

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

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**R.W., Appellant**

**and**

**U.S. POSTAL SERVICE, MAIN POST OFFICE,  
Montclair, NJ, Employer**

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**Docket No. 13-1080  
Issued: September 12, 2013**

*Appearances:*

*Thomas R. Uliase, Esq., for the appellant  
Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

PATRICIA HOWARD FITZGERALD, Judge  
ALEC J. KOROMILAS, Alternate Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On March 29, 2013 appellant, through her attorney, filed a timely appeal from a January 23, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her traumatic injury claim. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (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 sustained injuries on December 14, 2011 while in the performance of duty.

On appeal, counsel contends that the medical evidence of record from appellant's attending physician is sufficient to establish causal relationship between the accepted December 14, 2011 employment incident and her claimed injuries. He further contends that OWCP abused its discretion in failing to develop the medical evidence.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On December 17, 2011 appellant, then a 52-year-old sales service associate, filed a traumatic injury claim under OWCP File No. xxxxxx587. While she was passing around mail to carriers' cases on December 14, 2011, she felt a radiating sensation in her neck, shoulder, arm, hand and back that painfully worsened. Appellant stopped work on December 15, 2011.

In prescription notes dated December 2011 and January 17, 2012, Dr. Bharathi Nayak, an attending Board-certified neurologist, advised that appellant was totally disabled until further notice.

By letter dated January 23, 2012, the employing establishment controverted the claim. It noted a history that appellant filed a claim under OWCP File No. xxxxxx122 for an injury she sustained on July 14, 1999. Appellant received total disability compensation which was terminated by OWCP effective October 2, 2005 as the medical evidence established that she was fit for full-duty work. She did not return to work due to continuing total disability. Appellant's claim for a disability retirement was denied. The employing establishment issued a notice of removal on November 12, 2009 for her failure to meet the physical requirements of her position. As a result of additional diagnostic testing and a prearbitration settlement agreement, appellant returned to work at the employing establishment as of December 3, 2011. The employing establishment stated that on December 14, 2011 she performed her work duties and completed the day with no complaints of any pain or claim of injury. It further contended that the medical evidence did not present a history of injury or objective findings that prevented appellant from performing her work duties.

By letter dated January 31, 2012, OWCP advised appellant that the evidence submitted was insufficient to establish her claim and that she respond to the employing establishment's contentions. It also requested that she submit additional factual and medical evidence. Appellant was asked to provide dates of examination and treatment, a history of injury given by her to a physician, a detailed description of any findings, the results of any x-rays or laboratory tests, a diagnosis and course of treatment followed and a physician's opinion supported by a medical explanation as to how the reported work incident caused the claimed injury.

In a December 20, 2011 medical report, Dr. Nayak noted an 11-year history of treating appellant. On the date of examination, appellant complained about increased neck pain with spasms radiating predominantly to her left upper extremity with tingling and numbness in her left hand. She also complained about dull pain and spasms in her lower back and left-sided headaches. Appellant sustained a work-related injury over 10 years prior with chronic recurrent left cervical radiculitis and muscle tension headaches of cervical origin. Following this injury, she returned to work at the employing establishment. After two days of work, appellant experienced the above-noted symptoms which she attributed to repetitive work activity. She also felt extremely anxious and had difficulty sleeping due to pain. Dr. Nayak listed a history of appellant's medical treatment, family and social history. She reported essentially normal physical examination findings with the exception of an anxious and slightly depressed appearance, moderately restricted neck movements that were painful bilaterally left more than the right with diffuse bilateral trapezius tenderness, mild spasms over the left trapezius muscle with left scapular tenderness and mild diffuse lumbosacral tenderness without significant spasms.

