

FACTUAL HISTORY

On September 4, 2008 appellant, then a 53-year-old rural carrier, filed an occupational disease claim alleging that she developed a left shoulder condition and an aggravation of her preexisting cervical condition as a result of her employment activities.¹

In a September 8, 2008 statement, appellant noted that she had sustained a herniated cervical disc as a result of an employment-related motor vehicle accident on January 12, 2006. She experienced substantial cervical and left shoulder pain following the accident as a result of her employment activities, which included extending her shoulder overhead to case mail, picking up handfuls of mail from her truck, switching mail from her right to her left hand to deliver it to mailboxes and loading heavy bundles onto her truck. When appellant awoke on August 29, 2008, she was unable to lift her shoulder over her head without pain.

The employing establishment controverted the claim. Paul Kelly, a postmaster, stated that appellant had injured her neck in a work-related motor vehicle accident on January 12, 2006 and that her benefits under that claim had been terminated on April 29, 2008.

In an undated attending physician's report, Dr. Sara E. Megunick, a family practitioner, noted that appellant experienced long-term chronic shoulder pain and indicated by placing a checkmark in the box "yes" that her condition was caused or aggravated by her employment. The diagnosis provided was illegible.

By letter dated September 12, 2008, the Office informed appellant that the evidence submitted was insufficient to establish her claim. Appellant was advised to submit additional evidence, including a physician's report which contained a diagnosis and explanation as to how her diagnosed conditions resulted from the claimed employment activities.

Appellant submitted a position description for a rural carrier. The duties included sorting mail, receiving and sorting accountable mail, loading mail in vehicle, delivering mail to customers and picking mail up from roadside boxes, returning mail collected and undeliverable mail to office, preparing daily trip report, conducting surveys and selling and maintaining stamp inventory.

On September 18, 2008 Mr. Kelly stated that throughout the day as a rural carrier, appellant was required to sort mail in delivery order, pull down mail and set into trays, load vehicle, drive vehicle and put mail in mailboxes, dismount vehicle to deliver oversize parcels and accountable mail. He stated:

"Employee would start a 7:30 am and case manual letters and manual flats (approximant 2 1/2 hours). They would then sort through parcel and put into

¹ The Office accepted appellant's January 17, 2006 traumatic injury claim for cervical sprain and face laceration, which resulted from a January 12, 2006 motor vehicle accident. It terminated her medical and wage-loss benefits effective April 29, 2008 on the grounds that she had no residuals from the accepted injury. By decision dated August 13, 2010, the Board reversed the Office's October 14, 2008 and June 26, 2009 decisions, finding that the Office did not meet its burden of proof to terminate her benefits. (Docket No. 09-1893, issued August 13, 2010).

delivery order (1/2 hour). They would return to the letter case to pull letters and flats into trays and then cart the mail out to the loading dock to be loaded into their vehicle (1 hour). Then the carrier would drive to their delivery area and stop at each mailbox and insert mail into mailboxes. If carrier received a large parcel or an accountable piece of mail they would dismount the vehicle and make the delivery at the front door (3 hours). Carrier then would return to office put away empty equipment and sort additional manual mail if it was available and then end their tour (1/2 hour).”

In an April 28, 2008 report, Dr. Joel H. Spielman, a Board-certified orthopedic surgeon, stated that appellant had severe cervical spondylosis and degenerative joint disease. The report of a September 13, 2008 magnetic resonance imaging (MRI) scan of the left shoulder revealed minimal tendinosis within the distal supraspinatus tendon and moderate acromioclavicular (AC) joint osteoarthritis.

In a decision dated October 17, 2008, the Office denied appellant’s claim finding that the evidence was insufficient to establish that her cervical or left shoulder conditions were caused by factors of employment.

In an October 21, 2008 statement, appellant reiterated that her neck and shoulder conditions were exacerbated by her employment activities.

In a September 4, 2008 work capacity evaluation, Dr. Joseph Caselle, a treating physician, diagnosed cervical herniated disc and left rotator cuff. He restricted lifting or carrying to a maximum of 10 pounds intermittently; standing intermittently; kneeling four hours continuously; and bending or stooping four hours intermittently. On September 22, 2008 Dr. Megunick diagnosed supraspinatus tendinitis and chronic C-spine herniated disc.

On January 29, 2009 appellant requested reconsideration.

In an October 27, 2008 report, Dr. Megunick noted that she had been treating appellant for two years, since the occurrence of a work-related injury that had produced a herniated disc in her cervical spine which had never completely resolved. Appellant now had rotator cuff tendinitis, with a possible prior impingement syndrome on the left, which she opined was unrelated to the cervical condition. Dr. Megunick described appellant’s duties as a letter carrier (sorting and separating mail, lifting and carrying mail trays, loading trays into vehicles and delivering her route), noting that they involved lifting and twisting and often called for holding 20 pounds, multiple times a day. She stated:

“This can certainly explain her neck and shoulder injuries and her inability to recover with chronic exacerbations. As she uses her right hand to drive, the shoulder on the left bears the majority of the weight and motion for the box delivery.”

