

**United States Department of Labor
Employees' Compensation Appeals Board**

M.H., Appellant

and

**DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE, Fresno, CA,
Employer**

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**Docket No. 08-563
Issued: July 2, 2008**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On December 18, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decisions dated May 21 and November 15, 2007 denying her occupational injury claim. Pursuant to 20 C.F.R. §§ 501.2 and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has met her burden of proof in establishing that she sustained an injury in the performance of duty causally related to factors of her federal employment.

FACTUAL HISTORY

On April 12, 2007 appellant, a 59-year-old clerk, filed an occupational disease claim alleging that she developed carpal tunnel syndrome and pain and numbness in her arms and neck

as a result of work activities. She first realized that her alleged conditions were caused by her employment on January 1, 2006.

In a letter dated April 19, 2007, the Office informed appellant that the evidence submitted was insufficient to establish her claim. It advised her to submit details regarding the employment duties she believed caused or contributed to her claimed condition, as well as a comprehensive medical report from a treating physician, which contained symptoms, a diagnosis, and an opinion with an explanation as to the cause of her diagnosed condition.

In a statement dated April 23, 2007, appellant indicated that her neck pain became progressively worse because she was forced to lift her head to read her computer monitor, which was on top of her tower. She stated that she had been experiencing problems with her neck and arms for more than a year due to her work duties, which included typing, opening mail, counting tax returns, bundling and filing.

Appellant submitted a July 12, 2006 report from Dr. Madhav Suri, a Board-certified neurologist, who stated that, for the previous one to two years, appellant had been experiencing neck pain radiating into both arms, suggestive of bilateral C5-6 cervical radiculopathy. She also had bilateral hand paresthesias. Dr. Suri found a positive Tinel's sign bilaterally with a functional decrease in hand grip strength, suggestive of concomitant bilateral nerve entrapment at the wrists. On December 11, 2006 he noted that, in addition to her previous complaints, appellant also experienced intermittent back pain. Dr. Suri reported the results of a September 7, 2006 magnetic resonance imaging (MRI) scan of the cervical spine, which revealed a C6-7 bulging disc, left central disc herniation and C5-6 broad-based bulge protrusion with extrusion of disc material inferiorly, and C5-6 disc herniation, as well as C2-5. He stated that appellant had cervical pain secondary to cervical disc herniation at C6-7 with a small amount of extruded disc material, as well as bilateral hand pain. Tinel's sign was again positive bilaterally, with a functional decrease in hand grip strength, suggestive of concomitant bilateral nerve entrapment at the wrists. Dr. Suri noted that appellant might have a double crush injury.

Appellant submitted a report dated February 6, 2007 from Dr. David Myers, a treating physician, who stated that appellant's ongoing discomfort in her cervical and lumbar spine seemed to be related to activity and posture. She noted that the MRI scan of the cervical spine showed multilevel mild degenerative changes, with a more significant bulge at C5-6 and a small herniation at C6-7. A January 22, 2007 MRI scan of the lumbar spine revealed multiple degenerative discs with a mild collapse at L3-4, L5 and S1, and moderate central bulges and some central herniation at L5-S1. However, Dr. Suri indicated that none of these irregularities impinged on the spinal cord or caused any foraminal encroachment. He stated, "Overall, her condition appears relatively satisfactory."

Appellant submitted an April 19, 2007 note from Dr. Robert G. Castillo, Board-certified in the field of family medicine, reflecting that appellant was seen due to neck, arm and finger numbness on April 2, June 17, July 9, August 6 and September 10, 2003, as well as on November 20, 2006. She also submitted unsigned progress notes dated January 2, February 5 and 6, 2007, reflecting that appellant was experiencing neck pain.

By decision dated May 21, 2007, the Office denied appellant's claim on the grounds that she had not established a causal relationship between the diagnosed condition and accepted work-related events.

On August 3, 2007 appellant requested reconsideration of the Office's May 21, 2007 decision. She stated that she had developed carpal tunnel syndrome as a result of her employment activities, and that her condition was not improving.