Dr. Nayak listed essentially normal findings on motor examination with the exception of mild weakness of the left hand grip. On sensory examination, she found diminished pain and vibration perception over the left C7-8 dermatome. Dr. Nayak diagnosed chronic recurrent cervical radiculopathy at left C7-8 with acute exacerbation that was most likely related to physical activity. She also diagnosed left occipital nerve meralgia secondary to acute cervical strain and/or radiculopathy and muscle tension headaches of cervical origin, lumbosacral radiculitis and anxiety secondary to appellant's current medical situation. Dr. Nayak concluded that appellant was totally disabled.

In a February 27, 2012 letter, appellant described the December 14, 2011 incident. From 9:00 a.m. to 6:00 p.m. she passed around bundles of circulars which varied in weight to each mail carrier's case. Appellant lifted each bundle of circulars off the floor and placed them inside a carriage. She then pushed the carriage over to a mail carrier's case from which she lifted a bundle out of the carriage and stacked it on the floor next to a carrier's case. During the workday, appellant felt a sensation in her neck, shoulder and arm on the left side. On December 15, 2011 she felt pain in her neck, shoulder, arm and back which prevented her from going to work. Appellant reported her injury and absence to management. On December 16 and 20, 2011 she sought medical treatment from Dr. Nayak.

In a March 8, 2012 decision, OWCP accepted that the December 14, 2011 incident occurred as alleged. It denied appellant's claim, however, finding insufficient medical evidence to establish that she sustained a firm medical condition causally related to the accepted employment incident.

By letter dated March 26, 2012, appellant, through her attorney, requested an oral hearing before an OWCP hearing representative which was held on July 12, 2012. She testified regarding her work duties as a carrier and later as a distribution clerk. Appellant testified about her employment injury under File No. xxxxxx122. She described her work duties as a sales service associate and the development of her claimed injuries for which she sought medical treatment and disability for work. OWCP's hearing representative requested that appellant submit all medical records related to her claimed injury. He agreed with counsel that an affirmative statement on causal relationship between appellant's claimed injury and her employment duties was necessary to establish her claim.

Following the July 12, 2012 oral hearing, appellant submitted a report dated April 10, 2012 from Dr. Nayak, who advised that appellant had been totally disabled since December 14, 2011. Dr. Nayak stated that appellant's condition had improved. She released appellant to return to her regular job on April 16, 2012 with restrictions. In an August 6, 2012 report, Dr. Nayak provided a history of the December 14, 2011 employment incident and appellant's medical treatment. She reviewed electrodiagnostic test results and diagnosed chronic recurrent radiculopathy and a herniated nucleus pulposus at C5-6 and chronic recurrent lumbosacral radiculitis. Dr. Nayak also diagnosed post-traumatic stress disorder and improving anxiety that were precipitated by situational stress. She reiterated her opinion that appellant was capable of performing her regular job with restrictions.

In September 21, 2012 decision, OWCP's hearing representative affirmed the March 8, 2012 decision, finding that appellant failed to submit rationalized medical evidence to establish an injury causally related to the accepted employment incident.

By letter dated November 12, 2012, counsel requested reconsideration. In an undated addendum to her August 6, 2012 report, Dr. Nayak reviewed appellant's clinical evaluation and neurological follow up since December 2011 and diagnostic test results she stated that appellant's medical signs, symptoms and disability were caused by her December 2011 job-related activities.

In a January 23, 2013 decision, OWCP denied modification of the September 21, 2012 decision, finding that the medical evidence was not sufficient to establish an injury causally related to the accepted December 14, 2011 employment incident.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>2</sup> has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence<sup>3</sup> including that he or she sustained an injury in the performance of duty and that any specific condition or disability for work for which he or she claims compensation is causally related to that employment injury.<sup>4</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established.<sup>5</sup> There are two components involved in establishing the fact of injury. 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.<sup>6</sup>

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.<sup>7</sup> The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing a causal relationship between the claimed condition and the

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<sup>2</sup> *Id.*

<sup>3</sup> *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

<sup>4</sup> *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>5</sup> *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

