

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

G.W., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Sewell, NJ, Employer**

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**Docket No. 14-2004
Issued: February 5, 2015**

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, Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 17, 2014 appellant, through her attorney, filed a timely appeal from a July 8, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (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 the diagnosed cervical condition was caused or aggravated by her federal job duties.

On appeal her attorney asserts that appellant's cervical disc herniations should be accepted, based on the opinion of the attending physician or, in the alternative, the case should be remanded for further development of the medical record.

¹ 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

On February 12, 2013 appellant, then a 45-year-old rural carrier, filed an occupational disease claim alleging that extensive repetitive and strenuous upper extremity job duties caused bilateral carpal tunnel syndrome and a cervical injury. By letter dated April 29, 2013, OWCP informed appellant of the evidence needed to support her claim. In statements dated March 14, 2013, appellant described her employment history and job duties. She indicated that she injured her right hand at work in May 2007 and her lumbosacral spine in May 2009.² Appellant stated that she had surgery on her cervical spine in October 2011 and returned to full duty in July 2012.

A July 14, 2011 upper extremity electrodiagnostic study demonstrated ongoing left C6-7 radiculopathy and severe right and moderately severe left carpal tunnel syndrome. A July 25, 2011 cervical spine x-ray demonstrated mild cervical spondylosis and discogenic disease. A September 15, 2011 cervical spine x-ray for preoperative evaluation noted comparison with the July 25, 2011 x-ray and an August 1, 2011 magnetic resonance imaging (MRI) scan study of the cervical spine. The September 15, 2011 x-ray was interpreted as demonstrating mild degenerative changes at C4-5 and C5-6 with normal alignment and straightening of the normal cervical lordosis. A December 16, 2011 x-ray of the cervical spine demonstrated postsurgical fusion extending from C4 to C7 with normal alignment. A February 7, 2012 thoracic spine MRI scan study demonstrated small disc protrusions at T6-7, T7-8, and T8-9 with no significant neural foraminal narrowing or central canal stenosis.

By decision dated June 21, 2013, OWCP indicated that appellant had not submitted a report from a treating physician with a medical explanation of how the claimed conditions were caused by her employment and denied the claim.

Appellant, through her attorney, timely requested a hearing. In a May 22, 2013 report, Dr. Steven J. Valentino, a Board-certified osteopath specializing in orthopedic surgery, noted that on March 14, 2013 appellant had a new onset of neck pain that radiated into the right arm with paresthesia and weakness that correlated with MRI scan findings of a disc herniation at C3-4. He noted that an MRI scan study on August 1, 2011 demonstrated disc herniations at C4-5, C5-6, and C6-7 with nerve root compression, for which she had surgery on November 1, 2011. Dr. Valentino indicated that a May 10, 2013 cervical spine MRI scan study demonstrated a new moderate-sized central disc herniation at C3-4 with encroachment on the cord and moderate bilateral foraminal encroachment. He advised that the fusion from C4 to C7 was satisfactory. Dr. Valentino opined that the multilevel disc herniations were causally connected to a May 7, 2007 employment injury in which appellant stated she injured her right hand and wrist pulling down an LLV door. He noted that appellant returned to work after the November 2011 cervical spine surgery and that work activities created the symptomatic disc herniation at C3-4.

In a May 23, 2013 report, Dr. Mark S. Rekant, Board-certified in orthopedic and hand surgery, noted that appellant had been his patient since 2007. He described complaints of

² The May 7, 2007 claim for a right wrist injury, adjudicated by OWCP under file number xxxxxx536, was denied. A May 13, 2009 claim, adjudicated under file number xxxxxx571, was accepted for lumbosacral sprain. The instant claim was adjudicated under file number xxxxxx984.

bilateral hand pain, numbness, and tingling and noted positive physical examination findings of bilateral carpal tunnel syndrome which, he advised, were caused by appellant's repetitive job duties over the years as a letter carrier.

