United States Department of Labor
Employees' Compensation Appeals Board

D.V., Appellant	)	
and	)	**Docket No. 10-588**
	)	**Issued: November 3, 2010**
U.S. POSTAL SERVICE, POST OFFICE, Harrisburg, PA, Employer	)	

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
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 30, 2009 appellant filed a timely appeal from a November 24, 2009 merit decision of the Office of Workers' Compensation Programs. 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 sustained an injury in the performance of duty, causally related to her employment.

FACTUAL HISTORY

On March 19, 2009 appellant, a 43-year-old mail handler, filed an occupational disease claim (Form CA-2) for neck and left shoulder pain. She attributed her condition to employment tasks such as repetitive reaching and arm movements while repairing mail and clearing the

conveyor belt of mail.[1] Appellant first became aware of her condition and realized it was caused by her employment on January 27, 2009.

In a September 5, 2008 note, Dr. Ralf Van Der Sluis, a neurologist, diagnosed disc herniations at C4-5, C5-6 and C6-7, as well as cervical paraspinal muscle spasms and left shoulder crepitus. He stated that appellant has a "persistent injury, which is work related" and that appellant could work with "modifications." Dr. Van Der Sluis provided a list of work restrictions.

Appellant submitted an illegible report (Form CA-17).

In a January 27, 2009 report, Dr. Van Der Sluis presented findings on examination and diagnosed "worsening of left-sided radicular symptoms secondary to worsening of the cervical disc herniation" as well as myofascial pain. He noted that appellant continued to work the night shift at the employing establishment, where she had a physically very demanding job over the years.

On February 9, 2009 Dr. Fuhai Li, a Board-certified neurologist, presented findings on examination following a magnetic resonance imaging (MRI) scan of appellant's cervical spine. He diagnosed cervical degenerative changes with disc desiccation, a disc bulge at the C3-4 vertebrae and disc herniation at the C4-5, C5-6 and C6-7 vertebrae with "mild" impingement of the thecal sac.

In a February 20, 2009 report (Form CA-20), Dr. Van Der Sluis stated that appellant's condition was caused by "pushing and pulling heavy equipment." He diagnosed herniated nucleus pulposus (HNP) at the C4-5, C5-6 and C6-7 vertebrae.

On March 3, 2009 Dr. Van Der Sluis reported that a follow-up MRI scan of appellant's cervical spine showed C3 disc bulge and C4, C5 and C6 disc herniations. He also diagnosed cervical paraspinal muscle spasm and "chronic" pain.

By report dated April 3, 2009, Dr. Van Der Sluis diagnosed "multilevel cervical disc herniations with associated left radiculopathy." He noted that appellant continued to work at the employing establishment where her job duties required that she pick up damaged mail from the floor and sort damaged mail from a conveyor. Dr. Van Der Sluis also noted that she no longer had to push carts and trolleys around. He stated that these conditions were caused by appellant's employment, "… where she has a repetitive strain on the neck, the shoulders and the arms and this is causing her symptoms more so on the left than on the right." Dr. Van Der Sluis also diagnosed "reactive" myofascial neck and shoulder pain. In a note also dated April 3, 2009, he restricted appellant to limited-duty work of no more than six hours a day. Dr. Van Der Sluis provided work restrictions that included no reaching, pulling or lifting greater than five pounds.

[1] Appellant has another claim, no. XXXXXX669, for a July 17, 2007 injury, that was accepted for elbow strain and sprain, as well as brachitis and left radiculopathy at the C6 vertebrae. Following treatment, she returned to modified duty in the damaged mail area. It is unclear from the record as to when appellant returned to light work. On August 27, 2008 appellant filed a notice of recurrence of disability, alleging a recurrence as of July 30, 2008. On February 19, 2009 the Office advised her to file a new claim, if a new injury or ongoing work activities caused the recurrence.

In an April 16, 2009 note, appellant identified the employment tasks she deemed responsible for her condition, listed her dates of disability, asserted that her disability was related to her prior employment injury and outlined her history of injury.

