United States Department of Labor
Employees' Compensation Appeals Board

M.F., Appellant	)	
and	)	**Docket No. 17-1973**
	)	**Issued: December 31, 2018**
U.S. POSTAL SERVICE, POST OFFICE, Indianapolis, IN, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On September 22, 2017 appellant, through counsel, filed a timely appeal from a July 10, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met her burden of proof to establish an injury causally related to the accepted April 5, 2016 employment incident.

FACTUAL HISTORY

On April 26, 2016 appellant, then a 59-year-old mail handler, filed an occupational disease claim (Form CA-2) alleging that she experienced spasms in her biceps of both arms, shoulders, upper back, headaches, and ear aches. Additionally, she noted loss of mobility in both arms and shooting pains in her upper extremities, and shaking spasms. Appellant indicated that she first became aware of her condition on April 5, 2016 and of its relation to her federal employment on April 25 and 26, 2016. She did not stop work.

On April 26, 2016 appellant also filed a notice of recurrence (Form CA-2a). She alleged that, after returning to work following a November 20, 2002 injury in OWCP File No. xxxxxx934,[3] she was on permanent limited duty with restrictions of no lifting of more than 10 to 20 pounds, no pushing, no pulling, and no overhead work. Appellant explained that on April 5, 2016 she lifted a flat tub of mail from floor to breast height. She indicated that the pain in her neck, upper back, both shoulders, arms, and hands had intensified. Appellant indicated that her hands were cramping and weak. She noted that she had spasms in her shoulders, biceps, wrist, hands, and neck. Appellant noted that in 2015 she stepped on a floor jack in the middle of the workroom floor.

In an April 4, 2016 report,[4] Dr. Jeff C.C. Thomas, a physiatrist, noted that appellant returned with a report of a new injury *versus* an aggravation or exacerbation of a prior work-related condition. He noted that earlier that day, appellant had lifted a 10-pound tub of mail to chest level and felt pain shoot from her posterior neck down through both upper limbs. Appellant informed Dr. Thomas that the pain was new and included her arms, wrists, hands, and back. Dr. Thomas also noted that appellant indicated that the pain was constant and was worse than her base-line pain prior to the alleged employment incident. Appellant further related that she also experienced persistent headaches, pressure in her right ear, and weakness in her hands. Dr. Thomas noted that appellant holds up her right upper limb with the left upper limb due to pain and weakness associated with performing various upper limb activities. He examined her and diagnosed: an exacerbation of a cervical strain, a cervicalgia, facetogenic exacerbation; headaches secondary to cervicalgia; and shoulder pain due to rotator cuff bursitis *versus* rotator cuff tendinopathy. Dr. Thomas advised appellant to report a new injury to her supervisor at work. He recommended that she continue her current work restrictions and advised follow up after her report of an exacerbation injury at work.

[3] Appellant's traumatic injury claim (Form CA-1) for a November 29, 2002 injury in OWCP File No. xxxxxx934 was accepted by OWCP for cervical sprain. On December 23, 2013 OWCP accepted a recurrence of that condition. OWCP File No. xxxxxx934 has been administratively combined with the present claim, File No. xxxxxx277, with File No. xxxxxx934 serving as the master file.

[4] The Board notes that the date of the report appears to be a typographical error, as the report describes the April 5, 2016 employment incident.

By development letter dated June 28, 2016, OWCP informed appellant that the evidence of record was insufficient to establish her claim. It advised her of the type of evidence needed and provided a questionnaire for her completion. OWCP noted that appellant had also filed a claim for a recurrence and it was unclear if she intended to pursue a recurrence claim or a claim for a new occupational disease or a traumatic injury. It afforded her 30 days to submit the necessary information.

In a July 17, 2016 response, appellant explained that on April 5, 2016 she raised a flat tub of mail from the floor to breast height (weighing approximately 10 pounds or more) to place into a hamper that was full of flat tubs. She noted that she had limited mobility in both shoulders when lifting, and she pressed both elbows into the sides of her stomach in order to lift due to pain and limited mobility. Appellant also indicated that, when she reached for something, she used her opposite hand to balance the lifting arm to keep the pressure off her shoulders. However, when she injured herself on April 5, 2016, she was in a hurry so she acted without her normal lifting precautions. Appellant denied having any activities outside work that were relevant to her working conditions. She referenced her November 20, 2002 neck injury and noted how, on August 3, 2003, her right arm locked, and she was off work for six months because she could not use her right arm. Appellant explained how her medical conditions continued to limit her physical abilities. She reiterated that she has been suffering with her neck condition since 2002, her right shoulder since 2003, her left shoulder since 2012, and now her right hand, wrist, all five fingers, and pain running down her upper back, and both biceps since April 5, 2016.

