

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

M.M., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Navarre, FL, Employer)

**Docket No. 10-1812
Issued: June 10, 2011**

Appearances:
Capp Taylor, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 1, 2010 appellant, through counsel, filed a timely appeal from a February 22, 2010 merit decision of the Office of Workers' Compensation Programs denying the expansion of her claim to include additional conditions. Pursuant to the Federal Employees' Compensation Act¹ and 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 has met her burden of proof to establish that her left shoulder complete rotator cuff tear and left shoulder impingement syndrome were causally related to the accepted October 30, 2008 employment injury. On appeal, appellant contends the evidence is sufficient to warrant further development of the record.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On November 1, 2008 appellant, then a 47-year-old rural carrier, filed a traumatic injury claim alleging that on October 30, 2008 she sustained a stiff neck, headache and injuries to her right foot and left arm, leg and hip as a result of her automobile being rear ended on her way to work.

By letter dated November 12, 2008, the Office informed appellant that the evidence of record was insufficient to support her claim. It advised her as to the medical and factual evidence required to support her claim and gave her 30 days to provide the requested information.

In a November 28, 2008 progress note, Erin M. Zeh, physician's assistant, reported that appellant was seen for a follow-up examination following her October 30, 2008 motor vehicle accident. X-ray interpretations taken on November 3, 2008 revealed cervical spine, hip and shoulder degeneration and that a November 17, 2008 x-ray showed a C4-5 subluxation and further degeneration at C5-6. A physical examination indicated neck muscle spasms, cervical tenderness on palpitation and lack of full cervical range of motion. Diagnoses included cervicgia, left shoulder joint pain, foot pain and hip joint pain.

The record also contains x-ray interpretations of the cervical spine, foot and hip. A hip x-ray interpretation taken on November 3, 2008 revealed normal hip and sacroiliac joints. The report also noted "irregular and indistinct focus of sclerosis in the left proximal femoral metaphysics of indeterminate significance." A left shoulder November 3, 2008 x-ray interpretation demonstrated degenerative acromioclavicular joint. A November 17, 2008 cervical spine x-ray interpretation showed a slight subluxation at C4 and C5 without a fracture which could be degenerative in nature and C5-6 degenerative changes. A November 25, 2008 x-ray interpretation of the left foot revealed a dislocation fracture and left heel spur.

By decision dated December 22, 2008, the Office denied appellant's claim on the grounds that the evidence was insufficient to establish a medical condition causally related to the October 30, 2008 motor vehicle accident.

On January 13, 2009 appellant requested a telephonic oral hearing before an Office hearing representative, which was held on May 1, 2009.

Following her oral hearing request, appellant submitted additional medical evidence including an October 30, 2008 emergency room report and reports dated March 12 and April 7, 2009 from Dr. Thomas J. Manski, a treating Board-certified neurologist. On March 12, 2009 Dr. Manski based upon a history of the injury, medical history and physical examination, diagnosed left posterior neck pain, left trapezius pain, left scapular pain, left shoulder pain, left upper extremity pain, left interscapular pain, left elbow pain, paresthesias and weakness, C6-7 disc bulge, C3-4 disc osteophyte complex, left shoulder small partial thickness tear and left acromioclavicular joint degenerative changes. He noted that appellant has had the pain in her neck, left shoulder and left upper extremity since the October 30, 2008 motor vehicle accident. Dr. Manski reiterated his findings in his April 7, 2009 report. He also reported that appellant has

had lower back pain and intermittent lower extremity paresthesias and pain since the October 30, 2008 injury.

By decision dated June 25, 2009, the Office hearing representative found the medical evidence sufficient to establish a left shoulder strain, but insufficient to establish that appellant's right foot and neck conditions were causally related to the accepted October 30, 2008 motor vehicle accident.

On June 25, 2009 the Office accepted appellant's claim for a left shoulder strain. It subsequently expanded acceptance to include complete left shoulder rotator cuff tear and left shoulder impingement syndrome. The Office authorized left shoulder rotator cuff tear surgery, which was performed on December 8, 2009. By letter dated January 22, 2010, it placed appellant on the periodic rolls for temporary total disability.

In a letter dated August 5, 2009, appellant's counsel requested reconsideration and submitted medical and factual evidence in support of appellant's claim.

In an August 12, 2009 report, Dr. Leo C. Chen, a treating Board-certified orthopedic surgeon, reported reviewing appellant's medical history and noting that a November 2008 x-ray interpretation revealed a right foot fracture. A physical examination revealed current range of motion for the right foot was normal.

By decision dated October 5, 2009, the Office denied modification.

On December 30, 2009 appellant's attorney requested reconsideration and submitted an October 20, 2009 report by Dr. O. Farrett Jones, who noted that appellant had been treated for injuries sustained on October 30, 2008 as a result of the motor vehicle at the emergency room of Eglin Air Force Base and subsequently treated for her continuing injuries at Eglin Family Health Clinic. Dr. Jones diagnosed C5-6 bulging disc, cervical neck strain, left trapezius muscle strain, left rotator cuff tear and axial spine instability with loss of disc height and normal cervical lordosis. He attributed appellant's left posterior neck pain, left trapezius, scapular and interscapular pain due to the October 30, 2008 motor vehicle accident. In support of this conclusion, Dr. Jones noted that her car was hit so hard that the car went into the air, flipped twice, landed upside down and then flipped upright. He related "[t]his inevitably would result in jarring and thrusting of her neck in multiple directions" and had enough force to cause a left shoulder rotator cuff tear. The objective testing revealed a subluxation and disc bulge/protrusion at C6-7. Dr. Jones stated that appellant's symptoms were "very typical of cervical strain or hyperextension-flexion neck injury."

