United States Department of Labor
Employees' Compensation Appeals Board

Y.P., Appellant	)	
and	)	**Docket No. 09-203**
	)	**Issued: September 29, 2009**
U.S. POSTAL SERVICE, POST OFFICE, Bakersfield, CA, Employer	)	

Appearances:
Sally F. LaMacchia, 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 October 27, 2008 appellant filed a timely appeal of the Office of Workers' Compensation Programs' decision dated September 25, 2008 affirming the 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 this case.

ISSUE

The issue is whether appellant met her burden of proof in establishing that she sustained an occupational injury in the performance of duty.

FACTUAL HISTORY

On March 23, 2006 appellant, then a 48-year-old manual distribution clerk, filed an occupational injury claim alleging that she developed sharp pains in her shoulders, chest, back and right wrist from casing and pulling mail and working in automation areas sorting mail. She first became aware of her condition on December 10, 2000 and first realized that it was caused by her work on January 16, 2005. Appellant did not stop work. In a March 23, 2006

supplemental statement, she described the history of injury and the nature of work she performed. In particular, appellant noted that she began having back, shoulder and chest pain problems in December 2000 when she was assigned to case and pull mail at automation areas. She stopped work from July 2000 to February 2002 due to back, shoulder and chest pain. The employing establishment controverted the claim.

Appellant submitted medical evidence with her claim including a May 29, 2002 report from Dr. P.R. Chandrasekaran, a Board-certified orthopedic surgeon, who diagnosed bilateral shoulder impingement syndrome. Dr. Chandrasekaran noted that appellant's job involved repetitive motion to the shoulder and that her diagnosed condition was related to her job. On September 10, 2002 he reiterated his diagnosis of bilateral shoulder impingement syndrome, which he opined was "definitely due to [appellant's] job." Dr. Chandrasekaran also indicated that radiological findings consisted of degenerative cervical disc disease, degenerative thoracic disc disease and bilateral shoulder impingement syndrome.

In a December 19, 2002 report, Dr. Young Paik, a Board-certified orthopedic surgeon, noted that appellant had clinical symptoms of minimal shoulder impingement which was aggravated by work-related activities. On October 28, 2003 he noted appellant's complaint of mid-thoracic and low back pain. Dr. Paik indicated that this condition "may be a cumulative job injury." He recommended that appellant report the condition to a supervisor because of a "possible job-related injury." On May 18, 2004 Dr. Paik stated that examination showed lumbar lordosis. He noted early stage degenerative discogenic disease and hypertrophy of the facet joints. Dr. Paik advised that appellant had multiple joint pain that was aggravated by daily activities, especially working at the employing establishment.

On April 3, 2006 the Office advised appellant of the factual and medical evidence necessary to establish her claim. In response, appellant submitted a letter dated April 24, 2006 indicating that she wished to pursue her claim for shoulder, back and chest injury. She described her nonwork activities and the duration she performed each. Appellant also requested an extension to submit medical evidence.[1]

The employing establishment subsequently submitted a February 2, 2006 duty status report, Form CA-17, from Dr. Richard Sall, Board-certified in occupational medicine, who noted appellant's complaint of injury to her right wrist from casing letters. Dr. Sall diagnosed right wrist strain and left shoulder strain and indicated that appellant's current complaints were not related to her injury. He further noted that appellant could return to full duty that day and he discharged her.

By decision dated May 17, 2006, the Office denied appellant's claim finding that the medical evidence was insufficient to establish her claim.

Appellant submitted a July 17, 2006 report from Dr. Ernest Bonner, Jr., an internist, who noted that she suffered injuries and the onset of pain in her shoulders, back, chest and right wrist in the course of her employment in December 2000, January 16, 2005 and March 6, 2006.

[1] The Board notes that appellant's statement also indicated that she had a separate claim for a left shoulder condition that she initiated on January 16, 2005. This claim is not presently before the Board.

