

FACTUAL HISTORY

On February 19, 2011 appellant, then a 54-year-old mail handler, filed an occupational disease claim (Form CA-2) alleging that she developed a strain as a result of her duties as a mail handler. She first became aware of her condition and of its relationship to her employment on January 24, 2011.

In a March 11, 2011 narrative statement, appellant reported that she had been employed with the Postal Service since 1991. Her duties as a mail handler included lifting tubs and trays weighing up to 50 pounds, sorting and keying mail, loading and unloading trucks and repetitively lifting, pushing and pulling during the course of an eight-hour day for five to seven days a week. Appellant stated that these repetitive movements caused stiffness and pain in her neck, as well as pain in her arms, hands, hips and knees.

In a March 16, 2011 progress note, Dr. Jacob Salomon, a Board-certified surgeon, reported that appellant had right de Quervain's disease, left carpal tunnel syndrome, cervical disc disease and tendinitis of the left shoulder.

By letter dated March 28, 2011, OWCP informed appellant that the evidence of record was insufficient to support her claim. Appellant was advised of the medical and factual evidence needed and was directed to submit it within 30 days.

By decision dated May 2, 2011, OWCP denied appellant's claim finding that the medical evidence did not demonstrate that her medical conditions were causally related to the established work-related events.

On July 1, 2011 appellant requested reconsideration of OWCP decision.

In a May 24, 2011 report, Dr. Amjad Safvi, a Board-certified diagnostic radiologist, reported that a magnetic resonance imaging (MRI) scan of appellant's cervical spine showed cervical spondylosis, foraminal stenosis due to disc osteophyte complex, subtle disc bulge at the C5-6 level, significant disc extrusions and mild mucosal thickening with the ethmoid sinuses.

In another report dated May 24, 2011, Dr. Safvi reported that an MRI scan of the left shoulder showed partial tear of the distal articular surface of common tendons of supraspinatus and infraspinatus, tendinosis, moderate degenerative changes of the acromioclavicular joint, subtle marrow edema, small degenerative bone cyst, tenosynovitis of the long head of the biceps tendon and mild subcoracoid and subacromial bursitis.

In a June 3, 2011 electromyography report, Dr. Anatoly Rozman, Board-certified in physical medicine, reported that appellant's nerve conduction study showed double crush syndrome, which was a combination of severe carpal tunnel syndrome and cervical radiculopathy on the left side.

In a January 6, 2011 medical report, Dr. Salomon reported that appellant was a postal employee who was being treated for pain in her wrists, shoulders, arms and neck. He noted tenderness over the right wrist radial styloid bone consistent with de Quervain's of the right wrist and a positive Tinel's sign with decreased pinprick sensation in both hands consistent with bilateral carpal tunnel syndrome. Upon physical examination and review of diagnostic testing,

Dr. Salomon diagnosed right de Quervain's disease, bilateral carpal tunnel syndrome, aggravation of cervical disc disease with myelopathy and rotator cuff bilateral tendonitis plus rotator cuff tear of the left shoulder. He reviewed appellant's job duties, provided findings regarding her symptoms and stated that the repetitive motion of her job from raising and lifting packages of mail and sorting mail account for both the shoulder and wrist symptoms and therefore all injuries were job related. Dr. Salomon opined that both the de Quervain's and bilateral carpal tunnel syndrome were caused by the repetitive motion of sorting and handing mail due to stress on the carpal ligament of the wrist. He further stated that there was no history of cervical injury and appellant's cervical disc disease was aggravated by repetitive lifting and straining of the shoulders. Dr. Salomon opined that the mechanism of injury was repetitive bending, straining and lifting mail.

In a June 10, 2011 medical report, Dr. Salomon reported that, as a mail handler, appellant's duties include unloading docks and stated that her aggravations of multiple joint disease were clinically related to her job since the mechanism of injury was bending, pulling, stretching, raising her arms and pushing objects on the loading docks which would account for all of her symptoms over the many years she worked for the employing establishment.

In a June 17, 2011 report, Dr. Safvi reported that an MRI scan of the right knee showed a Grade 3 tear of the posterior horn of the medial meniscus, mild intrasubstance mucoid degeneration, small degenerative bone cyst and early chondromalacia patellae. An MRI scan of the left knee showed a Grade 3 tear of the posterior horn of the medial meniscus, possible Grade 3 tear of the posterior horn of the lateral meniscus, mild knee osteoarthritic changes with chondromalacia and small geode within the posterior aspect of the patella.

By decision dated October 5, 2011, OWCP denied modification of its May 2, 2011 decision on the grounds that the medical evidence of record failed to establish the causal relationship between appellant's injuries and the accepted work-related employment factors.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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 filed within the applicable time limitation; that an injury was sustained while 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.³ These are the essential elements of every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁴

In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP 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

³ Gary J. Watling, 52 ECAB 278 (2001); Elaine Pendleton, 40 ECAB 1143, 1154 (1989).

