

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

W.M., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE
Wallingford, CT, Employer**

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**Docket No. 08-1687
Issued: December 23, 2008**

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
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On May 28, 2008 appellant filed a timely appeal of the Office of Workers' Compensation Programs' merit decisions dated October 31, 2007 and April 17, 2008. Pursuant to 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 in establishing that she sustained right hand and shoulder conditions, as well as left shoulder, elbow and hand conditions causally related to factors of her federal employment.

FACTUAL HISTORY

On July 6, 2007 appellant, a 57-year-old flat sorter clerk, filed an occupational disease claim, alleging that she had developed pain in her right shoulder and right hand incidental to her federal employment. Specifically she alleged: her bones ache; her hand locks up; she has terrible pain in her left shoulder from constant movement; and that she has pain in her left elbow and hand. Appellant explained that this pain occurred "whenever I am using my hand to tie out

my case, I have to use elastic band and I have to stretch them over the mail, and then I have to use a stamper that's not working properly because of dried out ink." On the claim form, she noted that she first became aware her condition was caused by her employment in April 2007, and that she had filed previous claims for compensation, one of which was accepted.

By letter dated September 7, 2007, the Office notified appellant that the evidence submitted in support of her claim was insufficient. Specifically, it cited the absence of a diagnosis by physician as well as an explanatory opinion from her personal physician concerning how, within the context of her medical history, the event(s) caused or affected her condition.

In response to this letter, appellant submitted two reports from Dr. Michael A. Luchini, a Board-certified orthopedic surgeon, dated September 19 and October 15, 2007. In his report dated September 19, 2007, Dr. Luchini noted appellant's history that her medical problems began with a "fall down" accident on December 7, 2006 and that work, casing mail, aggravated her condition. He stated that appellant's examination was positive for bilateral hand tenderness and swelling, particularly on the right side; carpal tunnel compression test particularly on the right side is positive and less so on the left side, full motion of the elbow, limited motion of both shoulders and diffuse tenderness about the subacromial space of both shoulders. Dr. Luchini diagnosed appellant as having bilateral shoulder sprains with tendinitis. His assessment was that appellant suffered from bilateral dorsiflexion sprains with subsequent carpal tunnel syndrome.

The second report from Dr. Luchini, dated October 15, 2007, stated that appellant continued to have difficulty with her hands, particularly the right side, and that both of her shoulders were painful. He also observed that appellant had persistent lumbar spine pain, but never had hand or shoulder pain prior to the fall down episode of December 7, 2006.

By decision dated October 31, 2007, the Office denied appellant's claim for compensation, finding that the evidence submitted in support of her claim was insufficient to establish that she sustained an injury as defined by the Federal Employees' Compensation Act.

On January 5, 2008 appellant requested reconsideration of her claim. She submitted progress reports from Dr. Jennifer Patten, Board-certified in internal medicine, as well as endocrinology, diabetes and metabolism test results, which date from 2000; and progress reports from Dr. Luchini dating from 2007.

Dr. Patten's first report, dated June 13, 2000, diagnosed a left wrist sprain, with onset of pain 24 hours prior. The second report from Dr. Patten detailed the results of appellant's recheck examination on June 16, 2000. Dr. Patten observed that appellant had only mild point-specific tenderness to palpation at the ulnar styloid.

Dr. Luchini noted in a report dated April 16, 2007 that appellant was still bothered by her left elbow. He surmised that it was possible that she suffered a cervical disc injury or just a contusion and persistent strain in the left upper extremity. In a report dated September 27, 2007, Dr. Luchini stated that appellant had a fall in a parking lot at her place of employment on December 7, 2006. He opined that this fall affected several parts of her body. Dr. Luchini opined that he believed that during the course of the fall appellant injured her right knee and hand and her upper left extremity.

