

shoulder pain due to continuous reaching and lifting on the job.² She became aware of her condition on May 8, 2008 and realized its relationship to her employment on May 15, 2008. Appellant stopped work on July 1, 2008 and did not return.

OWCP informed appellant in an August 13, 2008 letter of the medical evidence needed to establish her claim.

In May 13, 2008 emergency department records, Dr. John R. Temple Jr., a surgeon, noted that appellant complained of work-related left arm pain radiating from the trapezius to the hand and diagnosed radicular pain. Medical notes dated May 21 and June 14, 2008 from Dr. Darrel Wells, a family practitioner, excused her from work from May 20 to 24 and June 9 to 16, 2008 due to illness. Dr. Wells advised in a July 30, 2008 note that appellant was being treated for a cervical condition and could not fulfill her job duties.

In a September 2, 2008 note, Dr. Todd R. Custer, a chiropractor, related that appellant sustained left arm, neck and shoulder symptoms on May 8, 2008 due to her job and was unable to work for two months. Appellant denied having any preexisting condition.

By decision dated September 16, 2008, OWCP denied appellant's claim, finding the medical evidence insufficient to establish that her accepted employment activity caused or contributed to a claimed condition.

Appellant requested a review of the written record on October 16, 2008. She explained in an undated statement that her employment entailed six to eight hours of repetitive reaching and lifting each workday. By May 8, 2008 appellant had sharp, burning pain in her left arm, neck and shoulders and occasional left arm numbness.

In a September 2, 2008 report, Dr. Custer stated that appellant presented with intense left arm, neck and shoulder pain, scapular muscle spasms and left arm numbness. Appellant's symptoms arose on May 8, 2008 after an on-the-job accident and prevented her from working. On examination, she had limited cervical range of motion (ROM), a positive left-sided Spurling's test and left cervical paraspinal muscle, left suboccipital muscle and bilateral levator scapulae hypertonicity. X-rays demonstrated mild spondylosis, decreasing disc space and anterior lipping and spurring of the C5-C6. Dr. Custer diagnosed cervical disc disorder and radiculitis and advised that appellant's injury was not due to a work-related accident. He stated in a September 2, 2008 duty status report that she was a rural carrier and her left arm, neck and shoulder injury resulted from repetitive reaching. Dr. Custer advised that appellant was able to return to full-time duty.

A November 21, 2008 note from Dr. Wells diagnosed left cervical radiculopathy and opined that appellant "should not be doing any work activity which involves lifting, pushing, pulling or sorting." He added that the length of this restriction was "indeterminate."

² The record contains medical evidence documenting chest symptoms. This condition is not presently before the Board.

In a February 20, 2009 decision, an OWCP hearing representative affirmed the September 16, 2008 decision.

Appellant requested reconsideration on April 24, 2009. She provided a March 12, 2009 report from Dr. Pamela D. Wilson, an anesthesiologist, who advised that appellant presented with neck, shoulder, head and left arm pain since May 2008 and related that driving a mail truck and lifting, reaching and inserting mail into slots approximately 500 times a day aggravated her symptoms. On examination, Dr. Wilson observed tenderness and spasms on palpation of the left trapezius and levator scapulae muscles and forward head carriage. In addition, an October 14, 2008 magnetic resonance imaging (MRI) scan exhibited significant C5-C6 spondylotic changes. Dr. Wilson diagnosed cervical radiculitis, facet arthropathy and myofascial pain syndrome.³

April 24, 2009 functional capacity evaluation from Dr. Custer recapped that appellant was working for the employing agency when she developed neck and left arm pain on May 8, 2008. After conducting a series of tests, he concluded that, while appellant demonstrated symptoms with activity, including a left-sided cervicospinal musculature myospasm and hypertonicity, limited cervical ROM and headaches, she was able to tolerate frequent bending, twisting, lifting of items less than 35 pounds, occasional lifting of items up to 75 pounds and other physical demands of her work. In a June 22, 2009 status report, Dr. Custer released appellant to unrestricted duty effective June 29, 2009.

In a July 13, 2009 decision, OWCP denied modification of the February 20, 2009 decision.

Appellant requested reconsideration on November 17, 2009 and submitted additional medical evidence. In a March 23, 2009 report from Dr. Custer, she complained of intermittent left hand, shoulder and neck pain. On examination, he observed limited cervical ROM and left cervical paraspinal muscle, left suboccipital muscle and bilateral levator scapulae hypertonicity. An MRI scan film showed bulging of the C4-C5 disc and a protrusion herniation at C5-C6. Dr. Custer diagnosed cervical disc disorder without myelopathy, a C5-C6 disc herniation and a C6 nerve root compression. He opined in an October 6, 2009 report that, "in all medical probability," appellant's "injuries were directly caused" by her mail delivery duties. Dr. Custer noted that cervical disc injuries were typically caused by repetitive lifting or neck leaning activities as performed by her at work.⁴

In a July 3, 2009 report, Dr. David W. Strausser, an orthopedic surgeon, noted that appellant was six weeks pregnant and experienced left upper extremity pain and cervicalgia since "May." On examination, he observed left trapezial tenderness. Based on a cervical MRI scan, Dr. Strausser diagnosed herniated nucleus pulposus of the C4-C5 and C5-C6 and left foraminal stenosis of the C5-C6.