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

actually experienced the employment incident which is alleged to have occurred.⁵ The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

To establish that an injury was sustained in the performance of duty in a claim for occupational disease, an employee must submit: (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.⁶

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.⁷ 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. This medical opinion must include an accurate history of the employee's employment injury and must explain how the condition is related to the injury. The weight of 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.⁸

An employee who claims benefits under FECA has the burden of establishing the essential elements of his or her claim. The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of the employment. As part of this burden, the claimant must present rationalized medical opinion evidence, based upon a complete and accurate factual and medical background, establishing causal relationship.⁹ However, it is well established that proceedings under FECA are not adversarial in nature and while the claimant has the burden of establishing entitlement to compensation, OWCP shares responsibility in the development of the evidence to see that justice is done.¹⁰

⁵ *Elaine Pendleton*, *supra* note 3 at 1143.

⁶ *See Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

⁷ *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

⁸ *James Mack*, 43 ECAB 321 (1991).

⁹ *See Virginia Richard*, *claiming as executrix of the estate of Lionel F. Richard*, 53 ECAB 430 (2002); *see also Brian E. Flescher*, 40 ECAB 532, 536 (1989); *Ronald K. White*, 37 ECAB 176, 178 (1985).

¹⁰ *Phillip L. Barnes*, 55 ECAB 426 (2004); *see also Virginia Richard*, *supra* note 9; *Dorothy L. Sidwell*, 36 ECAB 699 (1985); *William J. Cantrell*, 34 ECAB 1233 (1993).

ANALYSIS

The Board finds that this case is not in posture for decision.

OWCP accepted that appellant performed the duties of a mail handler as alleged. It denied her claim, however, as it found the medical evidence failed to establish a causal relationship between her work activities and her right de Quervain's disease, bilateral carpal tunnel syndrome, aggravation of cervical disc disease with myelopathy or rotator cuff bilateral tendinitis with rotator cuff tear of the left shoulder. The Board finds that the medical evidence of record is sufficient to require further development of the case record.

In medical reports dated January 6 and 10, 2011, Dr. Salomon reviewed appellant's job duties and reported that she was a mail handler whose duties included unloading docks, sorting mail and raising and lifting packages. Upon physical examination and review of diagnostic test results, he diagnosed right de Quervain's disease, bilateral carpal tunnel syndrome, aggravation of cervical disc disease with myelopathy and rotator cuff bilateral tendinitis plus rotator cuff tear of the left shoulder. Dr. Salomon opined that both the de Quervain's and bilateral carpal tunnel syndrome were caused by the repetitive motion of sorting and handing mail due to stress on the carpal ligament of the wrist. He described appellant's symptoms and stated that the repetitive motion of her job from raising and lifting packages of mail and sorting mail account for both the shoulder and wrist symptoms and therefore these conditions were job related. Dr. Salomon stated that there was no history of cervical injury and her cervical disc disease was aggravated by repetitive lifting and straining of the shoulders. He opined that the mechanism of injury was repetitive bending, straining and lifting mail.

Dr. Salomon also opined that appellant's aggravations of multiple joint disease were clinically related to her job since the mechanism of injury was bending, pulling, stretching, raising her arms and pushing objects on the loading docks which would account for all of her symptoms over the many years she worked for the employing establishment.

The Board notes that, while none of Dr. Salomon's reports are completely rationalized, they are consistent in indicating that appellant sustained an employment-related injury and are not contradicted by any substantial medical or factual evidence of record. Dr. Salomon did not fully describe the mechanism of the injury. He provided an opinion based on examination findings and an accurate factual and medical background. Dr. Salomon stated that appellant sustained her right de Quervain's disease, bilateral carpal tunnel syndrome and aggravation of disc disease, tendinitis and multiple joint disease due to her employment duties as a mail handler. The Board does note that he did not offer any direct opinion regarding the cause of her rotator cuff tear. Dr. Salomon demonstrated a clear understanding of appellant's work duties and discussed how these duties would cause her injuries. He provided a medical history and based his findings on diagnostic testing and physical examination. Additionally, Dr. Salomon's opinion is not contradicted by any medical or factual evidence of record. Though the reports are not sufficient to meet appellant's burden of proof to establish her claim, they raise an

uncontroverted inference between her condition and the identified employment factors and are sufficient to require OWCP to further develop the medical evidence and the case record.¹¹

On remand, OWCP should prepare a statement of accepted facts which includes a detailed employment history, job descriptions for each position held and specific functions performed by appellant in each position. It should submit the statement of accepted facts to a second opinion examiner, in order to obtain a rationalized opinion as to whether her current condition is causally related to factors of her employment, either directly or through aggravation, precipitation or acceleration.

CONCLUSION

The Board finds that this case is not in posture for a decision as to whether appellant developed bilateral arm, hand, hip and knee injuries causally related to factors of her federal employment as a mail handler.

ORDER

IT IS HEREBY ORDERED THAT the October 5 and May 2, 2011 decisions of the Office of Workers' Compensation Programs are set aside and the case is remanded for further development consistent with this decision.

Issued: May 24, 2012
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

¹¹ See *Virginia Richard*, *supra* note 9; see also *Jimmy A. Hammons*, 51 ECAB 219 (1999); *John J. Carlone*, 41 ECAB 354 (1989).