

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

L.R., Appellant

and

**U.S. POSTAL SERVICE, PALMETTO PARK
STATION, Boca Raton, FL, Employer**

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**Docket No. 09-872
Issued: January 7, 2010**

Appearances:

Alan J. Shapiro, Esq., for the appellant

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge

COLLEEN DUFFY KIKO, Judge

MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On February 12, 2009 appellant filed a timely appeal of a January 15, 2009 decision of the Office of Workers' Compensation Programs affirming the July 23, 2008 denial of her claim for compensation. 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 is whether appellant met her burden of proof to establish that she sustained an occupational disease in the performance of duty.

FACTUAL HISTORY

On March 4, 2008 appellant, then a 48-year-old distribution clerk, filed an occupational disease claim alleging that she could not use her right arm due to her employment duties. She first realized that her condition was caused by employment activities on November 21, 2007. Appellant stopped work on November 26, 2007 and returned to light duty on March 10, 2008. The employing establishment controverted the claim, advising that her job included moving

parcels that weighed up to 70 pounds, although parcels of that size were rare and assistance was available to help lift heavy items.

In a March 3, 2008 report, Dr. Tamar Ference, a Board-certified physiatrist, noted her complaint of weakness and numbness of the right upper extremity with neck and right upper extremity pain. Upon examination, she found weakness of the right upper extremity proximally and distally. Dr. Ference noted that a magnetic resonance imaging (MRI) scan of the lumbar spine dated December 5, 2007 revealed disc disease and arthritis with narrowing of the nerve canals.¹ She also noted that a nerve test revealed a pinched nerve in appellant's neck. Dr. Ference opined that these conditions were related to heavy lifting at work. She recommended physical therapy and lifting restrictions at work. Dr. Ference also indicated that appellant's 2004 car accident may have initiated her injury but that it continued to be aggravated by heavy lifting at work. A March 4, 2008 physical therapy note opined that appellant's continued heavy lifting at work exacerbated her preexisting cervical spine condition caused by a motor vehicle accident on December 10, 2004.

On June 12, 2008 the Office advised appellant of the factual and medical evidence necessary to establish her claim and allowed her 30 days to submit additional evidence. In a June 30, 2008 statement, appellant noted that her right arm began to hurt in April 2007. She further noted that, on November 21, 2007, she woke up with sharp pain in her neck and right arm that had worsened. Appellant indicated that her job duties consisted of unloading trucks and throwing parcels and loading and hauling heavy bags of coins from stamp vending machines. She noted that she and her physicians believed that her condition was clearly work related and that heavy lifting aggravated her neck condition. Appellant also noted that she had continued arm pain after returning to work on light duty on March 10, 2008.

In a July 3, 2008 report, Dr. Ference noted that she first saw appellant on February 14, 2008 and obtained a history that her job required daily heavy lifting. She also noted a prior 2004 motor vehicle accident resulted in neck and right shoulder pain that had resolved. Dr. Ference advised that in April 2007 appellant developed right forearm and elbow pain. She indicated that in November 2007 appellant's right upper extremity pain worsened and she developed neck pain and hand weakness with no improvement from treatment. Dr. Ference stated that a December 5, 2007 MRI scan revealed C5, C6 and C7 mild disc disease and spondylosis with mild circumferential disc bulging at both levels and slight narrowing of the foramina without impingement. She stated that an electromyogram (EMG) from January 2008 revealed C8-T1 radiculopathy and a March 28, 2008 MRI scan of the right shoulder revealed axonal sensorimotor ulnar neuropathy. Dr. Ference diagnosed neck, shoulder and elbow pain. She advised that appellant could not return to work as her job required lifting that could exacerbate her condition or cause further injury. While the 2004 motor vehicle accident initiated appellant's injury it was aggravated by heavy lifting at work. Dr. Ference opined that, as appellant had been performing this type of work for 29 years, the constant overhead lifting contributed to her injury.

In a July 23, 2008 decision, the Office denied appellant's claim finding that, although she established that the work-related lifting activities occurred as alleged, there was insufficient

¹ The Board notes that Dr. Ference's reference to the lumbar spine appears to be in error.

medical evidence providing a diagnosed medical condition that could be connected to the claimed event.

On October 1, 2008 appellant requested a telephonic hearing that was held on November 12, 2008.

After the hearing, appellant submitted a November 19, 2008 report from Dr. Raffi Toroyan, an osteopath specializing in sports medicine. Dr. Toroyan noted that appellant's initial injury on December 10, 2004 resulted in a hyperflexion and hyperextension injury to the cervical spine and right shoulder. Appellant's initial symptoms consisted of neck and right shoulder pain and her present symptoms consisted of right-sided neck and shoulder blade pain and spasms as well as right elbow and wrist pain. Dr. Toroyan stated that appellant's current diagnosis consisted of altered joint mechanics and soft tissue damage from the December 10, 2004 injury that resulted in premature degeneration of the spine and shoulder, with degenerative joint and disc disease of the mid-cervical spine. He also diagnosed C8 and T1 radiculopathy, right shoulder and acromioclavicular (AC) joint arthritis with tendinosis. Dr. Toroyan found that repetitive heavy lifting and twisting at work greatly exacerbated appellant's preexisting condition preexisting and resulted in her disability for work.