Dr. Bonner noted her history of employment since 1989 and the types of physical duties that she performed in her job with the employing establishment. He stated that appellant began noticing shoulder, low back and chest pain in December 2000 and advised that she had intermittent exacerbations since that time, including one on January 16, 2005. Dr. Bonner diagnosed recurrent cervical, thoracic, lumbosacral, chest wall and bilateral shoulder sprain and strain secondary to cumulative work trauma. He also diagnosed residual fibromyositis at the neck, upper back and lower back, chest wall and shoulders bilaterally secondary to cumulative work trauma. Dr. Bonner noted that appellant's history made it clear that she would have recurrent injuries to her neck, upper back, lower back, chest wall and shoulder bilaterally. He advised that "she has suffered such recurrent injuries over the years because of cumulative work trauma and now experiences residual fibromyositis in those same areas." Dr. Bonner noted that appellant had been "off work repeatedly because of her recurrent work injuries, with the most recent such absence from work occurring from April 13 through June 29, 2006." He advised reassignment at the employing establishment to prevent recurrent injury. Dr. Bonner also noted that appellant experienced residual fibromyositis in those same areas.

Appellant requested reconsideration on March 26, 2007. She also submitted a July 12, 2006 report from Dr. Francisco Garcia, a Board-certified family practitioner, who diagnosed impingement syndrome and vertebral subluxation. Dr. Garcia provided a list of work restrictions and advised that appellant could not perform her usual occupation but could perform another line of work.

By decision dated June 28, 2007, the Office affirmed its May 17, 2006 decision finding that, although factors of employment were established, the medical evidence was insufficient to establish causal relationship.

Appellant subsequently submitted a functional capacity evaluation performed by her physical therapist on April 26, 2007 which indicated that appellant's reported pain levels suggested symptom magnification.

In a letter dated June 26, 2008, appellant's attorney requested reconsideration and asserted that the current medical evidence established causal relationship. Additional medical evidence was submitted. A May 24, 2005 magnetic resonance imaging (MRI) scan of the right shoulder from Dr. Manjul Shah, a radiologist, revealed mild to moderate indentation upon the supraspinatus tendon by the acromion with no evidence of rotator cuff tear, slight irregularity of the glenoid labrum and degenerative change at the acromioclavicular joint. On November 6, 2006 Dr. Bryan Winkler, a diagnostic radiologist, found that an MRI scan of the cervical spine revealed mild degenerative changes of the cervical spine without evidence of significant central canal or neural foraminal stenosis. He also noted that an MRI scan of the lumbar spine revealed L4-L5 and L5-S1 broad-based disc protrusions and facet joint hypertrophy resulting in mild central canal and mild bilateral neural foraminal stenosis.

In an October 9, 2006 report, Dr. Mark Schamblin, a Board-certified orthopedic surgeon, noted appellant's complaint of thoracic and lumbar spine pain and right wrist and shoulder pain. He also noted that appellant reported multiple repetitive motions while at work. Dr. Schamblin diagnosed rotator cuff calcific tendinitis secondary to chronic impingement syndrome. He also

indicated that his findings were "likely resultant from a repetitive use at or above shoulder level." Dr. Schamblin advised work restrictions that limited work above the shoulder level.

In a July 3, 2007 report, Dr. Daniel Silver, a Board-certified orthopedic surgeon, noted appellant's complaint of bilateral shoulder pain, right wrist pain and left side chest pain. He also summarized appellant's injury history and the nature of the treatment sought. In particular, Dr. Silver noted that appellant's job sorting mail required repetitive pulling, lifting, carrying and pushing and pulling using the upper extremities on a repetitive basis. He diagnosed chronic bilateral shoulder post-traumatic arthritis of the acromioclavicular joint secondary to overuse with impingement syndrome as well as chronic cervical sprain and strain. Dr. Silver also diagnosed chronic thoracic sprain and strain, bilateral wrist carpal tunnel syndrome and chronic sprain and strain. He further diagnosed insomnia, stress and depression. Dr. Silver opined that appellant "definitely has a work-related injury due to repetitive use of her shoulder, wrist and neck." He recommended physical therapy. Appellant submitted several additional reports from Dr. Silver diagnosing bilateral shoulder impingement syndrome and bilateral wrist carpal tunnel syndrome and setting forth work restrictions. She also submitted several work capacity evaluation forms from Dr. Silver who checked a box "yes" indicating that appellant's condition was work related.

