United States Department of Labor
Employees' Compensation Appeals Board

Y.M., Appellant	)	
and	)	**Docket No. 10-1617**
	)	**Issued: May 9, 2011**
U.S. POSTAL SERVICE, POST OFFICE, Detroit, MI, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 10, 2010 appellant filed a timely appeal from an Office of Workers' Compensation Programs' decision dated May 10, 2010. 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 sustained left elbow, left ankle and left shoulder conditions in the performance of duty.

FACTUAL HISTORY

Appellant, a 59-year-old mail handler, filed a Form CA-2 occupational disease claim for benefits on May 26, 2009, alleging that she developed left lateral epicondylitis, left shoulder impingement and posterior tibial tendinitis of the left ankle causally related to employment

[1] 5 U.S.C. § 8101 *et seq.*

factors, *i.e*, loading and unloading trucks. She became aware of these conditions on April 25, 2006. Appellant has not worked since September 9, 2008.

In a statement received on June 4, 2009, appellant noted that she was treated for left shoulder impingement syndrome in 2004 but that her pain became severe as of April 25, 2006. Her shoulder pain worsened to the extent that she bid on another assignment in June 2006. Appellant indicated that her duties at the time involved loading and unloading trucks and transporting mail on the elevator to different floors. She believed that these duties were the cause of her left shoulder impingement syndrome because she repeatedly moved heavy equipment on a daily basis for eight years, eight hours a day, five days per week.

As to her lateral epicondylitis (tennis elbow) condition, appellant stated that she sought medical treatment for this condition in February and June 2008. She was involved in an automobile accident in August 2008 which aggravated her elbow condition.[2] Appellant received a cortisone injection on August 18, 2008 following the accident. She underwent left elbow surgery to ameliorate her left lateral epicondylitis on March 31, 2009. Appellant believed that her job duties at a third floor flat sorter machine, which entailed cutting open bundles of magazines and lifting and sorting tubs full of magazines, were the cause of her condition. She attributed her posterior tibial tendinitis (left ankle) condition of a July 28, 2008 automobile accident. Appellant stated that her attending physician told her that her injury was aggravated by climbing on and off of the Hi-Lo machine on a continuous basis while she was on the ground floor of the loading dock.

An August 18, 2008 magnetic resonance imaging (MRI) scan noted that appellant had tenosynovitis of the posterior tibial tendon of the left ankle.

Appellant provided progress reports from Dr. Donald F. Garver, Board-certified in orthopedic surgery, from August 2008 to May 2009. On August 18, 2008 Dr. Garver related that appellant had tennis elbow on the left side and wore a brace intermittently. He noted some swelling and tenderness in the left ankle with flexion and extension. Since appellant's symptoms apparently began as a result of a July 28, 2008 automobile accident, she might have developed a small osteochondral fracture off the dome of the talus. Dr. Garver administered an injection to her left elbow to ameliorate her pain and stated that she might require further time off from work or possibly undergo tennis elbow release to alleviate her pain. He scheduled her for an MRI scan of the left ankle.

In a report dated September 2, 2008, Dr. Garver stated that appellant continued to experience left ankle pain. He advised that the MRI scan showed posterior tibial tendinitis with no evidence of any chondral fractures or fragments. In an October 2, 2008 report, Dr. Garver noted continued problems with the left ankle caused by jumping on and off the Hi-Lo multiple times on a daily basis. He stated that appellant would be kept off work for one week.

On October 20, 2008 Dr. Garver stated that appellant still had complaints of pain in her left foot and left ankle. While he reviewed an MRI scan and x-rays and had examined her, he was unable to ascertain much in terms of objective findings. Dr. Garver reiterated his previous findings and conclusions.

[2] Appellant subsequently indicated that this automobile accident occurred on July 28, 2008.

In a December 28, 2008 report, received by the Office on June 4, 2009, Dr. Christopher N. Zingas, Board-certified in orthopedic surgery, stated that he examined appellant for her left ankle condition, which she attributed to the July 28, 2008 motor vehicle accident. Appellant had posterolateral and anterior ankle pain with some mild, dull aching. Dr. Zingas opined that engaging in activities aggravated her ankle pain. He noted that the x-rays and MRI scan of the left ankle were essentially unremarkable. Dr. Zingas diagnosed a left ankle sprain with tendinopathy.

In a January 9, 2009 report, Dr. Zingas advised that appellant was still experiencing significant discomfort in her left ankle with little improvement since his previous examination. He noted that appellant had an ultrasound performed which showed minimal fluid around the peroneal tendon and mild intrasubstance changes. Dr. Zingas stated that appellant did not require surgery based on the ultrasound and MRI scan results. He would keep her off work until she consulted a physiatrist.

In a January 21, 2009 report, Dr. Nicholas J. Schoch, an osteopath, advised that he had evaluated appellant for complaint of significant left shoulder pain which had been ongoing since 2004. Appellant attributed most of her pain to a work injury and work problems. Dr. Schoch noted that her pain was aggravated with reaching or lifting activities. He advised that appellant's shoulder examination and x-ray results were essentially unremarkable. Dr. Schoch diagnosed a history of left shoulder impingement syndrome.

