United States Department of Labor
Employees' Compensation Appeals Board

D.O., Appellant	)	
and	)	**Docket No. 07-2001**
	)	**Issued: January 22, 2008**
U.S. POSTAL SERVICE, GENERAL MAIL FACILITY, Cleveland, OH, Employer	)	

Appearances:
Appellant, pro se
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 July 25, 2007 appellant filed a timely appeal from the May 2, 2007 decision of the Office of Workers' Compensation Programs denying her occupational disease claim. 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 established that she sustained carpal tunnel syndrome of her right wrist in the performance of duty.

FACTUAL HISTORY

On November 15, 2006 appellant, then a 47-year-old clerk, filed an occupational disease claim for pain, weakness and numbness in her right hand since April 2006. She stated that her left hand carpal tunnel syndrome required her to work with her right hand only, which contributed to complications in her right hand. Appellant delayed filing the claim because she was off work for left hand carpal tunnel surgery and recovery. On November 24, 2006 the Office requested additional factual and medical information related to her claim.

On December 7, 2006 Dr. Robert Leb, a Board-certified orthopedic surgeon, treated appellant for right wrist pain. He reported that, in April 2006, she began experiencing numbness and stiffness in the tips of her fingers that sometimes shot to her elbows. Appellant believed her right-hand work restrictions were the cause of her condition. She could not write with her right hand without experiencing numbness and stiffness in her fingers. Appellant also had problems with her right wrist at night. On examination, Dr. Leb found general tenderness around the right wrist, but no bruising, swelling or redness. Appellant's range of motion and motor strength were within normal limits and she had no thenar or hypothenar atrophy. Dr. Leb noted that her grip strength was weak and that antidromic Tinel's and Phalen's tests were positive. He diagnosed right carpal tunnel syndrome and fit appellant with a wrist splint. Dr. Lev recommended carpal tunnel release surgery. In a series of x-rays conducted on December 7, 2006, Dr. Leb found no significant soft tissue swelling or evidence of fracture or dislocation in the right wrist. He also found no evidence of advanced arthritic changes. Dr. Leb noted that the carpal bones were in an acceptable position.

By decision dated January 24, 2007, the Office denied appellant's claim on the grounds that she did not identify which work factors caused her right wrist condition.

In an undated letter received by the Office on January 26, 2007, appellant stated that she had been assigned right-handed work for two years while undergoing treatment for her left hand. On April 30, 2006 while counting mail and preparing a report, appellant experienced numbness and tightening in her right hand fingers, with pain shooting through her wrists to her elbows. She was unable to grip a pen for an hour at a time. Appellant experienced these conditions continuously from that time.

In an undated report, Dr. Leb stated that he examined appellant's right wrist on December 7, 2006 and found that her symptoms were consistent with carpal tunnel syndrome. He noted that appellant had been on right hand only work restrictions because of her left wrist carpal tunnel syndrome which required surgery. While working with her right hand, appellant developed pain, numbness and tingling in that hand. A March 23, 2006 nerve conduction study showed mild carpal tunnel syndrome in appellant's right wrist as well as her left. He opined, to a reasonable degree of medical certainty, that appellant's one-handed duty was required because of her left-wrist surgery. In turn, this duty aggravated her right carpal tunnel syndrome. Dr. Lev appended the March 2006 nerve conduction study, which diagnosed mild bilateral median and ulnar nerve sensory neuropathy indicative of mild entrapment at both wrists.

On February 7, 2007 appellant requested reconsideration of the Office's January 24, 2006 decision. She stated that her duties for the prior two years consisted of counting mail every two hours for eight hours a day. Appellant wrote reports and carried materials under 10 pounds. When she started her light-duty assignment, appellant carried a clipboard, but then switched to a small notebook. Appellant was assigned to unit 110, where she counted the mail volume for 10 different groups. In unit 128, she counted mail for 5 different groups. She checked the color of the mail and wrote down the volume and color code for the mail. The entire process took 45 minutes. Appellant provided sample report worksheets.

On March 9, 2007 Edward Trusnik, the distribution operations supervisor, stated that appellant had not lifted anything beyond a pencil and a piece of paper in two years. He stated

that she counted mail for only two hours per night and that the rest of the time she was on "operation 340," the designation for time when an employee is unable to work because of his or her limitations. Mr. Trusnik stated that the majority of the time appellant was on operation 340 she played a touch-screen video game.

On April 4, 2007 appellant stated that Mr. Trusnik had not been her supervisor in four years and had no direct knowledge of her job duties. She stated that she never played videogames at work. In an undated letter received by the Office on April 16, 2007, appellant stated that she had never counted mail for Mr. Trusnik and that her supervisors, in chronological order, were Leroy Woodward, Erin Armstrong and Veronica Doleman.

On April 12, 2007 Ms. Armstrong stated that she was the primary supervisor at units 110 and 128 from January to May 2006. She stated that appellant provided counts every two hours and made a final count at the end of the tour. Each mail count lasted approximately one hour. Appellant walked around each unit and staging area with a note pad to record the mail volume. She would then go to the office and transfer the numbers to a dry erase board.

On April 12, 2007 Mr. Trusnik stated that appellant did not count mail for units 110 or 128. He stated that the current supervisors, Cecilia Cichra and Joseph Bambic, informed him that appellant did not perform mail counts for them. Mr. Trusnik reported that Yvonne Robinson, the manager of distribution operations, stated that appellant was supposed to count for units 110 and 128, but "never did, because she was never [at work]."

