United States Department of Labor
Employees' Compensation Appeals Board

C.C., Appellant	)	
and	)	**Docket No. 10-1843**
	)	**Issued: April 11, 2011**
U.S. POSTAL SERVICE, POST OFFICE, Albany, NY, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 7, 2010 appellant filed a timely appeal from a May 26, 2010 decision of the Office of Workers' Compensation Programs that denied modification of a January 25, 2010 decision. Pursuant to the Federal Employees' Compensation Act[1] and 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 met her burden of proof to establish that she sustained an injury causally related to factors of her federal employment.

FACTUAL HISTORY

On December 2, 2009 appellant, then a 53-year-old postmaster, filed an occupational disease claim alleging that she sustained a left arm and shoulder condition in the performance of duty. She noted that there was increased mail volume which resulted in greater lifting and

[1] 5 U.S.C. § 8101 *et seq.*

sorting. Appellant first became aware of the injury and its relation to her work on January 1, 2003. She noted having a prior left shoulder injury and surgery in 2004.

In a December 1, 2009 report, Dr. George Knapp, a Board-certified surgeon, diagnosed a left shoulder sprain. In a December 4, 2009 report, he provided restrictions for work that included intermittent grasping for no more than a half hour a day and no pulling, pushing or reaching above the shoulder.

By letter dated December 17, 2009, the Office advised appellant that additional factual and medical evidence was needed.[2]

On January 12, 2010 the Office received an undated letter from appellant describing her duties. Appellant referred to a surgery in 2004 on her left shoulder. She alleged that the work force had been reduced over the past few years and her workload had increased, especially sorting, lifting and break down times for delivery. Appellant's elbow burned and her entire arm ached. She noted that she also filled out a recurrence of disability claim form. Appellant related that she had the same pain as before, just more severe. Her pain was aggravated by over sorting and repetitive lifting.

In a January 13, 2010 treatment note, Dr. Knapp advised that appellant could return to work with no lifting over five pounds or sorting for a six-week period.

By decision dated January 25, 2010, the Office denied appellant's claim. It found that the medical evidence did not establish that her left shoulder condition was related to the established work-related events.

The Office subsequently received a January 13, 2010 report from Dr. George Silver, a Board-certified orthopedic surgeon, who noted that appellant presented with complaints of left arm pain, intermittent discomfort in the shoulder, with significant pain in the left elbow in November. Dr. Silver related that appellant was "doing a lot of lifting at work and sorting and it was then that she noticed her pain worsening and beginning in her elbow." He diagnosed left elbow lateral epicondylitis with mild ulnar neuritis. Dr. Silver did not believe that her condition was related to her prior shoulder problems and was a new claim. In a February 24, 2010 note, he advised that appellant had pain with lifting at work and should remain on light duty with no lifting, pushing or pulling over five pounds for four weeks.

On March 2, 2010 appellant requested reconsideration. She indicated that her elbow felt better but remained tender and ached after exercise. Appellant currently worked five to six hours daily and used sick leave for the time that she missed.

In a March 9, 2010 report, Dr. Silver related that in November 2009 appellant started to have pain after lifting at work and sorting. He treated appellant for left elbow tendinitis and provided light-duty restrictions. The Office also received physical therapy treatment records.

[2] The Office advised appellant that it appeared that she was filing a claim for a new injury. It advised her that, if she believed her claim was a recurrence, she should file for a recurrence under her prior claim.

In a letter dated March 12, 2010, the Office requested that Dr. Silver further explain how appellant's condition was related to her employment. In a March 18, 2010 letter, Dr. Silver's billing assistant noted that the Office should refer to Dr. Silver's January 13, 2010 report.

By decision dated May 26, 2010, the Office denied modification of its January 25, 2010 decision.

LEGAL PRECEDENT

An employee seeking benefits under the Act has the burden of establishing the essential elements of his or 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 and every 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 causal relationship, generally, 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 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]

ANALYSIS

The evidence establishes that appellant has a left arm and elbow condition. The Office accepted that she performed activities such as lifting and sorting mail at work. The Board finds that appellant submitted insufficient medical evidence to establish that her left shoulder or elbow

[3] *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[4] *Victor J. Woodhams*, 41 ECAB 345 (1989).

[5] *Id.*

condition was caused or aggravated by these activities or any other specific factors of her federal employment.

On January 13, 2010 Dr. Silver related that appellant was "doing a lot of lifting at work and sorting and it was then that she noticed her pain worsening and beginning in her elbow." He diagnosed left elbow lateral epicondylitis with mild ulnar neuritis. Dr. Silver did not believe that appellant's condition was related to her prior left shoulder problem and was a new claim. The Board finds that he did not adequately explain how particular employment factors caused or aggravated her diagnosed conditions. As noted, the evidence generally required to establish causal relationship is rationalized medical opinion evidence. The Office contacted Dr. Silver and requested a supplemental opinion to address how appellant's condition was related to his employment, but Dr. Silver did not respond. An Office assistant stated that Dr. Silver explained how appellant's condition was caused in his January 13, 2010 report. Dr. Silver submitted other treatment records, some of which referenced appellant's assertions that her pain increased with lifting and sorting at work, but none of these later reports explain the reasons why particular work duties caused or aggravated a diagnosed medical condition. Therefore, the reports from Dr. Silver are insufficient to establish appellant's claim.

Dr. Knapp diagnosed left shoulder sprain and set forth work restrictions. The Board notes that these reports do not specifically address whether any factors of appellant's employment caused her diagnosed condition.[6] Consequently, the Board finds that this medical evidence is insufficient to establish appellant's claim.

Additionally, the record contains physical therapy reports. Section 8101(2) of the Act[7] provides that the term "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by the applicable state law. Health care providers such as physical therapists are not physicians under the Act. Thus, a physical therapist is not competent to give a medical opinion.[8] Likewise, the letter from Dr. Silver's assistant cannot be considered competent medical evidence.

The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.[9] Neither the fact that the condition became apparent during a period of employment nor the belief that the condition was caused or aggravated by employment factors or incidents is sufficient to

[6] *K.W.*, 59 ECAB 271 (2007) (medical evidence that 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] *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).

[8] *See Bertha L. Arnold*, 38 ECAB 282 (1986).

[9] *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

establish causal relationship.[10] Causal relationship must be substantiated by reasoned medical opinion evidence, which is appellant's responsibility to submit.

There is no reasoned medical evidence of record explaining how appellant's employment duties of lifting or sorting caused or aggravated her left shoulder or elbow. She has not met her burden of proof to establish that she sustained a medical condition in the performance of duty causally related to factors of her employment.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a left upper extremity condition causally related to factors of her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated May 26 and January 25, 2010 are affirmed.

Issued: April 11, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

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

[10] *Id.*