United States Department of Labor
Employees' Compensation Appeals Board

J.B., Appellant	)	
and	)	**Docket No. 14-313**
	)	**Issued: July 10, 2014**
U.S. POSTAL SERVICE, 30th STREET MAIN 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:
PATRICIA HOWARD FITZGERALD, Acting Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On November 20, 2013 appellant, through counsel, timely appealed the September 12, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.[2]

ISSUE

The issue is whether appellant's claimed cervical condition and left carpal tunnel syndrome are causally related to either her October 5, 1998 or March 9, 2006 employment injuries.

[1] 5 U.S.C. §§ 8101-8193 (2006).

[2] The record on appeal contains evidence received after OWCP issued its September 12, 2013 decision. The Board is precluded from considering evidence that was not in the case record at the time OWCP rendered its final decision. 20 C.F.R. § 501.2(c)(1) (2012).

FACTUAL HISTORY

Appellant, a 63-year-old former equal employment opportunity (EEO) counselor/ investigator, has an accepted claim for right carpal tunnel syndrome (CTS) and right synovial cyst, which arose on or about October 5, 1998. She retired effective January 3, 2006.[3] Under a separate claim (xxxxxx109) with a March 9, 2006 date of injury, OWCP also accepted right CTS, along with right ganglion cyst and brachial neuritis/radiculitis. Appellant also claimed to have sustained injury to her cervical spine, as well as left CTS. However, OWCP did not accept these additional conditions under claim number xxxxxx109. Appellant's October 1998 and March 2006 upper extremity claims have been combined under claim number xxxxxx440. OWCP has awarded 11 percent permanent impairment of the right upper extremity, through three schedule awards.

While initially declining to expand her claim(s) to include left CTS and a cervical condition, in a May 5, 2010 decision, the hearing representative found a conflict between appellant's treating physician, Dr. Scott M. Fried, a Board-certified orthopedic surgeon, and Dr. Andrew J. Collier Jr., a Board-certified orthopedic surgeon and OWCP referral physician. Dr. Fried first treated appellant in February 2010. He diagnosed, *inter alia*, employment-related bilateral CTS and disc space narrowing at C3-4, C4-5 and C5-6, with radiculopathy. Dr. Collier previously examined appellant on August 6, 2008, and found that her left CTS and cervical spondylosis with bilateral radiculopathy were not work related.

The latest statement of accepted facts (SOAF) is dated January 7, 2011. The SOAF described appellant's various positions during her 37-year tenure with the employing establishment, including work as a clerk, letter sorting machine operator, data entry duties, work as an EEO counselor/investigator, and her latest position as an HR specialist, which appellant held from October 2000 until she retired in January 2006.

OWCP referred appellant to Dr. Walter W. Dearolf III, a Board-certified orthopedic surgeon, who examined her on January 17, 2013. Dr. Dearolf reviewed appellant's history of injury, employment history, various medical records and conducted his own physical examination. In a January 21, 2013 report, he found no evidence of a work-related injury causing either left CTS or cervical radiculopathy of the left upper extremity. Dr. Dearolf further stated that there was no evidence that appellant's employment directly caused or aggravated left CTS and/or a cervical strain. He also noted that appellant's latest electromyography (EMG) from April 6, 2010 showed no evidence of median nerve neuropathy CTS. Dr. Dearolf reiterated that appellant did not presently have left CTS. He further found that appellant's accepted right CTS and ganglion cyst had resolved.

In a February 4, 2013 decision, OWCP declined to expand appellant's claim to include left CTS or a cervical-related condition affecting the left upper extremity. It based its finding on the IME's January 21, 2013 report.

Appellant's counsel timely requested an oral hearing, which was held on June 26, 2013.

[3] Appellant was last employed as a human resources (HR) specialist.

In reports dated February 21 and May 15, 2013, appellant's physician, Dr. Fried, continued to diagnose, *inter alia*, employment-related bilateral CTS and disc space narrowing at C3-4, C4-5 and C5-6, with radiculopathy. During the most recent examination, appellant's neck and upper back continued to bother her, but her hands remained the major issue.[4]

By decision dated September 12, 2013, the Branch of Hearings and Review affirmed OWCP's February 4, 2013 decision.

