

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

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E.K., Appellant)	
)	
and)	Docket No. 11-1732
)	Issued: February 16, 2012
)	
U.S. POSTAL SERVICE, NEW PROVIDENCE)	
POST OFFICE, New Providence, NJ, Employer)	
)	

Appearances:
Thomas R. Uliase, Esq., for the appellant
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 July 20, 2011 appellant, through her attorney, filed a timely appeal of the April 14, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) 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 carpal tunnel syndrome of the right wrist and cervical conditions causally related to factors of her federal employment.

On appeal, counsel contends that the evidence of record is sufficient to establish that appellant sustained the claimed conditions as a result of her repetitive work duties.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On July 23, 2010 appellant, then a 47-year-old city carrier, filed an occupational disease claim alleging that on September 8, 2009 she first became aware of her right wrist and hand carpal tunnel syndrome and neck conditions.² She also alleged that on September 9, 2009 she first realized that her conditions were causally related to her repetitive work duties. Appellant stated that, after her return to work from vacation, adjustments had been made to her route. She had many accountables to deliver and postage dues to collect. Appellant also had to case mail and sort letters and flats.

In an undated Certification of Health Care Provider form, Dr. John Murray, Jr., a chiropractor, noted that he treated appellant from April 5 through May 3, 2010. He advised that she was unable to perform her work duties due to her pregnancy and listed her physical restrictions. Appellant also had a related condition of cervical radiculopathy due to degenerative joint disease. In a partially legible Certification of Health Care Provider form dated September 26, 2009, Dr. Murray advised that he treated appellant from September 10 to 25, 2010 for a medical condition other than pregnancy.

By letter dated July 29, 2010, the employing establishment challenged appellant's claim on the grounds that she was afforded an opportunity to discuss the final evaluation of and proposed adjustments to her route. It also contended that her claim was not timely filed. The employing establishment also controverted appellant's claim on the grounds that it accommodated the physical restrictions set forth by Dr. Murray regarding her cervical spasms. Lastly, it contended that she failed to provide a statement in support of her claim as requested.

In an August 5, 2010 letter, OWCP advised appellant that the evidence submitted was insufficient to establish her claim. It gave her 30 days to submit a factual statement describing the employment factors that contributed to her right wrist and neck injuries and a medical report from a physician explaining how exposure to these factors caused, contributed to or aggravated her conditions.

In an August 14, 2010 letter, appellant contended that repetitive pulling, pushing and lifting for 23 years as a city carrier contributed to her injury. She lifted, pulled and pushed 10 to 35 pounds one hour per day. Appellant did not engage in sports or other recreational activities and she did not have any hobbies. She first noticed her right-hand condition when she awoke one morning in 2004. Appellant felt pricking pains in her right hand. When she lifted heavy bundles her condition worsened; it felt better when she made lighter bundles. Appellant described the treatment she received from Dr. Manish B. Viradia, a neurologist.

Appellant submitted a description of her city carrier position, which required the routing or casing of all classes of mail in sequence of delivery along an established route. It also required the rearrangement and re-labeling of cases as required, withdrawal of mail from the distribution case and preparation of mail in sequence for efficient delivery along an established

² In a prior appeal, the Board issued a decision on August 19, 2011 affirming an OWCP hearing representative's April 16, 2010 decision in File No. xxxxxx835 which found that appellant did not sustain cervical radiculopathy and carpal tunnel syndrome of the right wrist for which carpal tunnel release surgery was warranted as a consequence of her accepted June 8, 2004 employment injury. Docket No. 10-1920 (issued August 19, 2011).

route. The position further required the preparation and separation of all classes of mail to be carried by truck to relay boxes along the route for subsequent delivery. It required the handling of undeliverable mail in accordance with established procedures. The position required mail to be delivered along a prescribed route either on foot or by vehicle on a regular schedule while picking up additional mail from relay boxes as needed. It further required the collection of mail from street letter boxes and customers. The position involved the delivery and collection of charges on customs, postage due and cash on delivery mail matters. It also involved delivering and obtaining receipts for registered and certain insured mail.

In an October 21, 2010 decision, OWCP denied appellant's occupational disease claim. It found that the factual evidence failed to establish the employment factors alleged by her. OWCP also found that the medical evidence failed to establish that appellant sustained a medical condition causally related to the claimed employment factors.

On October 25, 2010 appellant, through her attorney, requested an oral hearing before an OWCP hearing representative.

At the February 14, 2011 hearing, appellant testified that, following the postal adjustment to her route, her route became 30 minutes longer and she had to deliver more express and certified mail. She further testified that from 2007 to 2010 she worked at a trailer which had no loading dock. As a result, appellant pushed and pulled packages from the trailer to the parking lot. She also cased and sorted mail.

