United States Department of Labor
Employees' Compensation Appeals Board

M.M., Appellant	)	
and	)	**Docket No. 12-1320**
	)	**Issued: December 7, 2012**
SOCIAL SECURITY ADMINSTRATION, Brooklyn, NY, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge

JURISDICTION

On June 4, 2012 appellant filed a timely appeal of the December 28, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) which denied appellant's claim for an occupational disease. She also appealed a May 9, 2012 nonmerit decision. Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUES

The issues are: (1) whether appellant has met her burden of proof to establish an occupational disease in the performance of duty; and (2) whether OWCP properly denied appellant's request for reconsideration.

[1] 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

On October 21, 2011 appellant then a 55-year-old clerk filed a Form CA-2, occupational disease claim, alleging that she developed pain in the neck, head and back after picking up a tray of mail. She became aware of her condition and realized that it was causally related to her work on October 1, 2011. Appellant stopped work on October 2, 2011.[2]

Appellant was initially treated by Dr. Harry Li, a Board-certified internist, who noted on October 3, 2011 that she was treated for severe pain commencing on October 1, 2011 and that she could return to work on October 6, 2011. In an October 8, 2011 duty status report, Dr. Li diagnosed cervical strain and returned her to light duty on October 9, 2011. On October 7 and 8, 2011, a physician's assistant noted diagnoses and advised that appellant could work with restrictions. In an October 11, 2012 attending physician's report, an unspecified health care professional treated appellant for cervical and thoracic spine pain after she was lifting trays. Appellant was diagnosed with cervical and thoracic strain and was returned to limited duty on October 8, 2011. Also submitted was an October 17, 2011 report from Dr. Kiren Dayal, an osteopath, who diagnosed neck sprain, headache, trapezius/rhomboid strain and thoracic sprain and returned appellant to work with restrictions. On October 26, 2011 appellant was treated by Dr. Daniel R. Ignacio, a physiatrist, for neck, arm and shoulder pain. Dr. Ignacio noted that appellant worked as a mail processor and was required to perform repetitive motions, sweeping mail from top to bottom and reaching and placing mail in an over-the-road container. Appellant reported that, while performing her duties on October 1, 2011, she felt an acute radiating pain along the neck, shoulders and arms. Dr. Ignacio noted limited cervical and thoracic spine range of motion, tenderness along C3-4 and C6-7 with trigger points and limited range of motion of the right shoulder with hypoesthesia along the left arm and side. He diagnosed cervical strain with neuritis, bilateral shoulder strain, thoracic strain and bilateral wrist strain. On October 26, 2011 Dr. Ignacio offered diagnoses and noted that appellant's condition was work related. He stated that she was injured on October 1, 2011 and was totally incapacitated from October 27 to November 14, 2011. Appellant also submitted physical therapist notes.

On November 23, 2011 OWCP advised appellant of the type of evidence needed to establish her claim. It particularly requested that she submit a physician's reasoned opinion addressing the relationship of her claimed condition and specific work factors.

On November 16, 2011 appellant was treated by Dr. Ignacio for neck, shoulder and arm pain that developed at work on October 1, 2011. Dr. Ignacio noted a magnetic resonance imaging (MRI) scan of the cervical spine revealed a C6-7 disc protrusion. He noted findings on examination and diagnosed cervical strain with cervical neuritis, bilateral shoulder strain, thoracic strain, bilateral wrist strain with median neuritis and carpal tunnel syndrome. In a November 16, 2011 attending physician's report, Dr. Ignacio diagnosed cervical, thoracic, shoulder and bilateral wrist strain. He checked a box "yes" that appellant's condition was caused by her work activity and that she was disabled from October 27 to November 14, 2011.

---

[2] On October 7, 2011 appellant filed traumatic injury claim, alleging that on October 1, 2011 she picked up a tray and felt pain in her head, back and neck. A witness statement indicated that appellant was heard complaining of pain after lifting letter trays. The employing establishment stated that appellant was in the performance of duty. On November 1, 2011 appellant indicated that she wished to proceed with the occupational disease claim.

