

accompanying statement, she described that, as she put the 15- to 20-pound satchel on her shoulder, she felt a sharp pain starting with her neck, shoulder and shoulder blade, upper and lower back, hip and leg, with tingling and numbness throughout her left side.

The employing establishment controverted appellant's claim on the grounds that she had not reported the alleged incident to her supervisor on the date in question. On the afternoon of January 18, 2006, the station manager observed appellant walking and talking, in no apparent pain.

Appellant submitted a work status report dated January 19, 2006, bearing an illegible signature, reflecting diagnoses of: "C-spine; thoracic spine strain, strain; lumbar spine strain, sprain; left shoulder strain, sprain." She was restricted from lifting, pushing, bending stooping, kneeling or squatting.

On January 25, 2006 the Office informed appellant that the evidence submitted was insufficient to establish her claim. Appellant was advised to provide additional information and evidence, including a medical report containing a diagnosis and a rationalized opinion relating her diagnosed condition to factors of her employment.

Appellant submitted a report dated January 19, 2006 from Dr. Ramiro Futralan, Board-certified in the area of occupational medicine. Dr. Futralan related that, on January 18, 2006, as appellant placed a 15- to 20-pound mailbag on her left shoulder, she felt a sharp pain, numbness and tingling throughout her left side from neck to front. On examination, active range of motion was moderately restricted due to pain. Appellant experienced pain and tenderness at the anterior and posterior aspect of the left shoulder, with moderate restriction of abduction to 90 degrees, external and internal rotation with arm in abduction. Flexion and extension were executed with pain at 75 degrees respectively. An examination of the upper and lower back revealed pain and tenderness at the left parathoracic and paralumbar spine, with guarding of the paraspinalis. Bilateral straight leg raise was executed with pain at 45 degrees. There was moderate restriction of spinal mobility, especially flexion. Extension movement was at 35 degrees and 10 degrees respectively. Knee reflexes were hypoactive. Dr. Futralan diagnosed sprain/strain of the thoracic spine, cervical spine, lumbar spine and left shoulder. He indicated by placing a checkmark in the "yes" box that his findings and diagnosis were consistent with appellant's account of the injury.

On February 24, 2006 appellant expressed her belief that the January 18, 2006 injury was work related. She alleged that her repetitive work duties, including pushing and pulling carts weighing up to 25 pounds and carrying heavy loads of mail, were responsible for her previous work injuries.¹ The record contains physical therapy notes for the period January 25 through February 22, 2006.

Appellant submitted a February 6, 2006 report of a January 23, 2006 examination from Dr. Thai T. Do, a treating physician, who provided a history of injury, indicating that appellant developed pain in the left side of her neck and shoulder on January 18, 2006, after carrying a 20-pound satchel for half an hour. His examination revealed tenderness to rotation to the right

¹ Appellant stated that previous work injuries included: April 30, 2001 and December 30, 2002 neck injuries; August 29, 1998 and April 30, 2001 shoulder injuries; and May 25, 1995 and April 30, 2001 back injuries.

and lateral bend and rotation to the right produced symptoms in the left arm. Examination of the neck revealed tenderness on palpation of the left upper trapezius medial scapula area. There was full range of motion of the shoulders. Dr. Do found mild tenderness to palpation of the lower lumbar area, with good range of motion. He diagnosed myofascial strain of the left trapezius; lower back strain with some sciatica symptoms and left cervical strain. In a February 7, 2007 report of an examination conducted on that date, Dr. Do reiterated his previous diagnoses. He released appellant to modified duty, restricting her from lifting or carrying more than 10 pounds, or carrying mail for more than two hours per day.

By decision dated March 9, 2006, the Office denied appellant's claim on the grounds that the medical evidence did not demonstrate that the claimed medical condition was causally related to the established work-related event. The Office noted that three previous claims filed by appellant between 1995 and 2002 had been accepted for neck strain (File Nos. 131078276; 132027632; and 13205677). However, appellant's physicians did not explain why her current condition was not related to those injuries, rather than to the January 18, 2006 incident.

Appellant submitted follow-up reports dated February 22 and March 22, 2006 from Dr. Do, who reiterated his diagnoses. The record contains reports of June 20, 2006 magnetic resonance imaging (MRI) scans of the left shoulder, lumbar spine and cervical spine. The record also contains a June 27, 2006 electromyographic (EMG) report of appellant's upper and lower extremities.

