

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

N.N., Appellant)	
)	
and)	Docket No. 24-0510
)	Issued: July 16, 2024
U.S. POSTAL SERVICE, OXNARD POST)	
OFFICE, Oxnard, CA, Employer)	
)	

Appearances: Case Submitted on the Record
Capp P. Taylor, Esq., for the appellant¹
Office of Solicitor, for the Director

DECISION AND ORDER

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

JURISDICTION

On October 31, 2023 appellant, through counsel, filed a timely appeal from a September 29, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (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 a medical condition causally related to the accepted factors of her federal employment.

FACTUAL HISTORY

This case has previously been before the Board on a different issue. The facts and circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference.³ The relevant facts are as follows.

On April 26, 2021 appellant, then a 58-year-old retired city delivery specialist,⁴ filed an occupational disease claim (Form CA-2) alleging that her preexisting cervical degenerative disease, right hip enthesopathy, and multilevel stenosis (bilateral) facet arthropathy radiculopathy had been aggravated by factors of her employment.⁵ She noted that she first became aware of her conditions on August 12, 2011, and realized their relation to her federal employment on April 25, 2021.

In an August 12, 2020 medical report, Dr. Richard D. Scheinberg, an attending Board-certified orthopedic surgeon, noted that appellant had carried mail weighing up to 70 pounds in a satchel over her right shoulder prior to her August 2011 injury. He recounted that appellant had previously undergone C5-7 cervical fusion, and that she was treated for increasing neck pain and headaches, with cervical spinal stiffness. Dr. Scheinberg detailed his examination findings and diagnosed status post C5-7 anterior cervical discectomy and fusion, and headaches of cervical origin. He recommended that appellant undergo a computerized tomography (CT) scan of the cervical spine.

Dr. Scheinberg, in a February 23, 2021 supplemental report, reviewed appellant's January 25, 2020 statement and a diagnostic test, and reiterated his prior diagnoses of status post C5-7 anterior cervical discectomy and fusion, and headaches of cervical origin. He also diagnosed significant cervical degenerative disc disease. Dr. Scheinberg recounted that appellant returned to work as a modified city carrier in 2016, and worked modified duty until January 2017, when she returned to work as a city carrier with the only restriction being no lifting over 25 pounds. He noted that her duties required several hours per day of casing mail, which required overhead reaching, bending, stooping, and lifting from the floor, and placing the mail in the vehicle for delivery. Dr. Scheinberg opined that appellant's degenerative disc disease likely worsened over time and was related to the cumulative trauma sustained after appellant resumed work in

³ Docket No. 23-0299 (issued August 11, 2023).

⁴ Appellant retired from the employing establishment, effective April 5, 2019.

⁵ OWCP assigned the present claim OWCP File No. xxxxxx100. Appellant has a prior occupational disease claim (Form CA-2) under OWCP File No. xxxxxx550 for an August 2011 injury, which OWCP accepted for right hip enthesopathy, right hip trochanteric bursitis, and permanent aggravation of cervical disc disease. She also has a prior claim for a May 10, 2014 traumatic injury (Form CA-1) under OWCP File No. xxxxxx660, which OWCP accepted for neck sprain.

January 2017. He explained that based on the description of her job duties that these duties materially contributed to her inability to work.

In subsequent reports dated February 26, May 12, and June 30, 2021, Dr. Scheinberg noted appellant's increasing neck pain and stiffness. He continued to diagnose status post C5-7 anterior cervical discectomy and fusion, and headaches of cervical origin. In his May 12, 2021 report, Dr. Scheinberg also noted mild central spinal canal stenosis at C3-4 and multilevel advanced neural foraminal stenosis.

In a letter dated May 5, 2021, the employing establishment challenged appellant's claim, asserting that it was untimely filed.

In a development letter issued on August 7, 2021, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed to establish her claim and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond.

In a July 26, 2021 report, Dr. Tristan Zhang, a physician specializing in family and general medicine, noted his review of the medical record and related that appellant experienced cumulative trauma due to her mail carrier duties, which included carrying a 50- to 70-pound satchel. He diagnosed cervical radiculopathy and cervicgia.

