

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

C.G., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Carol Stream, IL, Employer)

**Docket No. 10-1773
Issued: March 17, 2011**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On June 22, 2010 appellant filed a timely appeal from a February 2, 2010 merit decision of the Office of Workers' Compensation Programs' denying her occupational disease claim. 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 met her burden of proof to establish that she sustained an injury causally related to factors of her federal employment.

FACTUAL HISTORY

On October 27, 2009 appellant, a 50-year-old mail processor, filed an occupational disease claim Form CA-2 alleging that she developed shoulder/muscle pain as a result of employment activities. She stated that she first became aware of her condition on August 4, 2004 and first realized it was caused by her employment on October 27, 2009.

Appellant submitted an October 30, 2009 disability certificate from Dr. Jacob Salomon, a Board-certified surgeon, reflecting that she was unable to work from October 30 through November 30, 2009. Dr. Salomon provided work restrictions precluding lifting, pulling and pushing more than 10 pounds; raising either arm above shoulder level; and sitting or standing for more than four hours.

In a letter dated November 19, 2009, the Office informed appellant that the evidence submitted was insufficient to establish her claim. It advised her to submit details regarding the employment duties she believed caused or contributed to her claimed condition, as well as a comprehensive medical report from a treating physician, which contained symptoms, a diagnosis and an opinion with an explanation as to the cause of her diagnosed condition.

Appellant submitted a January 5, 2010 report from Dr. Anatoly Rozman, a Board-certified physiatrist, who examined her on December 12, 2009 for numbness and tingling in both hands, as well as neck pain. Examination revealed full active range of motion in the upper extremities; positive Tinel's sign at the left elbow; negative Tinel's at the right elbow; and negative Tinel's at both wrists. Phalen's test was negative bilaterally. There was no pain to palpation of the cervical paraspinal muscles with decreased pain on flexion and extension. Dr. Rozman diagnosed cervicalgia and paresthesia of the upper extremities and recommended that appellant undergo an electromyogram (EMG)/nerve conduction study (NCS) to rule out cervical radiculopathy and to evaluate the extent of peripheral neuropathy.

Appellant submitted a December 15, 2009 report of an EMG/NCS performed by Dr. Rozman. Findings included no strong electrodiagnostic evidence of cervical radiculopathy and mild left ulnar nerve entrapment neuropathy at the elbow. She also submitted a patient information form dated October 30, 2009.

By decision dated February 2, 2010, the Office denied appellant's claim on the grounds that she had not established a causal relationship between the diagnosed condition and established work-related events.¹

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 an injury was

¹ Appellant submitted new evidence subsequent to the February 2, 2010 decision. As this evidence was not before the Office at the time it issued the February 2, 2010 decision, the Board is precluded from reviewing it for the first time on appeal. *See* 20 C.F.R. § 501.2(c)(1). Appellant may submit this evidence together with a formal written request for reconsideration pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606.

The Board notes that, after appellant filed her appeal with the Board on June 22, 2010, she requested reconsideration and the Office issued a merit decision dated October 27, 2010 denying modification of the February 2, 2010 decision. Under *Douglas E. Billings*, 41 ECAB 880 (1990), the Office's October 14, 2009 decision is null and void, as the Office and the Board may not have concurrent jurisdiction over the same issue. *See* 20 C.F.R. §§ 501.2(c) and 501.3(d)(2).

² 5 U.S.C. §§ 8101-8193.

sustained in the performance of duty as alleged³ and that any disability and/or specific condition for which compensation is claimed is causally related to the employment injury.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 the 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 diagnosed condition is causally related to the employment factors identified by the claimant.⁵ The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence, *i.e.*, medical evidence presenting a physician's well-reasoned opinion on how the established factor of employment caused or contributed to claimant's diagnosed condition. To be of probative value, 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

An award of compensation may not be based on appellant's belief of causal relationship. Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents, is sufficient to establish a causal relationship.⁷

ANALYSIS

The Office accepted that appellant was a federal employee, that she timely filed her claim for compensation benefits and that she engaged in employment activities as alleged. The issue, therefore, is whether appellant has submitted sufficient medical evidence to establish that the employment activities caused an injury. The medical evidence submitted by her is insufficient to establish that her diagnosed medical condition was caused or aggravated by established work-related events. Therefore, appellant failed to meet her burden of proof.

Dr. Rozman provided examination findings. He diagnosed cervicalgia and paresthesia of the upper extremities and recommended EMG/NCS studies. Results of the studies revealed no strong electrodiagnostic evidence of cervical radiculopathy and mild left ulnar nerve entrapment neuropathy at the elbow. Neither Dr. Rozman's narrative report, nor the report of the NCS,

³ *Joseph W. Kripp*, 55 ECAB 121 (2003); *see also Leon Thomas*, 52 ECAB 202, 203 (2001). "When an employee claims that he sustained injury in the performance of duty he must submit sufficient evidence to establish that he experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. He must also establish that such event, incident or exposure caused an injury." *See also* 5 U.S.C. § 8101(5) ("injury" defined); 20 C.F.R. § 10.5(q) and (ee) (2002) ("Occupational disease or Illness" and "Traumatic injury" defined).

⁴ *Dennis M. Mascarenas*, 49 ECAB 215, 217 (1997).

⁵ *Michael R. Shaffer*, 55 ECAB 386 (2004). *See also Solomon Polen*, 51 ECAB 341, 343 (2000).

⁶ *Leslie C. Moore*, 52 ECAB 132, 134 (2000); *see also Ern Reynolds*, 45 ECAB 690, 695 (1994).

⁷ *Phillip L. Barnes*, 55 ECAB 426 (2004); *see also Dennis M. Mascarenas*, *supra* note 4 at 218.

provided an opinion as to the cause of appellant's diagnosed condition. Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.⁸

Dr. Salomon's October 30, 2009 disability certificate did not contain a definitive diagnosis, examination findings or an opinion as to the cause of appellant's condition. Therefore, it, too, is of limited probative value and is insufficient to establish appellant's claim.

Appellant expressed her belief that her alleged condition resulted from her duties as a carrier. However, 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 establish causal relationship.¹⁰ Causal relationship must be substantiated by reasoned medical opinion evidence, which it is appellant's responsibility to submit. Therefore, appellant's belief that her condition was caused by the alleged work-related injury is not determinative.

The Office advised appellant that it was her responsibility to provide a comprehensive medical report which described her symptoms, test results, diagnosis, treatment and the physician's opinion, with medical reasons, on the cause of her condition. Appellant failed to do so. As there is no probative, rationalized medical evidence addressing how her claimed conditions were caused or aggravated by her employment, she has not met her burden of proof to establish that she sustained an occupational disease in the performance of duty causally related to factors of employment.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that she sustained an injury in the performance of duty.

⁸ *Michael E. Smith*, 50 ECAB 313 (1999).

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

¹⁰ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the February 2, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 17, 2011
Washington, DC

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

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board