

the form indicating that appellant's injury occurred in the performance of duty and asserted that the statements she made on the form were truthful.

In an October 7, 2010 report, Dr. Ronnie D. Shade, Board-certified in orthopedic surgery, stated that appellant had complaints of moderate pain, pain with range of motion, muscle spasms, stiffness and cramps. The pain was associated with lying down, lifting objects and overhead use. Appellant had slightly decreased range of motion in the cervical area. Dr. Shade diagnosed chronic cervical strain, left upper extremity radiculitis, thoracic outlet syndrome and bursitis of the left shoulder. He placed appellant off work from October 7 through November 7, 2010 due to numbness and a tingling sensation.

In a report dated October 20, 2010, Dr. Stephen Becker, a specialist in physical medicine and rehabilitation, stated that appellant had experienced approximately six years of discomfort in her upper extremities. Appellant recalled no specific onset of symptoms or trauma. She asserted that she felt numbness and tingling in digits one through five extending into the left forearm. Appellant also had numbness and tingling occurring in the right hand, particularly prolonged positioning activity exacerbated her symptoms. Dr. Becker stated that appellant also experienced significant cervical pain associated with her symptoms.

Appellant underwent electromyogram/nerve conduction velocity testing, the results of which showed bilateral C6-7 cervical radiculopathy. Dr. Becker recommended that she undergo a magnetic resonance imaging (MRI) scan of the cervical spine to confirm his findings. He stated that appellant could also be experiencing early thoracic outlet syndrome, although this was not strongly suggested by her symptoms.

In a November 8, 2010 report, Dr. Shade reiterated his findings and conclusions. He advised that appellant had complaints of severe cervical pain with moderate pain in her left hand. Dr. Shade noted a history of bilateral numbness and tingling sensation in her hands. He diagnosed suspected left carpal tunnel syndrome, chronic cervical strain, with left upper extremity radiculitis and suspected thoracic outlet syndrome. Dr. Shade reiterated these findings in a report dated November 22, 2010.

On December 1, 2010 OWCP 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 medical report from her treating physician describing his symptoms and the medical reasons for her condition and an opinion as to whether her claimed condition was causally related to her federal employment and a diagnosis of her claimed condition. OWCP requested that appellant submit the additional evidence within 30 days.

In an October 5, 2010 report, Dr. Michael V. Rainer, a specialist in emergency medicine, stated that appellant began experiencing constant, severe, neck pain two days prior. Appellant lifted heavy objects at work but was not able to recall a specific injury. She related that her neck began to hurt after work when she turned quickly in bed to answer her phone. Appellant had severe sharp pain on the left side of her neck and shoulder.

In a report dated December 10, 2010, Dr. Sam S. Ahm, Board-certified in neurology, stated that appellant underwent exploratory surgery to determine whether she had thoracic outlet

syndrome. He related that she experienced severe headaches as well as swelling and pain in the upper extremities and the head/neck region.

By decision dated January 7, 2011, OWCP accepted that the October 3, 2010 incident had occurred as alleged, but denied the claim, finding that appellant failed to submit sufficient medical evidence relating the diagnosed condition to the work incident.

On January 24, 2011 appellant requested reconsideration.

In a report dated January 21, 2011, received by OWCP on January 28, 2011, Dr. Shade stated that he saw appellant in 2004 for a problem regarding her hands which soon resolved. Appellant did not experience another onset until October 3, 2010, when she sustained an injury to her shoulders, her neck, left arm and left hand in the course of her employment. Dr. Shade opined that the mechanism of injury was directly, causally related to the incident at work, which resulted in neck, left shoulder, left hand and left arm pain.

In a report dated February 17, 2011, Dr. Shade stated that appellant's symptoms were unchanged. Appellant had complaints of severe bilateral arm pain, with numbness, a tingling sensation and night pain in both arms; severe left shoulder pain and muscle spasms; and significant left hand pain, with numbness and a tingling sensation. Dr. Shade stated that she underwent an MRI scan on November 19, 2011 which showed cervical lordosis straightening and right lateral recess discal substance protrusion at C4-5.

In a March 23, 2011 report, Dr. Shade noted that Dr. Ahm performed surgery on February 18, 2011 to ameliorate thoracic outlet syndrome. He reiterated the diagnoses and advised that an EMG showed cervical radiculopathy at C6-7.

By decision dated May 9, 2011, OWCP modified the January 7, 2011 decision to find that appellant failed to establish the October 3, 2010 incident. It found that she presented inconsistent, conflicting histories of how she sustained an injury to her medical examiners. Although Dr. Shade believed lifting heavy sacks of mail on October 3, 2010 was what caused appellant's diagnosed conditions, he did not address Dr. Rainer's October 5, 2010 report which indicated that she could not recall a specific injury. Appellant began to have pain in her neck and left shoulder when she turned to answer a telephone in bed on October 5, 2010. It further found that this presented a gradual progression over time which would constitute an occupational disease claim and not a traumatic injury.

