

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

N.T., Appellant)	
)	
and)	Docket No. 10-347
)	Issued: September 9, 2010
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Hartford, CT, Employer)	
)	

<i>Appearances:</i>	<i>Case Submitted on the Record</i>
<i>Alan J. Shapiro, Esq., for the appellant</i>	
<i>Office of Solicitor, for the Director</i>	

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 18, 2009 appellant, through her attorney, filed a timely appeal of the August 19, 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 established that she sustained fibromyalgia while in the performance of duty.

FACTUAL HISTORY

On October 29, 2008 appellant, then a 45-year-old mail handler, filed an occupational disease claim (Form CA-2) alleging that on April 15, 2002 she first became aware of her chronic myofascial pain and realized that her condition was caused by her numerous employment-related sprains and strains. She also suffered from numerous side effects of her medication. Appellant had fibromyalgia, depression and sleep deprivation which affected her mental capability. She feared for her personal safety due to management's actions. In an accompanying October 19, 2008 letter, appellant contended that her myofascial pain, which was primarily in her back, was

caused by unsafe working conditions and an overburdened workload. She contended that a manager of distribution operations refused to help her with her heaviest workload because she prevailed in a discrimination complaint she filed against the employing establishment.

Appellant submitted hospital records dated May 15 to November 5, 2008 from Linda U. McEwen and Bethany W. Michaud, licensed social workers, and Jeremy Mirsky, Ph.D., a clinical psychologist. Ms. McEwen and Ms. Michaud stated that appellant had depression, post-traumatic stress disorder, fibromyalgia, chronic lower back pain, left carpal tunnel syndrome, bilateral fasciitis of the feet and anxiety. In reports dated June 1 and July 25, 2008, Dr. Mirsky addressed the treatment of appellant's emotional conditions, fibromyalgia and chronic lower back pain. He concluded that appellant was partially disabled. In a June 11, 2008 medical report, Dr. J.P. Augustine Noonan, a Board-certified psychiatrist and neurologist, advised that she sustained post-traumatic stress disorder, myofascial pain and disc disease.

In a November 6, 2008 letter, the employing establishment controverted appellant's claim, contending that she failed to submit medical evidence establishing that her claimed injury was causally related to factors of her employment.

By letter dated November 24, 2008, the Office advised appellant that the evidence submitted was insufficient to establish her claim. It requested that she submit factual and medical evidence. Also, on November 24, 2008 the Office requested that the employing establishment submit factual evidence regarding appellant's claim.

In a December 8, 2008 letter, the employing establishment contended that appellant's emotional conditions were not related to her alleged employment-related condition or factors of her employment.

By decision dated March 12, 2009, the Office denied appellant's claim, finding that the medical evidence was insufficient to establish that she sustained fibromyalgia causally related to the established work-related duties. In a March 17, 2009 letter, appellant, through counsel, requested a telephonic hearing with an Office hearing representative.

In a June 1, 2009 medical report, Ms. McEwen stated that she had been treating appellant for depression and post-traumatic stress disorder during the past year. She stated that appellant had a history of moderate-to-severe depression. Appellant's history of fibromyalgia and chronic pain contributed to and exacerbated her depression. She exhibited a strong desire to maintain her employment and functional level in spite of these problems. Ms. McEwen advised that appellant's mental/emotional and physical symptoms had increased since being placed on the midnight shift. She stated that proper levels of rest and sleep were essential to maintaining appellant's well-being and keeping her chronic conditions at a manageable level. Ms. McEwen recommended a work schedule that allowed appellant to consistently get the rest she needed to maintain her health and functional level.

In a May 19, 2009 report, Dr. Jonathan A. Dixon, an attending Board-certified internist, stated that he had been treating appellant for severe refractory fibromyalgia since 2005. He related that her condition had been severe since that time and she failed to respond to treatment. Dr. Dixon advised that appellant had difficulty with prolonged standing, bending and lifting. Appellant also had decreased endurance due to severe fatigue associated with her fibromyalgia.

Her condition severely limited her ability to perform her mail handler work duties. Appellant had difficulty working an evening shift because the change in her daily sleep pattern markedly exacerbated her fibromyalgia. Dr. Dixon recommended a daytime work schedule.