By decision dated September 25, 2008, the Office denied modification of its June 28, 2007 decision, finding that the additional evidence submitted failed to clearly show how the conditions were causally related to appellant's factors of employment.

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]

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

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

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

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 job duties consist of casing and pulling mail and working in automation areas sorting mail. Therefore the issue is whether appellant has submitted sufficient medical evidence to establish that factors of her employment injured her shoulders, chest, back and right wrist. The Board finds that this case is not in posture for a decision.

The Office found that the medical evidence failed to show how the claimed conditions were causally related to appellant's employment duties. However, the Board finds that the medical evidence of record is sufficient to require further development of the case record.

In a July 3, 2007 report, Dr. Silver diagnosed chronic bilateral shoulder post-traumatic arthritis of the acromioclavicular joint secondary to overuse with impingement syndrome as well as chronic cervical sprain and strain. He also diagnosed chronic thoracic sprain and strain, bilateral wrist carpal tunnel syndrome and chronic sprain and strain. Dr. Silver noted that appellant's employment required repetitive tasks such as pulling, lifting and carrying. He opined that appellant "definitely had a work-related injury due to repetitive use of her shoulder, wrist and neck." Dr. Silver also submitted several other reports and work capacity evaluation forms diagnosing bilateral shoulder impingement syndrome and bilateral wrist carpal tunnel syndrome and finding that appellant's condition was work related.

Similarly, Dr. Bonner's report dated July 17, 2006 supports causal relationship. He diagnosed recurrent cervical, thoracic, lumbosacral, chest wall and bilateral shoulder sprain and strain as well as residual fibromyositis at the neck, upper back and lower back, chest wall and shoulders bilaterally, all secondary to cumulative work trauma. Dr. Bonner also indicated that appellant's shoulder, back, chest and right wrist injuries were sustained in the course of employment in December 2000, January 16, 2005 and March 6, 2006. He noted appellant's work history and stated that she began having shoulder, low back and chest pain in December 2000 and had intermittent exacerbations since that time. Dr. Bonner opined that appellant had recurrent injuries over the years because of cumulative work trauma. He also opined that appellant was disabled from her "recurrent work injuries, with the most recent such absence from work occurring from April 13, 2006 through June 29, 2006."

Additionally, in reports dated May 29 and September 10, 2002, Dr. Chandrasekaran diagnosed bilateral shoulder impingement syndrome. He opined that appellant's job involved repetitive motion to the shoulder and that her diagnosed condition was definitely related to her

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

job. Likewise, Drs. Paik and Schamblin diagnosed appellant's shoulder and back condition and attributed these conditions to employment activities.

The record contains a February 2, 2006 duty status report from Dr. Sall that disputes causal relationship. However, unlike the reports of Drs. Silver and Bonner, Dr. Sall's report does not indicate a familiarity with appellant's history and work duties.[5] Dr. Sall also did not otherwise explain the basis of his opinion. Thus, his report is of limited probative value.

While the medical reports supporting causal relationship are not sufficiently rationalized to meet appellant's burden of proof in establishing her claim, they provide consistent support for her claim and raise an inference between appellant's claimed condition and factors of her employment which is sufficient to require the Office to further develop the case record. 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] Accordingly, the Board finds that the case must be remanded for further development of the medical evidence. On remand the Office shall obtain a rationalized opinion from an appropriate Board-certified physician as to whether appellant's claimed conditions are causally related to her factors of 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 injury in the performance of duty.

[5] *See Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962) (medical opinions based upon an incomplete history have little probative value).

[6] *P.K.*, 60 ECAB ___ (Docket No. 08-2551, issued June 2, 2009); *see John J. Carlone*, 41 ECAB 354 (1989).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated September 25, 2008 is set aside and the case is remanded for further development consistent with this decision.

Issued: September 29, 2009
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