United States Department of Labor
Employees' Compensation Appeals Board

DARLENE V. PERMUTER, Appellant	)	
and	)	**Docket No. 04-593**
	)	**Issued: June 7, 2004**
DEPARTMENT OF JUSTICE, St. Louis, MO, Employer	)	

Appearances:
Lawrence Permuter, Esq. for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On December 30, 2003 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated November 6, 2003. Pursuant to 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 her burden of proof in establishing that her conditions of left carpal tunnel syndrome and subsequent release are causally related to the accepted employment injury of February 23, 2001.

FACTUAL HISTORY

On May 29, 2001 appellant, then a 51-year-old victim witness advocate, filed a notice of traumatic injury alleging that on February 23, 2001 she sustained a traumatic injury to her cervical and lumbar spine when she slipped and fell on ice in the performance of her duties.[1] The Office accepted the claim for cervical radiculopathy. On January 17, 2002 appellant

[1] The record reflects that the date of injury was actually February 22, 2001.

amended her claim to include injury to the entire spine, left shoulder, left hand, entire left arm, left upper and lower extremities, right upper and lower extremities and body as a whole.

Appellant had been under the care of Dr. David G. Kennedy, a Board-certified neurological surgeon, who noted in a May 24, 1991 report that appellant had previous evidence of carpal tunnel syndrome which did not require intervention. On July 12, 2001 he performed a resection of the nonfusion at C5-6 with bilateral foraminotomies, C6-7 microdiscectomy, and partial vertebrectomy and fusion.[2]

In a November 5, 2001 report, Dr. Daniel Phillips, a Board-certified neurologist, noted that left ulnar motor and sensory nerve conduction studies were unremarkable and that electromyography (EMG) was consistent with left sensory motor median neuropathy across the carpal tunnel and advised that there were mild changes in the left triceps without active denervation potentials or loss of motor units, consistent with a previous cervical radiculopathy.

In a December 4, 2001 report, Dr. Kennedy noted that appellant had significant arm and hand numbness with a strongly positive Tinel's sign. He stated that he suspected that much of appellant's pain was due to carpal tunnel syndrome, although appellant did have some ongoing pain at the base of the cervical spine with some probable residuals of cervical radiculopathy. Dr. Kennedy also noted right wrist tenderness. He indicated that appellant had spondylosis at L4-5 which he suspected was the cause of appellant's pain.

By letter dated January 24, 2002, the Office advised appellant that additional medical evidence was needed regarding the conditions of cervical fusion at C5-6 and C6-7, left carpal tunnel syndrome, left carpal tunnel release, left shoulder impingement and left shoulder arthroscopy. In response, she submitted a December 5, 2001 report in which Dr. William B. Strecker, a Board-certified orthopedic surgeon, noted complaints of left hand and arm pain and diagnosed carpal tunnel syndrome. On December 12, 2001 Dr. Strecker performed a left carpal tunnel release.

In a decision dated April 3, 2002, the Office denied appellant's claim for an expansion to include left carpal tunnel syndrome and release.[3] By letter dated April 22, 2002, appellant and her representative requested a hearing.

In an April 23, 2002 report, Dr. Strecker reported the history of injury as related by appellant, included landing on her left hand and injuring her left shoulder. He noted that appellant had no prior history of carpal tunnel syndrome and subsequently developed a history

[2] During the same operation, Dr. David Raskas, a Board-certified orthopedic surgeon, performed a C5-6 pressure vertebrectomy and a C5-6 micro dissection. The record also contains a January 14, 1991 discharge summary, in which Dr. E. Schmidt, a Board-certified internist, diagnosed *inter alia* cervical radiculopathy, cervical disc herniations at C4-5 and C5-6, post microdiscectomy and fusion at C4-5 and C5-6 and osteoarthritis. Additionally, appellant was treated for sciatica in 1999.

[3] The Office advised appellant that a decision regarding her cervical fusion at C5-6 and C6-7, left shoulder impingement, and left shoulder arthroscopy was pending the review of a second opinion examination and other case file information.

after the fall. Dr. Strecker opined that the carpal tunnel was of a traumatic nature and the fall was a "significant contributing factor."

The Office subsequently referred appellant for a second opinion examination with Dr. David Lange, a Board-certified orthopedic surgeon. In a May 16, 2002 report, Dr. Lange noted the history of injury and medical treatment and concluded that appellant's left carpal tunnel syndrome was not related to the fall in February 2001 but that it was a natural progression of her preexisting condition.

