United States Department of Labor
Employees' Compensation Appeals Board

J.H., Appellant	)	
and	)	**Docket No. 11-143**
	)	**Issued: September 22, 2011**
U.S. POSTAL SERVICE, POST OFFICE, Brooklyn, MI, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 25, 2010 appellant, through her attorney, filed a timely appeal of the October 4, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her occupational disease claim. Pursuant to the Federal Employees' Compensation Act (FECA)[1] and 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 sustained an injury in the performance of duty causally related to factors of her federal employment.

On appeal, appellant's attorney contends that the October 4, 2010 OWCP decision is contrary to fact and law.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case was previously before the Board.[2] In an August 26, 2009 decision, the Board found that the medical opinion of Dr. Emmanuel N. Obianwu, a Board-certified orthopedic surgeon and impartial medical specialist, was properly accorded the special weight of the medical opinion evidence. The Board affirmed the January 23 and October 6, 2008 OWCP decisions finding that appellant did not sustain an injury in the performance of duty causally related to her established employment duties.[3] The facts of the case as set forth in the Board's prior decision are incorporated by reference. The relevant facts are set forth below.

On May 27, 2006 appellant filed an occupational disease claim alleging that she sustained upper and lower back pain and a herniated disc as a result of bending, lifting and sitting for extended periods of time at work. Her work duties included repetitive lifting tubs of papers, magazines and catalogs and mail trays, sorting and casing mail, lifting parcels up to 70 pounds, pushing tubs of mail outside and loading them into her vehicle, opening mailboxes and placing mail in slots, repetitive bending to pick handfuls of mail off the ground, walking parcels to houses, picking up parcels as requested by customers for mailing and loading them into the vehicle and unloading undelivered parcels, empty mail trays and tubs at the end of the route.

In a December 21, 2007 medical report, Dr. Obianwu reviewed a history of appellant's medical, occupational and social background. On physical examination, he reported full flexion and extension of the cervical spine, negative Spurling's maneuver and 75 percent normal lateral rotation of the cervical spine to either side. Tightness was not present in the muscles in the neck and there was no tenderness over the anterior aspect of the cervical spine. Passive lateral flexion of the cervical spine caused some discomfort at the base of the neck. There were no sensory or reflex changes in the lower extremities and no paraspinous muscle spasms were noted in the lumbar spine. Deep palpation in the midline of the lumbar spine did not induce any discomfort and no tenderness was elicited in the entire lumbar spine. Dr. Obianwu reviewed magnetic resonance imaging (MRI) scans of the lumbar and cervical spine dated May 2006 and diagnosed cervical spondylosis and large right paracentral disc herniation with possible impingement on right S1 nerve root. There was no clinical evidence of cervical or lumbar radiculopathy.

Dr. Obianwu opined that the changes in appellant's cervical and lumbar spines were age related and there was no evidence to suggest that her work activities played any significant role in the development of these changes. He noted that epidemiologic studies suggested that the onset of low back pain was distributed evenly between the second and fifth decades of life. Dr. Obianwu advised that similar changes were seen in a significant portion of the general

[2] Docket No. 09-431 (issued August 26, 2009).

[3] The Board found that OWCP properly referred appellant to Dr. Obianwu to resolve the conflict in the medical opinion evidence between Dr. Cheryl Strzoda, an attending Board-certified family practitioner, Dr. Allen G. Clague, an attending neurologist, and Dr. Bruce D. Abrams, a Board-certified orthopedic surgeon and OWCP referral physician, as to whether appellant's cervical and lumbosacral spine conditions were causally related to the accepted factors of employment. Dr. Strzoda opined that appellant's work duties caused her back and neck conditions. Dr. Clague found that appellant's repetitive work duties caused her overuse syndrome of the upper extremities and degenerative lumbar and cervical spine conditions. Dr. Abrams found that appellant's lumbar and cervical conditions were not employment related.

population and that such neck and back pain could be secondary to anxiety. The fact that appellant's symptoms were controlled by antidepressants further suggested that to some degree anxiety and other psychosocial factors were significant in the persistence of her back pain. In addition, the multilevel involvement present in her case suggested a process that was ongoing over an extended period of time dating back to as early as 2004. Dr. Obianwu disagreed with Dr. Clague's opinion that the repetitive stress syndrome induced appellant's back problems, stating that the human body was not inert, but was a dynamic and living tissue that often responded in a positive manner to repetitive physical stress. He stated that terms like overuse or repetitive stress may explain symptoms, but did not bear a direct causation to disease. Dr. Obianwu noted that appellant did not recount one single episode of a significant trauma as being responsible for the onset of her symptoms. He further noted that the changes in the lumbar MRI scan were impressive, but he found no corroborating clinical findings. Dr. Obianwu concluded that, based on the rather ordinary clinical examination appellant could return to work without restrictions. He further concluded that, while her employment duties would suggest certain onerous tasks, taken together, they did not appear to constitute significant risk factors in themselves regarding the development of the degenerative changes of the spine.