In a June 16, 2009 letter, appellant contended that her fibromyalgia was caused by her alleged March 11, 2000 employment-related injury¹ and that her condition had worsened since she began work on the midnight shift. She averaged two to four hours of sleep per night which left her exhausted, in more pain and unable to concentrate, focus and memorize.

By decision dated August 19, 2009, an Office hearing representative affirmed the March 12, 2009 decision, finding that the evidence was insufficient to establish that appellant sustained fibromyalgia causally related to the established work-related duties.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing 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 and/or specific condition for which compensation is claimed are causally related to the employment injury.³ These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

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 employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish a causal relationship is rationalized medical opinion evidence. 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

¹ On June 29, 2008 appellant filed a CA-2 form assigned Office File No. xxxxxx036 alleging that she sustained an emotional condition due to retaliation by the employing establishment for winning an Equal Employment Opportunity grievance. She contended that on March 11, 2000 a manager failed to address her work safety concerns and provide her with help during peak machine running hours. By decision dated January 5, 2009, the Office denied appellant's emotional condition claim, finding that the evidence was insufficient to establish a compensable employment factor. The Board notes that File No. xxxxxx036 has been designated as a master file. The instant claim, File No. xxxxxx854, has been designated as a subsidiary claim.

² 5 U.S.C. §§ 8101-8193.

³ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁴ *See Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

physician 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 specific employment factors identified by the claimant.⁵ Neither the fact that appellant's condition became apparent during a period of employment nor her belief that the condition was caused by her employment is sufficient to establish a causal relationship.⁶

ANALYSIS

The Office accepted that appellant performed the work duties of a mail handler as alleged. The Board finds, however, that the medical evidence submitted is insufficient to establish that her diagnosed fibromyalgia was caused or aggravated by her work-related duties.

The reports from Dr. Mirsky, a clinical psychologist, addressed the treatment of appellant's emotional conditions, fibromyalgia and chronic lower back pain. He did not provide a medical opinion attributing her conditions to the established work-related duties as a mail handler. Moreover, Dr. Mirsky did not explain how and why those conditions disabled appellant for work. Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value.⁷ The Board finds that Dr. Mirsky's reports are insufficient to establish appellant's claim.

Similarly, Dr. Noonan's June 11, 2008 report which found that appellant had post-traumatic stress disorder, myofascial pain and disc disease is insufficient to establish her claim. This evidence does not discuss how these conditions were caused, precipitate or aggravated to by the established work-related duties. As Dr. Noonan's report does not contain a reasoned medical opinion regarding the cause of appellant's current emotional, myofascial and disc conditions, it is of limited probative in establishing that she sustained an employment injury causally related to the accepted employment-related work duties.⁸

Moreover, Dr. Dixon's May 19, 2009 report is insufficient to establish appellant's claim. Although Dr. Dixon advised that her fibromyalgia caused difficulty with prolonged standing, bending and lifting and decreased endurance due to severe fatigue which severely limited her ability to perform her mail handler work duties, he did not discuss how the condition was caused or contributed to by the established work-related duties.⁹ The Board finds that Dr. Dixon's report is insufficient to establish appellant's claim.

⁵ *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

⁶ *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

⁷ *A.D.*, 58 ECAB 149 (2006); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Michael E. Smith*, 50 ECAB 313 (1999).

⁸ *Id.*

⁹ *Id.*

The reports from Ms. McEwen and Ms. Michaud, licensed social workers, have no probative medical value in establishing appellant's claim. A licensed social worker is not considered to be a physician as defined under the Act.¹⁰

The Board finds that there is insufficient rationalized medical evidence to establish that appellant sustained fibromyalgia causally related to the accepted factors of her federal employment as a mail handler. Appellant did not meet her burden of proof.

CONCLUSION

The Board finds that appellant has failed to establish that she sustained fibromyalgia while in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the August 19, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 9, 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

¹⁰ *Ernest St. Pierre*, 51 ECAB 623, 626 (2000); 5 U.S.C. § 8101(2).