

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

B.R., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
New Orleans, LA, Employer**

)
)
)
)
)
)
)
)
)
)
)

**Docket No. 07-1765
Issued: December 21, 2007**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 20, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated June 1, 2007, which denied her claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue on appeal is whether appellant has met her burden of proof in establishing that she sustained a chest injury in the performance of duty.

FACTUAL HISTORY

This is the second appeal in this case. In a December 23, 2003 decision, the Board affirmed a February 10, 2003 Office decision which denied appellant's request for a review of the merits of her claim. The Board determined that appellant failed to show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office or submit relevant and pertinent new evidence not

previously considered by the Office.¹ The facts and the circumstances of the case up to that point are set forth in the Board's prior decision and incorporated herein by reference.²

In a letter dated September 30, 2004, appellant requested reconsideration. In a December 5, 2000 medical form report, signed by a nurse, it was noted that she experienced pressure on her chest and could not complete her shift at work. In a December 12, 2001 form report, a physician whose signature is illegible, noted that appellant reported severe chest pain in the sternum area and neck pain and was transported to a hospital for treatment. Appellant submitted several return to work slips prepared by Dr. Anthony J. Bouligny, a Board-certified internist, dated December 14, 2001 to October 28, 2003. Dr. Bouligny noted that appellant was treated for hypertension, cervical spine pain, headaches, chest pain and costochondritis. A magnetic resonance imaging (MRI) scan of the left shoulder dated October 21, 2002 revealed mild tendinosis with mild degenerative changes seen in the acromioclavicular and humeral head. Employing establishment medical records dated May 1, 2003 noted that appellant was treated for chest pain in the sternum area of the chest. An MRI scan of the right shoulder dated July 28, 2003 revealed a possible small partial tear of the supraspinatus tendon.

In a decision dated June 14, 2005, the Office denied modification of a January 31, 2002 decision.

In a letter received on February 8, 2006, appellant requested reconsideration. Appellant submitted an x-ray of the chest dated November 23, 2000 which revealed mild cardiomegaly. A November 23, 2000 emergency room report from Dr. Victor M. Garcia-Prats, Board-certified in emergency medicine, noted that appellant presented with aching chest pain in the superior anterior of the chest which radiated to her back and was exacerbated by movement. He diagnosed chest wall pain and musculoskeletal pain. In an attending physician's report of the same date, Dr. Garcia-Prats noted that appellant was pulling an over-the-road container and pulled muscles in the chest and back. He diagnosed muscular strain of the back and chest and noted with a checkmark "yes" that appellant's condition was caused or aggravated by an employment activity. An injury information report dated November 27, 2000 noted that on November 23, 2000 appellant was connecting a mail container and experienced chest and back pain.

Appellant submitted reports from Dr. Joseph Rauchwerk, a Board-certified orthopedic surgeon, dated June 25 and July 18, 2001. He noted that on November 23, 2000 appellant was pulling a mail container and had pain in the mid-back, right arm and anterior chest wall. Appellant noted that an MRI scan of the cervical spine revealed multilevel disc derangement and shoulder impingement. Dr. Rauchwerk diagnosed kyphoscoliosis, advanced dorsal disc derangement multilevel, impingement syndrome of the right shoulder, cervical spondylosis and probable disc displacement with radiculitis and radiculopathy and recommended appellant return to light duty. In reports dated July 25 and August 22, 2001, he opined that appellant's supraspinatus tendinitis, acromioclavicular joint arthritis and cervical spondylosis were

¹ On November 28, 2000 appellant filed a claim alleging that on November 23, 2000 she experienced chest pain when connecting a road container to a tow motor while in the performance of duty.

² Docket No. 03-1297 (issued December 23, 2003).

aggravated by her job. Dr. Rauchwerk diagnosed cervical disc displacement, thoracic spondylosis and shoulder impingement and recommended arthroscopic shoulder surgery. In an August 28, 2001 report, he noted that appellant had job-related supraspinatus tendinitis and secondary impingement syndrome and acromioclavicular joint arthritis of the right shoulder and was undergoing arthroscopic surgery.

On November 14, 2001 Dr. Rauchwerk noted treating appellant for a job-related injury that occurred on November 23, 2000 for which she presented with neck, chest, scapular and right shoulder pain. He diagnosed rotator cuff syndrome, acromioclavicular joint hypertrophy, spur of the acromion, impingement syndrome and cervical spondylosis. On December 11, 2001 he noted that appellant reported having chest and right arm pain after pulling heavy equipment. Dr. Rauchwerk diagnosed cervical spondylosis, supraspinatus tendinitis and impingement of the right shoulder and opined that appellant's job-related injury that resulted from pulling the heavy equipment "could have created the bursitis of the right shoulder" even though she had a preexisting abnormal acromion. Dr. Rauchwerk noted that the cervical spondylosis was also preexisting but the actual pulling incident aggravated the preexisting problem responsible for her chest pain.

In an August 23, 2005 report, Dr. Kenneth N. Addato, a Board-certified orthopedic surgeon, treated appellant for an injury which occurred after lifting a tray of mail in 2003 which caused neck and bilateral shoulder pain. He noted appellant's history was significant for a neck, chest and shoulder injury which occurred in November 2000. Dr. Addato diagnosed cervicalgia, unspecified disorders of the bursae and tendons in the shoulder and returned appellant to restricted duty.

In a decision dated May 3, 2006, the Office denied modification of the June 14, 2005 decision.