Following the Board's August 26, 2009 decision, appellant, through counsel, requested reconsideration before OWCP on August 17, 2010. In a January 27, 2010 report, Dr. Clague referenced the history of injury and findings set forth in his prior report dated August 17, 2007. He stated that, since this last examination, appellant reported that any type of repetitive movement of her extremities resulted in pain and discomfort. Appellant described her daily activities and resulting symptoms. Dr. Clague stated that a general review of appellant's medical systems was essentially normal with an occasional headache, dizziness or light-headedness and chest pain, gastroesophageal reflux disease (GERD), constipation and sleep deprivation. He reported normal findings on neurological, mental and physical examination with the exception of slight left central facial weakness, difficulty reaching behind her with her upper extremities, mild weakness of the interosseous muscles bilaterally, unevenness when attempting to level the outstretched arms with the eyes closed on cerebellar testing, pain with lateral bending right greater than left and with flexion greater than extension, tightness in the right lower extremity when performing a supine leg raise and cervical spine rotation laterally 45 degrees to the right and 45 degrees to the left. Dr. Clague diagnosed overuse syndrome repetition strain injury (RSI) of the upper extremities, posterior thoracic area (mid and upper back posterior torso) and neck regions, chronic neurogenic low back pain syndrome with S1 radiculopathy on the right side secondary to a herniated intervertebral disc at L5-S1, and cervical and lumbosacral osteoarthritis and degenerative disc disease. He opined that the diagnosed conditions were a direct result of appellant's repetitive work duties as a rural letter carrier. Dr. Clague stated that the overuse syndrome was the disabling manifestation of her employment-related conditions.

Dr. Clague reviewed Dr. Obianwu's December 21, 2007 findings. He stated that the symptomatic manifestations listed by Dr. Obianwu were muscle and soft tissue manifestations and not manifestations of underlying osteoarthritis of the cervical or lumbosacral spine. Dr. Clague stated that a lack of physical findings such as muscle weakness and atrophy and a positive Phalen's test was the very essence why he diagnosed overuse syndrome. He disagreed with Dr. Obianwu's finding that the changes in appellant's cervical and lumbar spines were age related. Dr. Clague stated that age-related changes would be in substance and bone structure and did not result in osteoarthritis or degenerative arthritis. He related that changes in the cervical

and lumbosacral spine known as degenerative osteoarthritis and disc disease were prevalent in individuals between 20 to 45 years old who engaged in repetitive physical activities at work which caused structural stress and trauma to the spine. Dr. Clague stated that, if Dr. Obianwu's statement regarding the development of low back pain between 10 and 60 years old as part of an aging process was true, then more cases as an individual progressed through each decade. He evaluated a great number of cases of patients for back pain in his practice who were from 20 to 50 years old. Dr. Clague rarely saw patients who were 60, 70 or 80 years for major back problems. He stated that it was standard practice to use antidepressants to treat appellant's chronic back pain which was a lower dosage than that generally used to treat depression. Dr. Clague did not know of an instance where anxiety was the cause of back or neck pain.

Dr. Clague also disagreed with Dr. Obianwu's statement that there was no causal relationship between appellant's work activities and her overuse syndrome. He described how repetitive trauma to body tissues over a period of time caused changes in the bony structures and soft tissues around the spinal area. Dr. Clague advised that appellant's trauma occurring since 2004 represented a post-traumatic pathologic process rather than an aging process. He stated that the MRI scan findings which did not demonstrate any evidence of ongoing sciatica or pressure on the S1 nerve root at the time of Dr. Obianwu's examination constituted the residuals of appellant's treatment on April 14, 2006 for severe low back pain radiating down her right lower extremity and resultant disability for work. Dr. Clague noted that an acute herniated intervertebral disc generally healed spontaneously and did not require surgical intervention.

