

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

N.C., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Quincy, IL, Employer)

Docket No. 11-448
Issued: September 26, 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
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 14, 2010 appellant filed a timely appeal from a July 16, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act (FECA)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 consequential right shoulder, neck and throat conditions causally related to her accepted June 30, 2007 head and neck injuries.

FACTUAL HISTORY

Appellant, a 42-year-old rural carrier, filed a traumatic injury claim on July 16, 2007 alleging that she injured her right arm, neck and head when her mail truck was struck from

¹ 5 U.S.C. § 8101 *et seq.*

behind by another vehicle. OWCP accepted the claim for open scalp wound, fracture of the C7 vertebra without spinal cord injury and concussion.

On July 3, 2007 appellant underwent surgery for an anterior cervical discectomy at C6-7.

On April 30, May 15 and 26, 2009 appellant filed (Form CA-2a) claims for a recurrence of disability, alleging that she sustained a recurrence of disability on December 26, 2007 which was causally related to her accepted conditions. In the May 26, 2009 claim, she stated that she was experiencing pain in her head, neck and right shoulder. Appellant also alleged that she had difficulty swallowing.

By letter dated June 26, 2009, OWCP advised appellant that the recurrence claims she had filed had in effect constituted requests for an expansion of her accepted employment conditions. It therefore requested additional factual information in support of her claim. OWCP asked appellant to submit: a statement describing any additional medical conditions she believed resulted from the June 30, 2007 employment incident; whether she sustained any new injuries since returning to work; and medical report from her treating physician containing a diagnosis for the claimed right shoulder and throat conditions, a history of the original injury, current clinical examination findings, any recent diagnostic test results and an opinion regarding the relationship, if any, between the right shoulder and throat condition and the accepted June 30, 2007 work injury.

In a January 28, 2008 report, received by OWCP on May 13, 2009, Dr. Steven D. Morton, Board-certified in orthopedic surgery, stated that appellant had complaints of persistent right shoulder pain and discomfort mostly in the rotator cuff, but also along the rhomboids and the medial edge of the scapula. He also advised that she had decreased range of motion in the cervical spine with possible somatic dysfunction.

Appellant submitted treatment notes dated January 15 through October 14, 2008, received by OWCP on May 29, 2009 from Dr. Jennifer K. Berge, a Board-certified otolaryngologist, who stated in her January 15, 2008 report that appellant experienced difficulty swallowing shortly after she underwent C6-7 anterior fusion surgery in July 2007. Dr. Berge indicated that appellant felt as if something was in her throat; she noted that appellant drank a lot of caffeinated drinks and consumed large amounts of chocolate.

In a January 29, 2008 report, Dr. Berge stated that she discussed appellant's reflux condition with her and advised her that all the medicines, caffeine, chocolate and foods that she consumed were potential triggers for a reflux condition.

On September 16, 2008 Dr. Berge noted that she continued to treat appellant for sore throat, globus sensation and dizziness. Appellant stated that she had been avoiding chocolate, which was one of the biggest triggers for a reflux condition. On October 14, 2008 Dr. Berge noted that appellant had a globus sensation and a feeling that there was a lump in her throat. She related that appellant was wondering why it happened after a car accident, since she did not have this condition before. Appellant also asserted that she had back pain after the accident. She stated that her reflux condition had not improved despite the fact that she was taking medication to alleviate this problem. Dr. Berge advised appellant that anxiety could affect acid reflux and

noted that appellant was going to talk to her regular physician about the effect of calcium and changing jobs on her condition.

In a June 29, 2009 report, Dr. Brigitte Cormier, an osteopath, stated that she had been treating appellant for several years for numerous problems. She opined that appellant's acid reflux condition could have been a direct result of the July 2007 vehicular accident since she had never been diagnosed with this condition prior to the incident.

By decision dated October 16, 2009, OWCP denied the claim, finding that appellant failed to establish that her claimed right shoulder and throat conditions developed as a consequence of her accepted June 30, 2007 employment injury.

On November 11, 2009 appellant requested reconsideration.