In an October 30, 2006 report, Dr. Albert Simpkins, a Board-certified orthopedic surgeon, stated that appellant experienced a traumatic injury on January 18, 2006 while working. Appellant grabbed her mail satchel with her right hand, slung it over her left shoulder, and immediately felt a sharp pain in her left shoulder, which radiated down to her arm. Examination revealed tenderness in the lower cervical spine in the midline; tenderness along the left upper trapezius, levator scapulae, and rhomboid musculature; and tenderness in the deltopectoral groove on the left and left pectoralis major. Examination of the lumbar spine revealed pain and limping on the left; normal alignment, shoulders at iliac crest level; tenderness of the left PSIS, left sciatic notch and in the inner spinous area of the lumbar spine. Pathological reflexes were absent. The June 20, 2006 MRI scan of the cervical spine revealed one- to two-millimeter (mm) disc bulges at C3-4, C4-5 and C5-6. The MRI scan of the lumbar spine showed one- to two-mm bulges at L4-5 and L5-S1. Dr. Simpkins observed a possible minimal disc desiccation and subtle focal annular tear of the right extraforaminal region of the L4-5 disc. The MRI scan of the right shoulder revealed minimal tendinitis of the supraspinatus tendon. Dr. Simpkins diagnosed left posterior shoulder strain with myofascial tenderness of the left upper trapezius, levator scapulae and rhomboid; musculoligamentous tenderness of the cervical spine and superimposed multilevel disc protrusions; and musculoligamentous tenderness of the lumbar spine consistent with musculoligamentous injury, with superimposed multilevel disc protrusions. He opined that appellant's present symptoms were the result of her industrial injury.

On February 8, 2007 appellant, through her representative, requested reconsideration of the Office's March 9, 2006 decision, contending that, although appellant's condition was caused by the repetitive nature of her job duties, it was exacerbated by the January 18, 2006 incident. She submitted an unsigned medical report dated June 14, 2006 from Performance Health Medical Group, reflecting her account of the January 18, 2006 incident, and diagnoses of

cervical disc syndrome; left shoulder tendinitis with impingement; and lumbar disc syndrome. Appellant submitted a statement dated February 5, 2007 indicating that she had informed her supervisor that she was “hurting” following her injury on January 18, 2006.

In a report dated July 26, 2006, Dr. Hosea Brown, III, a Board-certified internist, stated that appellant sustained an acute injury to her neck, left shoulder and low back on January 18, 2006 while attempting to lift a heavy satchel onto her left shoulder. He noted that appellant had sustained injuries to her neck and left shoulder in the past, including a left shoulder sprain in 2001 that had been accepted by the Office, and detailed appellant’s duties as a mail handler. Dr. Brown’s examination revealed evidence of decreased range of motion of the cervical spine, and spasm of the paraspinal cervical musculature. His findings were consistent with left shoulder tendinitis, with evidence of decreased range of motion of the left shoulder and positive impingement sign and positive left-sided acromioclavicular tenderness. Dr. Brown diagnosed multilevel cervical disc syndrome with intervertebral disc herniations at C3-4, C4-5 and C5-6; multilevel lumbar disc syndrome with intervertebral disc herniations at L4-5 and L5-S1; focal annular tear at L4-5 disc; and left shoulder tendinitis with impingement. Noting that appellant’s underlying condition was caused by the repetitive nature of her job duties, he opined that the lifting incident of January 18, 2006 precipitated and aggravated the underlying conditions of cervical disc syndrome, with secondary cervical musculature contraction, as well as masking the left shoulder tendinitis with impingement. On December 26, 2006 Dr. Brown modified his diagnoses to include lumbar and cervical radiculitis.

By decision dated April 13, 2007, the Office denied modification of its March 9, 2006 decision. The Office noted that no physician had opined that appellant’s diagnosed conditions were caused by the January 18, 2006 incident.

On June 4, 2007 appellant, through her representative, requested reconsideration. She submitted a May 9, 2007 letter from Dr. Brown, who reiterated his opinion that the underlying latent conditions from which appellant suffered were precipitated and aggravated by the January 18, 2006 work injury.

