United States Department of Labor
Employees' Compensation Appeals Board

A.C., Appellant	)	
and	)	**Docket No. 12-1957**
	)	**Issued: March 25, 2013**
DEPARTMENT OF AGRICULTURE, INSPECTION OPERATIONS PROGRAM, Minneapolis, MN, Employer	)	

Appearances:
Allan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On September 24, 2012 appellant, through her attorney, filed a timely appeal from the May 4, 2012 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 this 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 June 7, 2011 appellant, then a 33-year-old food safety inspector, filed an occupational disease claim (Form CA-2) alleging that she sustained injury to her left shoulder, back and neck

[1] 5 U.S.C. §§ 8101-8193.

due to performing her work duties over a period of time.[2] Regarding the relationship of the claimed injury to her employment, she stated, "This condition is a direct result of repetitive required by this work environment. I especially feel server pain when working at the table and on pluck side." Appellant indicated that she first became aware of her claimed condition on October 12, 2010 and that she first realized on May 24, 2011 that it was caused or aggravated by her employment. She stopped work on June 8, 2011.

In a June 7, 2011 statement, appellant provided further details of her occupational disease claim. She indicated that when working as a food safety inspector she used her left arm to pull hard and pluck in order to check glands and open hearts of cattle. Appellant indicated that the height of the table she worked on contributed to her pain. She stated that at times she had to inspect Holstein cattle for a long period and noted that plucking/lifting their enlarged hearts caused added stress to her left side. There also were times when the hearts still had blood inside, thereby causing them to weigh more. Appellant indicated that in the last week she had been trying to use her right arm to overturn the hearts and noted that she has noticed the same problem with her right side. She indicated that workers rotate in this type of work every two to three hours, whereas they used to rotate every 30 minutes and she believed that this practice increased her pain. Appellant stated that she worked about 40 hours per week.[3]

Appellant submitted a report of an October 12, 2010 clinic visit report in which Marcia Snodgrass, an attending nurse practitioner, indicated that appellant reported experiencing upper back pain and neck pain (including throbbing pain in the back of neck) and dizziness, near-fainting, numbness and seeing black spots for about two months. October 12, 2010 x-ray testing of her neck revealed negative results.[4] In a May 24, 2011 note, Nurse Snodgrass noted that appellant reported pain in her left shoulder, neck and head. In a June 7, 2011 note, a person with an illegible signature indicated that appellant should avoid engaging in repetitive motion.

In a June 22, 2011 letter, OWCP requested that appellant submit additional factual and medical evidence in support of her occupational disease claim.

Appellant submitted the findings of June 20, 2011 magnetic resonance imaging (MRI) scan testing of her left shoulder which showed negative results. The findings of June 20, 2011 MRI scan testing of her neck showed minimal degenerative cervical spondylosis. In a June 22, 2011 note, a person with an illegible signature stated that appellant could return to work after completing physical therapy. Appellant also submitted reports completed by a physical therapist and additional reports of Nurse Snodgrass produced between May and July 2011.

In a July 5, 2011 e-mail, Chris Fetters, appellant's immediate supervisor, responded to appellant's statement regarding her work duties. He indicated that if a heart is full of blood the inspector would first incise the heart and the blood would spill from the heart so this would not cause any additional weight to pluck. Mr. Fetters indicated that the new rotation pattern does

[2] Appellant indicated that a sharp pain radiated from her left shoulder to the top of her head.

[3] Appellant submitted a description of her food safety inspector position which indicated that at times she was required to lift up to 44 pounds.

[4] Nurse Snodgrass provided a similar account of a visit by appellant on October 15, 2012.

make inspectors stay on plucks longer but it also gives an inspector additional time at the final rail inspection stations which requires little to no lifting.

