

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

S.M., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Salt Lake City, UT, Employer**

)
)
)
)
)
)
)
)
)
)
)
)

**Docket No. 07-295
Issued: June 15, 2007**

Appearances:

*David J. Holdsworth, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 14, 2006 appellant filed a timely appeal from the August 18, 2006 merit decision of the Office of Workers' Compensation Programs which denied her claim of an occupational injury. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of the claim.

ISSUE

The issue is whether appellant sustained an injury in the performance of duty during her part-time modified assignment from February 12 to May 12, 2000.

FACTUAL HISTORY

In the prior appeal of this case,¹ the Board noted that appellant began a modified casual assignment on February 12, 2000 that required her to sort letters manually. Although the job

¹ Docket No. 05-1648 (issued December 9, 2005). The facts of this case as set forth in the Board's prior decision are hereby incorporated by reference.

description indicated that she was to avoid reaching and twisting, appellant stated that sorting letters into boxes required her to reach above her head and to reach out and in front of her body on a repetitive basis. The reaching, appellant stated, also involved twisting. She performed this activity for three hours in her four-hour shift.² As there was no strong or persuasive evidence refuting appellant's account of her physical activities at work, the Board found that she met her burden to establish that she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. The Board affirmed the denial of compensation benefits, however, on the grounds that appellant failed to submit a well-reasoned medical opinion explaining how the specific duties she performed in April and early May 2000 caused or contributed to her diagnosed neck or shoulder condition. Appellant did not meet her burden of proof to establish causal relationship.

In an earlier claim, the Office accepted that appellant sustained an injury in the performance of duty on November 1, 1998. The Office accepted that claim for a herniated disc at L4-5 and approved surgery.³

On January 16, 2006 Dr. L. Edwards Weeks, a Board-certified orthopedic surgeon, addressed causal relationship:

"[Appellant] has bilateral rotator cuff calcific tend[i]nitis with definite calcific deposits seen on x-ray. This was caused by the frequent use of her arms, especially with the arms overhead while at work for the [employing establishment]. I believe that problem was caused by her use of the arms in the performance of her duty while working for the [employing establishment].

"We have tried multiple interventions to alleviate [appellant's] problem, but she is still having continued pain due to calcific tend[i]nitis. This is due to her work situation with the use of the arms at work. It is caused by the performance of [appellant's] work duties.

"We have discussed arthroscopic surgery, especially on [appellant's] left shoulder which continues to be the most painful, but she is concerned about planning the surgery until the issue of responsibility for payment is worked out. I hope you will accept this as a work-related problem as it truly is. If I can provide any further information please let me know."

On January 24, 2006 Dr. Alan B. Brown, a consulting orthopedic surgeon, related the following history of injury:

"[Appellant] states that the pain in her neck and left shoulder are the worst and go down into the mid part of her arm posterior. I saw her about five years ago and [appellant] was having these problems at that time, but they have gotten gradually

² The assignment was limited to four hours a day. Appellant was to alternate sitting and standing. She was to avoid bending, reaching and twisting and she was limited to intermittent lifting of 10 to 15 pounds.

³ OWCP File No. 12-0181290.

worse. [Appellant] did have a subsequent discectomy which made her leg and back pain somewhat better, although it is still problematic for her. [She] is quite limited in her activities. [Appellant] is not working. [She] states that her pain is aggravated by standing, walking, reaching, twisting, turning and lifting. [Appellant's] pain is constant. She has had injections into her shoulder. [Appellant] is considering shoulder surgery in the future."

Dr. Brown described his findings on physical examination and reviewed a February 2, 2005 magnetic resonance imaging (MRI) scan which showed a degenerative disc at C5-6 and some slight neural foraminal stenosis. He then addressed appellant's claim for compensation:

"I initially saw [appellant] on June 27, 2000. At that time her history is that she started having problems in about November 1998 while working at the [employing establishment]. [Appellant] had a micro-discectomy in her lower back, but at the time I evaluated her, she was also complaining of pain in her neck and shoulder similar to what she has now, but not as severe. On her pain diagram [appellant] localized it to her shoulder and cervical spine. Based on this history I think that what [appellant] has is the same degenerative disc disease, neck pain and shoulder pain that she had when I first evaluated her in 2000. This all relates back to her work at the [employing establishment]. It appears that given [appellant's] history of working at the [employing establishment], doing a lot of heavy lifting, that this was the result of both her neck, shoulder as well as low back pain. She has had surgery of her low back which helped her some. However, again I think that all [appellant's] shoulder, neck and low back problems date back to her industrial exposure and given the type of work she did, there is a more probable than not basis that her neck, shoulder and low back problems were all caused by her industrial exposure at the [employing establishment]."

