

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

T.M., Appellant)
and) Docket No. 08-231
U.S. POSTAL SERVICE, POST OFFICE,) Issued: May 20, 2008
St. Louis, MI, Employer)

)

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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 26, 2007 appellant filed a timely appeal from a decision of the Office of Workers' Compensation Programs' hearing representative dated August 14, 2007, which affirmed that appellant's right shoulder condition was not causally related to her employment. 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 has met her burden of proof to establish that she sustained a right shoulder condition causally related to factors of her federal employment.

FACTUAL HISTORY

On July 20, 2006 appellant, then a 41-year-old rural letter carrier, filed an occupational disease claim alleging that she developed a right shoulder condition due to her work. She

alleged that she stretched her shoulder while reaching for mailboxes and putting up the mail.¹ Appellant indicated that she first became aware of the injury and its relation to her work on July 20, 2006. She did not stop work.

In an April 13, 2006 report, Dr. Michael D. Austin, Board-certified in internal medicine, indicated that appellant fell on her right shoulder while putting up Christmas lights. He conducted a physical examination and indicated that appellant had good range of motion with some positive impingement signs, marked tenderness of the long head of the biceps and area of the questionable lesion. Dr. Austin determined that appellant had tenderness of the coracromial ligament and good stability of the shoulder. He advised that an x-ray of the shoulder was essentially normal. Dr. Austin noted that a magnetic resonance imaging (MRI) scan of the shoulder showed a semi-cystic lesion anteriorly in the shoulder and behind the subscapularis inferior to the supraspinatus. He diagnosed a labral tear and soft tissue mass of the right shoulder. Dr. Austin recommended a right shoulder diagnostic and operative arthroscopy with labral repair.

By letter dated October 19, 2006, the Office requested additional information. The Office allotted appellant 30 days within which to submit the requested information.

By decision dated December 21, 2006, the Office denied appellant's claim as the medical evidence was insufficient to demonstrate that the claimed medical condition was causally related to the established work-related events. The Office found that appellant has established that her duties included "stretching for the mailboxes and putting up the mail."

On January 12, 2007 appellant requested a hearing, which was held on May 11, 2007.²

The Office subsequently received reports dated January 12, 14, 19, 26, February 6 and 20, 2004, from Dr. Gary D. Stebelton, Board-certified in internal medicine, who noted that appellant was treated for injuries pertaining to a motor vehicle accident on January 8, 2004. Dr. Stebelton advised that he was rechecking appellant for post-traumatic cervical and trapezius strain. The Office also received physical therapy and massage therapy reports and chiropractic notes. The chiropractic notes did not diagnose a spinal subluxation based on x-rays.

In a June 4, 2007 report, Dr. Austin noted that appellant was convinced that her shoulder problems were work related. He also advised that initially, appellant believed that her shoulder problems started in December 2005; however, after reviewing her records, she realized that her

¹ Appellant also indicated that, in March 2003, she was involved in an on-the-job motor vehicle accident, in which she pinched by the air bags and her shoulder was injured. She also noted that, in December 2005, she fell while putting up Christmas decorations. Appellant noted that her family physician referred her to a specialist, regarding her shoulder.

² During the hearing, appellant described her current duties. She also described her 2004 employment injury in which she was involved in an on-the-job motor vehicle accident. Appellant alleged that this injury involved her right shoulder. She also noted that she had a 1994 employment injury. Appellant alleged that these claims were accepted by the Office. Additionally, she alleged that she fell at home while putting up Christmas lights. Appellant indicated that she fell off a ladder onto her shoulder and hip and bumped her head. However, she did not seek treatment after the fall. Appellant alleged that she continued to work and her shoulder worsened.

problems began in 2004. Dr. Austin noted that appellant needed a special stool for sorting mail due to her height, as well as for the activities that were involved above shoulder level for the sorting. He indicated that appellant continued to work despite her difficulties. Dr. Austin opined that appellant's symptoms "could easily be caused by the motor vehicle accident that she had at work and by the repetitive use of her arm at work over shoulder level." He added that appellant's shoulder complaints "predated the fall from the tree" and advised that the "fall from the tree could have possibly caused the symptoms also and it could have further aggravated symptoms that were already present." Dr. Austin opined that appellant's "work activities [were] a major contributor to the symptoms and the pathology that she has." He recommended an arthroscopy.

By decision dated August 14, 2007, the Office hearing representative affirmed the December 21, 2006 decision of the Office which denied appellant's claim. The hearing representative found that there was no rationalized medical evidence to support that appellant's right shoulder condition was causally related to her federal employment.

