

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

A.M., Appellant)	
)	
and)	Docket No. 19-1138
)	Issued: February 18, 2020
U.S. POSTAL SERVICE, POST OFFICE,)	
Chippewa Falls, WI, Employer)	
)	

Appearances:
Appellant, pro se
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 April 23, 2019 appellant filed a timely appeal from a March 18, 2019 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.²

ISSUE

The issue is whether appellant has met her burden of proof to establish cervical and left arm conditions causally related to the accepted factors of her federal employment.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that following the March 18, 2019 decision appellant submitted additional evidence on appeal. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

FACTUAL HISTORY

On February 27, 2017 appellant, then 66-year-old city carrier, filed an occupational disease claim (Form CA-2) alleging that she had developed swelling and pain in her left arm as well as a pull in her neck due to repetitive handling of mail on a daily basis while in the performance of duty. She noted that she first became aware of her conditions on February 22, 2015 and first attributed them to factors of her federal employment on April 12, 2015. Appellant did not stop work.

In a March 15, 2017 development letter, OWCP advised appellant that the record did not contain evidence sufficient to establish her claim. It advised her of the type of factual and medical evidence needed and afforded her 30 days to submit the necessary evidence.

On April 18, 2016 Dr. Carol S. Carlson, a physician Board-certified in physical medicine and rehabilitation, examined appellant due to left-sided neck pain and left upper extremity pain aggravated by lifting and the repetitive use of her left arm. She noted that appellant's pain began without any injury. Dr. Carlson reviewed appellant's cervical spine magnetic resonance imaging (MRI) scan, noted a large disc protrusion at C5-6 compressing the spinal cord, and diagnosed cervical radiculopathy and cervical spondylosis without myelopathy. On April 21 and May 5 and 19, 2016 appellant underwent cervical epidural steroid injections at C7-T1. On June 1, 2016 Dr. Carlson examined appellant due to left-sided neck pain aggravated by lifting. She diagnosed left-sided cervical radiculopathy with occasional left arm numbness and cervical spondylosis without myelopathy. Dr. Carlson also noted that appellant had residual lymphedema in the left arm after breast cancer treatment and lymph node resection.

By decision dated May 26, 2017, OWCP denied appellant's occupational disease claim finding that she had not submitted medical evidence sufficient to establish causal relationship between her diagnosed conditions and her accepted federal employment factors.

On June 26, 2017 appellant requested reconsideration. She provided a narrative statement describing her job duties including lifting heavy mail trays and parcels as well as opening and closing mailboxes, the mail truck doors, and dock doors. Appellant alleged that these activities caused or contributed to her cervical radiculopathy. She denied previous neck conditions and asserted that her left arm pain began on February 22, 2016 due to lifting heavy sacks and packages on her mail route. Appellant explained that, after injections, she was pain free until October 27, 2016 when her neck and left arm pain recurred.

By decision dated July 3, 2017, OWCP denied appellant's request for reconsideration of the merits of her claim.

In a report dated August 2, 2017, Dr. Joseph T. Hebl, a physician specializing in occupational medicine, listed appellant's employment duties including reaching, lifting, pushing, and pulling. He diagnosed cervical radiculopathy and cervical spondylosis and noted that she reported that her work activities worsened her symptoms, especially turning her head or neck, reaching, and lifting mail. Dr. Hebl opined that appellant's diagnoses were causally related to her job duties and that her work activities were a material contributing cause of the onset of her neck pain and radiculopathy. He provided work restrictions.

On August 23, 2017 Dr. Hebl indicated that appellant began experiencing neck symptoms on February 22, 2016. He repeated her employment duties, medical history, diagnoses, and noted that she reported that her work activities worsened her symptoms. Dr. Hebl found that appellant had an industrial injury to her neck with left upper extremity paresthesias and dysesthesias. He opined that her diagnosed conditions were directly and causally related to her work duties. Dr. Hebl explained that appellant's work activities were a material contributing cause to the onset of her neck pain and radiculopathy and that continued activities worsened these symptoms. He found that she could return to work with restrictions.

On December 19, 2017 appellant requested reconsideration. She provided an additional narrative statement attributing her conditions to her daily job duties over a period of years. Appellant noted that she had experienced left arm lymphedema due to breast cancer treatment, but that her left arm condition was also aggravated by work activities.

On March 24, 2016 Dr. Mark Southard, a Board-certified diagnostic radiologist, reviewed appellant's chest x-rays. Appellant also submitted notes dated February 23, March 24, and December 12, 2016 from Ellen N. Canopy, a physician assistant, who diagnosed postmastectomy lymphedema syndrome, lumbago, cervical radiculopathy, cellulitis, and chronic acquired lymphedema. On November 2, 2016 Stephanie A. Roth, a registered nurse, examined appellant due to lymphedema.

