

³ The Board notes that, following the issuance of the July 18, 2012 OWCP decision, appellant submitted new evidence. The Board is precluded from reviewing evidence which was not before OWCP at the time it issued its final decision. See 20 C.F.R. § 501.2(c)(1).

ISSUE

The issue is whether appellant met her burden of proof to establish that she developed an occupational disease causally related to factors of her federal employment.

On appeal, appellant contends that OWCP failed to acknowledge a February 28, 2012 report from her attending physician, Dr. Jon Silver, a Board-certified neurosurgeon, stating his opinion that the condition of pseudoarthrosis was aggravated by pushing and pulling flats.

FACTUAL HISTORY

On July 27, 2011 appellant, then a 48-year-old mail processor, filed an occupational disease claim (Form CA-2) alleging that her cervical pseudoarthrosis in the inferior end plate of C4 and fractured screws were aggravated by factors of her federal employment, such as pushing and pulling.

In a May 6, 2011 report, Dr. Silver stated that appellant had increasing neck pain and it was difficult to know if it was from a new cervical disc problem or if there was truly nonunion at the C4-6 corpectomy site, which led to fracture of the screws. He reported that x-rays of the neck showed fracture through both C4 screws, with some dislodgement of the right-sided screw. Appellant had increasing discomfort in the back of her neck, into the trapezii bilaterally, and into the right shoulder, with occasional pain and some numbness radiating down the right arm into the forearm.

Appellant submitted a May 24, 2011 computerized tomography (CT) scan of the cervical spine which showed fracturing of the bilateral C4 screws and a May 25, 2011 magnetic resonance imaging (MRI) scan of the cervical spine which revealed mild spondylosis with features of fusion and nonunion.

On June 2, 2011 Dr. Silver reviewed the May 24, 2011 CT scan and the May 25, 2011 MRI scan and opined that the pseudoarthrosis was responsible for the fractured screw. In a report dated June 14, 2011, he opined that appellant's heavy pushing and pulling at work possibly could have aggravated the pseudoarthrosis to the point where the screws became fractured.

In an August 22, 2011 letter, OWCP informed appellant of the deficiencies of her claim and afforded her 30 days to submit additional evidence. Appellant submitted an undated form signed by Jean Stryker, a physician's assistant, who opined that heavy pushing and pulling added to neck movement resulting in a screw fracture.

In a May 6, 2011 report, Dr. Silver provided the following work restrictions, no lifting greater than 15 pounds. On September 29, 2011 he opined that while it was unclear whether or not appellant's current duties caused the actual pseudoarthrosis it was certainly possible that repetitive motion led to aggravation of this condition. Dr. Silver indicated that had appellant had complete sedentary work this may have gone on to successful fusion and certainly there may not have been further fracture of the screws. He explained that it was difficult to determine this for certain but appellant stated that most of her repetitive movement came about in the workplace.

Dr. Silver stated that he did not know of any other way to confirm whether or not the actual work itself caused this or if this was caused by daily activities.

By decision dated November 9, 2011, OWCP denied appellant's claim on the basis that the evidence of record failed to establish causal relationship between appellant's condition and factors of her federal employment.

On April 25, 2012 appellant requested reconsideration and submitted a December 6, 2011 report from Dr. Silver who indicated that appellant was satisfied with continuing her weight limitations of 15 pounds at work as well as the addition of no overhead lifting, which had been problematic for her. She also submitted a November 15, 2011 report from Dr. Dennis P. White, a Board-certified physiatrist, who indicated that her symptoms increased with axial loaded activities.

By decision dated July 18, 2012, OWCP denied modification of its November 9, 2011 decision on the basis that the medical evidence submitted was not sufficient to establish causal relationship.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ has the burden of establishing 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 timely filed within the applicable time limitation period of FECA, and that an injury⁵ was sustained in the performance of duty. These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁶

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

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical evidence. 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

⁴ 5 U.S.C. §§ 8101-8193.

⁵ OWCP's regulations define an occupational disease or illness as a condition produced by the work environment over a period longer than a single workday or shift. 20 C.F.R. § 10.5(q).

