

her condition in May 2006 and of its relationship to her employment in October 2006. Appellant stopped work on August 28, 2006.¹

On September 18, 2006 Dr. Juan C. Jimenez, an attending Board-certified neurosurgeon, indicated that appellant reported that she dislocated her shoulder at work and injured her neck a couple of years prior. He stated that appellant reported experiencing neck pain since a recent water park accident when she caught the top of her head while ducking under a rope and her neck jerked back. Dr. Jimenez indicated that appellant described neck pain that radiated into her back, shoulders and arms with occasional numbness, tingling and sensitivity, but indicated that the results of sensory, strength and motion testing of the extremities were normal. He noted that appellant's water park accident "appeared temporally related to the exacerbation of her symptoms," indicated that her working diagnosis was cervical arthritis and myelopathy, and recommended that she undergo surgery at C5-6.²

On October 9, 2006 Dr. Jimenez stated that appellant was doing well after undergoing a discectomy and fusion at C5-6 and noted that she had an acute tear in the posterior longitudinal ligament which was most likely related to her water park accident. He stated, "There was evidence of degeneration with anterior osteophytes and the patient has history of occupational injury." On October 25, 2006 Dr. Jimenez stated that appellant reported having back pain for two years which became worse after her water park accident. He reported normal results of sensory, strength and motion testing of appellant's extremities and indicated that her low back symptoms were stable.

In a November 28, 2006 letter, the Office requested that appellant submit additional factual and medical evidence in support of her claim. Appellant submitted a January 5, 2007 statement in which she indicated that since 2004 she had injured her neck, shoulders, arms and back by performing such duties as lifting heavy packages or bundles of mail weighing up to 70 pounds, pulling down mail from cases, sorting mail and delivering mail on her route. She claimed that she sustained fibromyalgia, chronic fatigue syndrome and carpal tunnel syndrome due to these duties. Appellant provided additional details regarding the July 16, 2006 accident at the water park.

The results of a July 18, 2006 magnetic resonance imaging (MRI) scan of appellant's neck showed a disc protrusion and stenosis at C5-6 and a disc bulge at C6-7. In a November 6, 2006 report, Dr. Jimenez stated that appellant reported that she initially had a dull pain in her left neck area and left shoulder after her neck surgery but that she now had more generalized neck and shoulder pain. He again reported normal examination results and indicated that appellant was neurologically stable after her neck surgery.

¹ Appellant sustained a left shoulder injury at work in June 2004 and returned to regular duty in December 2004.

² In an August 28, 2006 note, Dr. Jimenez indicated that appellant was to be off work until September 28, 2006. In a September 22, 2006 note, he stated that appellant would have to take off about six weeks after surgery on September 28, 2006.

In a January 16, 2007 decision, the Office denied appellant's claim on the grounds that she did not submit sufficient medical evidence to establish that she sustained an occupational disease in the performance of duty.³

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act⁴ 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 the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and specific condition for which compensation is claimed are causally related to the employment injury.⁵ 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 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

ANALYSIS

Appellant claimed that she sustained neck, back, shoulder and arm injuries as well as fibromyalgia and chronic fatigue syndrome due to lifting mail, pulling down mail from cases, sorting mail and delivering mail on her route. The Board finds that appellant did not submit

³ Appellant submitted additional evidence after the Office's January 16, 2007 decision, but the Board cannot consider such evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c).

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁶ *See Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

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

sufficient medical evidence to establish that she sustained an occupational disease in the performance of duty.

Appellant submitted numerous reports of Dr. Jimenez, an attending Board-certified neurosurgeon. In reports dated between September and November 2006, Dr. Jimenez noted that appellant reported pain in her neck, back, shoulders and arms as well as numbness and tingling in her arms. He indicated in each of these reports that the findings of sensory, strength and motion testing of the extremities were normal and diagnosed cervical arthritis and myelopathy. Dr. Jimenez recommended that appellant undergo neck surgery and she had a discectomy and fusion at C5-6 on September 28, 2006. In disability notes, he indicated that appellant was disabled from August 28, 2006 until about mid November 2006.

These reports, however, are of limited probative value on the relevant issue of the present case in that they do not contain an opinion on causal relationship.⁸ Dr. Jimenez provided no indication that he felt that appellant's continuing problems were employment related. In fact, he provided no discussion of appellant's work duties and did not state in any of his reports that she had implicated her work duties as causing or aggravating her medical condition. Dr. Jimenez focused on treating appellant's neck condition, but provided no opinion that it was employment related. He suggested that her neck condition was the result of the natural progression of a degenerative condition and also indicated that some of her other symptoms were due to a nonwork-related accident at a water park in July 2006. In an October 9, 2006 report, Dr. Jimenez stated that appellant had a "history of occupational injury," but he did not provide any additional explanation of this comment. He indicated that appellant was disabled from August 28, 2006 until about mid November 2006, but he did not provide any opinion on the cause of this disability.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained an occupational disease in the performance of duty.

⁸ See *Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (finding that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' January 16, 2007 decision is affirmed.

Issued: September 6, 2007
Washington, DC

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

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

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