

FACTUAL HISTORY

On September 26, 2012 appellant, then a 60-year-old city letter carrier, filed an occupational disease claim alleging pain in her neck, left arm and wrist with a “pins and needles” sensation in both hands which she attributed to repetitive motion in her job. She first became aware of her condition on August 6, 2012 and realized it was caused or aggravated by her employment on August 17, 2012. Appellant stopped work on August 20, 2012 and returned on September 10, 2012.

In an undated statement received by OWCP on October 11, 2012, appellant noted that on August 16, 2012, while delivering the mail, she began to have pain in her neck. She thought it would go away and continued to work, but as the days passed, the pain worsened and traveled to her left shoulder and down to her arm and wrist. Appellant experienced a pins and needles sensation in both hands. She informed her supervisor and was advised to use a pain patch. Appellant alleged that she had a prior work-related cervical condition and sought medical attention.

In an August 20, 2012 treatment note, Dr. Peter Sayegh, a chiropractor, noted that appellant was seen for treatment of symptoms which she described as “having a gradual onset.” He related that she felt the symptoms while lifting, carrying and reaching. Dr. Sayegh advised that appellant related that she felt a sharp, tingling, severe numbness and severe pain which was ruining her quality of life. He advised the discomfort was in her cervical region, right cervical dorsal area, left cervical dorsal area, right upper thoracic area and lumbar region. Dr. Sayegh noted that appellant worked as a letter carrier and could not raise her right arm above 75 degrees while carrying. Appellant had numbness and tingling every night in both arms and hands, worse on the left. Dr. Sayegh determined that she had multiple spinal subluxations with spasm, hypomobility and end-point tenderness at the right C1, left C3, T1, T2, T8, T9 and L5 levels. He submitted treatment notes dated August 20 to October 17, 2012. Dr. Sayegh noted that he began treating appellant on August 20, 2012 and placed her off work until September 10, 2012. He stated that “the cause of her injury is due to repetitive stress trauma from actions at work.” Dr. Sayegh indicated that appellant had a previous on-the-job injury and spinal surgery.

OWCP received an undated report from Dr. Muntaz Majeed, a Board-certified internist, who diagnosed a sprained right ankle. An April 1, 1992 surgical report from Dr. Richard Radna, a Board-certified neurological surgeon, documented an anterior cervical discectomy at C5-6. A November 5, 1996 lumbar and cervical myelogram, by Dr. Smiljan Puljic, a Board-certified diagnostic radiologist, noted degenerative discogenic bulge at L3-4 and L4-5 as well as posterior discogenic bulge or chronic herniation at C4-5. A computerized tomography scan of the same date showed a posterior bulge at C4-5 and degenerative spondylosis in the cervical and lumbar spine.

By letters dated November 6, 2012, OWCP advised appellant and the employing establishment that additional factual and medical evidence was needed. A questionnaire was provided which requested that appellant describe the employment-related activities which she believed contributed to her condition, how often she performed such activities and for how long they were performed. Appellant was also asked to describe her activities outside her federal

employment. OWCP also requested medical information and a physician's opinion. Appellant was advised that a chiropractor could not be considered a physician unless there was a spinal subluxation demonstrated by x-ray. OWCP allowed her 30 days to respond. No additional evidence was received.

In a January 8, 2013 decision, OWCP denied appellant's claim, finding that the evidence did not support that the claimed injury or events occurred as described. It also found that the medical evidence did not establish a medical condition causally related to her work activities.

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

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.

It is the employee's burden to establish that his or her injury occurred at the time, place and in the manner alleged.⁵ An injury does not have to be confirmed by an eyewitness to establish that it occurred in the performance of duty.⁶ An employee's statement regarding the circumstances surrounding an injury is of great probative value and will be accepted unless refuted by persuasive evidence.⁷ The employee's statement must be consistent with the surrounding facts and circumstances as well as the employee's subsequent course of action.⁸ An

³*Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

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

⁵*Delphyne L. Glover*, 51 ECAB 146, 147-48 (1999).

⁶*Id.*

⁷*Michelle Kunzwiler*, 51 ECAB 334, 335 (2000).

⁸*Id.*

employee has not met his or her burden of proof where there are inconsistencies in the record that cast serious doubt on the validity of the claim.⁹

ANALYSIS

The Board finds that appellant has submitted insufficient evidence to establish her occupational disease claim. In a November 6, 2012 letter, OWCP advised her of additional factual and medical evidence needed to establish the claim. A questionnaire was provided in which appellant was to describe her employment-related activities which she believed contributed to her condition, how often she performed the activities and for how long they were performed. OWCP also requested a physician's opinion which included a medical explanation as to how her work activities caused, contributed to or aggravated her medical condition. Appellant did not respond to the request for additional factual and medical evidence.

To establish a claim for compensation, the Board has held that an employee must submit a statement which identifies the factors of employment believed to have caused his or her condition and submit medical evidence to establish causal relation.¹⁰ Appellant asserted that she was engaged in constant repetitive motion at work, but did not provide sufficient evidence as to the nature of her workplace exposure. She provided a statement in which she indicated that on August 16, 2012 she experienced pain in her neck, which worsened and traveled to her shoulder, arms and wrists while delivering mail. Appellant did not provide any further evidence describing her work duties. In view of her failure to respond to OWCP's specific request for factual evidence addressing work factors, she has not met her burden of proof to establish her claim by establishing the specific employment factors alleged to have caused or contributed to the presence or occurrence of the claimed condition.

As appellant did not establish any employment factors alleged to have caused her claimed condition, it is not necessary to consider the medical evidence with respect to causal relationship.¹¹

On appeal, appellant submitted additional evidence. However, the Board has no jurisdiction to review this evidence for the first time on appeal.¹²

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.

⁹*Id.*

¹⁰*Donald W. Wenzel*, 56 ECAB 390 (2005); *Richard H. Weiss*, 47 ECAB 182 (1995).

¹¹*See S.P.*, 59 ECAB 184 (2007). The Board notes that Dr. Sayegh, a chiropractor, submitted evidence in which he diagnosed subluxations caused by her work. While Dr. Sayegh advised that appellant had multiple subluxations, there is no indication that a diagnosis of spinal subluxation was based on a review of x-rays. *See* 5 U.S.C. § 8101(2). Therefore, Dr. Sayegh is not a physician under FECA and his opinion on causal relationship does not constitute competent medical evidence. *See Jay K. Tomokiyo*, 51 ECAB 361 (2000) (without a diagnosis of a subluxation from x-ray, a chiropractor is not a physician under FECA and his or her opinion on causal relationship does not constitute competent medical evidence).

¹² 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35 (1952).

CONCLUSION

The Board finds that appellant has not met her burden of proof in establishing that she sustained an injury in the performance of duty, causally related to factors of her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the January 8, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 13, 2013
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

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