Appellant underwent an MRI scan of her left shoulder on January 27, 2009. The results of this test showed a partial thickness tear, a bursal aspect tear of the distal supraspinatus tendon. There was an abnormal increase signal intensity present within the superior aspect of the infraspinatus musculature, which suggested either a muscle strain or recent injection of medication.

In a February 11, 2009 report, Dr. Schoch noted continued pain complaints in the left shoulder and left elbow. An MRI scan of the left shoulder showed partial fraying to the rotator cuff with no tear and no significant pathology. Dr. Schoch noted some tenderness over the lateral epicondyle of the left elbow with mild pain with resisted extension of the left wrist. He asserted that there was no instability in the elbow joint. Dr. Schoch diagnosed a history of left shoulder impingement syndrome and lateral epicondylitis of the left elbow. He stated that appellant had experienced these ongoing symptoms for more than six months; appellant understood the risks and benefits of a possible subacromial decompression and wanted to proceed with surgery.

In a March 30, 2009 report, Dr. Garver stated that appellant had left-sided tennis elbow which had been troubling her for two months. He administered an injection to her left elbow.

On March 31, 2009 Dr. Schoch performed a left lateral epicondylectomy with fasciotomy of the left elbow.

On June 10, 2009 the Office advised appellant that it required additional factual and medical evidence to determine whether she was eligible for compensation benefits. It asked her to submit a comprehensive report from her treating physician describing her symptoms and the medical reasons for her condition, with an opinion as to whether her claimed condition was

causally related to her federal employment. The Office requested that appellant submit evidence within 30 days.

In a June 17, 2009 report, Dr. Schoch stated that appellant's postsurgical condition was improving. He noted decreased swelling in the left elbow, no pain with extension and no instability in the elbow joint. Dr. Schoch planned to restrict appellant from any significant work with the left arm for the next three months.

By decision dated August 24, 2009, the Office denied appellant's claim, finding that she failed to establish that her work duties caused the claimed medical conditions. It found that the medical evidence did not establish that her claimed conditions were related to factors of employment.

In a September 23, 2009 report, Dr. Schoch stated that appellant's left elbow was in excellent condition and that she had no pain complaints. With regard to her left shoulder and neck, however, he related that she had significant pain in the posterior left cervical region and the posterior aspect of her left shoulder with activity. Dr. Schoch diagnosed a history of fasciotomy for the lateral left elbow for lateral epicondylitis and cervical and parascapular myofascitis. He recommended physical therapy and restricted appellant from lifting more than 20 pounds and repetitive overhead lifting.

Appellant submitted treatment notes from April, May and December 2006 that were not signed by a physician.

In a report dated November 18, 2009, Dr. Schoch advised that he saw appellant for reevaluation of her neck, shoulder and elbow conditions. He continued to have pain complaints on a daily basis which she rated as a seven on a scale of one to ten. It consisted of a throbbing ache over the neck, both shoulders and her elbow. Dr. Schoch stated that appellant had a repetitive job which likely aggravated her conditions, but the x-rays and MRI scan results demonstrated no structural issues. On examination, appellant had a full range of motion through both shoulders with significant parascapular trigger points to palpation over the posterior shoulder along the medial border of the shoulder blade going up to the cervical spine. Dr. Schoch diagnosed a history of cervical and parascapular myofascitis with possible fibromyalgia. He recommended that appellant change jobs and avoid repetitive activities.

On February 11, 2010 appellant's attorney requested reconsideration.

By decision dated May 10, 2010, the Office found that appellant engaged in work duties as a mail handler as described; however, she failed to submit sufficient medical evidence to establish that her left elbow, left ankle or left shoulder conditions were caused or aggravated by factors of her employment.

LEGAL PRECEDENT

An employee seeking benefits under the Act[3] has the burden of establishing that 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 is usually rationalized medical 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]

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between her claimed left elbow, left ankle and left shoulder conditions and her federal employment. This burden includes providing medical evidence from a physician who concludes that the disabling conditions are causally related to employment factors and supports that conclusion with sound medical reasoning.[7]

ANALYSIS

The Board finds that appellant has failed to submit sufficient medical evidence which relates her claimed left elbow, left ankle and left shoulder conditions to factors of her federal

[3] *Supra* note 1.

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

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

[6] *Id.*

[7] *See Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

employment. For this reason, appellant has not discharged her burden of proof to establish her claim that her conditions were sustained in the performance of duty.