On June 11, 2002 the Office authorized left shoulder arthroscopy and subacromial decompression and retroactively authorized decompression and fusion at C5-6 and C6-7.[4]

At the hearing held on October 23, 2002, appellant testified regarding the February 2001 fall and her carpal tunnel condition. She also submitted an October 10, 2002 report in which Dr. Strecker advised that appellant was initially seen on December 5, 2001 with a history that she sustained a fall and landed on her left hand, and injured her shoulder and neck. He indicated that after persistent ongoing hand and arm pain, a nerve conduction study was performed which revealed left carpal tunnel syndrome. Dr. Strecker noted that appellant's history did not include any carpal tunnel symptoms until after her fall in February 2001. He opined that it was a "significant and contributing factor to the development of her carpal tunnel syndrome."

In a November 1, 2002 medical report, Dr. Strecker reviewed Dr. Kennedy's May 24, 1991 report and explained that, although appellant had an EMG consistent with mild carpal tunnel syndrome in 1991, she did not have any complaints at that time. He noted that Dr. Kennedy did not recommend intervention, and that appellant did not seek medical attention or have any complaints of carpal tunnel syndrome until the February 2001 fall, which he again opined was the cause of appellant's carpal tunnel syndrome.

By decision dated December 4, 2002, the Office hearing representative vacated the April 3, 2002 decision and remanded the case. The Office hearing representative requested that the Office refer appellant to an impartial medical specialist to resolve the conflict in medical opinion between Drs. Strecker and Lange on the issue of whether the left carpal tunnel syndrome was causally related to the February 22, 2001 accident.

On December 19, 2002 the Office referred appellant along with the medical record, a set of questions, and a statement of accepted facts, to Dr. Michael Ralph, a Board-certified orthopedic surgeon, for an impartial medical examination. In a January 15, 2003 report, Dr. Ralph noted appellant's history of injury and treatment and reviewed the medical records. He noted that appellant had "significant activity tremors on both upper extremities," and that radiographs of the left wrist were normal. Dr. Ralph opined that appellant was post-carpal tunnel release with some resolution of her symptamatology. In a January 25, 2003 addendum report, he explained that carpal tunnel syndrome was caused by repetitive use of the hands and wrist and was not related to trauma, except when the trauma was in "the nature of a displaced fracture."

[4] By letter dated June 14, 2002, appellant's attorney requested a number of subpoenas. The record contains a memorandum to file dated September 6, 2002 advising that the attorney withdrew the request.

Dr. Ralph noted that appellant did not complain of any symptoms until approximately a year after the work injury. He indicted that appellant worked minimally or not at all during that time frame and it was "impossible" to relate her increased symptoms to repetitive use at work. Dr. Ralph also noted that appellant had symptoms dating back to 1991. He concluded that appellant's left carpal tunnel syndrome and subsequent surgery were not related to the February 2001 fall at work.

In a January 31, 2003 decision, the Office found that the medical evidence did not establish that appellant's left carpal tunnel syndrome with subsequent surgery were causally related to her February 22, 2001 injury.

By letter dated February 18, 2003, appellant and her representative requested a hearing, which was held on August 21, 2003. Following the hearing, the Office received additional reports from Dr. Kennedy which indicated that appellant continued to experience left arm and leg pain as well as cervical and lumbar radiculopathy which left her disabled from any type of employment.

By decision dated November 6, 2003, the Office hearing representative affirmed the January 31, 2003 decision.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act has the burden of establishing the essential elements of his or her claim, including the fact that an injury was sustained in the performance of duty as alleged and that any disability for which compensation is claimed is causally related to the employment injury.[5] The evidence required to establish causal relationship is rationalized medical evidence, based on a complete factual and medical background, showing a causal relationship between the claimed medical condition and the identified factors.[6] An award of compensation may not be based on surmise, conjecture, speculation or the claimant's belief of causal relationship. The claimant must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relationship.[7] The mere manifestation of a condition during a period of employment does not raise an inference of causal relationship between the condition and the employment.[8] Neither the fact that the condition became apparent during a period of employment nor the claimant's belief that the employment caused or aggravated her condition is sufficient to establish causal relationship.[9] Furthermore, section 8123(a) of the Act provides: "[i]f there is disagreement between the physician making the examination for the United States

[5] *William F. Gay*, 50 ECAB 276 (1999); *Duane B. Harris*, 49 ECAB 170 (1997).

[6] *Dennis Mascarenas*, 49 ECAB 215 (1997).

[7] *Kenneth R. Love*, 50 ECAB 193 (1998); *Michael E. Smith*, 50 ECAB 313 (1999); *Mary J. Briggs*, 37 ECAB 578, 581 (1986).