In a July 27, 2009 report, received by OWCP on December 2, 2009, Dr. Berge advised that she had been treating appellant for throat problems and occasional difficulty swallowing which began after her mail vehicle was T-boned in an intersection while she was on her route. She reiterated that appellant underwent anterior cervical spine surgery and subsequently developed trouble swallowing, which she diagnosed as laryngopharyngeal reflux. Dr. Berge opined that appellant had been significantly traumatized and stressed by the whole situation and that her reflux was probably exacerbated and related to the previous trauma.

By decision dated February 8, 2010, OWCP denied appellant's request for modification. It found that appellant did not meet her burden to establish that her claimed right shoulder and throat conditions were sustained as a consequence of her accepted June 30, 2007 work injury.

In a report dated February 1, 2010, received by OWCP on April 5, 2010, Dr. Garth S. Russell, Board-certified in orthopedic surgery, reviewed the medical history and stated findings on examination. He advised that appellant had experienced difficulty in swallowing since her July 3, 2007 cervical arthrodesis procedure. Dr. Russell opined that the arthrodesis had stabilized her neck but had placed additional stress on the intervertebral disc between C5 and C6. He advised that appellant had continued cervical pain in both the C6-7 and C5-6 regions which increased the possibility of future surgical intervention at those levels.

Dr. Russell stated that appellant had right upper extremity weakness and pain secondary to a contusion of the C7 nerve root with the residual weakness and symptoms; she also had evidence of chronic bursitis within the right shoulder with resultant muscle spasm, but no rotator cuff tear. Dr. Russell indicated that appellant had continued right shoulder pain centered in the suprascapular area radiating down into the upper back. He recommended occasional myofascial release or steroid injections to relieve her discomfort.

With regard to her difficulty swallowing, Dr. Russell stated that appellant's cervical surgery involved an incision with entry into the anterior cervical spine, adjacent to the esophagus. He advised that difficulty swallowing was a frequent complication for patients who underwent this particular type of surgical procedure. Dr. Russell also stated that appellant had an ongoing depression condition, traumatic brain syndrome, which had healed with residual effects.

On April 13, 2010 appellant requested reconsideration.

By decision dated July 16, 2010, OWCP denied appellant's request for modification. It reviewed Dr. Russell's February 1, 2010 report and determined that it did not contain sufficient medical opinion to warrant expansion of her claim for additional right shoulder, throat or neck conditions.²

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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 FECA, that the claim was timely filed within the applicable time limitation period of FECA, 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

² The Board notes that OWCP indicated in its October 16, 2009, February 8 and July 16, 2010 decisions that it was considering whether appellant had sustained right shoulder and throat conditions as a consequence of her accepted June 30, 2007 injury. In the three Forms CA-2a claims appellant submitted in 2009, however, she indicated that she was experiencing neck problems in addition to her right shoulder and throat difficulties. She submitted Dr. Russell's February 1, 2010 report, which contained a thorough evaluation and discussion of appellant's neck complaints and symptoms. In the July 16, 2010 decision, OWCP appeared to review Dr. Russell's report for the purpose of determining whether she had an additional neck condition, as well as right shoulder and throat conditions. Therefore, the Board has also considered herein whether appellant sustained a neck condition as a consequence of the accepted June 30, 2007 employment injury.

³ 5 U.S.C. § 8101-8193.

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

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

relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁶

The general rule respecting consequential injuries is that, when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent intervening cause.⁷ The subsequent injury is compensable if it is the direct and natural result of the compensable primary injury. With respect to consequential injuries, the Board has noted that where an injury is sustained as a consequence of an impairment residual to an employment injury, the new or second injury, even if nonemployment related, is deemed because of the chain of causation to arise out of and in the course of employment and is compensable.⁸

ANALYSIS

The Board finds that appellant failed to submit sufficient medical evidence to establish that she sustained right shoulder, neck and throat conditions as a consequence of her accepted June 30, 2007 employment injury. For this reason, appellant has not met her burden of proof to establish her claim that these conditions were sustained in the performance of duty.