In a July 18, 2011 report, Dr. Richard A. Snodgrass, an attending Board-certified family practitioner, stated that he and Nurse Snodgrass were appellant's primary care providers. He noted that she had been visiting for her workers' compensation issues with her shoulder pain, upper back pain, neck pain, dizziness and numbness. The upper back pain had been constant, moderate in intensity, aching and stabbing and started in about August 2010. Dr. Snodgrass stated that, upon examination, appellant had neck edema over the bilateral anterior portion of the neck and that pain radiated to the upper back. Appellant also had associated symptoms including crepitus, headaches, neck stiffness and neck and shoulder muscle spasms. Her range of neck motion was decreased with rotation toward the left. Dr. Snodgrass stated that MRI scan testing of appellant's neck showed an impression of minimal degenerative cervical spondylosis. He noted, "After visiting with [appellant] it was concluded that this is due to her job with the repetition of her movements that are required in her current position."

In a July 27, 2011 report, Dr. Christian Lothes, an attending Board-certified neurosurgeon, stated that he saw appellant in consultation for evaluation of her left-sided scapular and neck pain. He noted that she complained that she had turned over animal parts on the conveyor belt to inspect them and that during this process she experienced fairly severe left-sided scapular pain, which radiated up into her neck and sometimes to the back of her head. Appellant denied radicular arm symptoms or other neurologic complaints. Dr. Lothes indicated that on examination appellant moved all of her extremities well, that her strength was 5/5 throughout and that she had a full range of motion of her cervical spine. Appellant's fine motor movements were intact and her coordination was normal. Dr. Lothes stated that appellant did have some pain around the left interscapular region and less so over the left trapezius area. MRI scan testing of appellant's cervical spine showed some mild degenerative changes but no significant neural foraminal stenosis and no central canal narrowing. Dr. Lothes stated, "I think that [appellant's] symptoms are probably a result of either muscle or soft tissue injury around her scapular region. I do not think at this point that her cervical spine itself appears to be responsible for her symptoms and I do not see any role for surgery at this point. [Appellant] may benefit from possibly physical therapy or even trigger point injections for her scapular pain."[5]

In an August 23, 2011 decision, OWCP denied appellant's claim on the grounds that she did not submit sufficient medical evidence to establish that she sustained an occupational disease in the performance of duty. It indicated that she did not submit a rationalized medical report relating her claimed condition to work factors.

Appellant submitted an August 16, 2011 duty status report in which Dr. Snodgrass indicated that she had a torn muscle of her posterior shoulder and noted "[illegible] repetitive motion." Dr. Snodgrass indicated that she could work with restrictions for eight hours per day.[6]

[5] In an August 3, 2011 note, a person with an illegible signature indicated that appellant could not work due to a torn muscle.

[6] Appellant submitted a report, which provided greater detail of Dr. Lothes' July 27, 2011 examination, but that report did not contain any indication that her problems were due to work factors.

In reports of examination performed on September 6, October 4 and 18 and November 15, 2011 and January 24, 2012, he reported examination findings and diagnosed left shoulder pain. Appellant also submitted additional reports from her physical therapist.

Appellant requested a telephonic hearing with an OWCP hearing representative. During the December 14, 2011 hearing, she indicated that she worked as a food safety inspector for about eight years and she provided additional details about her job duties. Appellant indicated that she had to cut the lymph nodes of cattle hearts and turn the hearts over and palpate them to check for disease. She further discussed her shoulder, back and neck symptoms.

In a February 16, 2012 decision, the hearing representative affirmed OWCP's August 23, 2011 decision. She found that the submitted reports did not contain a rationalized opinion on causal relationship and did not show that appellant sustained a work-related occupational disease.

Appellant submitted reports of numerous examinations conducted between May 24 and October 15, 2011 by Dr. Snodgrass. In these reports, Dr. Snodgrass continued to diagnose left shoulder pain, but he also variously diagnosed such conditions as neck and left shoulder spasms, neck pain, acquired spondylolisthesis, low back pain, joint effusion of the left shoulder and cervical disc degeneration. Appellant also submitted reports of Nurse Snodgrass.

In a May 4, 2012 decision, OWCP affirmed its February 16, 2012 decision denying appellant's claim for a work-related occupational disease.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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 FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged and that any disability and specific condition for which compensation is claimed are causally related to the employment injury.[7] These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[8]

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 employment factors identified by the claimant were the proximate cause of the condition for

[7] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[8] *See Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990). A traumatic injury refers to injury caused by a specific event or incident or series of incidents occurring within a single workday or work shift whereas an occupational disease refers to an injury produced by employment factors which occur or are present over a period longer than a single workday or work shift. 20 C.F.R. §§ 10.5(ee)(q); *Brady L. Fowler*, 44 ECAB 343, 351 (1992).

which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.

