

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

R.K., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Stillwell, KS, Employer**

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**Docket No. 09-1368
Issued: January 26, 2010**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
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 May 5, 2009 appellant filed a timely appeal from merit decisions of the Office of Workers' Compensation Programs dated September 16, 2008 and March 25, 2009, regarding additional employment injuries. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant has established a right shoulder or right trigger finger condition causally related to her federal employment.

FACTUAL HISTORY

On June 3, 2002 appellant, then a 46-year-old rural carrier, filed an occupational disease or illness claim (Form CA-2) alleging that she sustained carpal tunnel syndrome as a result of

employment activities such as lifting, casing, sorting and twisting. The claim was accepted for bilateral carpal tunnel syndrome and left de Quervain's disease.¹

In a report dated March 16, 2007, Drs. Robert Pierron and Greg Chambron indicated that appellant was seen for right shoulder pain. The physicians stated that she had been having right upper extremity problems for some time, and that a magnetic resonance imaging (MRI) scan suggested degenerative changes in the cervical spine which might account for radiating pain. In an April 24, 2007 report, Dr. Pierron stated that he had not been the treating physician in the past and could not give an opinion as to whether appellant's problems were related to work activities.

The Office requested that an Office medical adviser review the evidence and provide an opinion as to whether a right shoulder condition was work related. In a June 15, 2008 report, an Office medical adviser opined that the medical evidence did not contain a rationalized opinion on causal relationship. The record contains a telephone memorandum dated June 23, 2008 indicating appellant felt the medical evidence also established a right trigger finger as employment related. By report dated July 7, 2008, Dr. Jeffrey Kaplan, a neurologist, reported that an electromyogram (EMG) showed mild residual right carpal tunnel syndrome. He indicated a repeat MRI scan of the cervical spine was warranted.

By decision dated September 16, 2008, the Office determined that the evidence was insufficient to establish a right shoulder or right trigger finger as employment related. Appellant requested a telephonic hearing before an Office hearing representative, which was held on January 8, 2009. She submitted a November 12, 2008 report from Dr. Kaplan, who noted her complaints of neck pain radiating into the right shoulder. Dr. Kaplan also noted a right trigger thumb. He reported that appellant "feels like recently she tore something in her shoulder when she was reaching for something." Dr. Kaplan diagnosed bilateral carpal tunnel syndrome, C7 cervical radiculopathy, possible shoulder impingement syndrome, scapulothoracic pain and weakness and history of left trigger thumb release. He stated, "All of her above diagnoses are directly related to work at [the employing establishment]."

By decision dated March 25, 2009, the hearing representative affirmed the September 16, 2008 decision. The hearing representative found the medical evidence insufficient to establish a right shoulder or right trigger finger condition as employment related.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing the essential elements of his or her claim, including that any disability or specific condition for which compensation is claimed is causally related to the employment injury.³ In order to establish causal relationship, a physician's opinion must be based on a complete factual and medical background, must be one of reasonable medical certainty and must

¹ An April 9, 2008 schedule award decision also states the claim was accepted for left radial styloid tenosynovitis, left ulnar nerve lesion and left trigger finger.

² 5 U.S.C. §§ 8101-8193.

³ *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment activities.⁴

ANALYSIS

The Office has accepted bilateral carpal tunnel syndrome, as well as left upper extremity injuries, causally related to appellant's federal employment as a rural carrier. With respect to a right shoulder or other right upper extremity injury, it is appellant's burden of proof and she must submit rationalized medical evidence on causal relationship. To the extent she claims an injury as a consequence of an accepted employment-related condition, there must be probative supporting evidence.⁵

In this case, the medical evidence is of diminished probative value to the issue presented. As to the right shoulder, Dr. Pierron referred to possible tendinitis or cervical degenerative changes. He did not provide a complete background, a definitive diagnosis or a rationalized medical opinion on causal relationship between a diagnosed condition and appellant's federal employment. Dr. Kaplan diagnosed cervical radiculopathy, along with possible shoulder impingement syndrome and scapulothoracic pain and weakness. He did not provide a complete factual and medical history or discuss the identified employment duties. The opinion that "all" of the reported diagnoses were related to work was not accompanied by any medical rationale. Dr. Kaplan referred to a recent incident where appellant was reaching for something, without providing further explanation; it is not clear whether this was a work incident.⁶

Appellant also sought to establish a right trigger finger as employment related. Dr. Kaplan noted a right trigger thumb, without providing an opinion on causal relationship with employment.

It is appellant's burden of proof to establish a specific condition as employment related. She did not submit a rationalized medical opinion on causal relationship, based on a complete factual and medical background, with respect to a right shoulder or right trigger finger condition. The Board finds that appellant did not meet her burden of proof in this case.

CONCLUSION

The Board finds that appellant did not establish a right shoulder or right trigger finger condition causally related to her federal employment.

⁴ *Gary L. Fowler*, 45 ECAB 365 (1994).

⁵ The Board has held that the subsequent progression of an employment-related condition "remains compensable so long as the worsening is not shown to have been produced by an independent nonindustrial cause." *Raymond A. Nester*, 50 ECAB 173, 175 (1998).

⁶ A claim for injury based on a new employment incident requires the filing of a new claim. See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(b)(2) (May 1997).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated March 25, 2009 and September 16, 2008 are affirmed.

Issued: January 26, 2010
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