

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

K.G., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Dallas, TX, Employer**

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**Docket No. 11-1009
Issued: March 7, 2012**

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
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On March 7, 2011 appellant filed a timely appeal from a September 16, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her occupational disease claim. 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 met her burden of proof to establish that she developed a right arm and neck injury causally related to factors of her employment.

FACTUAL HISTORY

On July 1, 2009 appellant, then a 42-year-old mail handler, filed an occupational disease claim Form CA-2. She alleged that she developed muscle spasms, tingling and numbness in her right arm, wrist, neck and back shoulder blade on May 26, 2006. Appellant noted that she was

¹ 5 U.S.C. § 8101 *et seq.*

putting a sleeve in a container when she felt muscle spasms and a pull in her right arm.² He stopped work and sought treatment on May 27, 2009.

In medical reports dated May 27 to June 24, 2009, Dr. Karen Perl, Board-certified in physical medicine and rehabilitation, noted that appellant complained of distress related to her right shoulder. She reported that appellant's musculoskeletal injuries related to an acute injury on May 26, 2006. Dr. Perl diagnosed right shoulder partial thickness tear of the subscapular tendon, tendonitis status post right shoulder arthroscopy on December 20, 2006 and acute flaring of right shoulder pain with weakness and loss of range of motion. She referred appellant to Dr. Richard Levy, a Board-certified orthopedic surgery, for further evaluation.

In a June 26, 2009 medical report, Dr. Levy reported that appellant previously had a rotator cuff repair in 2006. On May 26, 2009 appellant was pushing a container and developed radiating pain down the back of her arm and up into her neck for which she sought treatment from Dr. Perl. Upon evaluation of the magnetic resonance imaging (MRI) scan of her right shoulder, Dr. Levy noted that the rotator cuff tear was intact with no signs of atrophy. He diagnosed cervical radicular versus plexus sympathetic pain syndrome of the upper right extremity. Dr. Levy further recommended a cervical MRI scan and electrodiagnostic studies.

In a July 8, 2009 report, Dr. Perl listed a history that appellant had been repetitively doing sleeves and pushing containers under a modified-duty assignment. On May 26, 2009 there was an acute onset of neck pain and radiation into the right upper extremity while performing these work activities. Dr. Perl noted that appellant did not have a re-rupture of her prior rotator cuff injury; rather, the symptoms appeared to be coming from her cervical spine.

By letter dated July 29, 2009, OWCP informed appellant that the evidence of record was insufficient to support her claim. It noted that there was no medical evidence which diagnosed any cervical condition resulting from the May 26, 2009 injury. Although appellant filed a Form CA-2 for an occupational disease, it appeared that she described a traumatic injury on May 26, 2009 based on a pulling incident. She was advised of the medical and factual evidence needed and was directed to submit it within 30 days.

By letter dated August 24, 2009, appellant reported that on May 26, 2009 she was working modified duty putting sleeves into blue containers and as she pushed a container, she felt pain in her right arm and muscle spasms. She immediately informed her supervisor and reported to Dr. Perl the following day. Appellant filed a Form CA-2 under her supervisor's instructions.

On August 4, 2009 appellant underwent an MRI scan of the cervical spine by Dr. Crys Sory, a treating physician, who reported that her cervical curvature was reversed in the mid and lower cervical spine.

In an August 7, 2009 report, Dr. Perl noted that appellant's electromyogram of the right upper arm showed no electrodiagnostic evidence of peripheral neuropathy, brachial plexopathy

² Appellant had a previous worker's compensation case from May 26, 2006 for a right shoulder injury, claim File No. xxxxxx374. The Board does not have access to the information from this prior claim.

or cervical radiculopathy. There was a severe and acute flare of appellant's right upper extremity starting on May 26, 2009 with the MRI scan of the cervical spine showing C4-5 right paracentral disc protrusion, C5-6 two millimeter diffuse disc protrusion and C6-7 three millimeter disc protrusion. Dr. Perl recommended physical therapy for the cervical spine and right upper arm radiculitis.

By decision dated September 25, 2009, OWCP denied appellant's claim on the grounds that the evidence was insufficient to establish that she sustained an injury. It found that the occupational exposure occurred as alleged; however, that the evidence failed to establish a firm medical diagnosis which could be reasonably attributed to the accepted employment factors.

On October 21, 2010 appellant refiled this claim as a traumatic injury claim. She repeated the history of her injury on May 26, 2009. Appellant stopped work on May 27, 2009 and returned to work on September 23, 2009.

