United States Department of Labor
Employees' Compensation Appeals Board

L.S., Appellant	)	
and	)	**Docket No. 07-2163**
	)	**Issued: April 28, 2008**
U.S. POSTAL SERVICE, POST OFFICE, Philadelphia, PA, Employer	)	

Appearances:
Thomas R. Uliase, 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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 21, 2007 appellant, through counsel, filed a timely appeal from the decision of the Office of Workers' Compensation Programs, in File No. 03-2006734, dated March 2, 2007 wherein the hearing representative affirmed the Office's decision that appellant had not established entitlement to compensation benefits as a result of employment-related disability after September 13, 2004. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction to review the merits of this claim.

ISSUE

The issue is whether appellant has established that she is entitled to compensation benefits after September 13, 2004 causally related to the accepted employment injuries.

FACTUAL HISTORY

This case has been before the Board on prior appeal. By decision dated July 5, 2006, the Board affirmed the Office hearing representative's August 18, 2004 decision, finding that appellant failed to meet her burden of proof to establish a recurrence of disability commencing

February 26, 2003, causally related to her accepted bilateral carpal tunnel syndrome. The findings of law and fact as set forth in the prior opinion are hereby incorporated by reference.[1] The relevant facts are set forth below.

On March 6, 2002 appellant, then a 50-year-old clerk, filed an occupational disease claim alleging that as a result of 16 years of keying and lifting she had developed carpal tunnel syndrome. By letter dated June 7, 2002, the Office accepted her claim for bilateral carpal tunnel syndrome. The Office authorized left and right carpal tunnel release surgeries on June 7, 2002. Dr. James Raphael, a Board-certified orthopedic surgeon, performed a right carpal tunnel release on July 8, 2002. Appellant stopped work on July 8, 2002 and returned to regular-duty work effective October 15, 2002. The left carpal tunnel surgery was authorized but not performed at that time.

Appellant filed a claim for recurrence of disability beginning July 13, 2004, noting that left wrist surgery was performed on July 14, 2004. Specifically, on that date, Dr. Scott M. Fried, an osteopath, performed a median neuropathy with brachial plexopathy left upper extremity. Although the Office initially denied appellant's claimed disability resulting from this surgery, by decision dated November 2, 2005, the hearing representative advised the Office that, as it had previously authorized left wrist surgery in 2002, it was to authorize this surgery. On remand, the Office was to obtain medical evidence to determine the appropriate period of disability.

In an October 4, 2004 chart note, Dr. Fried listed his impressions as repetitive strain injury secondary to keying and repetitive activity as a data entry clerk; median neuropathy with flexor tenosynovitis bilaterally, proximately radiculitis with brachial plexitis bilaterally, status postoperative on July 2002 right carpal tunnel release and July 13, 2004 median nerve decompression with neurolysis and tenosynovectomy. He noted that he did not foresee appellant returning to repetitive activities. Dr. Fried also opined that appellant was "unable to return to her work activities and notes increased activity definitely increases her symptoms." In a chart note dated May 16, 2005, he noted that appellant was overall stable, but definitely remains with symptoms. Dr. Fried noted that appellant's major symptomatology is the right brachial plexus down through her arm, although her left side is problematic as well. He noted that appellant complained of a "relatively constant burning and is awakened regularly with her pain, discomfort, numbness and tingling." Dr. Fried also noted positive compression radial nerve both forearms, right side greater than left, and median nerve is positive right and moderate left. He noted, "Phalen's is positive right side greater than left for dysesthesias and a hand sensation about the plexus. Reos and Hunter testing are mildly positive, again right side greater, reproducing dysesthesias." Dr. Fried noted that appellant remained with significant symptoms. He recommended a spa program and also indicated that appellant was a candidate for pain management and self-hypnosis techniques.

[1] Docket No. 05-1231 (issued July 5, 2006).