By letter dated March 30, 2007, appellant requested reconsideration. In a May 18, 2005 report, Dr. Evalina Burger, an orthopedic surgeon, noted that appellant presented with middle and lower back pain. She indicated that appellant's chest pain improved after starting asthma treatment. Dr. Burger noted that x-rays of the spine revealed severe kyphosis and severe anterior spurring and disc space collapse and recommended a bone mineral density study.

In a decision dated June 1, 2007, the Office denied modification of the May 3, 2006 decision.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act 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 the Act, that the claim was filed within the applicable time limitation of the Act, that an injury was sustained 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. 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.³

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.⁴ The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability, claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.⁵

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.⁶ The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.⁷

ANALYSIS

The Office properly found that the November 23, 2000 lifting incident occurred as appellant alleged. The Board finds, however, that the medical evidence is insufficient to establish that appellant sustained a chest injury causally related to the November 23, 2000 incident.

Appellant submitted an emergency room report from Dr. Garcia-Prats dated November 23, 2000. Dr. Garcia-Prats noted that appellant presented with aching chest pain in the superior-anterior of the chest which radiated to her back and was exacerbated by movement. However, he did not address a history of the injury or the employment factors believed to have caused or contributed to appellant's condition.⁸ Additionally, Dr. Garcia-Prats failed to provide

³ *Gary J. Watling*, 52 ECAB 357 (2001).

⁴ *Michael E. Smith*, 50 ECAB 313 (1999).

⁵ *Id.*

⁶ *Leslie C. Moore*, 52 ECAB 132 (2000).

⁷ *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

⁸ *Frank Luis Rembisz*, 52 ECAB 147 (2000) (medical opinions based on an incomplete history have little probative value).

a rationalized opinion regarding the causal relationship between appellant's condition and the factors of employment believed to have caused or contributed to such condition.⁹ In an attending physician's report of the same date, he noted that appellant was pulling a container and pulled muscles in the chest and back. Dr. Garcia-Prats diagnosed muscular strain of the back and chest and noted with a checkmark "yes" that appellant's condition was caused or aggravated by an employment activity. However, 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.¹⁰

Appellant also submitted several return to work slips prepared by Dr. Bouligny dated December 14, 2001 to October 28, 2003, who noted treating appellant for several conditions. However, Dr. Bouligny did not relate any diagnosed condition to the November 23, 2000 employment incident.

Appellant submitted reports from Dr. Rauchwerk who noted that on November 23, 2000 appellant was pulling a container at work and had pain in the mid-back, right arm and anterior chest wall. Dr. Rauchwerk diagnosed kyphoscoliosis, advanced dorsal disc derangement multilevel, impingement syndrome of the right shoulder, cervical spondylosis and probable disc displacement with radiculitis and radiculopathy. However, he failed to provide a rationalized opinion regarding the causal relationship between appellant's diagnosed conditions and the factors of employment believed to have caused or contributed to such condition. In reports dated July 25 to November 14, 2001, Dr. Rauchwerk noted that appellant's supraspinatus tendinitis was job related and that the acromioclavicular joint arthritis and cervical spondylosis were aggravated by her job. However, these do not contain rationale in which the physician explains the reasons why appellant's neck, chest, scapular and right shoulder conditions were work related. Dr. Rauchwerk also did not explain the reasons why appellant's symptoms would not be attributable to her preexisting abnormal acromion and cervical spondylosis. In a report dated December 11, 2001, he noted that appellant reported developing chest and right arm pain after pulling heavy equipment. Dr. Rauchwerk diagnosed cervical spondylosis, supraspinatus tendinitis and impingement of the right shoulder and opined that appellant's job-related injury that resulted from pulling the heavy equipment "could have" created the bursitis of the right shoulder. Although he noted that appellant's condition "could have" been work related, he couched his opinion in speculative terms. The Board has held that medical opinions which are speculative or equivocal in character have little probative value.¹¹ Therefore, this report is also insufficient to meet appellant's burden of proof.

Dr. Addato's report dated August 23, 2005 noted appellant's treatment for an injury which occurred after lifting a tray of mail in 2003 and caused neck and bilateral shoulder pain.

⁹ See *Jimmie H. Duckett*, *supra* note 7.

¹⁰ *Lucrecia M. Nielson*, 41 ECAB 583, 594 (1991).

¹¹ *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).

He noted that appellant's history was significant for a neck, right shoulder and chest injury which occurred on November 23, 2000 while at work. However, Dr. Addato failed to provide a rationalized opinion regarding the causal relationship between appellant's neck and bilateral shoulder pain and the factors of employment believed to have caused or contributed to such condition.¹² Additionally, he appears to attribute appellant's condition to a work injury which occurred in 2003. Therefore, this report is insufficient to meet appellant's burden of proof.

In a May 18, 2005 report, Dr. Burger noted that x-rays of the spine revealed severe kyphosis, severe anterior spurring and disc space collapse and noted improvement in appellant's chest pain after starting asthma treatment. However, this report does not specifically address whether appellant sustained a work-related injury on November 23, 2000.

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.¹³

CONCLUSION

The Board finds that appellant failed to meet her burden of proof to establish that she sustained a chest injury causally related to her November 23, 2000 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the June 1, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 21, 2007
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

¹² *Jimmie H. Duckett, supra* note 7.

¹³ *See Dennis M. Mascarenas*, 49 ECAB 215 (1997).