By decision dated September 6, 2007, the Office denied appellant’s request for reconsideration on the grounds that the evidence presented was cumulative, repetitious and not specific to the original claim.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees’ Compensation Act has the burden of proof to establish 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 or specific condition for which compensation is claimed is causally related to the employment injury.² When an employee claims that she sustained a traumatic injury in the performance of duty, she must establish the fact of injury, consisting of two components which must be considered in conjunction with one

² Robert Broome, 55 ECAB 339 (2004).

another. The first is whether the employee actually experienced the incident that is alleged to have occurred at the time, place and in the manner alleged. The second is whether the employment incident caused a personal injury.³

The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of employment.⁴ An award of compensation may not be based on appellant's belief of causal relationship.⁵ 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.⁶ Simple exposure to a workplace hazard does not constitute a work-related injury entitling an employee to medical treatment under the Act.⁷

Causal relationship is a medical issue, and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion 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 established incident or factor of employment.⁸

ANALYSIS -- ISSUE 1

The Office accepted that appellant lifted a heavy satchel onto her left shoulder on January 18, 2006 while delivering mail. However, her claim was denied on the grounds that the medical evidence failed to establish that the claimed medical condition was related to the established work-related event. The Board finds that this case is not in posture for decision regarding whether appellant sustained an injury in the performance of duty.

The Board notes that the medical evidence of record generally supports that appellant sustained an injury on January 18, 2006. On the day following the work incident, Dr. Futral stated that appellant had experienced severe pain, numbness and tingling on the date in question, while placing a 15- to 20-pound mailbag on her left shoulder. He provided a definitive diagnosis, based on the information available at that time, which related appellant's condition to

³ *Deborah L. Beatty*, 54 ECAB 340 (2003). See also *Tracey P. Spillane*, 54 ECAB 608 (2003); *Betty J. Smith*, 54 ECAB 174 (2002). The term "injury" as defined by the Act, refers to a disease proximately caused by the employment. 5 U.S.C. § 8101 (5). See 20 C.F.R. § 10.5(q), (ee).

⁴ *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

⁵ *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

⁶ *Id.*

⁷ 20 C.F.R. § 10.303(a).

⁸ *John W. Montoya*, 54 ECAB 306 (2003).

the work incident. Following a January 23, 2006 examination, Dr. Do stated that appellant had developed pain in her neck and left shoulder after lifting a mail satchel at work on the date in question. He, too, provided a diagnosis consistent with the alleged injury. On October 30, 2006 Dr. Simpkins indicated that appellant experienced a traumatic injury on January 18, 2006, when she slung her mail satchel over her left shoulder. Based on his thorough examination of appellant and review of the MRI scan and EMG test results, he provided diagnoses of left posterior shoulder strain with myofascial tenderness of the left upper trapezius, levator scapulae, and rhomboid; musculoligamentous tenderness of the cervical spine and superimposed multilevel disc protrusions; and musculoligamentous tenderness of the lumbar spine consistent with musculoligamentous injury with superimposed multilevel disc protrusions. Dr. Simpkins opined that appellant's present symptoms were the result of her industrial injury. Although none of these reports explains in detail how the January 18, 2006 work incident caused her diagnosed conditions, they are factually consistent with treatment for a traumatic injury.

Dr. Brown's July 26, 2006 and June 4, 2007 narrative reports further support appellant's claim. He provided an accurate history of injury. Based on Dr. Brown's review of the medical record and thorough examination, he diagnosed multilevel cervical disc syndrome with intervertebral disc herniations at C3-4, C4-5 and C5-6; multilevel lumbar disc syndrome with intervertebral disc herniations at L4-5 and L5-S1; focal annular tear at L4-5 disc; and left shoulder tendinitis with impingement. Dr. Brown stated that appellant's underlying latent conditions were caused by the repetitive nature of her job duties. However, after noting appellant's previous cervical and shoulder injuries, he opined that the lifting incident of January 18, 2006 precipitated and aggravated those underlying conditions.

The reports of the attending physicians are not fully rationalized; however, they are consistent in indicating that appellant sustained an employment-related neck and left shoulder injury on January 18, 2006, and are not contradicted by any substantial medical or factual evidence of record. The Board finds that, while the reports are not sufficient to meet appellant's burden of proof to establish her claim, they raise an uncontroverted inference between her claimed condition and the accepted incident, and are sufficient to require further development of the medical evidence.⁹ On remand, the Office shall obtain a rationalized opinion from a qualified physician as to whether appellant's current condition is causally related to the accepted incident, and issue an appropriate decision in order to protect her rights of appeal.

CONCLUSION

The Board finds that this case is not in posture for decision as to whether or not appellant sustained an injury in the performance of duty on January 18, 2006.¹⁰

⁹ See *Virginia Richard*, *supra* note 9; see also *Jimmy A. Hammons*, 51 ECAB 219 (1999); *John J. Carlone*, 41 ECAB 354 (1989).

¹⁰ In light of the Board's ruling on the first issue, the second issue before the Board is moot.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated September 6 and April 13, 2007 are set aside and remanded for further development consistent with this decision.

Issued: March 18, 2008
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