Dr. Clague further disagreed with Dr. Obianwu's opinion that appellant could return to work with no restrictions and stated that she was totally and permanently disabled. He related that repetitive physical activity would worsen the intensification of her underlying symptomatology related to overuse syndrome.

In an October 4, 2010 decision, OWCP affirmed the denial of appellant's occupational claim. It found that Dr. Clague's December 21, 2007 report was not sufficiently rationalized to outweigh the special weight accorded to Dr. Obianwu's impartial medical opinion.

LEGAL PRECEDENT

An employee seeking benefits under FECA[4] has the burden of establishing the essential elements of her claim, including the fact that the individual is an employee of the United States within the meaning of FECA; that the claim was filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.[5] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[6]

[4] 5 U.S.C. §§ 8101-8193.

[5] *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[6] *S.P.*, 59 ECAB 184 (2007); *Victor J. Woodhams*, 41 ECAB 345 (1989); *Joe D. Cameron*, 41 ECAB 153 (1989).

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) a 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 a causal relationship is 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.[7] Neither the fact that appellant's condition became apparent during a period of employment nor her belief that the condition was caused by her employment is sufficient to establish a causal relationship.[8]

Section 8123(a) of FECA provides that, when there is a disagreement between the physician making the examination for the United States and the physician of the employee, a third physician shall be appointed to make an examination to resolve the conflict.[9] In situations where there exist opposing medical reports of virtually equal weight and rationale and the case is properly referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on proper factual and medical background, must be given special weight.[10]

ANALYSIS

The Board previously found that the report of Dr. Obianwu, a Board-certified orthopedic surgeon and impartial medical specialist, was entitled to special weight and resolved the conflict on medical opinion evidence regarding appellant's claimed employment-related injury. Appellant requested reconsideration before OWCP and submitted an additional report from Dr. Clague, a neurologist and her attending physician, who was on one side of the conflict in medical opinion that Dr. Obianwu resolved.

Dr. Clague opined that appellant had overuse syndrome of the upper extremities, posterior thoracic area (mid and upper back posterior torso) and neck regions, chronic neurogenic low back pain syndrome with S1 radiculopathy on the right side secondary to a herniated intervertebral disc at L5-S1, and cervical and lumbosacral osteoarthritis and

[7] *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

[8] *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

[9] 5 U.S.C. § 8123(a). *See also Raymond A. Fondots*, 53 ECAB 637 (2002).

[10] *Jack R. Smith*, 41 ECAB 691, 701 (1990); *James P. Roberts*, 31 ECAB 1010, 1021 (1980).

degenerative disc disease due to her repetitive work duties as a rural letter carrier for over 20 years. He further opined that she was totally disabled for work as repetitive physical activity would worsen the underlying symptomatology related to her overuse syndrome. Dr. Clague disagreed with Dr. Obianwu's opinion that the changes in appellant's cervical and lumbar spines were age related, there was no causal relationship between her diagnosed conditions and established work-related duties and she could return to work with no restrictions. While he described his examination findings and diagnoses, and opined that these conditions were caused by appellant's employment, the Board finds that he failed to provide a sufficiently rationalized medical opinion explaining why his diagnoses particularly, overuse syndrome were correct rather than age-related degeneration as found by Dr. Obianwu. Dr. Clague acknowledged that his primary diagnosis of overuse syndrome which resulted in appellant's disability for work was made without any objective physical findings. He further acknowledged that MRI scan findings indicated that appellant's lumbar herniated disc had resolved. Dr. Clague found that, if appellant returned to work, her overuse syndrome would worsen. However, the Board has held that fear of future injury is not compensable.[11] Dr. Clague was on one side of the conflict that Dr. Obianwu resolved. The additional report from Dr. Clague is insufficient to overcome the weight accorded Dr. Obianwu as the impartial medical examiner or to create a new conflict.[12]

On appeal, appellant's counsel contended, without explanation, that OWCP's decision was contrary to fact and law. For reasons stated above, the Board finds that appellant did not submit sufficient evidence establishing that she sustained an injury causally related to the established work duties.

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 failed to establish that she sustained an injury in the performance of duty causally related to factors of her federal employment.

[11] *I.J.*, 59 ECAB 408 (2008).

[12] *Jaja K. Asaramo*, 55 ECAB 200, 205 (2004).

ORDER

IT IS HEREBY ORDERED THAT the October 4, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 22, 2011
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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