

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

L.Z., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Phoenix, AZ, Employer**

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**Docket No. 14-1544
Issued: March 4, 2015**

Appearances:
Lonnie Boylan, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 30, 2014 appellant, through her representative, filed a timely appeal from a March 6, 2014 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 met her burden of proof to establish injuries to her back, neck, shoulders, arms, and lower extremities in the performance of duty.

On appeal, counsel contends that the medical evidence sufficiently established causal relationship, particularly the reports from Dr. Kimy Charani, a physician Board-certified in osteopathic manipulative medicine, and Dr. Demitri Adarmes, a Board-certified physiatrist.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On September 21, 2012 appellant, then a 56-year-old rural carrier associate, filed an occupational disease claim (Form CA-2) alleging that she injured her back, neck, shoulders, arms, and lower extremities due to factors of her federal employment, including lifting tubs, pushing heavy carts of mail, twisting, driving, and walking. She became aware of her condition on December 2, 2011 and attributed it to her federal employment on December 28, 2011.²

On December 28, 2011 Dr. Charani excused appellant from work until January 16, 2012 “due to illness.”

In a June 6, 2012 report, Dr. Adarmes stated that appellant complained of right low back pain, right hip pain, and right leg pain. He indicated that the date of injury was May 21, 2007 when she was involved in a motor vehicle accident while delivering mail and sustained injuries to her right shoulder, neck, low back, left knee, and forehead. Appellant stated that “everything ha[d] improved except the low back pain and the right shoulder pain” and that “she had right lower extremity pain since the accident.” She reported that she had neck surgery in 2009 and subsequently underwent a fusion. Dr. Adarmes noted that appellant had a claim accepted for neck sprain, cervical myelopathy, and lumbar sprain³ and diagnosed right greater trochanteric bursitis and right sacroiliac joint pain.

In an October 1, 2012 letter, OWCP notified appellant of the deficiencies of her claim and requested factual and medical evidence. It afforded her 30 days to submit additional evidence and respond to its inquiries.

Appellant submitted a narrative statement dated October 8, 2012 and a series of pay stubs.

In an October 16, 2012 report, Dr. Adarmes diagnosed increased muscular tone and motor weakness in the upper and lower limbs secondary to cervical myelopathy. He opined that appellant’s accepted conditions of cervical disc herniation and lumbosacral sprain were permanently aggravated by her repeated lifting of tubs of mail every day, pushing heavy carts filled with mail, and getting in and out of her postal vehicle “on a more probable than not basis.”

On October 22, 2012 the employing establishment indicated that appellant had been a rural carrier associate for the past 10 years. Appellant’s duties included: delivering a hamper of mail to four prisons, lifting tubs of mail, and delivering mail from a postal vehicle.

By decision dated January 8, 2013, OWCP denied the claim on the basis that the medical evidence failed to establish a causal relationship between appellant’s condition and the established factors of her federal employment.

² Appellant has the following additional claims: xxxxxx854 (May 21, 2007 motor vehicle accident); xxxxxx431 (October 15, 2009 short form closure); xxxxxx699 (February 13, 2010 recurrence of the May 21, 2007 injury); xxxxxx901 (September 15, 2010 date of injury); and xxxxxx270 (February 22, 2011 stress condition).

³ OWCP No. xxxxxx854.

On January 15, 2013 appellant, through her representative, requested an oral hearing before an OWCP hearing representative.

Appellant submitted reports dated December 28, 2011 through February 15, 2013 from Dr. Charani, who diagnosed chronic cervical and lumbar pain with right leg radiculopathy, myofascial pain across the lower back, chronic right hip pain, and chronic right leg pain due to motor vehicle accident. On March 20, 2012 Dr. Charani indicated that a study revealed left-sided radiculopathy, although most of appellant's pain was down the right leg at that time. On May 10, 2012 he found a positive abnormal electromyography (EMG), which revealed a right leg radiculopathy. Dr. Charani opined that appellant was not capable of performing the repetitive tasks required by her federal employment, including sitting, driving, stooping, bending, and lifting.

On May 1, 2012 Dr. Ali Araghi, an orthopedic surgeon, diagnosed lumbago, lumbalgia, and lumbar radiculopathy. He stated that her chief complaint was low back pain due to a motor vehicle accident that occurred on May 21, 2007. Appellant returned to work in May 2009 and continued to have lower back pain radiating down her right leg which was aggravated by bending forward, leaning back, sitting, standing, walking, physical activity, rising out of bed/chair, coughing, and sneezing. Upon examination, Dr. Araghi found no erythema, no significant joint swelling, no tenderness to palpation, no sign of instability, and range of motion within functional limits in the bilateral upper and lower extremities.