In a December 2, 2008 report, Dr. Ference noted that appellant's previous injury was a December 10, 2004 motor vehicle accident that caused a whiplash injury to the cervical spine. She indicated that appellant had symptoms of neck and right upper extremity pain, right shoulder, elbow and wrist pain as well as right upper extremity weakness and numbness. Dr. Ference stated that repetitive bending and lifting at work exacerbated the cervical disc disease and degenerative changes and resulted in severe episodes beginning November 21, 2007. Regarding appellant's current condition, she diagnosed degenerative changes and disc disease of the cervical spine, cervical radiculopathy, right upper extremity pain, weakness and numbness, right shoulder, elbow and wrist pain and tendinitis and arthritis.

In a January 15, 2009 decision, an Office hearing representative affirmed the July 23, 2008 decision, denying appellant's claim finding the medical evidence insufficient to establish causal relationship between her employment and the claimed medical conditions.

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 filed within the applicable time limitation; that an injury was sustained while 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 on a traumatic injury or an occupational disease.²

² *J.E.*, 59 ECAB ___ (Docket No. 07-814, issued October 2, 2007); *Elaine Pendleton*, 40 ECAB 1143 (1989).

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 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 diagnosed condition is causally related to the employment factors identified by the claimant.³

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors. The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.⁴

ANALYSIS

The record reflects that appellant's employment activities consist of unloading trucks, throwing parcels and hauling heavy bags of coins from stamp vending machines. Therefore, the issue is whether she submitted sufficient medical evidence to establish that factors of her federal employment injured her right arm and neck. The Board finds that this case is not in posture for a decision.

The Office found that the medical evidence of record was insufficient to establish a causal relationship between a diagnosed medical condition and the claimed work activities. However, the Board finds that the medical evidence of record is sufficient to require further development of the claim.

In a March 3, 2008 report, Dr. Ference noted that diagnostic tests revealed disc disease and arthritis with narrowing of the nerve canals as well as a pinched nerve in appellant's neck. She opined that these conditions related to heavy lifting at work and continued to be aggravated by such heavy lifting. Dr. Ference submitted additional reports, finding that appellant's right arm and neck conditions were exacerbated by her repetitive work duties. On July 3, 2008 she reiterated that appellant's job required constant overhead lifting that greatly contributed to her cervical disc disease, spondylosis and right shoulder neuropathy conditions. Dr. Ference advised that appellant not return to work as her lifting duties could further exacerbate her conditions. In a December 2, 2008 report, she diagnosed degenerative disc disease of the cervical spine, cervical radiculopathy, right shoulder pain, tendinitis and arthritis. Dr. Ference opined that repetitive bending and lifting at work resulted in cervical disc disease and degenerative changes which resulted in severe episodes of pain beginning November 21, 2007.

³ *D.I.*, 59 ECAB ____ (Docket No. 07-1534, issued November 6, 2007); *Roy L. Humphrey*, 57 ECAB 238 (2005).

⁴ *I.J.*, 59 ECAB ____ (Docket No. 07-2362, issued March 11, 2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

Similarly, Dr. Toroyan's November 19, 2008 report supports causal relationship. He diagnosed degenerative joint and disc disease of the mid-cervical spine as well as T1 radiculopathy, right shoulder and AC joint arthritis with tendinosis. Dr. Toroyan indicated that although an injury on December 10, 2004 resulted in premature degeneration of the spine and shoulder, he opined that repetitive heavy lifting and twisting at work greatly exacerbated appellant's conditions and resulted in premature cessation of work.

While none of the medical reports of record contain a completely rationalized opinion, they raise an uncontroverted inference of causal relationship between appellant's right arm and neck conditions and her employment activities. While the reports are not sufficient to meet her burden of proof to establish her claim, they are sufficient to require the Office to further develop the medical evidence.⁵ It is well established that proceedings under the Act are not adversarial in nature and, while the claimant has the burden of establishing entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.⁶

For these reasons, the Board will remand the case for further development of the medical evidence as appropriate as to whether appellant's claimed conditions are causally related to her federal employment. Following this and such other development as is deemed necessary, the Office shall issue an appropriate merit decision.

CONCLUSION

The Board finds that this case is not in posture for a decision as to whether appellant sustained an occupational disease in the performance of duty.

⁵ See *P.K.*, 60 ECAB ____ (Docket No. 08-2551, issued June 2, 2009); see also *Horace Langhorne*, 29 ECAB 820 (1978).

⁶ *John Carlone*, 41 ECAB 354 (1989).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decisions dated January 15, 2009 and July 23, 2008 are set aside and the case is remanded for further development consistent with this decision.

Issued: January 7, 2010
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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