

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

N.N., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Port Hueneme, CA, Employer)

**Docket No. 14-35
Issued: March 27, 2014**

Appearances:
Appellant, pro se
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 15, 2013 appellant filed a timely appeal of an October 3, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) 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 established that her degenerative disc disease was caused or aggravated by her employment.

FACTUAL HISTORY

On December 28, 2011 appellant, then a 49-year-old city carrier, filed an occupational disease claim alleging that on August 9, 2011 she first realized that her cervical degeneration, headaches, right hip arthritis and right shoulder arthritis were due to her employment duties including carrying a satchel.

¹ 5 U.S.C. § 8101 *et seq.*

In a December 23, 2011 report, Dr. Moustapha Abou-Samra, a treating Board-certified neurological surgeon, diagnosed degenerative disc disease. He related that appellant was scheduled to undergo C5-6 and C6-7 anterior cervical microdiscectomy and an interbody fusion. Dr. Abou-Samra stated that appellant's carrying a satchel for long periods of time as part of her employment had aggravated her symptoms. He opined that appellant's employment "may have aggravated and increased her degenerative disc disease."

By correspondence dated January 18, 2012, OWCP informed appellant that the evidence of record was insufficient to establish her claim. Appellant was advised to submit additional medical and factual evidence within 30 days.

In a January 23, 2012 statement, appellant related that she had preexisting cervical degenerative disc disease. She alleged that her condition was aggravated by carrying her satchel on her right shoulder for the past 8 to 10 years. Appellant noted that her routes involved heavy walking and the repetitive nature of carrying a satchel aggravated her condition.

By decision dated March 29, 2012, OWCP denied appellant's claim. It found that the medical evidence was insufficient to establish that her condition was caused or aggravated by carrying her satchel on her right shoulder while delivering mail.

On April 12, 2012 appellant requested reconsideration. In an April 4, 2012 report, Dr. Abou-Samra reviewed OWCP's correspondence regarding his December 23, 2011 report. He stated that it was his intent "to indicate that her work has in fact caused aggravation of her symptomatology and her degenerative disc disease" and not that it "may have caused."

By decision dated July 3, 2012, OWCP denied modification of the March 29, 2012 decision.

Appellant requested reconsideration and submitted an October 20, 2011 report from Dr. Abou-Samra who diagnosed cervical degenerative disc disease with some evidence of cervical radiculopathy. He related that appellant began having symptoms in July 2011 which she eventually realized was due to her carrying a heavy mail pouch on her right shoulder for 12 miles. Appellant related that she did this for years until switching to a shorter eight-mile route. She stated that her work was demanding, that she had fallen several times and believes her current condition is cumulative.

In an August 1, 2012 report, Dr. Abou-Samra reviewed appellant's history and his consultation reports. He reiterated that appellant's condition was employment related. Appellant had several work injuries and "experienced significant exacerbation of her symptomatology due to carrying a heavy satchel on her right shoulder" on a daily basis for at least 12 miles while delivering mail. He attributed appellant's cervical condition to the necessity for surgery to her employment.

By decision dated November 8, 2012, OWCP denied modification of the July 3, 2012 decision.

Appellant requested reconsideration. In a September 20, 2012 report from Dr. Abou-Samra who released appellant to return to light-duty work effective September 26, 2012. He

stated that appellant was precluded from carrying a heavy satchel on her shoulder as this had “probably precipitated her symptoms in the first place.”

In a September 27, 2012 report, Dr. Thomas Sean McBreen, a treating Board-certified family practitioner, noted appellant’s medical and employment history. He diagnosed moderate C5-6 degenerative disc disease based upon a review of the diagnostic tests, medical history and physical examination. Dr. McBreen opined that appellant’s carrying 30 to 75 pounds in a satchel on her right shoulder while delivering mail house to house played a large part in her cervical degeneration and injury.

By decision dated October 3, 2013, OWCP denied modification of the November 8, 2012 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA² 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 and/or specific condition for which compensation is claimed are causally related to the employment injury.³ 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.⁴

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.⁵

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.⁶ Rationalized medical opinion evidence is medical evidence which includes a physician’s rationalized opinion on whether there is a causal relationship between the employee’s diagnosed condition and the compensable employment factors.⁷ The opinion of the physician must be based on a complete

² *Id.*

³ *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

⁴ *S.P.*, 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *D.U.*, Docket No. 10-144 (issued July 27, 2010); *R.H.*, 59 ECAB 382 (2008); *Roy L. Humphrey*, 57 ECAB 238 (2005); *Donald W. Wenzel*, 56 ECAB 390 (2005).

⁶ *Y.J.*, Docket No. 08-1167 (issued October 7, 2008); *A.D.*, 58 ECAB 149 (2006); *D’Wayne Avila*, 57 ECAB 642 (2006).

⁷ *J.J.*, Docket No. 09-27 (issued February 10, 2009); *Michael S. Mina*, 57 ECAB 379 (2006).

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

ANALYSIS

OWCP accepted appellant's factors of federal employment as a letter carrier. It denied her claim on the grounds that the medical evidence failed to establish a causal relationship between her work activities and her diagnosed cervical condition. The Board finds that the case is not in posture for decision as the medical evidence of record is sufficient to require further development as to whether appellant's diagnosed conditions were related to factors of her federal employment.

Dr. Abou-Samra has repeatedly opined that appellant's carrying a satchel in delivering mail aggravated her preexisting cervical condition. In reports dated October 20, 2011 and August 1 and September 1, 2012, he attributed the aggravation of her cervical condition to carrying a heavy mail satchel on her right shoulder while delivering mail. On December 23, 2011 Dr. Abou-Samra stated that appellant's symptoms were aggravated by carrying a satchel for long periods of time, which might have increased and aggravated her cervical degenerative disc disease. In an April 12, 2012 report, he provided clarification of his December 23, 2011 report as he opined that appellant work duties definitely aggravated her degenerative disc disease and symptomatology.

Similarly, Dr. McBreen, in a September 27, 2012 report, found appellant's cervical condition had been aggravated by her employment duty of carrying a heavy satchel on her right shoulder while delivering mail.

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.⁹

The Board finds that the reports by Dr. Abou-Samra or Dr. McBreen are consistent in supporting that appellant's cervical condition was aggravated by her employment duties, and are not contradicted by any substantial medical or factual evidence of record. While the reports are not sufficient to meet her burden of proof to establish her claim, they raise an uncontroverted inference between appellant's diagnosed cervical condition and the accepted employment factors. The evidence is sufficient to require OWCP to further develop the medical evidence and the case record.¹⁰ The case will be remanded to OWCP to obtain a rationalized opinion from a qualified physician as to whether appellant's cervical condition is causally related to the

⁸ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁹ *R.E.*, 59 ECAB 323 (2008); *Phillip L. Barnes*, 55 ECAB 426 (2004); *see also Virginia Richard*, 53 ECAB 430 (2002); *Dorothy L. Sidwell*, 36 ECAB 699 (1985); *William J. Cantrell*, 34 ECAB 1233 (1993).

¹⁰ *See Virginia Richard*, 53 ECAB 430 (2002); *see also Jimmy A. Hammons*, 51 ECAB 219 (1999); *John J. Carlone*, 41 ECAB 354 (1989).

identified work activities. After such development as it deems necessary, OWCP should issue a *de novo* decision in order to protect appellant's rights to further appeal.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 3, 2013 is set aside and the case remanded for further proceedings consistent with the above opinion.

Issued: March 27, 2014
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