

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

M.N., Appellant

and

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

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**Docket No. 14-1845
Issued: December 29, 2014**

Appearances:
Debra Hauser, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA HOWARD FITZGERALD, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 20, 2014 appellant, through counsel, filed a timely appeal from a June 18, 2014 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 has established a cervical condition causally related to her April 10, 1996 employment injury.

FACTUAL HISTORY

On April 22, 1996 appellant, then a 35-year-old letter sorting machine operator, filed a traumatic injury claim (Form CA-1) alleging that on April 10, 1996 she sustained left arm injuries when a machine door fell open and struck her on the arm. OWCP has accepted the claim

¹ 5 U.S.C. § 8101 *et seq.*

for left upper arm contusion, left rotator cuff sprain, and left shoulder dislocation. Appellant returned to work in a light-duty position. The record indicates that the light-duty job was withdrawn pursuant to the National Reassessment Process (NRP), and appellant began receiving wage-loss compensation as of September 21, 2010.

In a report dated October 26, 2010, Dr. Alfredo Sardinas, a Board-certified orthopedic surgeon and attending physician, opined that both the left shoulder and the cervical spine were injured in the employment injury. He stated that the impact caused appellant's neck to turn rapidly causing a flexion and extension injury. Dr. Sardinas indicated that appellant complained of neck pain on September 13, 1996 when initially treated. He stated that appellant suffered a herniated cervical disc as a result of the employment injury.

OWCP prepared a statement of accepted facts (SOAF) dated February 25, 2013 and referred the case to an OWCP medical adviser for an opinion with respect to a cervical condition. In a report dated March 5, 2013, the medical adviser opined that appellant's cervical condition was not employment related. The medical adviser indicated that a February 12, 1997 magnetic resonance imaging (MRI) scan showed no evidence of a disc herniation, and there was no evidence of cervical radiculopathy on a March 22, 2002 electromyogram/nerve conduction velocity (EMG/NCV). According to the medical adviser, a July 27, 2005 MRI scan showed C4-5 and C5-6 disc herniations.

The case was referred to Dr. James Butler, a Board-certified orthopedic surgeon, for a second opinion evaluation.² In a report dated May 6, 2013, he provided a history and results on examination. Dr. Butler diagnosed cervical degenerative disc disease at multiple levels. He opined that appellant's cervical condition was not causally related to the April 10, 1996 employment injury. Dr. Butler noted the MRI scan and EMG/NCV findings and stated that the degenerative findings were an ordinary disease of life.

OWCP found that a conflict in the medical evidence existed with respect to causal relationship between a cervical condition and the employment injury. A February 3, 2014 SOAF was prepared and appellant was referred to Dr. Frank Barnes, a Board-certified orthopedic surgeon, for an impartial medical evaluation. The record contains an ME023 and screen shots showing that two physicians were bypassed prior to the selection of Dr. Barnes.

In a report dated March 6, 2014, Dr. Barnes provided a history and results on examination. He diagnosed cervical degenerative disc disease. Dr. Barnes opined:

"No, the cervical condition is not related to be accepted work injury. [Appellant's] cervical symptoms did not come on for several years after her injury and this is confirmed by the treatment notes and lack of treatment directed to her neck by Dr. Sardinas or Dr. Delgadillo. This indicates to me that her cervical problems are not related to the door striking her arm and shoulder and did not manifest for several years after that injury. Therefore, [appellant's] cervical

² FECA provides that an employee shall submit to examination by a physician approved by the Secretary of Labor after the injury and as frequently as may be reasonably required. 5 U.S.C. § 8123(a).

degenerative disc disease and her work injury of April 10, 1996 are not related to each other.”