The employing establishment clarified that appellant was working a modified casual assignment effective February 12, 2000 not to exceed 90 days. The employing establishment added that she was separated due to expiration of the temporary appointment and that she did not report the injury until after her separation from employment.

In a decision dated August 18, 2006, the Office reviewed the merits of appellant's claim and denied modification of its prior decision.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act⁴ has the burden of proof to establish the essential elements of her claim. When an employee claims that she sustained an injury in the performance of duty, she must submit sufficient evidence to establish that she experienced a specific event, incident or exposure occurring at the time, place

⁴ 5 U.S.C. §§ 8101-8193.

and in the manner alleged. Appellant must also establish that such event, incident or exposure caused an injury.⁵

Causal relationship is a medical issue⁶ and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion of the physician must be based on a complete factual and medical background of the claimant,⁷ must be one of reasonable medical certainty⁸ and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.⁹

ANALYSIS

Dr. Weeks, appellant's orthopedic surgeon, reported that frequent use of the arms, "especially with the arms overhead while at work for the [employing establishment]" caused her bilateral rotator cuff calcific tendinitis. However, there are two basic problems with this opinion. First, Dr. Weeks did not narrow his opinion on causal relationship to the assignment in question. Appellant claims that the limited duties she performed in her part-time assignment from February 12 to May 12, 2000 caused an injury. For his opinion to carry weight, Dr. Weeks must show his familiarity with this work assignment. He did not describe the length and nature of the assignment, its physical requirements, the physical limitations imposed, how many hours in a shift appellant performed those duties or the extent to which she exceeded her physical limitations.¹⁰ For this reason, his opinion is not based on an accurate history of the accepted employment factors. Second, Dr. Weeks did not explain how the frequent use of appellant's arms caused or contributed to rotator cuff calcific tendinitis. He did not explain the basis for his opinion that appellant's use of her arms during the 90-day assignment caused this medical condition. The Board finds that Dr. Weeks' opinion on causal relationship is of diminished probative value.¹¹

⁵ 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).

⁶ *Mary J. Briggs*, 37 ECAB 578 (1986).

⁷ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

⁸ See *Morris Scanlon*, 11 ECAB 384, 385 (1960).

⁹ See *William E. Enright*, 31 ECAB 426, 430 (1980).

¹⁰ *James A. Wyrick*, 31 ECAB 1805 (1980) (physician's report was entitled to little probative value because the history was both inaccurate and incomplete).

¹¹ *Connie Johns*, 44 ECAB 560 (1993) (holding that a physician's opinion on causal relationship must be one of reasonable medical certainty, supported with affirmative evidence, explained by medical rationale and based on a complete and accurate medical and factual background). See generally *Melvina Jackson*, 38 ECAB 443, 450 (1987) (discussing the factors that bear on the probative value of medical opinions).

Dr. Brown, the consulting orthopedic surgeon, did not find a bilateral rotator cuff calcific tendinitis. He noted instead a degenerative disc at C5-6 and some slight neural foraminal stenosis and related this degenerative disc disease, together with complaints of neck and shoulder pain, to appellant's history of "doing a lot of heavy lifting" at the employment establishment. As noted, however, appellant's assignment did not require heavy lifting. She attributed her neck and shoulder condition to reaching above her head and reaching out and in front of her body on a repetitive basis while manually sorting letters from February 12 to May 12, 2000. Dr. Brown did not base his opinion on an accurate history of injury. Like Dr. Weeks, he did not address the work assignment at issue. Dr. Brown offered no explanation how manually sorting letters on a part-time basis over a 90-day period would cause or aggravate the degenerative disc at C5-6 or the neural foraminal stenosis seen on the February 2, 2005 magnetic resonance imaging (MRI) scan. Without a complete and accurate history and without sound medical reasoning, Dr. Brown's opinion is also of diminished weight.

The Board will affirm the August 18, 2006 denial of appellant's claim. The medical reports she submitted after the last appeal are insufficient to discharge her burden of proof.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish the essential element of causal relationship. Her physicians did not demonstrate a proper understanding of the physical requirements of the February 12, 2000 assignment and did not support their opinions with sound medical reasoning.

ORDER

IT IS HEREBY ORDERED THAT the August 18, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 15, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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