By letter dated April 22, 2009, the employing establishment, through Pamela M. Youch, a human resource management supervisor, controverted appellant's claim. Ms. Youch wrote:

> "[Appellant] was assigned to work in the damage mail area. This consisted of sitting at a work table/desk fixing wrinkled/ripped and/or torn mail that was damaged in the automation/machines. This job entails smoothing out the wrinkled mail, trying to align/piece together ripped or torn mail and then if needed, taping the pieces together. The mail/piece would be placed in a bag or an envelope to forward to the customer. If and/or when there was n[o]t any mail to repair -- [appellant] would sit and wait for mail and/or go to the breakroom or library. [She] worked at her own pace and did not have to bend, pull, lift and/or stoop. [Appellant] was not required or asked to do more than she believed she was able to do. [She] was allowed to rest her head/neck and/or arm when she needed and/or wanted to."

By decision dated April 27, 2009, the Office accepted appellant's light-duty employment factors but denied the claim because the evidence of record did not establish that the accepted employment factors caused appellant's alleged condition.

On May 26, 2009 appellant, through her attorney, requested an oral hearing.

During a hearing conducted on September 11, 2009, appellant and her attorney were present and she offered testimony concerning her employment duties and medical condition. She testified that she was working her "regular job" but that "some limited other duties are involved." Appellant stated that she repaired damaged mail and, when the employer so required, worked on a conveyor belt, removing loose mail. She stated that her conveyor belt duties required "constantly reach to pull it off the conveyor belt." Appellant noted that the repair duties required "a lot of reaching down in to tubs that are down below me on the floor, up and down." She stated that she "dump mail out of the dumpers" and "I go through cages of mail sometimes looking for misdirected mail or lost mail." Appellant also stated that her symptoms "just got worse" and that that they "flare up" "spontaneously with just normal working activities."

Following the hearing, by letter dated September 29, 2009, the employing establishment provided comments responding to appellant's testimony. The employer wrote:

> "After reading the hearing transcript, employing establishment remains steadfast to our previous challenges for this claim. This employee has held a position with the USPS for less than four years with no leave balances and is not regular in attendance. For example: the claimant filed this [January 27, 2009] claim and during the month of January 2009 reported for work 4 days out of a possible 22 workdays! She did not work at all during the month of February 2009 and it continues.

> The supervisor wrote on April 3, 2009, if during [appellant's] shift there was no mail to be repaired, [she] would either sit there or go to the breakroom or library, which occurred frequently. [Appellant] never had to work this job for 8 hours, some nights maybe an hour. During these last several months [she] did not stoop, lift, pull or bend. [Appellant] was not made to do any work that she felt she was not able to do. [She] was allowed to rest her head and neck and arm anytime she wanted/needed to. Therefore, employing establishment disputes her testimony that she was performing her normal job with some limited duty."

By decision dated November 24, 2009, the Office affirmed its April 27, 2009 decision because the evidence of record did not demonstrate appellant's condition was caused by the accepted employment factors.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[2] has the burden of proof to establish the essential elements of his claim by the weight of the evidence,[3] including that she sustained an injury in the performance of duty and that any specific condition or disability for work for which she claims compensation is causally related to that employment injury.[4] As part of her burden, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background showing causal relationship.[5] The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of the analysis manifested and the medical rationale expressed in support of the physician's opinion.[6]

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.[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 which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors. The opinion of the physician must be based on a complete

[2] 5 U.S.C. §§ 8101-8193.

[3] *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

[4] *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[5] *Id.*; *Nancy G. O'Meara*, 12 ECAB 67, 71 (1960).

[6] *Jennifer Atkerson*, 55 ECAB 317, 319 (2004); *Naomi A. Lilly*, 10 ECAB 560, 573 (1959).

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

factual and medical background of the employee, 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 employee.

