

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

C.H., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Spokane, WA, Employer**

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**Docket No. 09-1819
Issued: March 19, 2010**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On July 10, 2009 appellant filed a timely appeal from a June 10, 2009 merit decision denying modification of an October 16, 2008 merit decision. Pursuant to 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 injury in the performance of duty.

FACTUAL HISTORY

On July 26, 2008 appellant, a 50-year-old distribution clerk, filed an occupational disease claim for osteoarthritis that she attributed to the repetitive lifting, twisting and squatting tasks she performed as a distribution clerk. She also alleged sustaining bilateral shoulder, arm, elbow, wrist, hand and finger pain, numbness, tingling, weakness and spasms. Appellant first became aware of her condition and that it was caused by her federal employment on June 13, 2007.

Appellant submitted a July 22, 2008 note in which Robert Johnson, American Postal Workers Union President, reported seeing appellant “hunched over and walking slowly.” Mr. Johnson noted that appellant told him she was in pain.

Appellant also submitted a report from the employing establishment’s health unit.

In a January 18, 2008 note, Dr. Cathy W. Engle, Board-certified in family medicine, reported that appellant has severe osteoarthritis in her cervical spine and bipolar disorder. He reviewed appellant’s history of injury and opined that appellant was not capable of holding “gainful employment of any kind.” Dr. Engle also noted that appellant experiences severe migraine headaches “at least once a month,” is under “a great deal of stress,” and has asthma as well as gastroesophageal reflux disease.

Appellant submitted August 27 and November 17, 2008 notes in which Dr. Engle reviewed appellant’s medical history and course of treatment. Dr. Engle noted that appellant’s asthma had been present since childhood and was “probably currently mixed with the component of chronic obstructive pulmonary disease (COPD) or emphysema because she has smoked for many years.” She reported that appellant has had bipolar disorder “for many, many years” as well as osteoarthritis with multilevel degenerative disc disease. Dr. Engle noted that appellant has “worsening” muscle spasms, pain, numbness and tingling in her fingers as well as back pain.

By decision dated October 16, 2008, the Office denied the claim. While it accepted that appellant identified the employment factors she considered responsible for her condition, it denied her claim because the evidence of record did not demonstrate that the claimed medical condition was caused by the accepted employment factors.

On December 17, 2008 the Office received a report from Family Health Services dated August 17, 2008. The signature on this report is illegible. This report documented diagnoses of: asthma, present since childhood with a current mixed component of COP or emphysema due to smoking; migraine headaches; bipolar disorder present for many years and osteoarthritis with multilevel degenerative disc disease.

On March 23, 2009 appellant, through her attorney, requested reconsideration.

The Office referred appellant, together with a statement of accepted facts and a list of questions, to Dr. Paul Collins, a Board-certified orthopedic surgeon, for a second opinion examination. In a May 4, 2009 report, Dr. Collins reported findings on examination, reviewed appellant’s history of injury and diagnosed cervical spine osteoarthritis and degenerative changes in appellant’s lumbar spine. He opined that these conditions were not employment related but, rather, were related to appellant’s “progressive age and degenerative changes related to [appellant’s] cigarette use and other activities.”

By decision dated June 10, 2009, the Office, affirming its October 16, 2008 decision, denied the claim because the evidence of record did not demonstrate that appellant's alleged condition was caused by the accepted employment factors.¹

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of proof to establish the essential elements of her claim by the weight of the evidence,³ including that she sustained an injury in the performance of duty and that any specific condition or disability for work for which she claims compensation is causally related to that employment injury.⁴ As part of her burden, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background showing causal relationship.⁵ The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of the analysis manifested and the medical rationale expressed in support of the physician's opinion.⁶

To establish that an injury was sustained in the performance of duty in a claim for occupational disease, an employee 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 causally related to the employment factors identified by the employee.⁷

ANALYSIS

The Office accepted that appellant established the employment factors responsible for her condition. Appellant's burden is to demonstrate that the accepted employment factors caused a medically-diagnosed condition. Causal relationship is a medical issue that can only be established through production of probative rationalized medical opinion evidence. Appellant has not submitted sufficient medical evidence and therefore the Board finds appellant has not satisfied her burden of proof to establish that she sustained an injury in the performance of duty.