The record contains a copy of a February 20, 2008 report from Dr. David Feldman, a Board-certified orthopedic surgeon, who served as an impartial medical specialist in File No. xxxxxx605 described a history of the January 12, 2006 motor vehicle accident. He stated that appellant sustained a herniated disc of her cervical spine as a result of the January 12, 2006

accident. On examination, Dr. Feldman noted a right rotator cuff impingement syndrome and a lateral epicondylitis right greater than left side, both positioning and overuse repetitive stress syndromes as a result of her work-related day and activities and not related to the motor vehicle accident of January 12, 2006.²

By decision dated February 12, 2010, the Office denied modification of the October 17, 2008 decision, finding that the evidence was insufficient to establish that appellant experienced an injury causally related to factors of her employment.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act³ 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.⁴ 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.⁵

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.⁶ However, it is well established that proceedings under the Act are not adversarial in nature and while the claimant has the burden of

² In an August 18, 2010 decision, the Board found that Dr. Feldman's referee opinion required clarification and therefore could not serve as a basis for termination of appellant's benefits.

³ 5 U.S.C. §§ 8101-8193.

⁴ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

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

⁶ *Id.*

establishing entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.⁷

ANALYSIS

The Board finds that this case is not in posture for a decision regarding whether appellant sustained a left shoulder or cervical disc condition as a result of her employment activities. It is not disputed that appellant was engaged in repetitive employment activities as a rural mail carrier, including pulling down and setting mail into trays, sorting and receiving mail, loading mail in her vehicle, delivering mail to customers in her vehicle, dismounting her vehicle to deliver oversize parcels, picking mail up from roadside boxes and returning mail collected and undeliverable mail to the main office. The Office denied her claim, however, on the grounds that the evidence failed to establish a causal relationship between those activities and her diagnosed left shoulder and cervical conditions. The Board finds that the medical evidence of record generally supports a causal relationship between appellant's work activities and her neck and shoulder conditions.

Dr. Megunick stated that appellant had long-term chronic shoulder pain and caused or aggravated by her employment activities. In an October 27, 2008 report, she noted treating appellant for two years, since the occurrence of a work-related injury that had produced a herniated disc in her cervical spine, which had never completely resolved. Appellant was diagnosed with cuff tendinosis and possible prior impingement syndrome on the left, which Dr. Megunick opined was unrelated to her cervical condition. Dr. Megunick described appellant's duties as lifting and twisting, often called up to 20 pounds, multiple times a day, and that her left shoulder bore a majority of the weight and motion for box delivery. She stated that appellant's work activities "[could] certainly explain her neck and shoulder injuries and her inability to recover with chronic exacerbations." Dr. Megunick provided a specific diagnosis and identified the employment factors believed to have caused or contributed to condition. Although appellant's opinion was not expressed to a reasonable degree of medical certainty, her report strongly supports a causal relationship between the identified activities and the diagnosed condition.

In a February 20, 2008 report, Dr. Feldman noted that appellant sustained a herniated disc in her cervical spine as a result of the January 12, 2006 accident. His examination and review, however, reflected not only a herniated cervical disc, but also a right rotator cuff impingement syndrome and lateral epicondylitis right greater than left side, both positioning and overuse repetitive stress syndromes, which he attributed to appellant's work-related activities. Dr. Feldman's report does not provide a discussion of appellant's employment activities or an explanation as to how those activities would be competent to cause or aggravate her diagnosed conditions. It does, however, support her claim that her work activities caused or aggravated her neck and shoulder conditions.

In an April 28, 2008 report, Dr. Spielman diagnosed severe cervical spondylosis and degenerative joint disease. In a September 4, 2008 work capacity evaluation, Dr. Caselle

⁷ *Phillip L. Barnes*, 55 ECAB 426 (2004); *see also Virginia Richard*, 53 ECAB 430 (2002); *Dorothy L. Sidwell*, 36 ECAB 699 (1985); *William J. Cantrell*, 34 ECAB 1233 (1993).

diagnosed “cervical herniated disc” and “left rotator cuff” and provided work restrictions. In a report of a September 13, 2008 MRI scan of the left shoulder revealed minimal tendinosis within the distal supraspinatus tendon and moderate AC joint osteoarthritis. As these reports do not contain an opinion on causal relationship, they are of limited probative value on that issue. They do, however, support appellant’s claim that she was diagnosed and treated for a cervical and left shoulder condition during the alleged period.

The Board notes that, while none of the reports of appellant’s attending physicians is completely rationalized, they are consistent in indicating that she sustained an employment-related left shoulder condition and an aggravation of her cervical condition, and are not contradicted by any substantial medical or factual evidence of record. While the reports are not sufficient to meet her burden of proof to establish her claim, they raise an uncontroverted inference between appellant’s diagnosed conditions and the identified employment factors and are sufficient to require the Office to further develop the medical evidence and the case record.⁸ The case will be remanded to the Office to obtain a rationalized opinion from a qualified physician as to whether appellant’s left shoulder and neck conditions are causally related to the identified work activities. After such development as it deems necessary, the Office should issue an appropriate decision in order to protect appellant’s rights on appeal.

CONCLUSION

The Board finds that this case is not in posture for decision on whether appellant sustained a right shoulder injury or an aggravation of her cervical condition as a result of identified employment activities.

⁸ See *Virginia Richard*, *supra* note 7; see also *Jimmy A. Hammons*, 51 ECAB 219 (1999); *John J. Carlone*, 41 ECAB 354 (1989).

ORDER

IT IS HEREBY ORDERED THAT the February 12, 2010 decision of the Office of Workers' Compensation Programs is set aside. The case is remanded for action consistent with the terms of this decision.

Issued: January 18, 2011
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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