In an undated letter, appellant stated that she filed a Form CA-2 in November 2006 because her condition was worsening and that she had not heard anything about her 2005 claim. She contended that right wrist carpal tunnel syndrome was caused by lifting and pushing of small parcel with her right hand.

By decision dated May 2, 2007, the Office denied modification of its January 24, 2007 decision. It found that there was conflicting evidence between appellant and Mr. Trusnik as to the frequency and duration of time that she was involved in mail counting. The Office stated that appellant had not explained how she used her right hand in the performance of duty and provided no description of the actual physical requirements of counting or how the duties hurt her wrist. It found that the medical evidence was insufficient to establish a causal relationship because Dr. Leb did not identify the work factors he believed caused or contributed to appellant's symptoms.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[1] 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 filed within the applicable time limitation; that an injury was sustained while in the performance

[1] 5 U.S.C. §§ 8101-8193.

of duty as alleged; and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.[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;[3] (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;[4] and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.[5]

The employee has the burden of establishing the occurrence of the alleged injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantive evidence.[6] An employee has not met this burden when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.[7] However, an employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.[8]

When determining whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors, the Office generally relies on the rationalized opinion of a physician.[9] To be rationalized, the opinion must be based on a complete factual and medical background of the claimant[10] and must be one of reasonable medical certainty,[11] explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[12]

ANALYSIS

The Office noted that appellant counted mail at the employing establishment, but found that she had not established the frequency, duration or extent of this activity. It found that

[2] *Caroline Thomas*, 51 ECAB 451 (2000); *Elaine Pendleton*, 40 ECAB 1143 (1989).

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

[4] *Marlon Vera*, 54 ECAB 834 (2003); *Roger Williams*, 52 ECAB 468 (2001).

[5] *Ernest St. Pierre*, 51 ECAB 623 (2000).

[6] *John J. Carlone*, 41 ECAB 354 (1989).

[7] *Louise F. Garnett*, 47 ECAB 639, 643-44 (1996).

[8] *Constance G. Patterson*, 41 ECAB 206 (1989).

[9] *Conrad Hightower*, 54 ECAB 796 (2003); *Leslie C. Moore*, 52 ECAB 132 (2000).

[10] *Tomas Martinez*, 54 ECAB 623 (2003); *Gary J. Watling*, 52 ECAB 278 (2001).

[11] *John W. Montoya*, 54 ECAB 306 (2003).

[12] *Judy C. Rogers*, 54 ECAB 693 (2003).

Dr. Leb had not explained how mail counting was contributing to appellant's right carpal tunnel syndrome. Therefore, the issue to be determined is whether appellant established that her right carpel tunnel syndrome is due to factors of her federal employment.

On November 15, 2006 appellant contended that working with her right hand caused pain, weakness, numbness and tingling. She contributed her condition to counting mail and preparing reports. Appellant felt numbness and tightening in her fingers and pain shooting through her wrists and elbows. Her mail counting duties required her to count mail volumes for 15 different groups in units 110 and 128. Appellant checked the color of the mail and then wrote down the mail volume and color code. The process took her approximately 45 minutes and was repeated every two hours over the course of an eight-hour shift. Ms. Armstrong, appellant's supervisor from January to May 2006, stated that appellant walked around each unit's staging area with a note pad recording mail volumes. Appellant would then transfer the numbers from the notepad to a dry erase board in the office. This process took about one hour.

In March and April 2007, Mr. Trusnik, the distribution operations supervisor, stated that appellant was required to only lift a pencil and paper. He stated that she counted mail once a shift. The current unit supervisors for units 110 and 128, Ms. Cichra and Mr. Bambic, stated that appellant did not count mail for them. Ms. Robinson, the manager of distribution operations, stated that appellant was supposed to count for units 110 and 128, but "never did because she was never [at work]."

The Board has held that an employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.[13] Though there is some disagreement as to whether appellant continued her mail counting duty after returning to work following her left carpal tunnel syndrome surgery, both appellant and the employing establishment agree that, for two years, appellant's duties consisted of carrying paper and a pencil and writing down mail volumes. Appellant's explanation of her duties is consistent to the description provided by Ms. Armstrong, who was her supervisor from January to May 2006. For these reasons, the Board finds that appellant has established her mail counting duty as an employment factor.

The Board finds, however, that appellant has not established a causal relationship between her diagnosed right carpal tunnel syndrome and the requirement that she count mail. Dr. Leb, a Board-certified orthopedic surgeon, stated that appellant was on right-handed duty because of her left carpal tunnel syndrome. Appellant developed pain, numbness and tingling in her right hand. Dr. Leb opined that her right-hand duty was medically necessary because of her left hand condition and that her duty aggravated her right carpal tunnel syndrome. However, he did not describe what duties appellant's right-handed work entailed or how such duties would be sufficient to aggravate her condition. The Board has held that, to be considered rationalized, a medical opinion must explain the nature of the relationship between the diagnosed condition and the specific employment factors.[14] Because Dr. Leb's opinion lacks details about appellant's

[13] *Constance G. Patterson*, *supra* note 8.

[14] *Steven S. Selah*, 55 ECAB 169 (2003).

federal job activities, the Board finds that his opinion is of diminished probative value. The Board finds that appellant did not meet her burden of proof to establish fact of injury.

CONCLUSION

The Board finds that appellant established the existence of employment factors as required by the Act. However, she has not established that she sustained carpal tunnel syndrome in her right wrist in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated May 2 and January 24, 2007 are modified as described above and affirmed.

Issued: January 22, 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