United States Department of Labor
Employees' Compensation Appeals Board

R.H., Appellant	)	
	)	**Docket No. 06-1189**
and	)	**Issued: September 15, 2006**
U.S. POST OFFICE, POSTAL SERVICE, Los Angeles, CA, Employer	)	

Appearances:
Max Gest, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On May 3, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated January 25, 2006, which denied appellant's claim for cervical and lumbar strain and fibromyalgia. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue on appeal is whether appellant has met her burden of proof in establishing that she developed a cervical sprain/strain, bilateral carpal tunnel syndrome, lumbar sprain/strain, lumbar facet syndrome, bilateral chondromalacia and fibromyalgia in the performance of duty.

FACTUAL HISTORY

On May 28, 2003 appellant, then a 47-year-old distribution window clerk, filed an occupational disease claim alleging that she developed a condition of the muscles, joints, bones

and nerves while performing her clerk duties. She became aware of her condition on December 23, 2002. Appellant stopped work on January 7, 2003 and did not return.[1]

Appellant submitted reports from Dr. Isaac Schmidt, a Board-certified orthopedist, dated January 6 and March 27, 2003. Dr. Schmidt noted that she presented with increased neck and back pain as well as pain all over. Appellant reported that, on December 23, 2002, while performing her window clerk duties which included prolonged sitting, standing, heavy lifting, carrying, pushing and pulling objects weighing up to 70 pounds, she developed pain in her neck, bilateral hands and low back. Dr. Schmidt diagnosed cervical sprain/strain, bilateral carpal tunnel syndrome, lumbar sprain/strain, lumbar facet syndrome and bilateral chondromalacia and advised that appellant was temporarily totally disabled.

In a letter dated June 16, 2003, the Office advised appellant of the evidence needed to establish her claim and requested she submit it within 30 days.

In a April 28, 2003 report, Dr. Alejandro Katz, a Board-certified neurologist, diagnosed fibromyalgia and referred appellant for acupuncture. Appellant also submitted a statement describing her work duties which included selling stamps, casing mail, lifting packages up to 70 pounds, repetitive writing and keying, prolonged standing, bending and stooping.

The employing establishment submitted letters dated June 14 and 15, 2003, controverting appellant's claim. It contended that appellant informed her manager that her injury was due to a fall she sustained at home.

In a decision dated August 20, 2003, the Office denied appellant's claim.

In a letter dated October 1, 2003, appellant requested an oral hearing that was held on April 21, 2004. On August 8, 2003 Dr. Schmidt noted that appellant's job duties as a window clerk required prolonged standing, bending, stooping, the use of a keyboard and lifting packages, all of which contributed to her complaints of hand and knee pain. He indicated that the cumulative type of trauma and repetitive motion activities contributed to the creation and aggravation of fibromyalgia. In reports dated August 29, 2003 to April 6, 2004, Dr. Schmidt diagnosed cervical sprain/strain, bilateral carpal tunnel syndrome, lumbar sprain/strain, lumbar facet syndrome and bilateral chondromalacia and recommended lumbar facet injections. A magnetic resonance imaging (MRI) scan of the lumbar spine dated October 25, 2003 revealed a cyst encroaching into the right lateral recess at L4-5 and the possibility of right-sided nerve roots. An MRI scan of the cervical spine of the same date revealed mid-cervical spondylosis. Dr. Jeffrey A. Hirsch, a Board-certified internist, noted on a history of appellant's work injury and subsequent treatment January 20, 2004. He diagnosed musculoskeletal/orthopedic injuries, hypertension, history of peripheral edema due to venous insufficiency, widespread pain syndrome with multiple associated symptoms best characterized as fibromyalgia syndrome. He stated that appellant developed widespread pain syndrome or fibromyalgia and opined that the only credible source of musculoskeletal/orthopedic injury was her arduous job, standing on her feet and the repetitive biomechanical stress of her job duties. A March 30, 2004 report from

[1] Appellant filed a prior claim for injuries sustained on June 14, 1996 when she tripped while in the performance of duty. The Office accepted appellant's claim for a cervical strain, in file No. 13-1109946.

Dr. Henry S. Johnson, a Board-certified internist, noted a comprehensive history of appellant's condition and diagnosed chronic fibromyalgia, carpal tunnel syndrome and depression. He opined that fibromyalgia was most commonly associated with physical stress factors encountered in the cumulative industrial industry.

By decision dated August 2, 2004, an Office hearing representative set aside the August 20, 2003 decision and remanded the case for further development.

On October 21, 2004 the Office referred appellant for a second opinion to Dr. H. Harlan Bleecker, a Board-certified orthopedic surgeon, to determine whether her claimed cervical or lumbar conditions, fibromyalgia or a chronic pain syndrome were a result of her work duties. The Office provided Dr. Bleecker with appellant's medical records, a statement of accepted facts and a description of her employment duties.

In a November 10, 2004 report, Dr. Bleecker noted reviewing appellant's history and the medical record. He noted findings upon physical examination of difficulty getting on and off the examining table, limited range of motion of the neck in flexion, extension, rotation and bending, limited range of motion of the back in flexion, extension and bending, normal range of motion of the upper extremities, negative Phalen's test bilaterally, sensory examination was within normal limits and there was no evidence of crepitus or chondromalacia. Dr. Bleecker described appellant's cervical and lumbar MRI scans as essentially normal within her age group and the nerve conduction studies of both upper extremities were negative. Appellant stopped work in January 2003 due to an upper respiratory infection. Dr. Bleecker opined that the activities of appellant's work as a clerk would not have caused chronic pain syndrome or fibromyalgia. He found no evidence of cervical or lumbar sprain, chondromalacia of the patellae or carpal tunnel syndrome, only that of depression. Dr. Bleecker noted that appellant exhibited multiple trigger points of pain as seen in fibromyalgia; however, he believed her condition was not a musculoskeletal disease but a psychiatric condition. He indicated that appellant had no real objective findings and would need no further orthopedic treatment. Dr. Bleecker opined that appellant was totally disabled because of her mental condition of depression.

