carpal tunnel syndrome across both wrists and a report from Dr. Hunter dated March 13, 1997.[2]

In his March 13, 1997 report, Dr. Hunter again stated that appellant had advanced traction neuropathy of the median nerve and not carpal tunnel syndrome. He opined that appellant was disabled from work and that her condition required surgery.

In a decision dated August 20, 1997, the Office denied appellant's request for reconsideration pursuant to 5 U.S.C. § 8128.

The Board finds that appellant failed to establish that her carpal tunnel syndrome was causally related to the December 18, 1992 employment injury as alleged.[3]

[2] There are also physical therapy treatment notes but they do not constitute medical evidence since a physical therapist is not a physician for the purposes of the Federal Employees' Compensation Act; *see* 5 U.S.C. § 8101(2).

[3] Appellant submitted additional evidence subsequent to the Office's nonmerit decision. The Board, however, does not have jurisdiction to review evidence that was not before the Office at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c).

In the instant case, the Office accepted that appellant sustained a contusion to the head and cervical strain and a herniated disc when a light fell on her head in the performance of duty on December 18, 1992. The claim was expanded to include a herniated disc. After appellant underwent a cervical discectomy, she began to experience tingling and numbness in her upper extremities. Appellant's attending physician, Dr. Hunter, opined that her condition was directly related to the December 18, 1992 work injury. In contrast, Dr. Cooper, a Board-referral physician, opined that appellant suffered from carpal tunnel syndrome unrelated to her work injury.

Because there was a conflict in the medical evidence, the Office properly referred appellant for an impartial medical evaluation with Dr. Durning. Where a case is referred to an impartial medical specialist for the purpose of resolving a conflict in the medical evidence, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.[4]

In his April 24, 1997 report, Dr. Durning specifically disagreed with Dr. Hunter that appellant's median nerve damage at the wrist and her hand symptoms were causally related to appellant's work injury of December 18, 1992. Because Dr. Durning's report is based on a complete factual and medical background and is rationalized, it therefore is entitled to special weight. Because appellant failed to carry her burden of proof in establishing that her claimed carpal tunnel syndrome or median nerve condition was causally related to her work injury, the Office properly denied her compensation benefits.

The Board also finds that the Office properly denied appellant's request for a merit review.

Section 8128(a) of the Act, vests the Office with the discretionary authority to determine whether it will review an award for or against compensation.[5] The regulations provide that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a point of law; or (2) advancing a point of law or a fact not previously considered by the Office; or (3) submitting relevant and pertinent evidence not previously considered by the Office.[6] When application for review of the merits of a claim does not meet at least one of these three requirements, the Office will deny the application for review without reviewing the merits of the claim.[7] Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.[8] Evidence that does not address the particular issue involved also does not constitute a basis for reopening a case.[9] Where a claimant fails to submit relevant evidence not previously of record

[4] *Roger Dingess*, 47 ECAB 123 (1995); *Charles E. Burke*, 47 ECAB 185 (1995).

[5] 5 U.S.C. § 8128; *Jesus D. Sanchez*, 41 ECAB 964 (1990); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

[6] 20 C.F.R. § 10.138(b)(1).

[7] 20 C.F.R. § 10.138(b)(2).

[8] *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin,* 35 ECAB 1090, 1093-94 (1984).

[9] *Edward Matthew Diekemper*, 31 ECAB 224 (1979)

or advance legal contentions not previously considered, it is a matter of discretion on the part of the Office to reopen a case for further consideration under section 8128 of the Act.[10]

In support of her reconsideration request, appellant did not advance a new legal argument or show that the Office erroneously appealed or interpreted a point of law. Appellant only submitted a nerve conduction study dated March 13, 1997, which is duplicative of the prior evidence of record showing that she has carpal tunnel syndrome. Appellant also submitted a report from Dr. Hunter dated March 13, 1997 in which he reiterated his opinion, that appellant has a median nerve condition of the wrist as opposed to carpal tunnel syndrome. Evidence that is repetitive or duplicative of that already in the case record has no evidentiary value in establishing a claim and does not constitute a basis for reopening a case.[11]

Furthermore, although appellant submitted medical articles concerning the nature of and treatment necessary for median nerve neuropathy, those medical articles are not considered to be relevant medical evidence. The Board has held that newspaper clippings, medical texts and excerpts from publications are of no evidentiary value in establishing the necessary causal relationship as they are of general application and are not determinative of whether the specific condition claimed was causally related to the particular employment factors involved.[12] Consequently, inasmuch as appellant's request for reconsideration did not present new and relevant evidence, the Office properly denied her request for a merit review.

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[10] *Gloria Scarpelli-Norman*, 41 ECAB 815 (1990); *Joseph W. Baxter*, 36 ECAB 228 (1984).

[11] *James A. England*, 47 ECAB 115 (1995).

[12] *William C. Bush*, 40 ECAB 1064 (1989); *Gaetan F. Valenza,* 35 ECAB 763 (1984); *Kenneth W. Yansick,* 31 ECAB 1132 (1980).

The decisions of the Office of Workers' Compensation Programs dated August 20 and May 27, 1997 are hereby affirmed.

Dated, Washington, D.C.
January 3, 2000

George E. Rivers
Member

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member