On February 26, October 27, and November 22, 2016 Dr. Paul M. Ippel, a family practitioner, examined appellant due to left hand pain and diagnosed lymphedema and cellulitis in the left arm. On April 8, 2016 he found that she had pain in the left upper back just above the scapular spine that seemed to be radiating down in her left triceps. Appellant also reported that her neck felt stiff. Dr. Ippel diagnosed left arm pain and ruled out left cervical radiculopathy. He noted that appellant's upper back pain did not have anything to do with the bag that she carried to deliver mail.

On May 17, 2017 Dr. Carlson reported that appellant was experiencing right-sided neck upper extremity pain. She performed cervical epidural injections at C7-T1 on July 6, 27, and August 10, 2017. On August 30, 2017 Dr. Carlson reported that appellant was not experiencing any significant pain in her neck or left arm. She noted that appellant's pain was only triggered by lifting the heavy back door on her mail truck or lifting packages weighing over 70 pounds.

By decision dated March 19, 2018, OWCP denied modification of the May 26, 2017 decision.

On April 19, 2018 appellant requested reconsideration. In a narrative statement, she again attributed her cervical condition to her federal employment duties.

On April 12, 2016 appellant underwent a cervical spine MRI scan which demonstrated a very significant large disc protrusion at C5-6 compressing against the spinal cord affecting both the right and left sides as well as a smaller disc protrusion at C4-5.

On September 20, 2017 Dr. Laura Isaacson, an osteopath Board-certified in family practice, examined appellant due to neck pain and found tenderness to palpation over the right cervical paraspinal muscles with moderate muscle spasm. She diagnosed dyspnea, and lipid

disorders. In a March 2018 narrative report, Dr. Isaacson noted appellant's history of cancer, chronic lymphedema, and recurrent cellulitis of the left arm with pain. She noted that appellant was experiencing an exacerbation of the lymphedema as a result of recent surgery on her right hand which required her to use her left arm and hand more frequently.

In a report dated April 16, 2018, Dr. Isaacson related that, on February 22, 2016, while at work, appellant noticed significant left arm pain that quickly developed into lymphedema and cellulitis. She opined that repetitive motion and heavy lifting at work had exacerbated appellant's lymphedema and had likely caused cervical radiculopathy. Dr. Isaacson noted that overuse of the left arm and hand had exacerbated appellant's lymphedema and that appellant underwent right hand surgery which required her to use her left hand and arm more frequently with an exacerbation of the lymphedema. She implicated appellant's work activities of lifting heavy mail trays, opening and closing her vehicle door, pushing and pulling the emergency brake, pulling dock doors, and pushing a heavy mail cart as contributing to her flares of lymphedema and arm pain. Dr. Isaacson found that the recurrent lifting, pushing, and pulling of heavy mail parcels, and doors on a daily basis had caused increased left arm pain and lymphedema, which had progressed to cellulitis when it was difficult to control. She further found that appellant's left arm and neck pain were also likely a result of the activities required for her job.

In January 2, 2019 reports, Dr. Hebl listed appellant's job duties of repetitive reaching, lifting, pushing, and pulling. He noted on February 22, 2016 while at work, she delivered several heavy packages and experienced severe pain, spasm, and tightness in the left side of her neck with radiation to her left upper back and down her left arm. Dr. Hebl also described appellant's medical history and diagnosed cervical spondylosis and cervical radiculopathy. He noted that she reported that her work activities continued to worsen her cervical symptoms. Dr. Hebl noted that appellant had preexisting lymphedema from her cancer, but that her edema worsened significantly after work exposure. He further found that she had permanent aggravation of her preexisting post-cancer related left upper extremity lymphedema secondary to cervical radiculopathy as a result of a work-related neck injury, repetitive work activities, and exacerbation of symptoms due to her right upper extremity surgery, resulting in use of the left upper extremity exclusively. Dr. Hebl opined that appellant's work injury of February 22, 2016 was a material contributing cause to the onset of her neck pain and radiculopathy as well as worsening these conditions. He found that her left upper extremity paresthesias, dysesthesias, weakness, swelling, and pain, were permanently aggravated, accelerated, and worsened by her acute work injury of February 22, 2016. Dr. Hebl recommended that appellant work with restrictions.

On January 11, 2019 Dr. Thomas C. Jetzer, a physician Board-certified in occupational medicine serving as an OWCP second opinion physician, examined appellant due to right thumb osteoarthritis and left arm lymphedema and swelling. He noted her medical history and her work duties of repetitive casing and sorting mail. Dr. Jetzer opined that appellant's lymphedema was due to her breast cancer surgeries and treatments. He noted that if her employment duties were causing lymphedema this condition would also occur in her right arm. Dr. Jetzer reported that lymphedema was a common and well-known complication of extensive breast cancer surgery which had been made worse by recurrent episodes of cellulitis. He found that appellant did not have a work-related condition.