In a decision dated December 16, 2004, the Office denied appellant's claim on the grounds that the weight of the evidence as established by the Office referral physician did not demonstrate that appellant developed the diagnosed conditions as a result of her employment duties.

In a letter dated December 22, 2004, appellant requested an oral hearing that was held on December 8, 2005. In a December 16, 2004 report, Dr. Schmidt noted findings upon physical examination of the cervical spine of tenderness to palpation over the paracervical and trapezius musculature bilaterally with decreased range of motion and with regard to the lumbar spine tenderness of the bilateral sacroiliac joints and paravertebral musculature. He diagnosed cervical sprain/strain, mild degenerative hypertrophy of the legamenta flava at C5-6 and C6-7, bilateral carpal tunnel syndrome, lumbar sprain/strain, lumbar facet syndrome, L4-5 focal cyst encroaching into the lateral recess, bilateral chondromalacia and depression. Dr. Schmidt reviewed the report of Dr. Bleecker and opined that he was incorrect in stating that appellant stopped work in January 2003 due to a respiratory infection. Rather, Dr. Schmidt believed that her condition was a multiple spread symptomology. Dr. Schmidt opined that appellant had

underlying fibromyalgia that was caused and aggravated by her repetitive work duties. He further opined that appellant performed repetitive duties for over 10 years and her symptomology commenced during this time and he believed her condition was solely related to her industrial environment. Dr. Schmidt summarized Dr. Hirsch's report of January 20, 2004 and concurred in his determination that the only credible source of appellant's musculoskeletal orthopedic injury was her arduous job, which included prolonged standing. He provided a detailed summary of his prior reports and treatment of appellant.

On March 2, 2005 appellant contended that Drs. Schmidt and Hirsch opinions were more probative than that of Dr. Bleecker or that the Office should find a conflict of medical opinion.

In a decision dated January 25, 2006, the hearing representative affirmed the December 16, 2004 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 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 the 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. 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.[2]

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) 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 diagnosed condition is causally related to the employment factors identified by claimant. The medical evidence required to establish causal relationship is generally rationalized medical opinion 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.[3]

[2] *Gary J. Watling*, 52 ECAB 357 (2001).

[3] *Solomon Polen*, 51 ECAB 341 (2000).

ANALYSIS

On May 28, 2003 appellant filed an occupational disease claim alleging that she developed a cervical sprain/strain, bilateral carpal tunnel syndrome, lumbar sprain/strain, lumbar facet syndrome, bilateral chondromalacia and fibromyalgia while performing her clerk duties. In a decision dated January 25, 2006, the hearing representative affirmed an Office decision denying appellant's claim on the grounds that the weight of the evidence as established by the Office referral physician did not demonstrate that appellant developed the diagnosed conditions as a result of her employment duties.

The Board finds that there is a conflict in medical opinion between Dr. Bleecker, the Office referral physician and Dr. Schmidt, appellant's treating physician, both of whom are Board-certified specialists.

Dr. Bleecker opined that appellant had no real objective orthopedic findings and found no evidence of cervical or lumbar sprain, chondromalacia of the patellae, carpal tunnel syndrome or fibromyalgia. He opined that the activities of appellant's work as a clerk would not have caused fibromyalgia and believed her condition was not a musculoskeletal disease but of a psychiatric origin. By contrast, Dr. Schmidt stated that appellant's job duties as a window clerk required prolonged standing, bending and stooping, use of a keyboard and lifting packages, which contributed to appellant's complaints of hand and knee pain. He noted that the cumulative type of trauma and repetitive motion activities of appellant's job also contributed to the creation and aggravation of the diagnosed condition of fibromyalgia. Dr. Schmidt found that the only credible source of appellant's various conditions was her job, which required prolonged standing. He supported that appellant developed a cervical sprain/strain, bilateral carpal tunnel syndrome, lumbar sprain/strain, lumbar facet syndrome, bilateral chondromalacia and fibromyalgia while performing her clerk duties. Dr. Bleecker found no objective orthopedic evidence of cervical or lumbar sprain, chondromalacia of the patellae, carpal tunnel syndrome or fibromyalgia and believed appellant's condition was of a psychiatric origin. The Board, therefore, finds that a conflict in medical opinion has been created.

Section 8123 of the Act[4] provides that, if there is a disagreement between the physician making the examination for the United States and the employee's physician, the Office shall appoint a third physician who shall make an examination.[5]

The case, therefore, will be remanded for an impartial medical specialist to resolve the conflict in the medical opinions. On remand, the Office should refer the case record and a statement of accepted facts to an appropriate physician pursuant to section 8123(a) of the Act. Following this and such further development as the Office deems necessary, it shall issue a *de novo* decision.

[4] 5 U.S.C. §§ 8101-8193.

[5] 5 U.S.C. § 8123(a); *see also Charles S. Hamilton*, 52 ECAB 110 (2000); *Leonard M. Burger*, 51 ECAB 369 (2000); *Shirley L. Steib*, 46 ECAB 39 (1994).

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 25, 2006 is set aside and the case remanded to the Office for further action consistent with this decision.

Issued: September 15, 2006
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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