None of the reports appellant submitted contained a rationalized medical opinion indicating that her right shoulder and neck conditions were causally related to the June 30, 2007 work injury. Dr. Morton stated in his January 28, 2008 report, that she had persistent right shoulder pain and discomfort, mostly in the rotator cuff. He also stated that appellant had decreased range of motion in the cervical spine with possible somatic dysfunction. Dr. Morton, however, did not provide an opinion that these symptoms were attributable to the June 30, 2007 injury. Dr. Russell noted complaints of pain in appellant's right shoulder area in the suprascapular area radiating down into the upper back. His report did not contain a probative medical opinion addressing how her right shoulder condition arose as a consequence of the June 30, 2007 injury. The weight of medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of 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. Russell's opinion is of limited probative value because it is conclusory and does not provide adequate medical rationale to establish that appellant's claimed right shoulder condition arose from the previous neck and head injury.¹⁰

Regarding appellant's current cervical condition, Dr. Russell opined that the July 2007 arthrodesis procedure had stabilized her neck but placed additional stress on the intervertebral disc between C5 and C6. Appellant experienced continued cervical pain and weakness in both

⁶ *Id.*

⁷ See *Debra L. Dillworth*, 57 ECAB 516 (2006).

⁸ *L.S., Docket No. 08-1270* (issued July 2009).

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

¹⁰ *William C. Thomas*, 45 ECAB 591 (1994).

the C6-7 and C5-6 regions which increased the possibility of future surgery at those levels. Dr. Russell stated that appellant had a C7 nerve root contusion. The report of Dr. Russell did not explain why the nature and severity of her June 30, 2007 C7 fracture injury, which resulted in July 2007 C6-7 cervical fusion surgery, caused a specific C5-6 neck condition, his opinion is conclusory at best.

In addition, appellant did not submit medical evidence sufficient to establish that her claimed throat condition was causally related to the June 30, 2007 work injury. Dr. Berge submitted treatment reports from January to October 2008, which indicated that appellant had difficulty swallowing following her July 2007 C6-7 anterior fusion surgery. She did not indicate that appellant's difficulty in swallowing, laryngopharyngeal reflux, could be attributable to the June 30, 2007 injury or the July 2007 surgery until her July 27, 2009 report. Dr. Berge opined in this report that appellant's reflux condition was probably exacerbated and related to "the previous trauma." In all of her previous reports from 2008, however, she stated that appellant's excessive consumption of caffeinated drinks and chocolate constituted potential triggers for a reflux condition and prescribed changes in her diet and medication. In her June 29, 2009 report, Dr. Cormier stated that appellant had never been diagnosed with acid reflux until her motor vehicle accident, which could be a direct result of her motor vehicle accident and not a preexisting condition. She did not definitively state that this condition was related to the June 30, 2007 employment injury. Dr. Russell stated that appellant's July 2007 cervical arthrodesis surgery entailed a procedure which frequently led to postsurgical difficulty swallowing. He did not, however, provide an opinion which specifically attributed her difficulty swallowing to this procedure.

The reports from Drs. Berge, Cormier and Russell did not provide any rationalized, probative medical opinion sufficient to establish that appellant's claimed throat condition was causally related to her accepted employment June 30, 2007 injury. The opinion of these physicians on causal relationship is of limited probative value in that they did not provide adequate medical rationale in support of his conclusions.¹¹ Moreover, their opinions are of limited probative value for the further reason that they are generalized in nature and equivocal in that they only noted summarily that appellant's claimed throat condition was causally related to the accepted June 30, 2007 neck injury.

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 her employment is sufficient to establish causal relationship.¹² Causal relationship must be established by rationalized medical opinion evidence and she failed to submit such evidence.

OWCP 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

¹¹ *Id.*

¹² *Id.*

establishing that she sustained right shoulder, neck and throat conditions as a consequence of her June 30, 2007 employment injury.¹³

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has failed to establish that she sustained right shoulder, neck and throat conditions as a consequence of her June 30, 2007 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the July 16, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 26, 2011
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

¹³ The Board notes that Dr. Russell diagnosed a traumatic brain syndrome condition in his February 2, 2010 report. Appellant, however, has not filed a claim for this condition and OWCP has not adjudicated whether she had a consequential psychological condition.