In a February 17, 2011 letter, appellant described her work duties at the employing establishment from 1988 through the date of her letter. On July 16, 1988 she started work at the employing establishment as a part-time flexible city carrier. The position required appellant to set up and deliver a route. One year later, she worked in an unassigned regular position which involved the same duties as the previous position, as well as, casing mail. After three years appellant was assigned to an open route. This assignment involved setting up a route which required sorting letters and flats and pulling down and putting them into a tray, loading and stacking trays and packages by delivery sequence in a truck, obtaining accountables from a clerk, delivering the route and returning the truck key and clearing all accountables at the end of the work shift. In 2001 appellant worked on a different route which involved the same duties as the last position with the exception of getting ready and checking delivery point sorted mail and accountables for delivery. Following the June 8, 2004 employment injury, she returned to light-duty work in April 2005 with a 10-pound lifting restriction. Appellant's duties were almost the same as her prior position, but she put everything in a bucket and made smaller bundles. During the summer when mail volume was low, she walked and put extra weight on her right arm for another one to two hours while pivoting another route. Appellant felt overwhelmed and overworked in 2007 when she had to pull and push the skid and all of her deliveries from the trailer to the parking lot. On September 9, 2009 she was unable to work and sought medical treatment from Dr. Murray who restricted her to walking two less hours. Chris Silva, the postmaster, allowed appellant to work six hours until March 2010 when the sorting/distribution section of the employing establishment was moved. Appellant's new work duties under C. Lamers, an officer-in-charge, involved casing mail and carrying the route, making park and loop deliveries in five fewer hours and cleaning out all outgoing mail from the trailer and bringing it back to the post office for dispatch. If there was remaining time, appellant delivered either cluster boxes or express mail.

Appellant submitted medical evidence that related to her June 8, 2004 work injury which was already on file in OWCP No. xxxxxx835. In an August 31, 2006 report, Dr. Michael H. Rokhsar, a Board-certified radiologist, advised that computed radiography of appellant's cervical spine showed mild multilevel degenerative changes contributing to mild right neural foraminal stenosis. There was no fracture or destructive lesion.

In reports dated December 21, 2006 to February 27, 2009, Dr. Viradia listed findings on neurological examination and electromyogram/nerve conduction study (EMG/NCV) testing. He advised that appellant had moderate right-sided carpal tunnel syndrome and right-sided chronic C5-6 cervical radiculopathy. Dr. Viradia also advised that she could work eight hours a day with restrictions. In an October 10, 2008 report, he stated that appellant's symptoms related to cervical radiculopathy and carpal tunnel syndrome developed after her June 8, 2004 employment injury. Dr. Viradia stated that, as a mail carrier, she lifted 30 to 40 pounds which may have contributed to her symptoms.

In an April 29, 2009 report, Dr. Glen P. Wainen, a Board-certified orthopedic surgeon and a previously selected impartial medical specialist, in File No. xxxxxx835, examined appellant, reviewed the medical evidence of record and found that she did not have cervical radiculopathy and right wrist carpal tunnel syndrome for which carpal tunnel release was not warranted and any disability as a result of the June 8, 2004 employment injury. He stated, however, that carpal tunnel syndrome could be related to people who lift and perform repetitive work.

In reports dated February 4, 2008 and September 23 and October 2, 2009, Dr. J. Elliot Decker, an orthopedic surgeon, listed findings on physical and x-ray examination. He diagnosed carpal tunnel syndrome of the right hand and need for surgery to treat the diagnosed condition.

In an April 14, 2011 decision, an OWCP hearing representative affirmed the October 21, 2010 decision. He found that the evidence of record was insufficient to establish the claimed employment factors. The hearing representative also found the medical evidence insufficient to establish that appellant sustained the claimed medical conditions and that these conditions were causally related to factors of her employment.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ has the burden of establishing the essential elements of her claim, including the fact that the individual is an employee of the United States within the meaning of FECA; that the claim was filed within the applicable time limitation; that an injury was sustained while 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 on a traumatic injury or an occupational disease.⁵

³ 5 U.S.C. §§ 8101-8193.

⁴ *Elaine Pendleton*, 40 ECAB 1143 (1989); *C.S.*, Docket No. 08-1585 (issued March 3, 2009).

⁵ *S.P.*, 59 ECAB 184 (2007); *Victor J. Woodhams*, 41 ECAB 345 (1989); *Joe D. Cameron*, 41 ECAB 153 (1989).

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 a causal relationship 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 Neither the fact that appellant's condition became apparent during a period of employment nor her belief that the condition was caused by her employment is sufficient to establish a causal relationship.⁷

ANALYSIS

Appellant alleged that she sustained right carpal tunnel syndrome and a cervical condition in the performance of duty due to delivering accountables, collecting postage dues, casing and sorting mail and pulling down and putting it into a tray, delivering a route, loading and stacking trays and packages, making park and loop deliveries, cleaning out all outgoing mail from the trailer and bringing it back to the post office for dispatch and delivering cluster boxes or express mail. A description of her city carrier position, hearing testimony and February 17, 2011 letter set forth the claimed work duties. The Board finds that the employment factors alleged to have caused appellant's right wrist and cervical conditions are established.