³ Subsequent medical records from Dr. Wilson for the period March 27 to October 3, 2009 essentially reiterated these findings.

⁴ Appellant also submitted Dr. Custer's reports for the period June 22 to July 23, 2009, which repeated the content found in his earlier reports.

In a January 20, 2010 decision, OWCP denied modification of the July 13, 2009 decision. On January 26, 2010 it reissued the January 20, 2010 decision.

Appellant requested reconsideration on May 24, 2010 and submitted additional evidence. In an undated report, Dr. Wilson reviewed the history of injury and prior radiological results and concluded that appellant's condition directly resulted from the execution of her daily job duties over time. She noted an insidious onset of symptoms since January 2008 that became unbearable on May 8, 2008. Dr. Wilson noted appellant's findings and MRI scan results that were significant for C4-5 and C5-6 spondylitic changes "likely caused by repetitive movements (*e.g.*, sorting mail at shoulder height) which has produced moderate compromise of the cervical neural foramens." She explained:

"[Appellant]'s job duties as a rural mail carrier which requires driving, lifting, carrying, sorting, pushing, pulling, reaching and casing mail, driving and/or operative vibrating equipment, repetitive neck rotation and left arm extension with reaching to case and deliver mail hundreds of times a day has directly contributed to the development of her cervical spondylotic changes and ensuing cervical nerve root compromise producing compression of the nerve roots causing her symptoms."

By decision dated August 30, 2010, OWCP denied modification of the January 26, 2010 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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 FECA, that the claim was timely filed within the applicable time limitation period, that an injury was sustained in the performance of duty as alleged and that any disabilities and/or specific conditions for which compensation is claimed are causally related to the employment injury.⁵ 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.⁶

Whether an employee actually sustained an injury in the performance of duty begins with an analysis of whether fact of injury has been established.⁷ To establish fact of injury in an occupational disease claim, an employee must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.⁸

⁵ *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁶ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁷ *See S.P.*, 59 ECAB 184, 188 (2007).

⁸ *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *see R.R.*, Docket No. 08-2010 (issued April 3, 2009).

Causal relationship is a medical issue and the evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is evidence which includes a physician's 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, 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.⁹

ANALYSIS

The Board finds that the case is not in posture for decision.

An employee who claims benefits under FECA has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or work factors. As part of this burden, the employee must present rationalized medical opinion evidence based on a complete and accurate factual and medical background. However, it is well established that proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter. While an employee has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence and has the obligation to see that justice is done.¹⁰

The evidence supports that appellant's duties entailed repetitive lifting, reaching, sorting, casing, pushing, pulling and driving. Chiropractic reports from Dr. Custer noted that she sustained left arm, shoulder and neck symptoms due to repetitive reaching, lifting and leaning activities at work. He diagnosed cervical disc disorder, C5-C6 disc herniation, C6 nerve root compression and radiculitis. As defined under FECA, however, a "physician" includes a chiropractor only to the extent that his reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist.¹¹ Since Dr. Custer did not diagnose spinal subluxation based on x-ray, he is not a physician for FECA purposes and his opinion cannot constitute probative medical evidence.¹²

Reports from Drs. Strausser, Temple and Wells did not address the cause of appellant's condition. Because 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,¹³ these records are insufficient to establish the claim.

⁹ *I.J.*, 59 ECAB 408 (2008); *Woodhams*, *supra* note 6.

¹⁰ *William J. Cantrell*, 34 ECAB 1233 (1983) *E.J.*, Docket No. 09-1481 (issued February 19, 2010).

¹¹ 5 U.S.C. § 8101(2); *Merton J. Sills*, 39 ECAB 572, 575 (1988). Subluxation means an incomplete dislocation, off-centering, misalignment, fixation, or abnormal spacing of the vertebrae which must be demonstrable on any x-ray film to an individual trained in the reading of x-rays. 20 C.F.R. § 10.5(bb).

¹² See *Gloria J. McPherson*, 51 ECAB 441 (2000); *Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (medical opinion, in general, can only be given by a qualified physician).

¹³ *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

Dr. Wilson's reports, although insufficiently rationalized to meet appellant's burden of proof, are sufficient to require further medical development by OWCP. Her undated report stated that appellant's cervical condition resulted from daily job activities over time, such as repetitive lifting, reaching, sorting, casing, pushing, pulling and driving. Dr. Wilson opined that sorting mail at shoulder height produced moderate compromise of the cervical neural foramina. Although she did not provide detailed rationale to explain the basis of her opinion, her opinion is sufficient to require further development of the medical record.¹⁴ Dr. Wilson obtained a consistent history of the injury, reviewed prior diagnostic records, conducted a physical examination, diagnosed cervical radiculitis, facet arthropathy and myofascial pain syndrome and rendered an opinion that was consistent with her findings.

On remand, OWCP should prepare a statement of accepted facts and develop the medical evidence by referring appellant to an appropriate Board-certified specialist for a rationalized medical opinion regarding whether appellant's employment duties caused or aggravated a left arm, shoulder or neck condition. After conducting such further development as it may find necessary, OWCP shall issue an appropriate merit decision.

CONCLUSION

The Board finds that the case is not in posture for decision and must be remanded for further development of the record.

¹⁴ See *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

ORDER

IT IS HEREBY ORDERED THAT the August 30, 2010 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: September 15, 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