<sup>6</sup> *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

<sup>7</sup> *John J. Carlone*, 41 ECAB 354 (1989); *see* 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(ee), 10.5(q) (traumatic injury and occupational disease defined, respectively).

identified factors.<sup>8</sup> The belief of the claimant that a condition was caused or aggravated by the employment is insufficient to establish a causal relationship.<sup>9</sup>

### ANALYSIS

OWCP accepted that on December 14, 2011 appellant passed mail out to carriers' cases while in the performance of duty. It found that the medical evidence failed to establish that she sustained an injury as a result of the accepted incident. The Board finds that appellant failed to provide sufficient medical evidence to establish that she sustained a cervical or back condition causally related to the December 14, 2011 employment incident.

Appellant submitted an August 6, 2012 medical report from Dr. Nayak who listed a history of the December 14, 2011 employment incident and reviewed electrodiagnostic test results. Dr. Nayak stated that appellant had chronic recurrent radiculopathy and a herniated nucleus pulposus at C5-6 with chronic recurrent lumbosacral radiculitis. She also found that appellant had post-traumatic stress disorder and improving anxiety that were precipitated by situational stress. Dr. Nayak opined that appellant could perform her regular work duties with restrictions. She did not fully address the causal relationship between the diagnosed cervical, lumbar and emotional conditions to the accepted December 14, 2011 employment incident.<sup>10</sup> While Dr. Nayak reiterated her conclusion, in an undated addendum to her August 6, 2012 report, that appellant's medical signs, symptoms and disability were causally related to her December 2011 work-related activities, she failed to provide a sufficient medical opinion explaining how passing out mail caused or contributed to the diagnosed conditions. She found that appellant's conditions were caused by the accepted work factor based on her clinical evaluation and neurological follow up since December 2011, and diagnostic test results. As noted, appellant's burden of proof includes the submission of medical evidence explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by her.<sup>11</sup> Dr. Nayak's report did not explain how the established employment factor caused or aggravated appellant's diagnosed conditions. The other reports and prescriptions from Dr. Nayak do not provide any opinion addressing the causal relationship between the diagnosed cervical, lumbar, headache and emotional conditions and resultant disability and the accepted December 14, 2011 employment incident.<sup>12</sup> In Dr. Nayak's December 20, 2011 report, appellant expressed her belief that her neck, left upper extremity, lower back and left-sided headaches were caused by her repetitive work duties. As noted, the Board has held that a claimant's belief that her condition was caused by her employment is insufficient to establish causal relationship.<sup>13</sup>

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<sup>8</sup> *Lourdes Harris*, 45 ECAB 545 (1994); *see Walter D. Morehead*, 31 ECAB 188 (1979).

<sup>9</sup> *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

<sup>10</sup> Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship. *A.D.*, 58 ECAB 149 (2006); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Michael E. Smith*, 50 ECAB 313 (1999).

<sup>11</sup> *See cases cited, supra* note 8.

<sup>12</sup> *See cases cited, supra* note 10.

<sup>13</sup> *Supra* note 9.

For the stated reasons, the Board finds that Dr. Nayak's reports are insufficient to establish appellant's claim.

On appeal, counsel contended that the medical evidence of record from appellant's attending physician was sufficient to establish that appellant sustained injuries caused by the December 14, 2011 employment incident. As noted, the reports and prescriptions from Dr. Nayak were not sufficiently rationalized on the issue of causal relationship.

Counsel further contended that OWCP abused its discretion in failing to develop the medical evidence. Appellant was advised by a January 31, 2012 letter and during the July 12, 2012 oral hearing of the medical evidence needed to establish her traumatic injury claim. However, she did not submit such evidence. The Board finds that she did not meet her burden of proof in establishing that she sustained an injury due to the December 14, 2011 employment incident.

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 met her burden of proof to establish that she sustained injuries on December 14, 2011 while in the performance of duty.

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 23, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 12, 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