

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

C.E., Appellant)

and)

U.S. POSTAL SERVICE, MAIN POST OFFICE,)
Oakland, MD, Employer)

**Docket No. 07-222
Issued: April 5, 2007**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On October 31, 2006 appellant filed a timely appeal from a decision of the Office of Workers' Compensation Programs dated March 31, 2006 denying her claim for an employment-related condition. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this claim.

ISSUE

The issue is whether appellant has met her burden of proof in establishing that she sustained an injury in the performance of duty causally related to factors of her federal employment.

FACTUAL HISTORY

On January 27, 2006 appellant, then a 51-year-old rural letter carrier, filed an occupational disease claim alleging that on April 19, 2004 she first realized her chronic back pain, sacroiliac joint arthropathy, lumbar facet arthropathy and fibromyalgia were aggravated by her duties of twisting, bending and lifting more than 25 pounds.

In support of her claim, appellant submitted reports dated March 29 and July 29, 2005 from Dr. Carlos S. Santiago, II, a treating Board-certified anesthesiologist, physical therapy reports, and x-ray interpretations dated August 6, 2001, October 23, 2003 and March 12, 2004. In a June 13, 2001 report, Dr. Scott L. Silverstein, an examining Board-certified orthopedic surgeon, diagnosed right tennis elbow and lumbar sprain. In a February 16, 2005 report, Dr. Warren T. Anderson, a Board-certified internist with a cardiac subspecialty, addressed her cardiac care and treatment. On March 30, 2001 Dr. J. David Lynch, Jr., a Board-certified physiatrist, diagnosed mechanical low back pain and deconditioning.

On February 23, 2004 Dr. Thomas G. Johnson, a family practitioner, diagnosed “progressive low back pain which has become progressively more severe and debilitating clearly affecting her ability to work.” He attributed the low back pain to appellant’s underlying osteoarthritis.

In a March 1, 2005 report, Dr. T.W. Crosby, an attending neurologist, noted that her disability retirement application had been denied. He first saw appellant in 1998 for occlusive carotid artery disease. Dr. Crosby diagnosed profound depression which he concluded prevented her from performing her duties as a rural mail carrier. He noted that the onset of depression as well as before her vascular disease was noted in 1998.”

On March 29, 2005 Dr. Santiago diagnosed sacroiliac joint arthropathy, chronic back pain, fibromyalgia and lumbar facet arthropathy. He opined that appellant had difficulty with her employment duties of lifting more than 25 pounds, twisting and bending. Dr. Santiago concluded that appellant was totally disabled from her employment on July 29, 2005.

On May 8, 2005 Dr. Mohammad Shafiei, a neurologist, concluded that appellant was totally disabled due to her hypertension, carotid artery stenosis, lumbar spine degenerative disc disease and hypercholesterolemia.

In a letter dated February 13, 2006, the Office requested that appellant submit additional factual and medical evidence in support of her claim.

Appellant submitted additional evidence.¹ On July 5, 2005 Dr. Santiago stated that she was totally disabled from performing her employment duties and that she continued under his care. In August 16, 2005 office notes, appellant reported that she continued to have complaints of pain. Dr. Santiago doubted whether she would be able to return to work as a rural mail carrier.

By decision dated March 31, 2006, the Office denied appellant’s occupational disease claim on the grounds that she did not submit sufficient medical evidence to establish that she sustained an injury in the performance of duty. The Office found that medical evidence did not causally relate her medical conditions to her employment activities.

¹ In a letter dated November 29, 2005, Dr. Santiago stated that he could no longer provide medical services for appellant.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing the essential elements of her claim, including the fact that an injury was sustained in the performance of duty as alleged³ and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.⁴

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 the 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 diagnosed condition is causally related to the employment factors identified by the claimant.⁵ The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence, *i.e.*, medical evidence presenting a physician's well-reasoned opinion on how the established factor of employment caused or contributed to the claimant's diagnosed condition. To be of probative value, 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.⁶ An award of compensation may not be based on appellant's belief of causal relationship. Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents, is sufficient to establish a causal relationship.⁷

ANALYSIS

The Office accepted that appellant's duties included reaching, twisting and lifting in her work as a rural letter carrier. The issue, therefore, is whether the medical evidence is sufficient to establish a medical condition causally related to the identified employment factors. The Board finds that appellant has not submitted sufficient medical evidence to establish that her back

² 5 U.S.C. §§ 8101-8193.