In a report dated October 21, 2021, Dr. Sheinberg explained that when appellant returned to work in January 2017, she had an accepted cervical condition of cervical degenerative disc disease, and had undergone fusion at C5-7, performed several hours of work each day of overhead reaching, bending and stooping and lifting from the floor. As she performed these tasks, appellant's radicular symptoms returned. A CT cervical scan performed on September 17, 2020 depicted neural foraminal stenosis bilaterally at C2-7. Dr. Scheinberg opined that, while appellant unquestionably had severe degenerative disc disease prior to returning to work in 2017, her work performed after that time contributed to her multilevel stenosis or aggravation of her cervical degenerative disc condition. He further explained that "the repetitive use of the upper extremities would cause stress especially on an already-damaged cervical spine thus causing the narrowing of the spine through which the nerve roots exit." By decision dated June 30, 2022, OWCP denied appellant's occupational disease claim, finding that it was untimely filed.

On July 26, 2022 appellant, through counsel, requested reconsideration. Counsel alleged that appellant had a prior claim involving a cervical condition, and had been able to work a modified job from January 2017 until April 2018. Prior to retiring, appellant experienced some neck pain with radicular symptoms, which were not disabling. She was unaware of her current cervical condition, C2-7 neural foraminal stenosis, until Dr. Scheinberg's February 23, 2021 report and his supplemental October 2, 2021 report, in which he attributed her condition to her return to modified work.

By decision dated October 21, 2022, OWCP denied appellant's request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

On December 11, 2022 appellant, through counsel, appealed the June 30 and October 21, 2022 decisions to the Board. By decision dated August 11, 2023, the Board reversed the June 30,

2022 merit decision, finding that appellant's claim for compensation was timely filed within the applicable time limitation provisions of 5 U.S.C. § 8122(a). The Board remanded the case for OWCP to address the merits of the claim and, following any further development, to issue a *de novo* decision. The Board found the denial of appellant's request for reconsideration moot.

On September 18, 2023 OWCP administratively combined OWCP File Nos. xxxxxx550, xxxxxx660, and xxxxxx100, with OWCP File No. xxxxxx550 serving as the master file.

By decision dated September 29, 2023, OWCP modified its prior decision, finding that the medical evidence of record was insufficient to establish that her diagnosed medical conditions were caused or aggravated by the accepted employment factors.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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,⁶ 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 or medical condition for which compensation is claimed is causally related to the employment injury.⁷ These are the essential elements of each and every 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: (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 evidence establishing that the diagnosed condition is casually related to the identified employment factors.⁹

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.¹⁰ The opinion of the physician must be based upon a complete factual and medical background, must be one of reasonable medical certainty, and must be

⁶ *M.T.*, Docket No. 24-0103 (issued March 28, 2024); *K.R.*, Docket No. 20-0995 (issued January 29, 2021); *A.W.*, Docket No. 19-0327 (issued July 19, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁷ *M.T., id.*; *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁸ *M.T., id.*; *J.B.*, Docket No. 20-1566 (issued August 31, 2021); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁹ *K.R.*, Docket No. 23-0696 (issued October 31, 2023).

¹⁰ *M.T., supra* note 6; *I.J.*, Docket No. 19-1343 (issued February 26, 2020); *T.H.*, 59 ECAB 388 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors.¹¹

In a case in which a preexisting condition involving the same part of the body is present and the issue of causal relationship, therefore, involves aggravation, acceleration, or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.¹²

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a medical condition causally related to the accepted factors of her federal employment.

In an August 12, 2020 medical report, Dr. Scheinberg noted that appellant's employment duties required that she carry mail weighing up to 70 pounds in a satchel over her right shoulder. He recounted that she had previously undergone C5-7 cervical fusion, and that she was treated for increasing neck pain and headaches with cervical spinal stiffness. In subsequent reports dated February 26, May 12, and June 30, 2021, Dr. Scheinberg continued to diagnose status post C5-7 anterior cervical discectomy and fusion, and headaches of cervical origin. In his report dated May 12, 2021, he also noted mild central spinal canal stenosis at C3-4 and multilevel advanced neural foraminal stenosis. Dr. Scheinberg, however, did not offer an opinion regarding the cause of appellant's diagnosed conditions. Medical evidence that fails to address causation is of no probative value on that issue.¹³ As such, this report is insufficient to establish the claim.