[8] *Edward E. Olson*, 35 ECAB 1099, 1103 (1984).

[9] *Patricia J. Glenn*, 53 ECAB ___ (Docket No. 01-65, issued October 12, 2001); *Bruce Martin*, 35 ECAB 1090, 1093 (1984); *Dorothy R. Goad*, 5 ECAB 192, 193 (1952).

and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."[10] Where 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 upon a proper factual background, must be given special weight.[11]

ANALYSIS

In this case, the issue presented for consideration is whether there is a causal relationship between appellant's February 2001 work injury and the diagnosed condition of left carpal tunnel syndrome. The Office determined that a conflict of medical opinion existed based on the opinions of Dr. Strecker, appellant's Board-certified orthopedic surgeon, and Dr. Lange, a Board-certified orthopedic surgeon and Office referral physician,[12] and referred appellant to Dr. Ralph, Board-certified in orthopedic surgery, for an impartial examination.

The Board has carefully considered the report of Dr. Ralph and finds that it is well rationalized and based on a proper factual background. After a thorough discussion of appellant's work injury and his history of medical treatment, Dr. Ralph opined that appellant's condition of carpal tunnel syndrome and subsequent release was not causally related to the accepted work injury. The impartial medical examiner explained that appellant was post-carpal tunnel release and that her carpal tunnel was not related to the February 2001 fall as appellant did not complain of any symptoms until more than a year after the work injury. He noted that appellant did not work in any significant repetitive capacity during that time such that her symptoms would be related to her employment, and that, except in the case of a displaced fracture, carpal tunnel syndrome was not caused by trauma. The physician also explained that, because appellant had carpal tunnel symptoms dating back to 1991 and did not complain of symptoms until a year after the incident, there was no evidence that her carpal tunnel syndrome and subsequent surgery were related to the accepted employment injury.

The Board finds that the Office properly relied on the impartial medical examiner's January 15 and 25, 2003 reports as a basis for determining that appellant's carpal tunnel syndrome and subsequent release were not causally related to the accepted injury. Dr. Ralph's opinion is sufficiently well rationalized and based upon a proper factual background. He not only examined appellant, but also reviewed appellant's medical records. Dr. Ralph also reported accurate medical and employment histories. In cases where the Office has referred appellant to an impartial medical examiner to resolve a conflict in the medical evidence, the opinion of such a specialist, if sufficiently well rationalized and based upon a proper factual background, must be

[10] *Richard L. Rhodes*, 50 ECAB 259 (1999); *Noah Ooten*, 50 ECAB 283 (1999); *Rosita Mahana* (*Wayne Mahana*), 50 ECAB 331(1999); *Richard Coonradt*, 50 ECAB 360(1999); *Gwendolyn Merriweather*, 50 ECAB 411 (1999); *Marsha R. Tison*, 50 ECAB 535(1999).

[11] *James R. Driscoll*, 50 ECAB 146 (1998).

[12] As previously noted, appellant's treating physician, Dr. Strecker, reported that appellant's carpal tunnel syndrome was caused by the employment injury, while Dr. Lange, the Office referral physician, indicated that appellant's carpal tunnel syndrome was not related to the accepted injury but rather a progression of her preexisting condition.

given special weight.[13] The Office properly accorded determinative weight to the impartial medical examiner's January 15 and 25, 2003 findings.

Appellant subsequently provided additional treatment notes and reports from her treating physician, Dr. Kennedy; however, he did not provide any opinion on causal relationship. In a March 5, 2003 report, Dr. Kennedy indicated that appellant had a significant amount of pain in the neck, left arm, wrist and hand and had a significant disability which precluded her from her former line of work in a full-duty capacity without restrictions. In a May 21, 2003 report, Dr. Kennedy noted that appellant had left arm numbness for the past three weeks with intermittent numbness into the third, fourth and fifth fingers of the left hand. In his July 17, 2003 report, Dr. Kennedy indicated that appellant could not pursue any gainful employment. However, these reports are of limited probative value on the issue in the present case in that he did not provide any opinions on causal relationship.[14]

The Board therefore finds that the medical evidence is insufficient to establish that appellant's left carpal tunnel syndrome was caused or contributed to by the accepted injuries.

CONCLUSION

Appellant has not met her burden of proof to establish that her left carpal tunnel syndrome and subsequent release are causally related to her accepted employment injuries.

[13] *Gary R. Sieber*, 46 ECAB 215, 225 (1994).

[14] *Michael E. Smith*, *supra* note 7.

ORDER

IT IS HEREBY ORDERED THAT the November 6, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 7, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member