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 claimant'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 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.[9]

As causal relationship is a medical question that can only be resolved by medical opinion evidence, the reports of a nonphysician cannot be considered by the Board in adjudicating that issue.[10]

ANALYSIS

On June 7, 2011 appellant filed an occupational disease claim alleging that she sustained injury to her left shoulder, back and neck due to performing her repetitive work duties over a period of time. Her job required her to repetitively handle and palpate animal parts, including the hearts of cattle, to check for disease.

The Board finds that appellant did not submit sufficient medical evidence to establish that she sustained an occupational disease in the performance of duty.

Appellant submitted a July 18, 2011 report in which Dr. Snodgrass, an attending Board-certified family practitioner, stated that she had complained of left shoulder pain, upper back pain, neck pain, dizziness and numbness. Dr. Snodgrass noted that upon examination she had neck edema over the bilateral anterior portion of the neck and that pain radiated to the upper back. Appellant also had associated symptoms including crepitus, headaches, neck stiffness and neck and shoulder muscle spasms. Dr. Snodgrass stated that MRI scan testing of her neck showed an impression of minimal degenerative cervical spondylosis and noted, "After visiting with [appellant] it was concluded that this is due to her job with the repetition of her movements that are required in her current position."

This report, however, is of limited probative value regarding appellant's claim for a work-related occupational disease because Dr. Snodgrass did not provide adequate medical rationale in support of his conclusion on causal relationship.[11] He did not provide any explanation of why he felt that her degenerative cervical spondylosis was related to her repetitive motions at work.

[9] *See Donna Faye Cardwell*, 41 ECAB 730, 741-42 (1990).

[10] *Arnold A. Alley*, 44 ECAB 912, 920-21 (1993). *See* 5 U.S.C. § 8101(2).

[11] *See Leon Harris Ford*, 31 ECAB 514, 518 (1980) (finding that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

Dr. Snodgrass did not describe appellant's work duties in any detail or explain how they could have been competent to cause the observed condition. He did not explain why appellant's problems were not solely due to her preexisting degenerative cervical condition. In reports of examination performed between May 2011 and January 2012, Dr. Snodgrass reported examination findings and diagnosed left shoulder pain as well as other conditions such as neck and left shoulder spasms, neck pain, acquired spondylolisthesis, low back pain, joint effusion of the left shoulder and cervical disc degeneration. He did not provide any indication that these conditions were related to the implicated work duties. Appellant submitted an August 16, 2011 duty status report in which Dr. Snodgrass indicated that appellant had a torn muscle of her posterior shoulder and noted "[illegible] repetitive motion." Dr. Snodgrass noted that she could work with restrictions for eight hours per day. He did not provide a clear opinion in this note that appellant's diagnosed condition was work related. Moreover, the basis for his diagnosis of a torn shoulder muscle remains unclear.

In a July 27, 2011 report, Dr. Lothes, an attending Board-certified neurosurgeon, stated that he saw appellant in consultation for evaluation of her left-sided scapular and neck pain. He stated that MRI scan testing of her cervical spine showed some mild degenerative changes but no significant neural foraminal stenosis and no central canal narrowing. Dr. Lothes stated, "I think that [appellant's] symptoms are probably a result of either muscle or soft tissue injury around her scapular region. I do not think at this point that her cervical spine itself appears to be responsible for her symptoms…." He did not, however, provide any opinion that appellant's medical condition was related to work factors. Appellant also submitted reports of an attending nurse practitioner and of physical therapists, but such reports of nonphysicians would not constitute probative medical evidence.[12]

For these reasons, appellant did not show that she sustained an occupational disease in the performance of duty.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained an occupational disease in the performance of duty.

[12] *See supra* note 10.

ORDER

IT IS HEREBY ORDERED THAT the May 4, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 25, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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