In a May 20, 2011 report, Dr. Shade stated that appellant's complaints and diagnoses were directly, causally related to employment factors.

On June 1, 2011 appellant requested reconsideration.

On June 4, 2011 appellant filed a Form CA-2 claim for benefits based on occupational disease, alleging that she developed neck, left shoulder, left chest cavity and left arm causally related to employment factors. She stated that she was engaged in constant and continued pushing, pulling, loading and casing mail which caused pain and resulted in the development of her claimed conditions.

In a June 9, 2011 report, Dr. Shade reiterated his previous findings and conclusions.

By decision dated July 8, 2011, OWCP denied modification of the May 9, 2011 decision.

In a report dated August 2, 2011, Dr. Shade reiterated his opinion that appellant's conditions were work related. He initially saw her on October 7, 2010 for complaints of neck, left shoulder, left hand and left wrist pain stemming from an occupational injury which occurred on October 3, 2010, in which she was lifting a sack of mail. Dr. Shade reiterated his opinion that the mechanism of injury was directly, causally related to the injury causing her neck, left shoulder and left hand injuries. He reviewed Dr. Rainer's October 5, 2010 emergency room report and advised that when appellant indicated that she felt neck pain while reaching for the telephone on that date she was only describing an "example, not an injury." Dr. Shade noted that there were inconsistencies in the record regarding the time, place and the manner in which appellant sustained her occupational injury; however, her job duties as a mail handler required constant lifting, pushing, pulling and overhead reaching for 14 years and caused numbness, achiness, pain and spasms in her neck, left shoulder, left arm and left hand/wrist.

On August 22, 2011 appellant requested reconsideration. In a statement dated August 22, 2011, she requested that the claim be adjudicated as one for occupational disease based on Dr. Shade's August 2, 2011 report. Appellant stated that the incident on October 5, 2010 in which she experienced a strain in her neck while reaching for a telephone was merely an example of how the October 3, 2010 injury was affecting her, not a new injury. She also stated that Dr. Shade wrote a letter supporting causal relationship. Appellant stated that October 3, 2010 was the date that her "occupational injury took a complete toll on [her] body."

By decision dated September 8, 2011, OWCP denied modification of the July 8, 2011 decision. It noted that appellant had filed a Form CA-2 claim on June 4, 2011 occupational disease, alleging that because of the constant pushing, pulling, loading and casing mail she sustained injuries to her left upper extremities, neck, left shoulder and chest. OWCP found that she had provided an inconsistent history of injury on her CA-1 and CA-2 forms and to her physicians which undermined her credibility and the validity of her claim. It further found that appellant failed to submit rationalized, probative and objective medical evidence sufficient to support that she sustained an injury as described on her Form CA-1 and to establish that her claimed work activities caused or contributed to her medical conditions.

By letter dated October 12, 2011, appellant's attorney requested reconsideration. He argued that appellant was not familiar with the process of filing claims and intended to file a claim based on an occupational condition, not traumatic injury. Counsel contended that each physician who had examined her stated that her diagnosed conditions developed not from a one-time, isolated incident but rather from a cumulative progression over a period of years, while she was performing her duties as a mail handler at the employing establishment. Appellant was unsure of the exact date of injury but was able to attribute her injuries to employment-related factors.

By decision dated November 29, 2011, OWCP denied modification of the September 8, 2011 decision.

In a January 16, 2012 report, Dr. Becker reviewed the history of injury and reiterated his previous findings, conclusions and diagnoses.

In a January 23, 2012 report, Dr. Shade related that appellant's symptoms had not changed since her February 18, 2011 surgery. Appellant sustained an occupational-type injury to the left neck, left shoulder and left arm in addition to an acute traumatic injury to the neck, left arm and shoulder while lifting a heavy sack at work. Dr. Shade opined that her various diagnoses were supported by objective and diagnostic testing; he questioned why her claim had not been accepted.

In a January 27, 2012 report, Dr. Shade opined that appellant sustained a traumatic, chronic cervical strain injury on October 3, 2010 after lifting sacks of mail at work, which revealed underlying latent occupational diseases of left carpal tunnel syndrome, cervical radiculopathy and thoracic outlet syndrome. He advised that these were diseases/injuries which had developed over time due to her 14 years of work as a mail handler. Dr. Shade asserted that appellant's various conditions were caused by bending, pulling, pushing containers, overhead reaching, constant upper extremity movements and lifting sacks of mail for the employing establishment, and not by a one-time act such as turning over in bed to answer a telephone.