On January 14, 2010 the Office received two pages of a May 20, 2009 report by Dr. Manski, who noted that appellant has had objective and physical findings of a cervical spine problem since her October 30, 2008 motor vehicle accident. An x-ray interpretation at the time revealed a fracture of the right foot in the area of the great and second toe, which Dr. Manski attributed to the automobile accident. In support of this conclusion, Dr. Manski noted that appellant had no right foot symptoms prior to the accident and the injury was consistent with "applying hard pressure with her right foot and ankle against the brake pedal upon impact." As to appellant's lower back pain, he opines that she may well have sustained a lower back injury as

a result of the automobile accident given the findings of an April 10, 2009 magnetic resonance imaging (MRI) scan showing herniated nucleus pulposus at L3-4 and L4-5, which injuries would be consistent with a motor vehicle accident. In concluding, Dr. Manski opined that she sustained left shoulder, left upper extremity, left neck and cervical spine injuries as a result of the October 30, 2008 motor vehicle accident.

By decision dated February 22, 2010, the Office denied modification.

LEGAL PRECEDENT

Where an employee claims that a condition not accepted or approved by the Office was due to an employment injury, she bears the burden of proof to establish that the condition is causally related to the employment injury.² To establish a causal relationship between the condition as well as any attendant disability claimed and the employment injury, an employee must submit rationalized medical evidence based on a complete medical and factual background supporting such a casual relationship.³ Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.⁴ Rationalized medical evidence is evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁵ 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 causal relationship.⁶

ANALYSIS

The Office accepted that the employment incident occurred on October 30, 2008, as alleged and that appellant sustained a left shoulder strain, which was subsequently expanded to include left shoulder complete rotator cuff tear and left shoulder impingement syndrome. The issue on appeal is whether appellant has met her burden of proof to establish that her diagnosed cervical condition, left foot condition and left hip condition are causally related to the October 30, 2008 employment injury. The Board finds that further development of the medical evidence is required.

In his reports dated March 12 and April 7, 2009, Dr. Manski diagnosed left posterior neck pain, left trapezius pain, left scapular pain, left shoulder pain, left upper extremity pain, left interscapular pain, left elbow pain, paresthesias and weakness, C6-7 disc bulge, C3-4 disc osteophyte complex, left shoulder small partial thickness tear and left acromioclavicular joint

² *Jaja K. Asaramo*, 55 ECAB 200 (2004).

³ *M.W.*, 57 ECAB 710 (2006); *John D. Jackson*, 55 ECAB 465 (2004).

⁴ *D.E.*, 58 ECAB 448 (2007); *Mary J. Summers*, 55 ECAB 730 (2004).

⁵ *Phillip L. Barnes* 55 ECAB 426 (2004); *Leslie C. Moore*, 52 ECAB 132 (2000).

⁶ *V.W.*, 58 ECAB 428 (2007); *Ernest St. Pierre*, 51 ECAB 623 (2000).

degenerative changes. In his May 20, 2009 report, he attributed appellant's cervical spine problem and right foot fracture to the October 30, 2008 employment injury. In support of his conclusion, Dr. Manski noted an x-ray interpretation at the time revealed a fracture of the right foot in the area of the great and second toe and this injury was consistent with the manner in which the accident occurred. With respect to her lower back pain, he opined that appellant's lower back injury might be due to the October 30, 2008 employment injury as herniated nucleus pulposus at L3-4 and L4-5 seen on an April 10, 2009 MRI scan were consistent with a motor vehicle accidents.

In an October 20, 2009 report, Dr. Jones diagnosed left posterior neck pain, left trapezius, scapular and interscapular pain and concluded that the resulted from the October 30, 2008 employment-related motor vehicle accident. In support of this conclusion, he noted that her injuries were consistent with the history of the motor vehicle. In addition, objective testing revealed a subluxation and disc bulge/protrusion at C6-7 and her symptoms were "very typical of cervical strain or hyperextension-flexion neck injury."

Proceedings under the Act are not adversarial in nature, nor is the Office a disinterested arbiter.⁷ While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.⁸ The Board has reviewed the reports from Drs. Manski and Jones and finds that they provided a clear opinion that appellant had cervical, lumbar and a foot fracture due to her October 30, 2008 employment injury. The physicians based their diagnoses on the objective findings found on x-ray interpretations obtained shortly after her October 30, 2008 employment-related motor vehicle accident and the corresponding findings on examination and subjective complaints. Drs. Manski and Jones' opinions are supportive, unequivocal, bolstered by objective findings and based on a firm diagnosis and an accurate history.

While none of these reports are completely rationalized, Drs. Manski and Jones are consistent in indicating that appellant's sustained additional medical conditions as a result of the October 30, 2008 employment-related motor vehicle accident. Their opinions are not contradicted by any substantial medical or factual evidence of record. While the reports are not sufficient to meet appellant's burden of proof to establish her claim, Drs. Manski and Jones raise an uncontroverted inference between her claimed conditions and the accepted employment incident and are sufficient to require the Office to further develop the medical evidence and the case record.⁹

CONCLUSION

The Board finds that the case is not in posture for a decision.

⁷ *Rebecca O. Bolte*, 57 ECAB 687 (2006); *J.B.*, Docket No. 08-1735 (issued January 27, 2009).

⁸ *A.A.*, 59 ECAB 726 (2008); *Phillip L. Barnes*, 55 ECAB 426 (2004).

⁹ *See Virginia Richard (Lionel F. Richard)*, 53 ECAB 430 (2002); *see also Jimmy A. Hammons*, 51 ECAB 219 (1999); *John J. Carlone*, 41 ECAB 354 (1989).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 22, 2010 is set aside and the case remanded for further proceedings consistent with the above opinion

Issued: June 10, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board