In reports dated February 23 and October 21, 2021, Dr. Sheinberg noted that after appellant's August 2011 injury, she returned to work in a modified city carrier position from September 2016 until January 2017, at which time she returned to work as a city carrier with only a 25-pound lifting restriction. Appellant's job requirements included performing several hours of work each day of overhead reaching, bending and stooping and lifting from the floor. Dr. Sheinberg diagnosed status post C5-7 anterior cervical discectomy and fusion, and headaches of cervical origin, which he opined were caused, aggravated by and accelerated by appellant's work conditions. In his February 23, 2021 report, he explained that based on the description of her job duties, these duties materially contributed to her inability to work. Dr. Sheinberg, in his October 21, 2021 report, opined that while unquestionably appellant had severe degenerative disc disease prior to returning to work in 2017, her work performed after that time contributed to her multilevel stenosis or aggravation of her cervical degenerative disc condition. He further explained that "the repetitive use of the upper extremities would cause stress especially on an

¹¹ *M.T.*, *id.*; *D.C.*, Docket No. 19-1093 (issued June 25, 2020); *see L.B.*, Docket No. 18-0533 (issued August 27, 2018).

¹² Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); *J.L.*, Docket No. 20-0717 (issued October 15, 2020).

¹³ *M.O.*, Docket No. 21-0940 (issued January 25, 2023); *C.G.*, Docket No. 20-0957 (issued January 27, 2021); *L.G.*, Docket No. 20-0433 (issued August 6, 2020); *S.D.*, Docket No. 20-0413 (issued July 28, 2020); *S.K.*, Docket No. 20-0102 (issued June 12, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

already-damaged cervical spine thus causing the narrowing of the spine through which the nerve roots exit.” Dr. Sheinberg provided an opinion which in general terms supported causal relationship. However, he did not provide rationale explaining how the accepted employment factors caused or contributed to appellant’s diagnosed conditions. The Board has held that a medical opinion should offer a rationalized explanation of how the specific employment factors physiologically caused a diagnosed condition.¹⁴ The Board has explained that such rationale is especially important in a case involving a preexisting condition.¹⁵ For these reasons, the Board finds that Dr. Sheinberg’s reports are of limited probative value and insufficient to establish the claim.¹⁶

In a July 26, 2021 report, Dr. Zhang diagnosed cervical radiculopathy and cervicalgia. He related that appellant experienced cumulative trauma due to her mail carrier duties, which included carrying a satchel which weighed 50 to 70 pounds. However, Dr. Zhang’s opinion was conclusory, as he did not provide medical rationale explaining how appellant’s work duties caused or contributed to her claimed condition. This evidence is, therefore, of limited probative value and insufficient to establish the claim.¹⁷

As the medical evidence of record is insufficient to establish a medical condition causally related to the accepted factors of federal employment, the Board finds that appellant 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 a medical condition causally related to the accepted factors of her federal employment.

¹⁴ See *F.U.*, Docket No. 22-1205 (issued January 9, 2023); *S.D.*, Docket No. 22-1006 (issued December 5, 2022); *R.B.*, Docket No. 18-0162 (issued July 24, 2019); *C.M.*, Docket No. 17-1977 (issued January 29, 2019).

¹⁵ *J.B.*, Docket No. 21-0011 (issued April 20, 2021); *A.M.*, Docket No. 19-1394 (issued February 23, 2021).

¹⁶ *V.L.*, Docket No. 20-0884 (issued February 12, 2021); *G.H.*, Docket No. 21-1225 (issued January 30, 2023); *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *A.P.*, Docket No. 19-0224 (issued July 11, 2019). *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

¹⁷ See *T.F.*, Docket No. 20-0260 (issued June 12, 2020); *D.J.*, Docket No. 18-0694 (issued March 16, 2020); *K.G.*, Docket No. 18-1598 (issued January 7, 2020); *K.O.*, Docket No. 18-1422 (issued March 19, 2019).

ORDER

IT IS HEREBY ORDERED THAT the September 29, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 16, 2024
Washington, DC

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

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

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