In a January 15, 2019 report, Dr. Hebl addressed appellant's right thumb condition.³ He opined that her neck and left upper extremity conditions were continually being exacerbated by work activities. Dr. Hebl also noted that appellant reported increased pain and swelling in her left upper extremity as her work activities "seem[ed] to be flaring up [appellant's] nonwork[-]related left upper extremity." He reported that she was developing worsening of her left upper extremity pain, lymphedema, and inflammation secondary to overuse of her left upper extremity to compensation for her nonfunctioning right upper extremity. On physical examination, Dr. Hebl found bilateral posterior paracervical spasm and pain with extremes of range of motion of her neck in all planes, worse on the left. On February 26, 2019 he submitted an additional report focused on appellant's accepted right thumb condition. Dr. Hebl repeated his findings and conclusions regarding her neck and left upper extremity conditions.

By decision dated March 18, 2019, OWCP denied modification of the March 19, 2018 decision finding that appellant had not submitted medical evidence establishing that she had sustained a material worsening of her diagnosed conditions due to factors of her federal employment.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ has the burden of proof to establish 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 filed within the applicable time limitation, that an injury was sustained while in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁵ 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.⁶

OWCP's 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 In an occupational disease claim, appellant's burden of proof to requires submission of the following: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical

³ On January 3, 2018 appellant underwent right thumb surgery including trapeziectomy, ligament reconstruction, and tendon interposition. She underwent a second thumb surgery on June 1, 2018.

⁴ *Supra* note 1.

⁵ *E.B.*, Docket No. 17-0164 (issued June 14, 2018); *Alvin V. Gadd*, 57 ECAB 172 (2005); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

⁶ *P.S.*, Docket No. 17-0939 (issued June 15, 2018); *Ellen L. Noble*, 55 ECAB 530 (2004); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁷ 20 C.F.R. § 10.5(ee).

evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.⁸

Causal relationship is a medical question, which 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 factors must be based upon 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 the claimant's specific employment factors.¹¹ The belief of a claimant that a condition was caused or aggravated by the employment is insufficient to establish causal relationship.¹²

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish cervical and left arm conditions causally related to the accepted factors of her federal employment.

Dr. Hebl provided reports dated August 2 and 23, 2017 as well as January 15 and February 26, 2019 in which he generally attributed appellant's diagnosed cervical radiculopathy and cervical spondylosis to her job duties by direct causation. He did not explain, however, how her diagnosed conditions were causally related to the accepted factors of her employment.¹³ Likewise, in a report dated January 2, 2019, Dr. Hebl found that appellant's conditions of cervical radiculopathy and cervical spondylosis as well as left arm lymphedema were significantly worsened by work activities including delivering heavy packages. He described her work activities, but he did not explain how the accepted employment factors physiologically caused, contributed to, or aggravated appellant's diagnosed conditions.¹⁴ While these reports offer an opinion on causal relationship, the reports are of limited probative value because of their conclusory nature.¹⁵

OWCP also received several reports from Dr. Isaacson. In her initial reports dated September 20, 2017 and March 2018, Dr. Isaacson noted appellant's diagnoses, but offered no opinion regarding causal relationship. Medical evidence that does not offer an opinion regarding

⁸ *C.H.*, Docket No. 19-0409 (issued August 5, 2019); *L.E.*, Docket No. 18-1138 (issued February 1, 2019).

⁹ *M.S.*, Docket No. 19-1001 (issued December 9, 2019); *E.V.*, Docket No. 18-1617 (issued February 26, 2019).

¹⁰ *Id.*

¹¹ *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

¹² *E.V.*, *supra* note 9; *Lourdes Harris*, 45 ECAB 545, 547 (1994).

¹³ *See M.S.* Docket No. 19-1001 (issued December 9, 2019).

¹⁴ *S.H.*, Docket No. 19-0631 (issued September 5, 2019); *M.S.*, Docket No. 19-0189 (issued May 14, 2019).

¹⁵ *Id.*

the cause of an employee's condition is of no probative value on the issue of causal relationship.¹⁶ In her April 16, 2018 report, Dr. Isaacson attributed an exacerbation of appellant's left arm lymphedema to overuse of appellant's left arm at work as well as her work duties of heavy lifting, pushing, and pulling. The Board has consistently held that medical rationale is particularly necessary when there are preexisting conditions involving the same body part¹⁷ and the Board has required medical rationale differentiating between the effects of the work-related injury and the preexisting condition in such cases.¹⁸ Dr. Isaacson provided no such medical rationale in support of her opinion regarding the aggravation of appellant's underlying lymphedema and her report is therefore insufficient to establish appellant's occupational disease claim.