LEGAL PRECEDENT

In order 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 diagnosed condition is causally related to the employment factors identified by the claimant.³ Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence.⁴

To establish causal relationship, appellant must submit a physician's report in which the physician reviews the factors of employment identified by appellant as causing his condition and, taking these factors into consideration as well as findings on examination of appellant and appellant's medical history, state whether these employment factors caused or aggravated appellant's diagnosed conditions and present medical rationale in support of his opinion.⁵

ANALYSIS

Appellant filed an occupational disease claim alleging that her work for the employing establishment caused or aggravated her right shoulder condition. The Office found that appellant had performed the duties of a letter carrier, which included "stretching for the mailboxes and putting up the mail. However, the medical evidence was insufficient to establish a medical condition arising from the claimed employment factors. The question, therefore, is whether

³ *Solomon Polen*, 51 ECAB 341 (2000); see also *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁴ See *Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors must be based on a complete factual and medical background of the claimant. *Victor J. Woodhams*, *supra* note 3.

⁵ *Donald W. Long*, 41 ECAB 142, 146-47 (1989).

appellant's employment duties caused or aggravated the right shoulder condition for which she seeks compensation.

The relevant reports in support of appellant's claim include several reports from Dr. Austin, appellant's treating physician. In an April 13, 2006 report, Dr. Austin, indicated that appellant fell on her right shoulder while putting up Christmas lights. He diagnosed a labral tear and soft tissue mass of the right shoulder and recommended a right shoulder diagnostic and operative arthroscopy with labral repair. This report, however, is of limited probative value on the relevant issue of the present case in that it does not contain an opinion on causal relationship.⁶ Instead, it tends to support that a nonwork-related fall at home caused her symptoms.

In a June 4, 2007 report, Dr. Austin related that appellant informed him that she had reviewed her records and realized that her shoulder problems actually began in 2004. He also noted that appellant utilized a special stool for sorting mail due to her height, and was engaged in activities that required her to reach above shoulder level. Dr. Austin opined that appellant's symptoms "could easily be caused by the motor vehicle accident that she had at work and by the repetitive use of her arm at work over shoulder level." The Board has held that medical opinions based upon an incomplete history or which are speculative or equivocal in character have little probative value.⁷ Additionally, Dr. Austin also indicated that the "fall from the tree could have possibly caused the symptoms also and it could have further aggravated symptoms that were already present." The Board again notes that this is a speculative opinion. While Dr. Austin opined that appellant's "work activities [were] a major contributor to the symptoms and the pathology that she has," he did not explain how he arrived at this conclusion. The Board has held that and medical reports not containing rationale on causal relation are entitled to little probative value and are generally insufficient to meet an employee's burden of proof.⁸

Reports from Dr. Stebelton, dating from January 12 to February 20, 2004, were related to appellant's previous January 8, 2004 employment injury⁹ and pertain to a post-traumatic cervical and trapezius strain. These reports did not address the present claim in which appellant alleged that her shoulder condition arose from reaching for mailboxes and putting up mail.

The Office also received physical therapy and massage therapy reports. Section 8101(2) of the Act¹⁰ provides that the term "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope

⁶ See A.D., 58 ECAB ____ (Docket No. 06-1183, issued November 14, 2006) (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).

⁷ *Vaheh Mokhtarians*, 51 ECAB 190 (1999).

⁸ *Albert C. Brown*, 52 ECAB 152 (2000).

⁹ Claim No. 092042063. This claim, accepted for a cervical and thoracic strain/sprain is not before the Board on the present appeal.

¹⁰ See 5 U.S.C. § 8101(2). See also *Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (where the Board has held that a medical opinion, in general, can only be given by a qualified physician).

of their practice as defined by the applicable state law. Consequently, this evidence is not relevant as it is cannot be considered medical evidence and, as noted above, the underlying point at issue is medical in nature. Likewise, chiropractic notes submitted by appellant cannot be considered medical evidence. Section 8101(2) of the Act¹¹ provides that the term physician, as used therein, includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulation by the Secretary.¹² Without a diagnosis of a subluxation from x-ray, a chiropractor is not a physician under the Act and his or her opinion on causal relationship does not constitute competent medical evidence.¹³ As these reports did not diagnose a spinal subluxation based on x-rays, they cannot be considered medical evidence.

An award of compensation may not be based on surmise, conjecture, speculation or upon appellant's own belief that there is causal relationship between his claimed condition and his employment.¹⁴ To establish causal relationship, appellant must submit a physician's report in which the physician reviews what factors of employment identified by appellant as causing her condition and, taking these factors into consideration as well as findings upon examination of appellant and appellant's medical history, state whether these employment factors caused or aggravated appellant's diagnosed condition and present medical rational in support of his opinion.¹⁵ Appellant failed to submit such evidence and therefore failed to discharge her burden of proof.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that she sustained a right shoulder condition causally related to factors of her federal employment.

¹¹ 5 U.S.C. § 8101(2).

¹² See 20 C.F.R. § 10.311.

¹³ *Jay K. Tomokiyo*, 51 ECAB 361 (2000).

¹⁴ *Robert Broome*, 55 ECAB 339 (2004).

¹⁵ *Gary J. Watling*, 52 ECAB 278 (2001).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs' hearing representative dated August 14, 2007 is affirmed.

Issued: May 20, 2008
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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