In support of her request, appellant submitted reports dated July 25, 2007 from Dr. Anthony Montana, Board-certified in the field of family medicine, stated that appellant had a history of neck pain, bilateral carpal tunnel syndrome, left thumb pain and bilateral hand pain. Dr. Montana noted that she had a prior workers' compensation claim in 2002 for right trigger finger. Appellant reported that she developed carpal tunnel syndrome as a result of repetitive work activities, which included typing and keyboarding, and that her neck pain was due to the positioning of her computer screen. Dr. Montana diagnosed carpal tunnel syndrome, but stated, "I am unable to determine whether, in fact, she has any industrial injury at all." In a California Workers' Compensation form dated August 1, 2007, Dr. Montana reiterated his diagnosis of carpal tunnel syndrome. When asked to describe how the injury or exposure happened, Dr. Montana stated, "Patient states: 'Due to repetitive motion such as keyboarding, typing, I can feel pain in both hands, left thumb, neck, both arms, and both wrists.'"

By decision dated November 15, 2007, the Office denied modification of its May 21, 2007 decision on the grounds that appellant had failed to provide any rationalized medical evidence explaining how and why her federal employment duties could have caused her claimed condition.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of her claim, including the fact that an injury was sustained in the performance of duty as alleged,² and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.³

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) a factual statement identifying the employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that

¹ 5 U.S.C. §§ 8101-8193.

² *Joseph W. Kripp*, 55 ECAB 121 (2003); *see also Leon Thomas*, 52 ECAB 202, 203 (2001). "When an employee claims that he sustained injury in the performance of duty he must submit sufficient evidence to establish that he experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. He must also establish that such event, incident or exposure caused an injury." *See also* 5 U.S.C. § 8101(5) ("injury" defined); 20 C.F.R. § 10.5(q) and (ee) (2002) ("Occupational disease or Illness" and "Traumatic injury" defined).

³ *Dennis M. Mascarenas*, 49 ECAB 215, 217 (1997).

the diagnosed condition is causally related to the employment factors identified by the claimant.⁴ The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence, *i.e.*, medical evidence presenting a physician's well-reasoned opinion on how the established factor of employment caused or contributed to claimant's diagnosed condition. To be of probative value, 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.⁵

An award of compensation may not be based on appellant's belief of causal relationship. Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents, is sufficient to establish a causal relationship.⁶

ANALYSIS

The medical evidence of record is insufficient to establish that appellant's diagnosed medical condition was caused or aggravated by factors of her federal employment. Contemporaneous medical evidence of record consists of reports from Dr. Suri, Dr. Meyers, Dr. Castillo and Dr. Montana, as well as MRI scan reports and unsigned progress notes. None of the evidence submitted contains a rationalized medical opinion explaining the nature of the relationship between appellant's diagnosed condition and identified factors of employment. Therefore, appellant has failed to meet her burden of proof.

On July 12, 2006 Dr. Suri stated that, for the previous one to two years, appellant had been experiencing neck pain radiating into both arms, suggestive of bilateral C5-6 cervical radiculopathy. Appellant also had bilateral hand paresthesias. Dr. Suri found a positive Tinel's sign bilaterally with a functional decrease in hand grip strength, suggestive of concomitant bilateral nerve entrapment at the wrists. On December 11, 2006 he noted that appellant also experienced intermittent back pain. A September 7, 2006 MRI scan of the cervical spine revealed a C6-7 bulging disc, left central disc herniation and C5-6 broad-based bulge protrusion with extrusion of disc material inferiorly and C5-6 disc herniation. Dr. Suri stated that appellant had cervical pain secondary to cervical disc herniation at C6-7 with a small amount of extruded disc material, as well as bilateral hand pain. Tinel's sign was again positive bilaterally, with a functional decrease in hand grip strength, suggestive of concomitant bilateral nerve entrapment at the wrists. Dr. Suri noted that appellant might have a double crush injury. However, he did not express an opinion as to the cause of appellant's condition. Therefore, Dr. Suri's reports do not constitute probative medical evidence.⁷

⁴ *Michael R. Shaffer*, 55 ECAB 386 (2004). *See also Solomon Polen*, 51 ECAB 341, 343 (2000).