Similarly, in a November 16, 2011 duty status report, Dr. Ignacio diagnosed cervical and thoracic strains and opined that appellant was totally disabled. Other reports from him dated December 1 and 2, 2011 noted that appellant developed progressive chronic neck pain radiating into the shoulder, arms and upper back with paresthesia while performing clerk duties on October 1, 2011. Dr. Ignacio diagnosed cervical strain with cervical neuritis, bilateral shoulder strain, thoracic strain, bilateral wrist strain with median neuritis and carpal tunnel syndrome. On December 1, 2011 he opined that appellant's medical conditions were related to the activities she performed at work. A December 2, 2011 electromyogram (EMG) revealed left ulnar neuritis across the elbow, bilateral C6 radiculitis and bilateral T7, T8 radiculitis.

On December 28, 2011 OWCP denied appellant's claim on the grounds that the evidence did not support that the injury or events occurred as alleged and that the medical evidence did not establish that her diagnoses were caused or aggravated by her work.

On January 19, 2012 appellant requested reconsideration and submitted additional evidence. She submitted reports from a physician's assistant, a report from Dr. Dayal dated October 17, 2011, reports from Dr. Ignacio dated October 26 to December 2, 2011, all previously of record. Appellant also submitted physical therapy notes. On October 11, 2011 she was treated by Dr. Sheryl Ashton-Jones, a Board-certified internist, for cervical and thoracic strains. Examination of the cervical and thoracic spine was essentially normal. Dr. Ashton-Jones diagnosed cervical and thoracic strains and returned appellant to work with restrictions. Also submitted were reports from Dr. Ignacio dated December 14, 2011 to April 6, 2012 who continued to treat appellant for neck, shoulder and back pain which developed after performing her work duties of standing, sweeping mail and lifting mail trays. He reiterated previous diagnoses and opined that appellant's medical conditions were related to the trauma sustained at work on October 1, 2011. Dr. Ignacio noted the main cause of the injury was the significant strains to the cervical and lumbar spine while she was working, reaching and picking up mail trays. In an attending physician's report dated December 14, 2011, he diagnosed cervical, thoracic, shoulder and bilateral wrist strain. Dr. Ignacio checked a box "yes" that appellant's condition was caused or aggravated by work and noted that the injury occurred at work while lifting trays, reaching and repetitive movements. In a return to work slip dated December 14, 2011, he found appellant totally disabled from December 16, 2011 to January 16, 2012 and in a January 4, 2012 duty status report, Dr. Ignacio returned appellant to work full-time light duty.

Also submitted was a March 14, 2012 report from Dr. Eric C. Dawson, a Board-certified orthopedist, who treated appellant for pain, spasm and stiffness to the neck and shoulder area. He noted tenderness at C5-6 and C6-7, positive trigger points, diminished intersegmental excursions of L4-5 and L5-S1 and positive straight leg raises on the left. Dr. Dawson reviewed a cervical spine MRI scan and noted disc protrusion at C6-7 and degenerative changes at C5-6. He noted that a lumbar MRI scan revealed protrusions at L4-5 and L5-S1 with nerve impingement at L4-5 with sensory and motor deficits. Dr. Dawson opined that appellant was clearly functional at work prior to the repetitive lifting of containers at work and sustained substantial injuries to her neck and back. He noted that there was no sign of preexisting problems and that appellant had a high functional level before her injury. Dr. Dawson noted findings consistent with her injury and stated that diagnostic testing clearly showed instabilities and major problems in her lumbar and cervical spine with nerve impingement. He advised appellant was not cleared for regular duties.