The Board finds, however, that appellant did not submit sufficient medical evidence to establish that her right wrist and cervical conditions were caused by the accepted employment factors. Appellant submitted copies of medical evidence from Dr. Rokhsar, Dr. Viradia, Dr. Decker and Dr. Wainen that were previously of record in File No. xxxxxx835. The Board previously reviewed Dr. Decker's February 4, 2008 report in its August 19, 2011 decision in File No. xxxxxx835 and explained the basis for finding it insufficient to establish that appellant sustained cervical radiculopathy and carpal tunnel syndrome of the right wrist for which carpal tunnel release surgery was warranted as a consequence of the accepted June 8, 2004 employment injury. Regarding the instant claim under File No. xxxxxx258, the Board finds that Dr. Decker's February 4, 2008 report does not contain a medical opinion addressing whether the diagnosed right wrist and cervical conditions were caused or aggravated by the established work duties.⁸ In the August 19, 2011 decision, the Board had also accorded special weight to Dr. Wainen's

⁶ *Victor J. Woodhams, supra* note 5.

⁷ *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

⁸ *Willie M. Miller*, 53 ECAB 697 (2002).

April 29, 2009 impartial medical opinion that appellant did not have cervical radiculopathy and right wrist carpal tunnel syndrome as a consequence of the accepted injury. The Board notes that Dr. Wainen has not been selected as an impartial medical specialist to resolve a conflict in medical opinion in the instant claim under File No. xxxxxx258. Further, the Board finds that his opinion that carpal tunnel syndrome “could” be related to people who lift and perform repetitive work is speculative in nature and not fully rationalized.⁹ Dr. Wainen’s opinion was general and did not address appellant’s specific work duties. Further, he did not provide adequate medical rationale explaining how or why the established work duties caused or aggravated the diagnosed conditions. For the stated reasons, the Board finds that the reports of Dr. Decker and Dr. Wainen are insufficient to establish appellant’s claim.

None of the reports from Dr. Rokhsar and Dr. Viradia or other reports from Dr. Decker presented a detailed description of appellant’s employment duties, history of injury or a reasoned medical opinion attributing her diagnosed right wrist carpal tunnel syndrome and cervical radiculopathy to the established work-related duties. Neither Dr. Rokhsar nor Dr. Decker addressed the cause of the diagnosed conditions.¹⁰ The Board finds that Dr. Viradia’s opinion that appellant’s work duties which involved lifting 30 to 40 pounds “may” have contributed to the development of her moderate right-sided carpal tunnel syndrome and right-sided chronic C5-6 cervical radiculopathy following the June 8, 2004 employment injury is speculative on the issue of causal relationship.¹¹ Dr. Viradia did not provide adequate medical rationale explaining how or why the established work duties caused or aggravated the diagnosed conditions. The Board finds that the reports of Dr. Rokhsar, Dr. Viradia and Dr. Decker do not establish appellant’s claim.

Dr. Murray, a chiropractor, did not diagnose a spinal subluxation as demonstrated by x-ray. Therefore, he is not a physician under FECA for the purposes of this case and his reports are of no probative medical value.¹²

The Board finds that the medical evidence of record does not provide a fully-rationalized medical opinion, based on a full or accurate history explaining the reasons why the established work-related duties caused or aggravated the claimed medical conditions. Appellant did not meet her burden of proof.¹³

Although counsel contended on appeal that appellant sustained carpal tunnel syndrome of the right wrist and cervical injuries causally related to the established work duties, the medical evidence, as discussed above, was not sufficiently rationalized to establish her claim.

⁹ Medical opinions that are speculative or equivocal in character are of little probative value. *See Kathy A. Kelley*, 55 ECAB 206 (2004). Moreover, a medical opinion not fortified with medical rationale is of diminished probative value. *See Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006).

¹⁰ *Willie M. Miller*, *supra* note 8.

¹¹ *See supra* note 9.

¹² 5 U.S.C. § 8101(3), 20 C.F.R. § 10.311(a). *See Thomas W. Stevens*, 50 ECAB 288 (1999); *George E. Williams*, 44 ECAB 530 (1993).

¹³ *See Robert J. Krstyen*, 44 ECAB 227 (1992) (finding that appellant failed to submit sufficient medical evidence to establish that specific work factors caused or aggravated his back condition).

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 not established the employment factors which she alleges are responsible for her wrist and cervical condition; but the Board finds that she has met her burden of proof to establish that she sustained carpal tunnel syndrome of the right wrist and cervical conditions causally related to factors of her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the April 14, 2011 decision of the Office of Workers' Compensation Programs is affirmed, as modified.

Issued: February 16, 2012
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