¹ The record reflects that appellant submitted additional evidence on appeal. The Board may not consider evidence for the first time on appeal which was not before the Office at the time it issued the final decision in the case. 20 C.F.R. § 501.2(c). See *J.T.*, 59 ECAB ___ (Docket No. 07-1898, issued January 7, 2008) (holding the Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision.)

² 5 U.S.C. §§ 8101-8193.

³ *J.P.*, 59 ECAB ___ (Docket No. 07-1159, issued November 15, 2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

⁴ *G.T.*, 59 ECAB ___ (Docket No. 07-1345, issued April 11, 2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁵ *G.T.*, *supra* note 4; *Nancy G. O'Meara*, 12 ECAB 67, 71 (1960).

⁶ *Jennifer Atkerson*, 55 ECAB 317, 319 (2004); *Naomi A. Lilly*, 10 ECAB 560, 573 (1959).

⁷ See *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

Dr. Engle's notes have little probative value on the issue of causal relationship and are insufficient to satisfy appellant's burden of proof. She did not present findings on examination or a diagnosis based on those findings. Furthermore, Dr. Engle did not provide a rationalized medical opinion explaining how the accepted employment factors caused a medically-diagnosed condition.⁸ She did not document any history of appellant's employment duties. Dr. Engle's reports offered no rationalized opinion causally relating appellant's accepted employment duties to her diagnoses. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and compensable employment factors. The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.⁹ These deficiencies reduce the probative value of Dr. Engle's opinion such that her notes are insufficient to meet appellant's burden of proof.

The Office properly referred appellant to Dr. Collins for a second opinion examination. Dr. Collins presented findings on examination, reviewed appellant's history of injury and diagnosed osteoarthritis and degenerative changes in appellant's lumbar spine. He opined that these conditions were not employment related but, rather, were related to appellant's "progressive age and degenerative changes related to [appellant's] cigarette use and other activities." The Board finds Dr. Collins' report is sufficiently rationalized and constitutes the weight of the medical evidence in appellant' case.

An award of compensation may not be based on surmise, conjecture or speculation.¹⁰ Neither the fact that appellant's claimed condition became apparent during a period of employment nor her belief that her condition was aggravated by her employment is sufficient to establish causal relationship.¹¹ The fact that a condition manifests itself or worsens during a period of employment¹² or that work activities produce symptoms revelatory of an underlying condition¹³ does not raise an inference of causal relationship between a claimed condition and employment factors.

⁸ See *Mary E. Marshall*, 56 ECAB 420 (2005) (medical reports that do not contain rationale on causal relationship have little probative value). See also, *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001).

⁹ *I.J.*, 59 ECAB ____ (Docket No. 07-2362, issued March 11, 2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

¹⁰ *Edgar G. Maiscott*, 4 ECAB 558 (1952) (holding appellant's subjective symptoms and self-serving declarations do not, in the opinion of the Board, constitute evidence of a sufficiently substantial nature).

¹¹ *D.I.*, 59 ECAB ____ (Docket No. 07-1534, issued November 6, 2007); *Ruth R. Price*, 16 ECAB 688, 691 (1965).

¹² *E.A.*, 58 ECAB 677 (2007); *Albert C. Haygard*, 11 ECAB 393, 395 (1960).

¹³ *D.E.*, 58 ECAB 448 (2007); *Fabian Nelson*, 12 ECAB 155, 157 (1960).

CONCLUSION

The Board finds appellant has not satisfied her burden of proof to establish that she sustained an injury in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the June 10, 2009 and October 16, 2008 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: March 19, 2010
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board