By letter dated June 23, 2006, the Office referred appellant to Dr. Steven Valentino, an osteopath. In a medical opinion dated July 18, 2006, Dr. Valentino diagnosed bilateral carpal tunnel release. He concluded:

> "Review of medical records did not substantiate a recurrence of disability occurring on March 26, 2002. Given, however, that the diagnosis of bilateral carpal tunnel syndrome was accepted as being related to the original work injury, a period of two-months disability subsequent to the surgery on the left which occurred on [July 13, 2004] would have been reasonable. Total disability and maximum medical improvement would typically have been in reach by [September 14, 2004] and the records do not substantiate any additional disability. Today's evaluation revealed multiple subjective complaints without objective basis. I find no organic basis to her ongoing symptomatology or residual from her work injury. I find she can return to gainful employment including her preinjury position as related to her work-related diagnosis of bilateral carpal tunnel syndrome.

In a decision dated August 15, 2006, the Office approved compensation for total disability from July 13 to September 13, 2004. It denied compensation beyond September 14, 2004 as the weight of the evidence, as represented by the opinion of Dr. Valentino, did not support a relationship between total disability after this time and appellant's surgery to the left carpal tunnel.

By letter dated August 18, 2006, appellant requested a hearing. At the hearing held on December 13, 2006, her attorney argued that there was a conflict between the opinions of Drs. Fried and Valentino and also raised questions as to whether Dr. Valentino was an impartial medical examiner or a second opinion physician and whether Dr. Valentino was properly appointed.

In a decision dated March 2, 2007, the Office hearing representative affirmed the Office's August 15, 2006 decision.

LEGAL PRECEDENT

As used in the Federal Employees' Compensation Act, the term disability means incapacity, because of an employment injury, to earn wages the employee was receiving at the time of injury. When the medical evidence establishes that the residuals of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing his employment, she is entitled to compensation for any loss of wage-earning capacity resulting from such incapacity.[2]

Whether a particular injury causes an employee to become disabled for work and the duration of that disability are medical issues that must be resolved by a preponderance of the reliable, probative and substantial evidence.[3] The medical evidence required is rationalized

[2] *Bobby W. Thornbuckle*, 38 ECAB 626 (1987).

[3] *Edward H. Horton*, 41 ECAB 301 (1989).

medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issues of whether there is a causal relationship between appellant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of appellant, 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 appellant.[4]

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.[5] In situations where there are 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 on a proper factual background, must be given special weight.[6]

ANALYSIS

In the instant case, the Office accepted appellant's claim for bilateral carpal tunnel syndrome and for the necessary surgeries. On July 14, 2004 appellant underwent an accepted median neuropathy with brachial plexopathy left upper extremity. Dr. Fried, appellant's treating physician, indicated in his chart note of October 4, 2004 that he treated appellant for, among other things, repetitive strain injury secondary to keying and repetitive activity as in data entry, that she was unable to return to her work activities and pointed out that "increased activity definitely increases her symptoms." In a chart note dated May 16, 2005, he noted that appellant remained symptomatic. Dr. Fried, however, did not offer an opinion on whether appellant was disabled for any specific period of time. He diagnosed symptoms and enumerated possible treatment but that is not relevant to the question of whether appellant was able to work.

In a report dated June 23, 2006, Dr. Valentino, the second opinion physician, opined that total disability and maximum medical improvement from appellant's July 14, 2004 surgery would have typically been reached by September 14, 2004 and that the records do not substantiate any additional disability. This opinion is not contradicted in the record. Based on Dr. Valentino's opinion, the Office found that appellant was not entitled to compensation for disability after September 14, 2004.

The Office is not empowered to search for opinions which may be inferred or guessed from the reports of treating or examining physicians. The law requires that medical opinions be rationalized and explicit. On this record, the weight of the evidence rests with Dr. Valentino.

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

[5] 5 U.S.C. § 8123(a).

[6] *Kathryn E. DeMarsh*, 56 ECAB 677 (2005).

CONCLUSION

The Board finds that appellant has not offered rationalized medical evidence on the question of whether she had a continuing disability after September 13, 2004.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 2, 2007 is affirmed.

Issued: April 28, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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