Dr. Isaacson found that appellant's cervical radiculopathy was "likely caused" by repetitive motion and heavy lifting at work. Entitlement to FECA benefits may not be based on surmise, conjecture, speculation, or on the employee's own belief of a causal relationship.¹⁹ While the opinion supporting causal relationship does not have to reduce the cause or etiology of a disease or a condition to an absolute certainty, the opinion must be one of reasonable medical certainty and not speculative or equivocal in character.²⁰ Because Dr. Isaacson's opinion is speculative and equivocal in nature these opinions are insufficient to meet appellant's burden of proof.²¹

On June 1 and April 18, 2016 Dr. Carlson diagnosed cervical radiculopathy and cervical spondylosis without myelopathy aggravated by lifting and using appellant's left arm. She noted on August 30, 2017 that appellant's pain was triggered by lifting heavy doors or packages, but did not offer an opinion that these activities caused or contributed to appellant's cervical conditions. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.²² These reports, therefore, are insufficient to establish appellant's claim.

Dr. Ippel examined appellant from February 26 through November 22, 2016 and negated causal relationship between her diagnosed conditions and her duty of carrying a mailbag. Dr. Carlson attributed appellant's left arm lymphedema to breast cancer treatment and lymph node resection rather than to her work duties. Dr. Jetzer also opined that appellant's lymphedema was due to her breast cancer treatments and surgeries. He noted that lymphedema was a common and well-known complication of breast cancer surgery and found that she did not have a work-related

¹⁶ *A.P.*, Docket No. 19-1158 (issued October 29, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁷ *K.R.*, Docket No. 18-1388 (issued January 9, 2019).

¹⁸ *A.J.*, Docket No. 18-1116 (issued January 23, 2019); *M.F.*, Docket No. 17-1973 (issued December 31, 2018); *J.B.*, Docket No. 17-1870 (issued April 11, 2018); *E.D.*, Docket No. 16-1854 (issued March 3, 2017); *P.O.*, Docket No. 14-1675 (issued December 3, 2015).

¹⁹ *M.S.*, *supra* note 13; *L.T.*, Docket No. 18-1603 (issued February 21, 2019).

²⁰ *M.S.*, *id.*; *C.L.*, Docket No. 18-1379 (issued February 5, 2019).

²¹ *C.H.*, Docket No. 19-0409 (issued August 5, 2019).

²² *See L.B.*, *supra* note 16; *D.K.*, *supra* note 16.

condition. The Board has held that a medical report that negates causal relationship between the accepted employment factors and the diagnosed conditions is of no probative value.²³ Therefore, these reports do no support appellant's claim for cervical conditions or lymphedema caused or aggravated by her accepted employment activities.²⁴

Appellant also submitted March 24, 2016 x-rays from Dr. Southard and an April 12, 2016 MRI scan report in support of her claim for cervical and left upper extremity conditions. The Board has held, however, that diagnostic studies lack probative value as they do not address whether the accepted employment factors caused any of the diagnosed conditions.²⁵ These reports are therefore also insufficient to establish appellant's claim.

Appellant submitted reports from Ms. Canopy, a physician assistant, and Ms. Roth, a nurse. The Board has held that medical reports signed solely by a physician assistant or nurse are of no probative value as neither of these providers are considered physicians as defined under FECA.²⁶ Therefore, these reports are also insufficient to establish the claim.

As appellant has not submitted rationalized medical evidence establishing that her cervical and left arm conditions are causally related to the accepted factors of her federal employment, the Board finds that she has not met her burden of proof.

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 has not met her burden of proof to establish cervical and left arm conditions causally related to the accepted factors of her federal employment.

²³ See *T.W.*, Docket No. 19-0677 (issued August 16, 2019).

²⁴ *Id.*

²⁵ *R.Z.*, Docket No. 19-0408 (issued June 26, 2019); *J.S.*, Docket No. 17-1039 (issued October 6, 2017).

²⁶ See *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render medical opinions under FECA); 5 U.S.C. § 8101(2) (this subsection defines a physician as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law). *N.C.*, Docket No. 19-0299 (issued June 24, 2019); *M.W.*, Docket No. 18-1555 (issued May 20, 2019) (nurse's reports are of no probative medical value as nurses are not considered physicians under FECA); *T.K.*, Docket No. 19-0055 (issued May 2, 2019) (physician assistants are not considered physicians under FECA); *B.B.*, Docket No. 09-1858 (issued April 16, 2010).

ORDER

IT IS HEREBY ORDERED THAT the March 18, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 18, 2020
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