In a January 25, 2013 report Dr. George Wang, a sleep medicine specialist, diagnosed cervical radiculopathy, neck pain, cerebral concussion, headache, and migraine. He indicated that appellant's conditions began in 2007 subsequent to a motor vehicle accident on the job.

On April 16, 2013 a telephonic oral hearing was held before an OWCP hearing representative.

By decision dated July 3, 2013, the hearing representative affirmed the January 8, 2013 decision.

On January 7, 2014 appellant, through her representative, requested reconsideration and submitted a position description and terms of employment.

In a July 31, 2013 report, Dr. Charani stated that he initially saw appellant on December 9, 2008 for an employment-related motor vehicle injury, which occurred on May 21, 2007. He reported that she underwent cervical spinal surgery on March 5, 2009 and continued to have issues, particularly in the lower back with radiculopathy into the right leg, which was made worse by her continued work schedule at the employing establishment. Dr. Charani indicated that appellant's duties included repeated bending, lifting, squatting, walking, sitting, and climbing in and out of her vehicle. Appellant filled and pushed one to two carts filled with mail weighing anywhere between 70 to 100 pounds each day. Her duties also included a lot of driving, which at times was 30 miles of unpaved roads with lots of bumps. Dr. Charani stated that over the course of two years it came to a point where appellant could no longer function at work due to her chronic pain issues. He reported that an October 19, 2011 magnetic resonance imaging (MRI) scan revealed degenerative disc disease with possible

radiculopathy on her EMG. Dr. Charani stated that he took appellant off work and put her on full disability beginning December 28, 2011 because of her deteriorating condition and the constant pain in her neck, lower back, down her leg, and into her shoulder and because her pain was not being adequately controlled with medication. He opined that her injuries were chronic in nature and “clearly related to the activities of her work.”

An MRI scan of the cervical spine dated October 2, 2013 showed anterior cervical discectomy and fusion with hardware in place from C5-7, mild spinal stenosis at C4-5, effacement of the central subarachnoid space at C6-7 and small focus of myelomalacia in the spinal cord at C5-6.

An MRI scan of the lumbar spine dated October 16, 2013 revealed no spinal canal or neural exit foraminal stenosis, a straightened thoracolumbar lordosis, circumferential disc bulging, disc desiccation, endplate hypertrophic degenerative changes, and posterior element degenerative changes.

In a November 1, 2013 report, Dr. Adarmes indicated that appellant was first seen on June 6, 2012 for evaluation of her right shoulder, neck, low back, left knee, and forehead pain that began after a motor vehicle accident in 2007. Abnormal findings on his examination of appellant showed a magnetic shuffling gait, wide-based station, restriction of lumbar flexion and extension and a positive right Patrick’s test. Muscle strength was 4/5 in both lower limbs. Appellant had right C5 and C6 myotomal weakness rated with strength of 3/5. She had positive bilateral Babinski reflexes and increased muscle tone in the upper and lower limbs. Dr. Adarmes stated that it was “a miracle that she returned to work in a physically demanding position considering that she sustained a spinal cord injury in the mid cervical spine.” He reviewed the physical requirements of appellant’s federal employment and opined that the repetitive physical demands of her job had a direct impact on her cervical and lumbar spine conditions. Dr. Adarmes opined that her “lumbar spine intervertebral disc disorder was permanently aggravated as a consequence of the physical demands of her job on a more probable than not basis.” He indicated that repetitive carrying, lifting, and pushing, as well as prolonged standing to sort mail and operating a vehicle on unpaved roads “can cause injury or exacerbate already injured lumbar discs and contribute to degenerative changes in the lumbar spine.” Dr. Adarmes further indicated that repetitive reaching activities, carrying, lifting, pushing, pulling, and driving a vehicle “also contribute to [appellant’s] cervical spine problem.” He concluded that appellant’s workplace exposure of repetitive lifting, bending, stooping, twisting, pushing, pulling, climbing, and operating a motor vehicle while performing her federal duties accelerated the expected progression of her preexisting conditions of intervertebral disc disorder with myelopathy of the cervical region and lumbosacral sprain with evidence of left L4, L5, and S1 radiculopathy. Dr. Adarmes opined that “her present debilitating condition would not have manifested itself but for her employment.”