Appellant explained that she was claiming a traumatic injury because she knew when it happened, how it happened, and the parts of the body it affected. She provided a witness statement from her coworker, M.S., who indicated that he witnessed appellant lift a tray of mail and pick it up. M.S. noted that mid-way, appellant immediately took a seat in her chair, and when he asked her what was wrong, "she began explaining that her hands all the way up to her arms were hurting bad as a direct result of lifting that tray."

By decision dated July 27, 2016, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish an injury causally related to the accepted work factors. It noted that the evidence of record did not support a traumatic injury. Therefore OWCP reviewed appellant's claim as an occupational disease claim.

Appellant subsequently submitted a July 14, 2016 report from Dr. Thomas. Dr. Thomas noted his review of her April 2016 work injury, which exacerbated her prior condition resulting from a previous work-related injury, OWCP had not authorized much-needed radio frequency ablation (RFA) of her cervical spine. He advised that appellant responded extremely well to the diagnostic cervical facet joint blocks performed on November 24, 2014 and March 20, 2015, which greatly reduced her headaches, her neck pain, and her shoulder pain, bilaterally, for several weeks to months making her an excellent candidate for the definitive treatment of cervical RFA procedure. Dr. Thomas repeated his earlier diagnoses of cervicalgia, facetogenic, and cervical strain exacerbation, headaches, and shoulder pain due to rotator cuff bursitis. He noted that she was a good candidate for RFA of the cervical spine facet joint nerves and provided continuing work restrictions. Dr. Thomas also saw appellant on November 21, 2016, and provided a work excuse and continued work restrictions.

A February 3, 2017 magnetic resonance imaging (MRI) scan of the right shoulder read by Dr. Thomas Vahey, a Board-certified diagnostic radiologist, revealed moderate-sized full-thickness rotator cuff tear involving the anterior half of the supraspinatus tendon with the torn segment retracted approximately 13 millimeters, and parascapular musculature preserved.

In a March 27, 2017 report, Dr. Gregory L. Estes, a Board-certified orthopedic surgeon, noted that appellant was seen for right shoulder pain. He diagnosed a right rotator cuff tear with acromioclavicular osteoarthritis. Dr. Estes noted that appellant's initial history included some intermittent issues with her shoulder since 2003. He advised that she had been lifting a heavy tray at work when she started having increased pain, mostly on the lateral aspect of her shoulder. Dr. Estes noted that appellant had pain at night and pain with overhead activity. He also noted that she had physical therapy for two months and she had a steroid injection in December 2016.

In a March 28, 2017 report, Dr. Nilda Durany, specializing in emergency medicine, noted that, on April 5, 2016, appellant lifted a tub of mail that weighed approximately 20 pounds. She explained that, as appellant lifted the tub chest high, appellant flexed her shoulder forward and extended her arms out to place the tray of mail onto another tub of mail. Dr. Durany then felt a sharp pain like never before in her right shoulder and arm. She reported that the pain was worse with use of the right arm when raising it overhead.

Dr. Durany noted that x-rays of appellant's right shoulder taken on March 28, 2017, showed acromioclavicular osteoarthritis, but no fractures. She noted that the February 3, 2017 MRI scan of appellant's right shoulder, revealed findings which included a moderate-sized full-thickness rotator cuff tear. Additionally, Dr. Durany noted that there were moderate hypertrophic changes at the acromioclavicular articulation and a small glenohumeral joint effusion decompressing into the subacromial bursa through the rotator cuff tear. She diagnosed a complete tear of the supraspinatus, right rotator cuff and a right rotator cuff sprain. Dr. Durany explained that in her medical opinion, appellant's injury on April 5, 2016, was "directly due to her employment while working as a mail handler" and was "as a direct result of her required work duties on April 5, 2016."

On April 11, 2017 appellant requested reconsideration and indicated that she was providing additional documentation. OWCP subsequently received therapy notes dating from December 28, 2016 to January 20, 2017. In a March 28, 2017 correspondence entitled "Letter of Reconsideration," Dr. Durany indicated that appellant felt a sharp pain when lifting a tub of mail and that it was the direct result of her work-related duties.

In a June 9, 2017 memorandum, OWCP determined that appellant's claim should be converted to a traumatic injury as appellant clearly attributed her claimed medical conditions to a work event which occurred during the course of a single workday or shift.

By decision dated July 10, 2017, OWCP denied modification of its July 27, 2016 decision, finding that the evidence of record was insufficient to establish causal relationship between appellant's diagnosed conditions and the accepted April 5, 2016 work injury.