On February 1, 2010 appellant requested reconsideration of OWCP's decision. On May 27, 2009 she went to see Dr. Perl, who thought her pain and muscle spasms were a result of her May 26, 2006 shoulder injury. After several MRI scan and arthyogram tests, Dr. Levy reported that appellant's medical problem involved conditions involving her neck for which she refiled a Form CA-1 on October 21, 2009.³

In an August 26, 2009 attending physician's report Form CA-20, Dr. Perl reported that appellant had a history of right shoulder and cervical spine problems. She diagnosed cervical radiculitis and cervical herniated nucleus pulposus. Dr. Perl stated that appellant was injured on May 26, 2009 and checked the box marked "yes" when asked if the condition was caused or aggravated by appellant's employment activity. She noted a period of total disability from September 1 to 23, 2009.

In notes dated October 14 to September 28, 2009, Michael Robinson, a licensed physical therapist, addressed appellant's progress.

By decision dated September 16, 2010, OWCP denied modification of its September 25, 2009 decision on the grounds that the medical evidence of record failed to establish a disability or that appellant's cervical condition was due to her federal employment.⁴

³ Appellant had a previous worker's compensation case from May 26, 2006 for a rotator cuff tear, claim File No. xxxxxx374. She further noted that Dr. Perl submitted her paperwork for the wrong claim File No. xxxxxx374 and that it should have been submitted for this claim, File No. xxxxxx685, because it involved a new neck injury.

⁴ The Board notes that appellant submitted additional evidence after OWCP rendered its September 16, 2010 decision. The Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its final decision and therefore, this additional evidence cannot be considered on appeal. 20 C.F.R. § 510.2(c)(1); *Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952). Appellant may submit this evidence to OWCP, together with a formal request for reconsideration, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606(b)(2).

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 filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁵ These are the essential elements of every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁶

In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.⁷ The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background, supporting such a causal relationship.⁸ 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. This medical opinion must include an accurate history of the employee’s employment injury and must explain how the condition is related to the injury. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician’s opinion.⁹

⁵ *Gary J. Watling*, 52 ECAB 278 (2001); *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

⁶ *Michael E. Smith*, 50 ECAB 313 (1999).

⁷ *Elaine Pendleton*, *supra* note 5.

⁸ *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

⁹ *James Mack*, 43 ECAB 321 (1991).

ANALYSIS

OWCP accepted that the May 26, 2009 incident occurred as alleged. It denied appellant's claim on the grounds that insufficient medical evidence was submitted to support that the diagnosed conditions were medically related to the employment incident.¹⁰ The Board finds that she did not submit sufficient medical evidence to support that she sustained a right arm and neck injury causally related to the May 26, 2009 employment incident.¹¹

In medical reports dated May 27 to July 8, 2009, Dr. Perl reported that appellant was pushing containers at work and experienced acute onset of neck pain and radiation into the right upper extremity on May 26, 2009. She opined that the issue was not a result of appellant's previous rotator cuff injury from 2006 but rather involved her cervical spine. In an August 7, 2009 follow up visit, Dr. Perl reported that there was a severe and acute flare of appellant's right upper extremity starting on May 26, 2009. The MRI scan of appellant's cervical spine showed C4-5 right paracentral disc protrusion, C5-6 two-millimeter diffuse disc protrusion and C6-7 three millimeter disc protrusion. Dr. Perl recommended physical therapy for the cervical spine and the right upper extremity radiculitis. In an August 26, 2009 attending physician's report, she diagnosed cervical radiculitis and cervical herniated nucleus pulposus, noting that appellant was injured on May 26, 2009. Dr. Perl checked the box marked "yes" when asked if she believed the condition was caused or aggravated by appellant's employment activity.

In its September 16, 2010 decision, OWCP found insufficient evidence to establish either a disability or that the condition was due to appellant's federal employment. The Board finds, however, that, contrary to OWCP findings, the medical evidence of record establishes a sufficient diagnosis of cervical radiculitis and cervical herniated nucleus pulposus. OWCP decision noted that the medical evidence submitted did not establish a diagnosed condition. Dr. Perl's August 26, 2009 Form CA-20, however, diagnosed cervical radiculitis and cervical herniated nucleus pulposus.¹² Further, her August 7, 2009 report supported her diagnoses. Dr. Perl reported that the MRI scan of appellant's cervical spine showed C4-5 right paracentral disc protrusion, C5-6 two millimeter diffuse disc protrusion and C6-7 three millimeter disc protrusion, recommending physical therapy for the cervical spine and the right upper extremity radiculitis.