³ *Joseph W. Kripp*, 55 ECAB 121 (2003); *see also Leon Thomas*, 52 ECAB 202 (2001). When an employee claims that she sustained injury in the performance of duty he must submit sufficient evidence to establish that he experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. Appellant must also establish that such event, incident or exposure caused an injury. *See also* 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. § 10.5(q) and (ee) (2002) (occupational disease or illness and traumatic injury defined, respectively).

⁴ *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

⁵ *Michael R. Shaffer*, 55 ECAB 386 (2004). *See also Solomon Polen*, 51 ECAB 341 (2000).

⁶ *Leslie C. Moore*, 52 ECAB 132 (2000); *see also Ern Reynolds*, 45 ECAB 690 (1994).

⁷ *Phillip L. Barnes*, 55 ECAB 426 (2004); *see also Dennis M. Mascarenas*, *supra* note 4.

condition, sacroiliac joint arthropathy, lumbar facet arthropathy and fibromyalgia were caused or aggravated by factors of her federal employment.

The Board finds that the February 16, 2005 report from Dr. Anderson, the June 13, 2001 report by Dr. Silverstein and the March 1, 2005 report of Dr. Crosby are of diminished probative value. The reports of the physicians addressed appellant's cardiac treatment, a lumbar strain and tennis elbow, coronary artery disease and depression. However, none of the physicians provided a medical opinion relating these diagnosed conditions to any factor of appellant's work as a rural letter carrier. The reports of Drs. Anderson, Crosby and Silverstein are insufficient to establish appellant's claim.

Dr. Lynch diagnosed deconditioning and mechanical low back. Dr. Johnson concluded that appellant was totally disabled due to her low back pain, which he attributed to her underlying osteoarthritis. Drs. Shafiei and Santiago each concluded that appellant was totally disabled from performing her duties as a rural carrier. Dr. Shafiei attributed her disability to hypertension, carotid artery stenosis, lumbar spine degenerative disc disease and hypercholesterolemia. Dr. Santiago diagnosed sacroiliac joint arthropathy, chronic back pain, fibromyalgia and lumbar facet arthropathy. As noted, none of the physicians related the diagnosed conditions to the implicated factors of appellant's federal employment. The record lacks a reasoned medical opinion explaining how appellant's various conditions were caused or aggravated by her work as a rural mail carrier.⁸ The reports of Drs. Lynch, Johnson, Shafiei and Santiago are insufficient to meet appellant's burden of proof.

Appellant also submitted reports of diagnostic testing. However, these reports do not address the issue of a causal relationship between appellant's medical condition and her claimed work duties. This evidence is of diminished probative value in establishing appellant's claim. Furthermore, physical therapy reports cannot be used to establish an employment-related condition as a physical therapist is not a physician within the meaning of the Act. A physical therapist's opinion is of no probative value.⁹

The Office advised appellant that it was her responsibility to provide a comprehensive medical report which described her symptoms, test results, diagnosis, treatment and a physician's opinion on the cause of her condition. Appellant failed to do so. It is well established that an award of compensation may not be based on surmise, conjecture, speculation or on the claimant's own belief that there is a causal relationship between the claimed conditions and her employment.¹⁰ The mere fact that a disease or condition manifests itself during a period of employment is not sufficient to establish causal relationship.¹¹ Appellant has not met her burden

⁸ *Elizabeth H. Kramm (Leonard O. Kramm)*, 57 ECAB ____ (Docket No. 05-715, issued October 6, 2005); *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

⁹ 5 U.S.C. §§ 8101-8193; 8101(2); *David P. Sawchuk*, 57 ECAB ____ (Docket No. 05-1635, issued January 13, 2006); *Vickey C. Randall*, 51 ECAB 357 (2000) (a physical therapist is not a physician under the Act).

¹⁰ See *Robert Broome*, 55 ECAB 339 (2004).

¹¹ See *Michael R. Shaffer*, 55 ECAB 386 (2004).

of proof in establishing that she sustained an occupational disease in the performance of duty causally related to factors of her employment.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that she sustained an injury in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 31, 2006 is affirmed.

Issued: April 5, 2007
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

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