LEGAL PRECEDENT

A claimant seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence, including that an injury was sustained in the performance of duty as alleged, and that any specific condition or disability claimed is causally related to the employment injury.[5]

To determine whether an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.[6] The second component is whether the employment incident caused a personal injury.[7] An employee may establish that an incident occurred in the performance of duty as alleged, but fail to establish that the disability or specific condition for which compensation is being claimed is causally related to the injury.[8]

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.[9] A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.[10] Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment incident.[11] Certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered "physician[s]" as defined under FECA.[12] Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.[13]

In any case where a preexisting condition involving the same part of the body is present and the issue of causal relationship therefore involves aggravation, acceleration, or precipitation,

---

[5] 20 C.F.R. § 10.115(e), (f); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

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

[7] *John J. Carlone*, 41 ECAB 354 (1989).

[8] *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

[9] *Robert G. Morris*, 48 ECAB 238 (1996).

[10] *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[11] *Id.*

[12] 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).

[13] *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006). A report from a physician assistant or certified nurse practitioner will be considered medical evidence if countersigned by a qualified physician. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013).

the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.[14]

ANALYSIS

The Board finds that appellant has not established an injury causally related to the accepted April 5, 2016 employment incident.

The relevant evidence submitted by appellant includes reports from Dr. Thomas. In his April 4, 2016 report,[15] Dr. Thomas noted that, on the date of injury, appellant related that she lifted a tub of mail to chest level and felt pain shoot from her posterior neck down through both upper limbs. While Dr. Thomas diagnosed an exacerbation of a cervical strain, cervicalgia, headaches, and rotator cuff bursitis causing shoulder pain, he did not provide medical rationale, explaining how or why, physiologically, appellant's work activity caused or aggravated any of the diagnosed conditions.[16] This is particularly important in light of her preexisting conditions.[17]

In a July 14, 2016 report, Dr. Thomas noted that he reviewed appellant's April 2016 work injury, which exacerbated her prior condition resulting from a previous work-related injury. He indicated that her treatment was not approved despite his explanation of causal relationship between the musculoskeletal pathology and the causal relationship of her work activities. Dr. Thomas repeated his diagnoses of an exacerbation of cervical strain, cervicalgia, headaches secondary to cervicalgia, and shoulder pain due to rotator cuff bursitis. While he concluded that there was a causal connection between appellant's work incident and her diagnosed conditions, he did not provide medical rationale, explaining why this work activity caused or aggravated any of the particular diagnosed conditions.

In a March 27, 2017 report, Dr. Estes diagnosed a right rotator cuff tear and described appellant's incident at work in which she lifted a heavy tray and felt pain in the lateral aspect of her shoulder. Although he noted what she was doing at work, this report did not clearly indicate that appellant's activities as a mail handler on April 5, 2016 caused or aggravated any specific diagnosed condition. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.[18]

In a March 28, 2017 report, Dr. Durany described appellant's April 2016 work incident and diagnosed a complete tear and sprain of the right rotator cuff. She indicated that the injury was directly due to her employment and work on the day in question. However, other than to offer that appellant's condition was a result of the April 5, 2016 work incident, Dr. Durany did not explain how she arrived at his conclusion. This is especially important as she did not examine

[14] Federal (FECA) Procedure Manual, *id*. at Chapter 2.805.3e (January 2013).

[15] As noted above, the date of this report appears to be a typographical error.

[16] *See George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

[17] *See supra* note 16.

[18] *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

appellant until almost a year after incident. Furthermore, Dr. Durany did not mention appellant's preexisting conditions or explain how lifting the tub of mail caused the aforementioned diagnoses. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of appellant, 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 incident identified by appellant.[19]

OWCP also received diagnostic reports which included a February 3, 2017 MRI scan of the right shoulder read by Dr. Vahey. However, this evidence is of limited probative value as it does not address whether the work activities caused or aggravated a diagnosed condition.

OWCP also received physical therapy notes from December 28, 2016 to January 20, 2017. Health care providers such as nurses, acupuncturists, physician assistants, and physical therapists are not physicians under FECA. Thus, their opinions on causal relationship do not constitute competent medical opinions.[20]

The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is causal relationship between the two.[21] Neither the fact that the condition became apparent during a period of employment, nor the belief that the condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[22]

Because the medical reports submitted by appellant do not explain how the April 5, 2016 employment incident caused or aggravated a specific condition, they are insufficient to establish the claim.[23] Thus appellant has not met her burden of proof.

On appeal counsel argues that appellant's medical evidence was improperly discounted. However, as found above, the medical evidence of record was insufficiently rationalized.

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.

[19] *A.D.*, 58 ECAB 149, 156 (2006); *L.D.*, 58 ECAB 344, 350 (2007); *G.G.*, 58 ECAB 389, 391 (2007); *D.E.*, 58 ECAB 448, 453-54 (2007).

[20] *Jane A. White*, 34 ECAB 515, 518-19 (1983); *see* 5 U.S.C. § 8101(2).

[21] *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

[22] *Id.*

[23] *See Linda I. Sprague*, 48 ECAB 386, 389-90 (1997).

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish an injury causally related to the accepted April 5, 2016 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the July 10, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 31, 2018
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board