By decision dated May 9, 2012, OWCP denied appellant's request for reconsideration on the grounds that the evidence submitted was insufficient to warrant a merit review.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim. When an employee claims that he or she sustained an injury in the performance of duty, he or she must submit sufficient evidence to establish that he or she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. Appellant must also establish that such event, incident or exposure caused an injury.[3]

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) 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 employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish causal relationship is generally rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a 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 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 the claimant.[4]

ANALYSIS -- ISSUE 1

OWCP found that the evidence was insufficient to establish that workplace events occurred as alleged. However, appellant's claim form clearly indicated that lifting trays at work caused her claimed conditions and the employing establishment did not challenge the duties that she performed. There is no dispute that her job required lifting trays and mail at work and there were no inconsistencies in the evidence on that point that cast serious doubt upon the validity of the claim.[5] Thus, the Board finds that the evidence establishes that appellant moved trays and mail at work. It is also not disputed that she has been diagnosed with cervical, thoracic, shoulder

[3] *See Walter D. Morehead,* 31 ECAB 188, 194 (1979) (occupational disease or illness); *Max Haber*, 19 ECAB 243, 247 (1967) (traumatic injury). *See generally John J. Carlone*, 41 ECAB 354 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[4] *Solomon Polen*, 51 ECAB 341 (2000).

[5] *See V.F.*, 58 ECAB 321 (2007).

and neck strains. However, appellant has not submitted sufficient medical evidence to establish that her conditions were causally related to specific employment factors or conditions.

Appellant submitted reports dated October 26 and November 16, 2011 from Dr. Ignacio who noted that appellant worked as a mail processor and was required to perform repetitive motions, including sweeping mail from top to bottom and placing mail in containers. She reported that on October 1, 2011 while doing her job she felt acute radiating pain along the neck, shoulders and arms. Dr. Ignacio diagnosed cervical strain with neuritis, bilateral shoulder strain, thoracic strain, bilateral wrist strain with median neuritis, carpal tunnel syndrome. Similarly, in reports dated December 1 and 2, 2011, he noted that appellant developed progressive chronic radiating pain of the neck while at work and diagnosed cervical strain with cervical neuritis, bilateral shoulder strain, thoracic strain, bilateral wrist strain with median neuritis and carpal tunnel syndrome. Dr. Ignacio opined that her medical conditions were work related. The Board finds that, although Dr. Ignacio supported causal relationship, he did not provide medical rationale explaining the basis of his conclusion regarding the causal relationship between appellant's cervical strain with neuritis, bilateral shoulder strain, thoracic strain, bilateral wrist strain with median neuritis, carpal tunnel syndrome and work factors.[6] For example, Dr. Ignacio did not explain the process by which repetitive motions, sweeping mail from top to bottom and placing mail in an over-the-road container would cause or aggravate the diagnosed conditions. In a November 16, 2011 attending physician's report, he noted diagnoses and checked a box "yes" that the appellant's condition was caused or aggravated by work activity. The Board has held that an opinion on causal relationship which consists only of a physician checking "yes" to a medical form report question on whether the claimant's condition was related to the history given is of little probative value. Without any explanation or rationale for the conclusion reached, such report is insufficient to establish causal relationship.[7] These reports are insufficient to meet appellant's burden of proof.

Other reports from Dr. Ignacio submitted before the December 28, 2011 decision are insufficient to establish appellant's claim as they did not provide a history of injury[8] or specifically address whether appellant had a diagnosed medical condition that was causally related to her employment duties.[9] Similarly, reports from Drs. Li and Dayal are insufficient to establish appellant's claim as they did not provide a history of injury or specifically address whether appellant had a diagnosed medical condition that was causally related to her employment duties.

---

[6] *Franklin D. Haislah,* 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value); *Jimmie H. Duckett,* 52 ECAB 332 (2001).

[7] *Lucrecia M. Nielson,* 41 ECAB 583, 594 (1991).

[8] *Frank Luis Rembisz,* 52 ECAB 147 (2000) (medical opinions based on an incomplete history or which are speculative or equivocal in character have little probative value).