By decision dated March 6, 2014, the hearing representative affirmed the July 3, 2013 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ 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 timely filed within the applicable time limitation period of FECA, and that an injury⁵ was sustained in the performance of duty. These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁶

To establish that an injury was sustained in the performance of duty in a claim for an occupational disease claim, an employee must submit the following: (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.⁷

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical evidence. 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 implicated employment factors.⁸ The opinion of the physician must be based on a complete 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.⁹

ANALYSIS

The Board finds that appellant did not meet her burden of proof to establish a claim that federal employment factors caused or aggravated her back, neck, bilateral upper and lower extremity conditions. Appellant submitted a statement in which she identified the factors of employment that she believed caused the conditions, including lifting tubs, pushing heavy carts of mail, twisting, driving, and walking. However, in order to establish a claim that she sustained an employment-related injury, she must also submit rationalized medical evidence which

⁴ See *supra* note 2.

⁵ OWCP regulations define an occupational disease or illness as a condition produced by the work environment over a period longer than a single workday or shift. 20 C.F.R. § 10.5(q).

⁶ See *J.C.*, Docket No. 09-1630 (issued April 14, 2010). See also *Ellen L. Noble*, 55 ECAB 530 (2004).

⁷ *Id.* See also *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

⁸ See *D.N.*, Docket No. 10-1762 (issued May 10, 2011).

⁹ See *D.E.*, Docket No. 07-27 (issued April 6, 2007). See also *Victor J. Woodhams*, 41 ECAB 345 (1989).

explains how her medical conditions were caused or aggravated by the implicated employment factors.¹⁰

In his reports, Dr. Charani diagnosed chronic cervical and lumbar pain with right leg radiculopathy, myofascial pain across the lower back, chronic right hip pain, and chronic right leg pain due to motor vehicle accident. He opined that appellant was not capable of performing the repetitive tasks required by her federal employment, including sitting, driving, stooping, bending, and lifting. In his report dated July 31, 2013, Dr. Charani stated that he initially saw her on December 9, 2008 for an employment-related motor vehicle injury, which occurred on May 21, 2007. He reported that appellant underwent cervical spinal surgery on March 5, 2009 and continued to have issues, particularly in the lower back with radiculopathy into the right leg, which was made worse by her continued work schedule at the employing establishment. Dr. Charani indicated that appellant's duties included repeated bending, lifting, squatting, walking, sitting, climbing in and out of her vehicle, and driving, which at times was 30 miles of unpaved roads with lots of bumps. He stated that over the course of two years it came to a point where she could not function any longer at work due to her chronic pain issues. Dr. Charani stated that he took appellant off work and put her on full disability beginning December 28, 2011 because of her deteriorating condition and her constant pain in her neck, lower back, down her leg and into her shoulder and because her pain was not being adequately controlled with medication. He opined that her injuries were chronic in nature and "clearly related to the activities of her work." Dr. Charani failed to directly address the issue of causal relationship as he did not provide a rationalized medical opinion explaining how factors of appellant's federal employment, such as repeated bending, lifting, squatting, walking, sitting, driving, and climbing in and out of her vehicle, caused or aggravated her conditions. The Board has held that the mere fact that her symptoms arise during a period of employment or produce symptoms revelatory of an underlying condition does not establish a causal relationship between her condition and her employment factors.¹¹ Although Dr. Charani noted that appellant's conditions occurred while she was at work and stated that her injuries were "clearly related to the activities of her work," such generalized statements do not establish causal relationship because they are unsupported by adequate medical rationale explaining how her physical activity at work actually caused or aggravated the diagnosed conditions.¹² Thus, the Board finds that his reports are insufficient to establish that she sustained an employment-related injury.

In his reports, Dr. Adarmes diagnosed right greater trochanteric bursitis, right sacroiliac joint pain, increased muscular tone, and motor weakness in the upper and lower limbs secondary to cervical myelopathy. He opined that appellant's accepted conditions of cervical disc herniation and lumbosacral sprain were permanently aggravated by her repeated lifting of tubs of mail every day, pushing heavy carts filled with mail and getting in and out of her postal vehicle "on a more probable than not basis." On November 1, 2013 Dr. Adarmes stated that it was "a miracle that she returned to work in a physically demanding position considering that she

¹⁰ See *A.C.*, Docket No. 08-1453 (issued November 18, 2008); *Donald W. Wenzel*, 56 ECAB 390 (2005); *Leslie C. Moore*, 52 ECAB 132 (2000).