On February 18, 2012 counsel requested reconsideration. He stated that appellant had sustained two types of injuries, one for traumatic injury and one based on occupational condition, developed over time as a mail handler. Counsel contended that Dr. Shade's reports provided an opinion of causal relationship between her various diagnosed conditions and her years of lifting sacks as a mail handler, which OWCP had yet to consider.

In a March 19, 2012 report, Dr. Shade reiterated his previous findings and conclusions.

By decision dated May 29, 2012, OWCP denied modification of its prior decisions. It found that appellant failed to submit sufficient medical evidence in support of her claim that she sustained an injury in the performance of duty on October 3, 2010. While OWCP noted again that she had filed a Form CA-2 claim for an occupational condition, it stated that because she provided an inconsistent history of injury she had diminished her credibility and the validity of her claim. OWCP found that appellant failed to submit rationalized, probative medical evidence sufficient to support that she sustained an injury and to establish that her claimed work activities caused or contributed to her medical conditions.

LEGAL PRECEDENT

An employee seeking benefits under FECA² 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.³ These are the essential elements of each and every

² 5 U.S.C. §§ 8101-8193.

³ *Joe Cameron*, 42 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a “fact of injury” has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.⁵ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁶

OWCP cannot accept fact of injury if there are such inconsistencies in the evidence as to seriously question whether the specific event or incident occurred at the time, place and in the manner alleged, or whether the alleged injury was in the performance of duty,⁷ nor can OWCP find fact of injury if the evidence fails to establish that the employee sustained an “injury” within the meaning of FECA. An injury does not have to be confirmed by eyewitnesses in order to establish the fact that an employee sustained an injury in the performance of duty, as alleged, but the employee’s statements must be consistent with surrounding facts and circumstances and her subsequent course of action.⁸ Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury, and failure to obtain medical treatment may cast doubt on an employee’s statements in determining whether he or she has established his or her claim.⁹

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.¹⁰

The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.¹¹

⁴ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁵ *John J. Carlone*, 41 ECAB 354 (1989).

⁶ *Id.* For a definition of the term “injury,” see 20 C.F.R. § 10.5(a)(14).

⁷ *Pendleton*, *supra* note 3.

⁸ See *Gene A. McCracken*, Docket No. 93-2227 (issued March 9, 1995); *Joseph H. Surgener*, 42 ECAB 541, 547 (1991).

⁹ See *Constance G. Patterson*, 42 ECAB 206 (1989).

¹⁰ *Id.*

¹¹ See *Joe T. Williams*, 44 ECAB 518, 521 (1993).

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.¹² Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence.

ANALYSIS

In the present case, OWCP found that the record contained inconsistent to support that the October 3, 2010 incident occurred at the time, place and in the manner alleged. It concluded that appellant did not establish that she sustained the injury in the performance of duty on that date. The Board finds, however, that she presented sufficient evidence to establish that she lifted sacks of mail in the manner alleged.¹³ The Board has held that an employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.¹⁴ The Board notes that appellant filed the claim for the October 3, 2010 work incident in a timely fashion, on October 5, 2010. Appellant sought medical attention on October 5 and 7, 2010. Although no one witnessed the incident, her statement that she experienced left shoulder pain on October 3, 2010 while lifting sacks of mail was not contradicted by her employing establishment or by substantial evidence in the record. Dr. Rainer stated in an October 5, 2010 report that appellant experienced neck and left shoulder pain two days prior while answering a telephone at home and was unable to recall a specific work injury. Dr. Shade, appellant's treating physician, related in several reports that appellant sustained an injury to her shoulders, her neck, left arm and left hand on October 3, 2011 while lifting sacks of mail. He asserted in a January 2011 report that the mechanism of injury was directly, causally related to the October 3, 2010 work incident, which resulted in neck, left shoulder, left hand and left arm pain. In his August 2, 2011 report, Dr. Shade reiterated his opinion that appellant's various conditions were work related and reviewed Dr. Rainer's October 5, 2010 emergency room report. He opined that when she stated that she felt neck pain while reaching for the telephone on that date she was only describing an "example, not an injury." Dr. Shade supported that appellant sustained a traumatic cervical strain injury on October 3, 2010 while lifting sacks of mail at work.

The Board finds that the totality of the evidence is sufficient to establish that appellant was lifting mail sacks in the performance of duty on October 3, 2010. The employing establishment did not controvert the claim. On the Form CA-1 that it accepted that appellant's statements on the form were truthful. The Board notes that the record contains no contemporaneous factual evidence indicating that the claimed October 3, 2010 work incident did not occur as alleged.¹⁵ The Board finds that the evidence of record is sufficient to establish that the incident in which appellant sustained an injury on October 3, 2010 occurred at the time, place and in the manner alleged.