By decision dated April 17, 2008, the Office affirmed its previous denial of her claim for compensation, modified “to reflect fact of injury.” The decision specifically stated:

“It is determined that the evidence of record is now sufficient to establish the events as stated on your claim form regarding experiencing pain while performing your federal duties related to casing mail. The record also contains evidence of a diagnosis connected to the claimed injury. However, the evidence of record remains insufficient to demonstrate a causal relationship between your federal employment and the diagnosed conditions.”

LEGAL PRECEDENT

An employee seeking benefits under the Act has the burden of establishing the essential elements of his or her claim including: the individual is an employee of the United States within the meaning of the Act; the claim was filed within the applicable time limitation of the Act; an injury was sustained 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. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.¹

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.²

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; be one of reasonable medical certainty; and, be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.³ 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.⁴ Evidence that repeats or duplicates evidence already in the case record has no evidentiary value.⁵

¹ *Gary J. Watling*, 52 ECAB 357 (2001).

² *See Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

³ *Leslie C. Moore*, 52 ECAB 132 (2000); *Bobby J. Parker*, 49 ECAB 260 (1997).

⁴ *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value); *Jimmie H. Duckett*, 52 ECAB 332 (2001).

⁵ *Paul Kovash*, 49 ECAB 350 (1998).

An award of compensation may not be based on surmise, conjecture, speculation or upon appellant's own belief that there is a causal relationship between her claimed injury and her employment.⁶ To establish a causal relationship, appellant must submit a physician's report in which the physician reviews the employment factors identified by appellant as causing her condition and, taking these factors into consideration as well as findings upon examination of appellant and her medical history, state whether the employment injury caused or aggravated appellant's diagnosed conditions and present medical rationale in support of his or her opinion.⁷

ANALYSIS

The Office accepted that appellant experienced pain in her upper extremities while casing mail. However, it denied appellant's claim for compensation benefits as the medical evidence of record failed to establish a causal relationship between appellant's claimed diagnosed conditions and the accepted factors of employment. Although appellant submitted medical reports from several treating physicians, this evidence does not address causation or describe, with detailed rationale, the relationship between the upper extremities conditions and appellant's duties casing mail.

Dr. Patten's medical reports from 2000 address appellant's injury to the left wrist attributable to a prior incident, which occurred on or about June 12, 2000. These reports are neither relevant nor of any probative value as to appellant's present claim concerning an overuse injury due to casing mail in late 2006 and early 2007.

Dr. Luchini's reports do address appellant's upper extremity complaints commencing in late 2006. His reports, however, only relate her statements regarding her history of injury and do not provide a complete assessment of the entire medical history underlying her upper extremity medical conditions. In a report dated October 15, 2007, Dr. Luchini opined that appellant had never experienced hand or shoulder pain prior to December 2006, however, this statement is contradicted by both Dr. Patten's reports which describe a left wrist injury in June 2000, and by his own report of September 27, 2007 wherein he noted that appellant injured her right hand and left upper extremity during a fall on December 16, 2005.

Equally problematic is that Dr. Luchini's report lacks a well-rationalized discussion addressing the physiological cause of appellant's condition. Rather, his report is conclusive: merely stating that casing mail aggravated the conditions.

Dr. Luchini did not explain why or how the accepted factors of rubber banding and stamping mail caused or aggravated appellant's various bilateral upper extremity conditions as of December 2006. Therefore, because Dr. Luchini's reports did not address the critical causal relationship between appellant's employment factors and the diagnosed conditions, his reports are insufficient.

⁶ *Donald W. Long*, 41 ECAB 142 (1989).

⁷ *Id.*

Although appellant has symptoms indicative of an underlying injury, she has not met her burden of proof in establishing that her upper extremity conditions commencing in December 2006 were causally related to the accepted factors of employment.

CONCLUSION

The Board finds that the Office properly concluded that appellant has not met her burden of proof in establishing that she sustained an occupational disease in the performance of her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the April 17, 2008 and October 31, 2007 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: December 23, 2008
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board