LEGAL PRECEDENT

Where an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, she bears the burden of proof to establish that the condition is causally related to the employment injury.[5]

If there is disagreement between an OWCP designated physician and the employee's physician, OWCP shall appoint a third physician who shall make an examination.[6] For a conflict to arise the opposing physicians' viewpoints must be of "virtually equal weight and rationale."[7] Where OWCP has referred the case to an impartial medical examiner to resolve a conflict in the medical evidence, the opinion of such a specialist, if sufficiently well reasoned and based upon a proper factual background, must be given special weight.[8]

ANALYSIS

OWCP properly found a conflict in medical opinion based on the reports of Dr. Fried and Dr. Collier. Accordingly, it referred appellant to Dr. Dearolf for an impartial medical evaluation. Counsel suggested that Dr. Dearolf was not properly selected as impartial medical examiner (IME) because of the absence of a screen shot image. The current record includes both a screen shot and an ME023 -- Appointment Schedule Notification, which together confirm Dr. Dearolf's proper selection as IME pursuant to OWCP's Medical Management application. *See* Federal (FECA) Procedure Manual, Part 3 -- Medical, *OWCP Directed Medical Examinations*, Chapter 3.500.5i (May 2013). The ME023 report indicated that no physicians were bypassed prior to Dr. Dearolf's selection as IME.

[4] Dr. Fried also administered a neuromusculosketal ultrasound on May 15, 2013.

[5] *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004). Causal relationship is a medical question, which generally requires rationalized medical opinion evidence to resolve the issue. *See Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factors must be based on a complete factual and medical background. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors. *Id.*

[6] 5 U.S.C. § 8123(a); *see* 20 C.F.R. § 10.321 (2012); *Shirley L. Steib*, 46 ECAB 309, 317 (1994).

[7] *Darlene R. Kennedy*, 57 ECAB 414, 416 (2006).

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

Dr. Dearolf reviewed appellant's history of injury, as well as her prior employment history. He also reviewed various medical records, including recent diagnostic studies. Based on this information and the results of his January 17, 2013 physical examination, Dr. Dearolf found no evidence of a work-related injury causing either left CTS or cervical radiculopathy of the left upper extremity. He specifically found no evidence of a causal relationship, either directly or by aggravation, between appellant's accepted employment exposure and left CTS and/or a cervical strain. Dr. Dearolf noted that appellant's latest EMG dated April 6, 2010, showed no evidence of carpal tunnel syndrome.

When a case is referred to an IME to resolve a conflict, the resulting medical opinion, if sufficiently well reasoned and based upon a proper factual background, must be given special weight.[9] The Board finds that OWCP properly gave the appropriate weight to Dr. Dearolf's January 21, 2013 findings. Dr. Dearolf provided a well-reasoned report based on a proper factual and medical history. He also accurately summarized the relevant medical evidence. Additionally, Dr. Dearolf provided a thorough physical examination. His January 21, 2013 report included detailed findings and medical rationale supporting his opinion. As the IME, Dr. Dearolf's opinion is entitled to determinative weight.[10] Accordingly, the Board finds that OWCP properly relied on the IME's findings in declining to accept left CTS and any cervical-related condition.

Subsequent reports from a physician who was on one side of a medical conflict that has since been resolved would generally be insufficient to overcome the weight accorded the IME's report and/or insufficient to create a new medical conflict.[11] In his February 21 and May 15, 2013 follow-up reports, Dr. Fried merely reiterated his prior diagnoses. Moreover, he did not specifically attribute appellant's disc space narrowing at C3-4, C4-5 and C5-6, and associated radiculopathy to her prior employment. Consequently, Dr. Fried's latest reports are insufficient to overcome the weight properly accorded Dr. Dearolf's January 21, 2013 opinion, and they are similarly insufficient to create a new conflict in medical opinion.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision.[12]

CONCLUSION

Appellant failed to establish that her claimed cervical condition and left carpal tunnel syndrome were causally related to either her October 5, 1998 or March 9, 2006 employment injuries.

[9] *Id.*

[10] *Id.*

[11] *I.J.*, 59 ECAB 408, 414 (2008).

[12] *See* 5 U.S.C. § 8128(a); 20 C.F.R. §§ 10.605-10.607.

ORDER

IT IS HEREBY ORDERED THAT the September 12, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 10, 2014
Washington, DC

Patricia Howard Fitzgerald, Acting Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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