¹² *Id.*

¹³ *Id.*

¹⁴ *Patterson, supra* note 9; *Buffington*, 34 ECAB 104 (1982).

¹⁵ *See Thelma Rogers*, 42 ECAB 866 (1991).

The Board finds, however, that appellant failed to submit sufficient medical evidence that address how the October 3, 2010 lifting incident was competent to cause the claimed injury. In this regard, the Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.¹⁶

The question of whether an employment incident caused a personal injury can only be established, however, by probative medical evidence.¹⁷ Appellant has not submitted rationalized, probative medical evidence to establish the medical component of fact injury; *i.e.*, that the October 3, 2010 employment incident cause the claimed injury.

Appellant submitted numerous reports in support of her traumatic injury claim. Dr. Rainer examined her in the emergency room on October 5, 2010 and advised that she began experiencing constant, severe, neck pain on October 3, 2010. He advised that appellant lifted heavy objects at work but was not able to recall a specific injury. Dr. Rainer also asserted that she began to have neck and left shoulder symptoms on October 5, 2010 when she turned quickly in bed to answer her phone and experienced pain on the left side of her neck and shoulder. Dr. Becker submitted reports dated October 20, 2010 and January 16, 2012 in which he advised that appellant had experienced six years of discomfort in her upper extremities but could not recall any specific onset of symptoms or trauma. He advised that electromyogram/nerve conduction velocity tests showed bilateral C6-7 cervical radiculopathy. Dr. Ahm's December 10, 2010 surgical report diagnosed thoracic outlet syndrome, but did not indicate whether this condition was work related. Dr. Shade submitted periodic reports from October 2010 to March 2012 in which he related complaints of pain, stated findings on examination and presented diagnoses of bilateral C6-7 cervical radiculopathy, thoracic outlet syndrome, left upper extremity radiculitis, bursitis of the left shoulder, left carpal tunnel syndrome and chronic cervical strain. He stated in his January 21, May 20 and August 2, 2011 reports that on October 3, 2010 appellant injured both shoulders, her neck, left arm and left hand in the course of her employment with the employing establishment; he opined that the mechanism of injury was directly, causally related to the incident at work in which she was lifting a sack of mail, which resulted in neck, left shoulder, left hand and left arm pain. In a report dated August 2, 2011, Dr. Shade reiterated his opinion that her various conditions were work related.

The medical reports of record are not sufficient to meet appellant's burden of proof. None of the physicians sufficiently related the diagnoses to the October 3, 2010 incident at work. Dr. Shade opined that appellant's diagnosed conditions of bilateral C6-7 cervical radiculopathy, thoracic outlet syndrome, left upper extremity radiculitis, bursitis of the left shoulder, left carpal tunnel syndrome and chronic cervical strain conditions were causally related to her years of working as a mailhandler but he did not provide a rationalized medical opinion addressing how the claimed conditions or disability were causally related to lifting sacks of mail.¹⁸ The weight of medical opinion is determined by the opportunity for and thoroughness of examination, the

¹⁶ See *supra* note 11.

¹⁷ *Supra* note 5.

¹⁸ *William C. Thomas*, 45 ECAB 591 (1994).

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.¹⁹ Although Dr. Shade presented diagnoses of appellant's condition and stated generally that she experienced neck and left shoulder pain on October 3, 2010, he did not adequately address how this condition and these findings were causally related to the October 3, 2010 work incident. The medical reports of record did not explain how medically she would have sustained a neck and left shoulder injury because she was lifting sacks of mail on October 3, 2010. There is insufficient rationalized evidence in the record that appellant's neck and left shoulder strains were work related. Dr. Shade's reports thus did not constitute adequate medical evidence to establish that her claimed conditions were causally related to the October 3, 2010 work incident.

OWCP advised appellant of the evidence required to establish her claim; however, she failed to submit such evidence. It properly denied her claim for compensation.

For the reasons stated above the Board finds that appellant did not meet her burden of proof to establish that she sustained an injury in the performance of duty on October 3, 2010. 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 10.607.²⁰

CONCLUSION

The Board finds that appellant has failed to establish that she sustained an injury in the performance of duty on October 3, 2010.

¹⁹ See *Anna C. Leanza*, 48 ECAB 115 (1996).

²⁰ The Board notes that appellant filed a separate claim has not issued a final decision based on occupational condition and has submitted medical evidence in support of this claim. OWCP based on this claim. This issue is presently pending before OWCP and will not be discussed in the instant decision. See 20 C.F.R. § 501.2(e).

ORDER

IT IS HEREBY ORDERED THAT the May 29, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 15, 2013
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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