⁵ *Leslie C. Moore*, 52 ECAB 132, 134 (2000); *see also Ern Reynolds*, 45 ECAB 690, 695 (1994).

⁶ *Phillip L. Barnes*, 55 ECAB 426 (2004); *see also Dennis M. Mascarenas*, *supra* note 3.

⁷ *Michael E. Smith*, 50 ECAB 313 (1999) (Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value).

On February 6, 2007 Dr. Myers stated that appellant's ongoing discomfort in her cervical and lumbar spine seemed to be related to activity and posture. He noted that the MRI scan of the cervical spine showed multilevel mild degenerative changes, with a more significant bulge at C5-6 and a small herniation at C6-7, and an MRI scan of the lumbar spine revealed multiple degenerative discs with a mild collapse at L3-4, L5, and S1, and moderate central bulges and some central herniation at L5-S1. However, Dr. Myers indicated that none of these irregularities impinged on the spinal cord or caused any foraminal encroachment and stated that, "overall her condition appear[ed] relatively satisfactory." He did not express a definitive opinion that, or explain how, appellant's condition was causally related to identified employment factors. Although Dr. Myers opined that the ongoing discomfort in her cervical and lumbar spine seemed to be related to activity and posture, he did not offer an opinion as to the cause of the underlying condition. Therefore, his report is of limited probative value and does not support appellant's claim.⁸

On July 25, 2007 Dr. Montana diagnosed carpal tunnel syndrome. However, he, too, failed to express an opinion as to the cause of appellant's condition and expressly stated that he was "unable to determine whether, in fact, she ha[d] any industrial injury at all." On August 1, 2007 Dr. Montana noted appellant's belief that her condition was caused by "repetitive motion such as keyboarding, typing." However, he did not offer his own opinion as to the cause of her carpal tunnel syndrome. For reasons stated above, these reports are of diminished probative value, and are insufficient to establish appellant's claim.

On April 19, 2007 Dr. Castillo stated that appellant was seen due to neck, arm and finger numbness on various dates from April 2, 2003 to November 20, 2006. However, he did not provide a specific diagnosis or findings on examination; nor did he express an opinion as to the cause of appellant's condition, based on a review of a complete factual and medical background. Therefore, Dr. Castillo report also lacks probative value.

The remaining medical evidence of record does not support appellant's claim. Appellant submitted physicians' progress notes bearing illegible signatures. These reports, lacking proper identification, cannot be considered as probative evidence.⁹ Other medical evidence of record including reports of MRI scans and x-rays, which do not contain an opinion on causal relationship, are of no probative value.

Appellant expressed her belief that her alleged condition resulted from her duties as a carrier. However, the Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.¹⁰ Neither the fact that the condition became apparent during a period of employment, nor the belief that the condition was caused or aggravated by employment factors or incidents, is sufficient to establish causal relationship.¹¹ Causal relationship must be substantiated by

⁸ *Id.*

⁹ *Merton J. Sills*, 39 ECAB 572 (1988).

¹⁰ *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

¹¹ *Id.*

reasoned medical opinion evidence, which it is appellant's responsibility to submit. Therefore, appellant's belief that her condition was caused by work activities is not determinative.

The Office advised appellant that it was her responsibility to provide a comprehensive medical report which described her symptoms, test results, diagnosis, treatment and the doctor's opinion, with medical reasons, on the cause of her condition. Appellant failed to do so. As there is no probative, rationalized medical evidence addressing how her claimed conditions were caused or aggravated by her employment, she has not met her burden of proof in establishing that she sustained an occupational disease in the performance of duty causally related to factors of employment.

CONCLUSION

The Board finds that appellant has not met her burden of proof in establishing that she sustained an injury in the performance of duty causally related to factors of her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the November 15 and May 21, 2007 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: July 2, 2008
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board