[9] *A.D.*, 58 ECAB 149 (2006) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

Appellant submitted other reports from a physician's assistant and a physical therapist. The Board has held that treatment notes signed by a physician's assistant or physical therapist are not considered medical evidence as these providers are not a physician under FECA.[10] Similarly, appellant submitted an October 11, 2012 attending physician's report from an unspecified health care professional; however, there is no evidence that the document is from a physician. The Board has held that a medical report may not be considered as probative medical evidence if there is no indication that the person completing the report qualifies as a physician as defined in 5 U.S.C. § 8101(2) and reports lacking proper identification do not constitute probative medical evidence.[11]

For these reasons, OWCP properly found that appellant did not meet her burden of proof in establishing her claim.

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.

LEGAL PRECEDENT -- ISSUE 2

Under section 8128(a) of FECA,[12] OWCP has the discretion to reopen a case for review on the merits. It must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations, which provides that a claimant may obtain review of the merits of his or her written application for reconsideration, including all supporting documents, sets forth arguments and contain evidence that:

> "(i) Shows that OWCP erroneously applied or interpreted a specific point of law; or
>
> "(ii) Advances a relevant legal argument not previously considered by the (Office); or
>
> "(iii) Constitutes relevant and pertinent new evidence not previously considered by OWCP."[13]

---

[10] *See David P. Sawchuk*, 57 ECAB 316 (2006) (lay individuals such as physician's assistants, nurses and physical therapists are not competent to render a medical opinion under the 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).

[11] *C.B.*, Docket No. 09-2027 (issued May 12, 2010).

[12] 5 U.S.C. § 8128(a).

[13] 20 C.F.R. § 10.606(b)(2).

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by OWCP without review of the merits of the claim.[14]

ANALYSIS -- ISSUE 2

OWCP's May 9, 2012 decision denied appellant's reconsideration request, without conducting a merit review, on the grounds that the evidence was insufficient to warrant a merit review.

With her January 19, 2012 reconsideration request, appellant submitted relevant and pertinent evidence not previously considered by OWCP. After the December 28, 2011 decision, which denied her claim because she had not submitted a rationalized medical opinion establishing that her clerk duties caused her cervical, thoracic, shoulder and neck strains, she submitted a March 4, 2012 report from Dr. Dawson, who noted examination findings and reviewed diagnostic testing. Dr. Dawson opined that appellant was clearly functional at work prior to the repetitive lifting at work and had substantial injuries to her neck and back. He opined that there was no sign of preexisting problems and that she had a high functional level prior to carrying out the workplace duties prior to this injury. Dr. Dawson indicated that his findings were consistent with appellant's injury and MRI scans clearly show instabilities and major problems with her disc, lumbar and cervical spine with nerve impingement.

This particular medical evidence is relevant as the physician noted findings upon injury and referenced a history of injury noting appellant performed repetitive lifting duties at work and sustained substantial injuries to her neck and back. This evidence was not previously considered by OWCP in rendering a decision. While this evidence may be of limited probative value, the Board has held that the requirement for reopening a claim for merit review does not include the requirement that a claimant must submit all evidence which may be necessary to discharge his or her burden of proof. Instead, the requirement pertaining to the submission of evidence in support of reconsideration only specifies that the evidence be relevant and pertinent and not previously considered by OWCP.[15] The Board finds that, in accordance with 20 C.F.R. § 10.606(b)(2)(iii), this new report from Dr. Dawson is sufficient to require reopening appellant's case for further review on its merits.

Therefore, OWCP improperly refused to reopen appellant's claim for further review on its merits under 5 U.S.C. § 8128. Consequently, the case must be remanded for OWCP to reopen her claim for a merit review. Following this and such other development as deemed necessary, OWCP shall issue an appropriate merit decision on the appellant's claim.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that her claimed conditions were causally related to her employment. The Board further notes that

---

[14] *Id*. at § 10.608(b).

[15] *See Helen E. Tschantz*, 39 ECAB 1382 (1988).

OWCP, in its decision dated May 9, 2012, improperly denied appellant's request for reconsideration of his case on its merits.

ORDER

IT IS HEREBY ORDERED THAT the December 28, 2011 decision of the Office of Workers' Compensation Programs is affirmed as modified and the May 9, 2012 decision is set aside and the case is remanded to OWCP for further development in accordance with this decision.

Issued: December 7, 2012
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board