¹¹ See *Richard B. Cissel*, 32 ECAB 1910, 1917 (1981); *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

¹² See *K.W.*, Docket No. 10-98 (issued September 10, 2010).

sustained a spinal cord injury in the mid cervical spine.” He reviewed the physical requirements of appellant’s federal employment and opined that the repetitive physical demands of her job had a direct impact on her cervical and lumbar spine conditions. Dr. Adarmes opined that her “lumbar spine intervertebral disc disorder was permanently aggravated as a consequence of the physical demands of her job on a more probable than not basis.” He indicated that repetitive carrying, lifting, and pushing, as well as prolonged standing to sort mail and operating a vehicle on unpaved roads “can cause injury or exacerbate already injured lumbar discs and contribute to degenerative changes in the lumbar spine.” Dr. Adarmes further indicated that repetitive reaching activities, carrying, lifting, pushing, pulling, and driving a vehicle “also contribute to [appellant’s] cervical spine problem.” He concluded that appellant’s workplace exposure of repetitive lifting, bending, stooping, twisting, pushing, pulling, climbing, and operating a motor vehicle while performing her federal duties accelerated the expected progression of her preexisting conditions of intervertebral disc disorder with myelopathy of the cervical region and lumbosacral sprain with evidence of left L4, L5 and S1 radiculopathy. Dr. Adarmes opined that “her present debilitating condition would not have manifested itself but for her employment.” He noted that appellant’s conditions occurred while she was at work, however, he repeatedly maintained that her conditions were aggravated “on a more probable than not basis” and such generalized statements do not establish causal relationship because they are unsupported by adequate medical rationale explaining how her physical activity at work actually caused or aggravated the diagnosed conditions.¹³ The Board finds that Dr. Adarmes failed to provide a rationalized opinion explaining how factors of her federal employment, such as prolonged standing, repetitive carrying, lifting, bending, stooping, twisting, pushing, pulling, climbing, and operating a motor vehicle, caused or aggravated her conditions. Therefore, appellant has failed to meet her burden of proof to establish a claim.

In his May 1, 2012 report, Dr. Araghi diagnosed lumbago, lumbalgia and lumbar radiculopathy, indicating that appellant’s condition was aggravated by bending forward, leaning back, sitting, standing, walking, physical activity, rising out of bed/chair, coughing, and sneezing. He failed to provide a rationalized opinion explaining how factors of her federal employment caused or aggravated her lumbar condition. Lacking thorough medical rationale on the issue of causal relationship, the Board finds that Dr. Araghi’s reports are insufficient to establish that appellant sustained an employment-related injury.

In his January 25, 2013 report, Dr. Wang diagnosed cervical radiculopathy, neck pain, cerebral concussion, headache, and migraine. He indicated that appellant’s conditions began in 2007 subsequent to a motor vehicle accident on the job. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee’s condition is of limited probative value on the issue of causal relationship.¹⁴ As such, the Board finds that appellant did not meet her burden of proof with the submission of this report.

In support of her claim, appellant submitted a position description, terms of employment, and MRI scans dated October 2 and 16, 2013. These documents do not constitute competent medical evidence as they do not contain rationale by a physician relating her disability to her

¹³ *Id.*

¹⁴ *See C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

employment.¹⁵ As such, the Board finds that appellant did not meet her burden of proof with these submissions.

As appellant has not submitted any rationalized medical evidence to support her allegation that she sustained an injury causally related to the indicated employment factors, she failed to meet her burden of proof to establish a claim.

On appeal, appellant's representative contends that the medical evidence sufficiently established causal relationship, particularly the reports from Dr. Charani and Dr. Adarmes. For the reasons stated above, the Board finds that the representative's arguments are not substantiated.

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 not met her burden of proof to establish injuries to her back, neck, shoulders, arms, and lower extremities in the performance of duty causally related to factors of her federal employment.

¹⁵ See 5 U.S.C. § 8101(2). Section 8101(2) of FECA provides as follows: "(2) 'physician' includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law." See also *Paul Foster*, 56 ECAB 208, 212 n.12 (2004); *Joseph N. Fassi*, 42 ECAB 677 (1991); *Barbara J. Williams*, 40 ECAB 649 (1989).

ORDER

IT IS HEREBY ORDERED THAT the March 6, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 4, 2015
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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