Given that appellant has established a diagnosed condition, the question becomes whether the May 26, 2009 incident caused her cervical radiculitis and cervical herniated nucleus pulposus. To establish this, she must submit rationalized medical evidence to establish that her

¹⁰ Appellant initially filed an occupational disease claim but described a traumatic injury. She refiled the claim under the proper Form CA-1 on October 21, 2010. OWCP adjudicated the case as a traumatic injury claim. Under the circumstances of the case, the Board will treat this case as a traumatic injury claim as it appears that appellant is alleging an injury caused by a specific event or incident or series of events or incidents, within a single workday or shift. 20 C.F.R. § 10.5(q).

¹¹ See *Robert Broome*, 55 ECAB 339 (2004).

¹² OWCP failed to address Dr. Perl's August 26, 2009 Form CA-20 noting that the document was illegible. The copy provided to the Board was sufficient for review which provided Dr. Perl's medical opinion and diagnoses.

diagnosed medical condition is causally related to the accepted May 26, 2009 employment incident.

While Dr. Perl's reports establish a diagnosis, they are not rationalized on causal relation. She noted that appellant repeatedly pushed containers at work and experienced an acute onset of neck pain and radiation into the right upper extremity on May 26, 2009. Dr. Perl checked the box marked "yes" when asked if she believed the condition was caused or aggravated by her employment activity. These medical reports are not well rationalized because she did not explain how the accepted incident caused or contributed to appellant's injury. Dr. Perl merely recounted the incident as described by appellant. Though she concluded that causal connection exists between appellant's condition and the May 26, 2009 employment incident, the reports do not support that conclusion. The opinion of a physician supporting causal relationship must rest on a complete factual and medical background supported by affirmative evidence, address the specific factual and medical evidence of record and provide medical rationale explaining the relationship between the diagnosed condition and the established incident or factor of employment.¹³ Medical reports without more extensive rationale on causal relationship are of diminished probative value and do not meet an employee's burden of proof.¹⁴

In a June 26, 2009 medical report, Dr. Levy reported that appellant was pushing a heavy container and developed radiating pain down the back of her arm and up into her neck. He diagnosed cervical radicular versus plexus sympathetic pain syndrome of the upper right arm. While Dr. Levy addressed appellant's prior treatment and injury, he did not state a causal relationship between her condition and the May 26, 2009 employment incident. He recounted the incident but did not state that her condition was work related or offer a rationalized opinion on causation.¹⁵ The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on that issue.¹⁶ Without medical reasoning explaining how appellant's employment caused her injury, the report is insufficient to meet her burden of proof.¹⁷

The remaining medical evidence of record is insufficient to establish causal relationship. Dr. Sory's August 4, 2009 MRI scan report merely provided findings and did not address medical history, diagnoses or cause of injury. Appellant also submitted physical therapy notes dated October 14 to September 28, 2009 from her physical therapist. This medical evidence is insufficient to establish a causal relationship between her injury and the May 26, 2009 employment incident. Physical therapists, registered nurses, licensed practical nurses and

¹³ See *Lee R. Haywood*, 48 ECAB 145 (1996).

¹⁴ *Ceferino L. Gonzales*, 32 ECAB 1591 (1981).

¹⁵ *Franklin D. Haislah*, 52 ECAB 457 (2001); *Jimmie H. Duckett*, 52 ECAB 332 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

¹⁶ *S.E.*, Docket No. 08-2214 (issued May 6, 2009); *C.B.*, Docket No. 09-2027 (issued May 12, 2010).

¹⁷ *C.B.*, Docket No. 08-1583 (issued December 9, 2008).

physicians assistants, they are not physicians as defined under FECA, their opinions are of no probative value.¹⁸

On appeal, appellant alleges her physician erroneously put the wrong claim number on her paperwork and submitted her medical documents to her previous May 26, 2006 injury, claim File No. xxxxxx685. The Board cannot review claim File No. xxxxxx685 because it is not on appeal and it is the burden of appellant to provide evidence to establish her claim.

Evidence submitted by appellant after the final decision cannot be considered by the Board. As previously noted, the Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its decision.¹⁹ Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.606 and 10.607.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained a traumatic injury on May 26, 2009 in the performance of duty.

¹⁸ 5 U.S.C. § 8102(2) of FECA provides as follows: (2) 'physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law.

¹⁹ 20 C.F.R. § 501.2(c)(1).

ORDER

IT IS HEREBY ORDERED THAT the September 16, 2009 decision of the Office of Workers' Compensation Programs is affirmed, as modified.

Issued: March 7, 2012
Washington, DC

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

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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