By decision dated June 18, 2014, OWCP denied appellant’s request to expand her claim to include a cervical condition as causally related to the April 10, 1996 employment injury. It found the weight of the evidence was represented by Dr. Barnes.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of establishing the essential elements of his or her claim, including that a specific condition for which compensation is claimed is causally related to the employment injury.³

FECA provides that, if there is a disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make the examination.⁴ The implementing regulations state that if a conflict exists between the medical opinion of the employee’s physician and the medical opinion of either a second opinion physician or an OWCP medical adviser, OWCP shall appoint a third physician to make an examination. This is called a referee or impartial examination and the OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.⁵

It is well established that, when a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.⁶

ANALYSIS

In the present case, OWCP accepted that appellant sustained a left upper arm contusion, left rotator cuff sprain, and left shoulder dislocation in the performance of duty on April 10, 1996. Appellant’s attending physician, Dr. Sardinas, opined that appellant had also sustained a cervical condition as a result of the employment incident. He explained that when appellant was struck by the machine door, she had turned her neck quickly, and he believed cervical herniated discs were causally related to the April 10, 1996 incident. On the other hand, Dr. Butler, an OWCP medical adviser, as well as second opinion physician, opined that a cervical condition was not causally related to the employment incident. Both physicians noted that a 1997 MRI scan showed no evidence of cervical disc herniation, and a 2002 EMG/NCV showed no evidence of cervical radiculopathy.

³ *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ 5 U.S.C. § 8123.

⁵ 20 C.F.R. § 10.321 (1999).

⁶ *Gloria J. Godfrey*, 52 ECAB 486, 489 (2001).

Pursuant to 5 U.S.C. § 8123(a), OWCP selected Dr. Barnes as a referee physician to resolve the conflict in medical opinion. Dr. Barnes indicated that he had reviewed the medical evidence and the SOAF, he provided a history and results on examination. He diagnosed a cervical degenerative disc disease. With respect to causal relationship to the April 10, 1996 employment injury, Dr. Barnes opined that the cervical condition was not employment related. He explained that the medical evidence showed that the condition did not arise until several years after the employment incident, and he found no causal relationship between a cervical condition and the employment injury.

The Board finds that Dr. Barnes provided an opinion that was supported by sound medical rationale and based on a complete background. As noted above, a rationalized medical opinion from a referee physician is entitled to special weight. The Board, therefore, finds that the opinion of Dr. Barnes represents the weight of the medical evidence in this case.

On appeal, appellant's representative contended that the selection of the referee was not properly documented, but the evidence of record indicates that OWCP followed its procedures. The referee physician is selected using the Medical Management Application (MMA).⁷ The ME023 (appointment notification report) serves as documentary evidence that the physician was selected using the rotational system in the MMA.⁸ If any physicians are bypassed in the selection process, the report will document the physicians bypassed and provide a bypass code as to the reason the physician was not selected.⁹ In this case the record contains an ME023 documenting the selection of Dr. Barnes. In addition, two physicians were bypassed and documents the reasons: one because the physician no longer had a local office in appellant's area and the other was because the physician (the second opinion physician Dr. Butler) had a previous connection with the case. There was no evidence of error in the selection of the referee.

Appellant also argued that the SOAF did not disclose that appellant complained of neck pain after the injury. The SOAF in this case provided a proper background, noting the incident and the accepted conditions in this case. Dr. Barnes reviewed the medical evidence as to the treatment for cervical complaints. The Board finds that Dr. Barnes was provided with a complete and accurate background with respect to the medical issue presented. As to appellant's argument that the opinion of Dr. Barnes was not rationalized, the Board finds, for the reasons noted above, his opinion was supported by sound medical rationale and represents the weight of the medical evidence.

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.

⁷ Federal (FECA) Procedure Manual, Part 3 -- Medical, *OWCP Directed Medical Examinations*, Chapter 3.500.4 (May 2013).

⁸ *Id.* at Chapter 3.500.5(i).

⁹ *Id.*

CONCLUSION

The Board finds that appellant has not established a cervical condition as causally related to her April 10, 1996 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 18, 2014 is affirmed.

Issued: December 29, 2014
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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