On September 17, 2013 an OWCP hearing representative reversed in part and set aside in part the June 21, 2013 OWCP decision. She found that appellant had established that the claimed bilateral carpal tunnel syndrome was causally related to employment and should be accepted. The hearing representative remanded the case to OWCP to double the instant claim with claim number xxxxxx536,³ prepare an appropriate statement of accepted facts, and ask Dr. Valentino to provide the August 1, 2011 and May 10, 2013 MRI scan reports and give a full reasoned explanation regarding the medical connection between appellant's cervical condition and accepted job duties.

On remand OWCP doubled claim numbers xxxxxx536 and xxxxxx984. The record for claim number xxxxxx536 indicates that the claim, filed for a right wrist injury that occurred on May 7, 2007, was not accepted by OWCP. The medical evidence in that claim includes reports from Loretta Tortcher, a nurse practitioner, dated May 7 to June 7, 2007 in which she diagnosed carpal tunnel syndrome. A duty status report dated May 30, 2007 from a "hand surgeon" has an illegible signature. This also included a diagnosis of carpal tunnel syndrome. In an October 22, 2008 report, Dr. Rekant evaluated appellant's bilateral hand pain, and an upper extremity electrodiagnostic study demonstrated bilateral carpal tunnel syndrome and no ulnar or cervical neuropathy.

On October 9, 2013 Dr. Valentino was asked to provide the MRI scan study reports of August 1, 2011 and May 10, 2013 and a medical narrative explaining the connection between appellant's cervical condition and employment exposure, as described in the statement of accepted facts. In an October 29, 2013 report, he reiterated his findings and conclusions described in his May 22, 2013 report.⁴

In a November 20, 2013 decision, OWCP denied appellant's claim, finding that appellant did not establish that she sustained a cervical condition causally related to factors of her federal employment. Appellant, through her attorney, timely requested a hearing and submitted an August 1, 2011 cervical spine MRI scan study report that demonstrated a moderate disc herniation at C4-5, a small disc herniation at C5-6, and a moderate-to-large disc herniation at C6-7. A May 10, 2013 cervical spine x-ray report demonstrated stable postoperative changes. A May 10, 2013 MRI scan study of the cervical spine demonstrated a new moderate-sized central disc herniation at C3-4 with involvement of the neural foramina.⁵

At the hearing, held on April 22, 2014, the hearing representative acknowledged that bilateral carpal tunnel syndrome had been accepted. Appellant described her job duties and

³ *Id.*

⁴ A review of the two reports demonstrates that Dr. Valentino merely redated his May 22, 2013 report on October 29, 2013.

⁵ Appellant also submitted a May 10, 2013 MRI scan study of the right shoulder that demonstrated mild supraspinatus and infraspinatus tendinosis without rotator cuff tear.

indicated that she did not file a workers' compensation claim for a cervical condition prior to the November 2011 surgery. She stated that she was off work for approximately eight months and returned to regular duty in the summer of 2012 and continued to work. Appellant indicated that since her return to work she had symptoms of neck stiffness and pain and bilateral hand pain that was treated with medication and injections. Her attorney asserted that the medical evidence regarding the cervical condition was at least sufficient to require further development by referring appellant for a second opinion evaluation.

In a July 8, 2014 decision, an OWCP hearing representative affirmed the November 20, 2013 decision, finding the evidence of record insufficient to establish that the claimed cervical condition was caused by appellant's duties as a rural carrier.

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/or specific condition for which compensation is claimed is causally related to the employment injury. These are the essential elements of each and every compensation claim, regardless of whether the asserted claim involves traumatic injury or occupational disease, an employee must satisfy this burden of proof.⁶

OWCP regulations define the term "occupational disease or illness" as a condition produced by the work environment over a period longer than a single workday or shift."⁷ 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. The medical opinion 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.⁸

Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence.⁹ 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

⁶ *Roy L. Humphrey*, 57 ECAB 238 (2005).