ANALYSIS

The Office accepted appellant's light-work duties as employment factors. Appellant's burden is to demonstrate that these employment factors caused a medically-diagnosed condition. While the record establishes that she has had a previous work injury which was accepted for brachitis and C6 radiculopathy and that as early as September 5, 2008 appellant was diagnosed with disc herniations at C4-7, appellant's burden in the present claim is to establish that the light work she performed caused these currently diagnosed conditions, either by direct causation or aggravation. Causal relationship is a medical issue that can only be proven by probative, rationalized medical opinion evidence. The medical opinion evidence of record lacks a medical explanation as to how appellant's current condition developed, given the accepted employment factors. Without the requisite rationalized medical opinion establishing causal relationship, the Board finds appellant has not established she sustained an injury in the performance of duty, causally related to her employment.[8]

Dr. Van Der Sluis diagnosed cervical paraspinal muscle spasms, left shoulder crepitus, HNP at the C4-5, C5-6 and C6-7 vertebrae, cervical paraspinal muscle spasm "chronic" and "reactive" myofascial neck and shoulder pain. His reports however are not sufficient to establish appellant's claim because he did not provide a consistent knowledge of her employment duties and he did not explain how the accepted light work duties, caused or aggravated her diagnosed conditions. Dr. Van Der Sluis initially stated that appellant had a persistent work-related injury, suggesting that her current condition was related to her earlier injury. Next he related her current diagnoses to her "very" physically demanding job over the years, then he related appellant's condition to "pushing and pulling heavy equipment." Dr. Van Der Sluis did not acknowledge that appellant had been performing light work since her July 2007 work injury. Finally, in his April 3, 2009 report, he related that in appellant's employment, "… she has a repetitive strain on the neck, the shoulders and the arms, and this is causing her symptoms more so on the left than on the right." As noted above, rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors. The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee. Dr. Van Der Sluis did not describe, with any specificity, knowledge that appellant was working limited duty, modified to her physical restrictions. His history of appellant's job duties as "pushing and pulling heavy equipment" and "repetitive strain of the shoulder, neck, arms" are not supported by appellant's testimony or the reports of appellant's employment duties provided by the employing establishment. As Dr. Van Der Sluis did not explain how the accepted employment factors,

[8] Reports that are unsigned or that bear illegible signatures are not considered probative evidence because they lack proper identification concerning the identity of their author. *See, e.g., Willie M. Miller*, 53 ECAB 697 (2002).

caused the conditions he diagnosed, his opinion is not sufficiently rationalized. Therefore, this evidence does not establish the required causal relationship.

Dr. Li's report lacks probative value on causal relationship because it only provides an diagnosis of appellant's condition and lacks an opinion explaining how the accepted employment factors caused the conditions he diagnosed.[9] Accordingly, this evidence does not establish the requisite causal relationship.

An award of compensation may not be based on surmise, conjecture or speculation.[10] Neither the fact that appellant's claimed condition became apparent during a period of employment nor her belief that her condition was aggravated by her employment is sufficient to establish causal relationship.[11] The fact that a condition manifests itself or worsens during a period of employment[12] or that work activities produce symptoms revelatory of an underlying condition[13] does not raise an inference of causal relationship between a claimed condition and identified employment factors.

Because appellant has not submitted medical opinion evidence that explains how the accepted employment factors caused or aggravated a firmly diagnosed medical condition, the Board finds appellant has not established the essential element of causal relationship.

CONCLUSION

The Board finds that appellant has not established she sustained an injury in the performance of duty, causally related to her employment.

[9] *See Mary E. Marshall*, 56 ECAB 420 (2005) (medical reports that do not contain rationale on causal relationship have little probative value).

[10] *Edgar G. Maiscott,* 4 ECAB 558 (1952).

[11] *D.I.*, 59 ECAB 158 (2007)*; Ruth R. Price,* 16 ECAB 688, 691 (1965).

[12] *E.A.*, 58 ECAB 677 (2007); *Albert C. Haygard*, 11 ECAB 393, 395 (1960).

[13] *D.E.*, 58 ECAB 448 (2007); *Fabian Nelson,* 12 ECAB 155, 157 (1960).

ORDER

IT IS HEREBY ORDERED THAT the November 24, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 3, 2010
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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