Appellant submitted reports from Drs. Garver, Zingas and Schoch. However, the reports of the physicians did not provide a probative, rationalized medical opinion explaining how her left elbow, left ankle or left shoulder conditions were causally related to employment factors. In an August 18, 2008 report, Dr. Garver advised that appellant had left-sided tennis elbow and administered an injection to her left elbow to ameliorate her pain and discomfort. He noted that she might require further time off from work or possibly undergo tennis elbow release in order to alleviate her pain. On February 11, 2009 Dr. Schoch reported that appellant continued to have left elbow pain and tenderness over the lateral epicondyle of the left elbow, with mild pain with resisted extension of the left wrist. He diagnosed lateral epicondylitis of the left elbow and scheduled her for surgery. Dr. Schoch saw appellant again on March 30, 2009 and diagnosed lateral epicondylitis of the left elbow. He performed a left lateral epicondylectomy with fasciotomy of the left elbow on March 31, 2009. Dr. Schoch opined in June 17 and September 23, 2009 reports that the surgery was successful and that she no longer experienced left elbow pain. The reports from Drs. Garver and Schoch, however, did not describe appellant's job duties or explain the medical process through which such duties would have been competent to cause or aggravate the left elbow condition. These reports are of limited probative value as they do not contain sufficient medical rationale explaining how or why appellant's claimed left elbow condition was caused by or related to factors of her federal employment. Accordingly, appellant failed to submit medical evidence to establish that her claimed left elbow condition was causally related to her employment.

With regard to appellant's left ankle condition, Dr. Garver noted in reports dated August to October 2008 that she had swelling and tenderness in the left ankle with flexion and extension and stated that she might have developed a small osteochondral fracture off the dome of the talus. He advised that an MRI scan of her left ankle revealed that she had tenosynovitis of the posterior tibial tendon of the left ankle. On October 2, 2008 Dr. Garver stated that appellant had continued problems with the left ankle which were caused by jumping on and off the Hi-Lo multiple times on a daily basis. On October 20, 2008 appellant's examination, an MRI scan and x-rays showed minimal objective evidence to support her symptoms. Dr. Zingas diagnosed a left ankle sprain with tendinopathy and also stated that appellant attributed her left ankle pain to her July 28, 2008 motor vehicle accident. He opined that engaging in activities aggravated her ankle pain but noted that the x-rays and MRI scan of the left ankle were essentially unremarkable. Dr. Zingas stated that she had posterolateral and anterior ankle pain with some mild, dull aching. In his January 9, 2009 report, he advised that appellant underwent an ultrasound which showed minimal fluid around the peroneal tendon and mild intrasubstance changes; he opined that appellant did not require surgery based on the ultrasound and MRI scan results. Dr. Garver and Dr. Zingas provided diagnoses of appellant's left ankle condition and indicated that her left ankle symptoms were aggravated by work activities; but they did not describe appellant's job duties in any detail or explain the medical process through which such duties would cause the claimed left ankle condition. Their opinions are of limited probative value for the additional reason that they did

not provide a full history of appellant's preexisting left ankle condition or medical rationale as to how her left ankle condition was currently related to factors of employment.[8]

As to appellant's claimed left shoulder condition, Dr. Schoch noted that he had treated her for complaints of significant, ongoing left shoulder pain since 2004, which she attributed to a work injury and work problems. He diagnosed a history of left shoulder impingement syndrome. Dr. Schoch opined that appellant's shoulder pain was aggravated with reaching or lifting-type activities; he stated, however, that her shoulder examination and x-ray results were essentially unremarkable. A January 27, 2009 left shoulder MRI scan revealed a partial thickness tear of the distal supraspinatus tendon with abnormal increased signal intensity in the infraspinatus musculature. Dr. Schoch stated on February 11, 2009 that the MRI scan showed partial fraying to the rotator cuff with no tear and no significant pathology. In his September 23 and November 18, 2009 reports, he continued to note significant pain with activity in the posterior aspect of her left shoulder. Dr. Schoch restricted appellant from lifting more than 20 pounds and repetitive overhead lifting, noting that she had a repetitive-type job which likely aggravated her conditions. He recommended that appellant change jobs and avoid repetitive activities. Dr. Schoch noted, however, that the x-rays and MRI scan results demonstrated no structural issues. The weight of medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of a physician's knowledge of the facts of the case, the medical history provided, the care of analysis manifested and the medical rationale expressed in support of stated conclusions.[9] Dr. Schoch's reports did not contain any medical rationale explaining how appellant's job duties physiologically caused the diagnosed condition of history of left shoulder impingement syndrome. As noted above, medical opinions which fail to provide a full history of a preexisting condition or medical rationale as to how the claimed condition was currently related to factors of employment are of limited probative value.[10] Thus, Dr. Schoch's reports did not satisfy appellant's burden of proof to establish that she sustained a left shoulder condition in the performance of duty.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor, the belief that her condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.[11] Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence.

The Office advised appellant of the evidence required to establish her claim; however, she failed to submit such evidence. Consequently, appellant has not met her burden of proof in establishing that her claimed left elbow, left ankle and left shoulder conditions were causally related to her employment.

[8] *William C. Thomas,* 45 ECAB 591 (1994).

[9] *See Anna C. Leanza*, 48 ECAB 115 (1996).

[10] *William C. Thomas, supra* note 8.

[11] *Id.*

CONCLUSION

The Board finds that appellant has failed to meet her burden of proof in establish that her claimed left elbow, left ankle and left shoulder conditions were sustained in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the May 10, 2010 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: May 9, 2011
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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