⁷ 20 C.F.R. § 10.5(ee).

⁸ *Supra* note 6.

⁹ *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

the employee.¹⁰ 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.¹¹

ANALYSIS

The Board finds that appellant did not establish that she sustained a cervical condition caused by a claimed May 7, 2007 employment incident that was not accepted by OWCP or by her usual job duties as a rural carrier. The medical evidence is insufficient to establish causal relationship.

In his May 22, 2013 report, redated on October 29, 2013, Dr. Valentino noted that on March 14, 2013 appellant had a new onset of neck pain that radiated into the right arm with paresthesia and weakness that correlated with MRI scan findings of a disc herniation at C3-4. He noted that an MRI scan study on August 1, 2011 demonstrated disc herniations at C4-5, C5-6, and C6-7 with nerve root compression, for which she had surgery on November 1, 2011. Dr. Valentino indicated that a May 10, 2013 cervical spine MRI scan study demonstrated a new moderate-sized central disc herniation at C3-4 with encroachment on the cord and moderate bilateral foraminal encroachment. He opined that the multilevel disc herniations were causally connected to a May 7, 2007 employment injury in which appellant stated that she injured her right hand and wrist pulling down an LLV door. Dr. Valentino noted that appellant returned to work after the November 2011 cervical spine surgery and that work activities created the symptomatic disc herniation at C3-4.

The Board finds that Dr. Valentino's opinion lacks sufficient detailed medical rationale to discharge appellant's burden of proof that she sustained an employment-related cervical injury. Dr. Valentino described the circumstances of the claimed injury by mentioning that appellant injured her right hand and wrist on May 7, 2007 pulling down an LLV door and by opining that work activities caused a C3-4 disc herniation. He did not demonstrate specific knowledge of her job duties or offer an explanation of how either a May 7, 2007 employment incident or appellant's regular job duties resulted in a cervical injury. Without a detailed medical report describing how and why appellant sustained a cervical condition caused by employment factors, appellant has not met her burden of proof.¹²

The opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to a claimant's federal employment and such relationship must be supported with affirmative evidence, explained by medical rationale, and be based upon a complete and accurate medical and factual background of the claimant.¹³ As Dr. Valentino did not adequately explain or describe physiologically how or why the May 7, 2007 employment incident or appellant's work

¹⁰ *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

¹¹ *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

¹² *See W.S.*, Docket No. 14-1022 (issued July 1, 2014).

¹³ *A.D.*, 58 ECAB 149 (2006).

duties as a rural carrier caused her cervical condition, his opinion is of diminished probative value.¹⁴

The reports from Dr. Rekant, a hand surgeon, are not relevant to a claimed cervical condition. Dr. Rekant diagnosed bilateral carpal tunnel syndrome which has been accepted as employment related. The numerous diagnostic studies did not provide a cause of any diagnosed conditions, and medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹⁵ The May and June 2007 reports from Ms. Tortcher, a nurse practitioner, do not constitute competent medical evidence as a nurse practitioner is not a physician under FECA.¹⁶ Furthermore, Ms. Tortcher did not diagnose a cervical condition in her reports.

It is appellant's burden to establish that the claimed cervical condition is causally related to factors of her federal employment. She submitted insufficient evidence to show that she sustained a cervical condition caused by her employment factors. 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 establish that she sustained a cervical condition causally related to a May 7, 2007 employment incident of other factors of her federal employment.

¹⁴ See *M.L.*, Docket No. 14-1128 (issued September 17, 2014).

¹⁵ *Willie M. Miller*, 53 ECAB 697 (2002).

¹⁶ *L.D.*, 59 ECAB 648 (2008). Section 8101(2) of FECA provides that "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. 5 U.S.C. § 8101(2); see *supra* note 6.

ORDER

IT IS HEREBY ORDERED THAT the July 8, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 5, 2015
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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