⁶ See *J.C.*, Docket No. 09-1630 (issued April 14, 2010). See also *Ellen L. Noble*, 55 ECAB 530 (2004).

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

the relationship between the diagnosed condition and the specific employment factors identified by the employee.⁸

ANALYSIS

The Board finds that appellant failed to establish that she developed an occupational disease in the performance of duty. The record reflects that she has a cervical condition and that her federal employment requires pushing and pulling. However, appellant has not established that her condition is causally related to any of these factors of her federal employment.

Dr. Silver reviewed diagnostic testing and opined that pseudoarthrosis was responsible for the fractured screws in appellant's neck. He provided work restrictions and opined that appellant's heavy pushing and pulling at work possibly could have aggravated the pseudoarthrosis to the point where the screws became fractured. On September 29, 2011 Dr. Silver opined that while it was unclear whether or not appellant's current duties caused the actual pseudoarthrosis it was certainly possible that repetitive motion led to aggravation of this condition. He indicated that had appellant had complete sedentary work this may have gone on to successful fusion and certainly there may not have been further fracture of the screws. Dr. Silver noted that it was difficult to determine this for certain but appellant stated that most of her repetitive movement came about in the workplace. He stated that he did not know of any other way to confirm whether or not the actual work itself caused this or if this was caused by daily activities. Dr. Silver provided firm diagnoses and identified appellant's work duties, but his opinion on causal relation is speculative. He failed to provide a rationalized opinion explaining how factors of appellant's federal employment, such as pushing and pulling, caused or aggravated her cervical condition. The Board has held that the mere fact that appellant's symptoms arise during a period of employment or produce symptoms revelatory of an underlying condition does not establish a causal relationship between appellant's condition and her employment factors.⁹ Lacking thorough medical rationale on the issue of causal relationship, Dr. Silver's reports are insufficient to establish that appellant sustained an employment-related injury.

In his November 15, 2011 report, Dr. White indicated that appellant's symptoms increased with axial loaded activities. He did not provide a rationalized medical opinion explaining how factors of her federal employment, such as pushing or pulling, caused or aggravated her condition. Thus, the Board finds that appellant did not meet her burden of proof with the submission of Dr. White's report.

⁸ See *I.J.*, 59 ECAB 408 (2008). See also *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁹ See *Richard B. Cissel*, 32 ECAB 1910, 1917 (1981); *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

The report from Ms. Stryker, a physician's assistant, is of no probative value as she is not a physician under FECA.¹⁰ As such, the Board finds that appellant did not meet her burden of proof with this submission.

The May 24, 2011 CT scan and May 25, 2011 MRI scan are diagnostic in nature and therefore do not address causal relationship. As such, the Board finds that they are insufficient to establish appellant's claim.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that her condition was caused, precipitated or aggravated by her employment is sufficient to establish causal relationship.¹¹ Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence. As appellant has not submitted any medical evidence to support her allegation that she sustained an injury causally related to the indicated employment factors, she failed to meet her burden of proof to establish a claim.

On appeal appellant contends that OWCP failed to acknowledge a February 28, 2012 report from Dr. Silver stating his opinion that the condition of pseudoarthrosis was aggravated by pushing and pulling flats. The Board has reviewed the record and finds that it does not contain a report from Dr. Silver dated February 28, 2012. As OWCP did not receive the medical evidence from appellant, the Board finds that her argument is not substantiated.

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 that she developed an occupational disease in the performance of duty causally related to factors of her federal employment.

¹⁰ 5 U.S.C. § 8101(2). Section 8101(2) of FECA provides as follows: "(2) 'physician' includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law." See also *Paul Foster*, 56 ECAB 208, 212 n.12 (2004); *Joseph N. Fassi*, 42 ECAB 677 (1991); *Barbara J. Williams*, 40 ECAB 649 (1989).

¹¹ See *Anna C. Leanza*, 48 ECAB 115 (1996).

ORDER

IT IS HEREBY ORDERED THAT the July 18, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 17, 2013
Washington, DC

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

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board