United States Department of Labor
Employees' Compensation Appeals Board

B.B., Appellant	)	
and	)	**Docket No. 13-823**
	)	**Issued: July 17, 2014**
U.S. POSTAL SERVICE, POST OFFICE, Detroit, MI, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On February 25, 2013 appellant filed a timely appeal from the January 28, 2013 merit decision of the Office of Workers' Compensation Programs' (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant met her burden of proof to establish an emotional condition in the performance of duty with disability beginning around April 7, 1996; and (2) whether appellant met her burden of proof to establish that her fibromyalgia and bilateral carpal tunnel syndrome were related to factors of her employment.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case has previously been before the Board. On November 29, 2012 the Board issued an order remanding case.[2] The Board explained that the case record did not contain the most recent merit decision, dated October 14, 2003, nor the transcript of the hearing held on July 15, 2003. The Board directed OWCP to reconstruct the record and to issue an appropriate decision in order to preserve appellant's appeal rights.

OWCP sought to reconstruct the record but was unable to locate a copy of the decision or the hearing transcript. Accordingly, it conducted a *de novo* review of all the evidence in the record since the last merit decision of February 6, 1998.

In the February 6, 1998 decision, OWCP had denied appellant's claim for an emotional condition and disability beginning on or about April 7, 1996. It found that, although she had established two compensable work factors,[3] the medical evidence had not established that the accepted work factors caused or contributed to any emotional condition and that the medical evidence had not established that work duties contributed to her fibromyalgia or bilateral carpal tunnel syndrome. OWCP noted that the prior acceptance of the thoracic outlet syndrome with resulting surgery remained in effect. It noted that "a separate decision will be rendered on whether "any subluxations of the back are related to employment factors" upon further review of x-rays.[4]

Medical evidence of record includes a July 21, 1995 treatment note from Dr. Fred Stelson, a Board-certified psychiatrist, who noted that appellant reported feeling depressed since mid-June. Appellant reported having difficulties with coworkers. Dr. Stelson assessed major depression or an adjustment order. He also suspected personality pathology with paranoid elements. In an April 8, 1996 treatment note, Dr. Stelson advised that appellant presented as angry and depressed and stated that her reduced weight load at work led to conflicts with coworkers. He stated that she should not work. Dr. Stelson continued submitting treatment records.

In a February 23, 1998 report, Dr. Dan R. McFarland, a Board-certified diagnostic radiologist, opined that the x-rays from May 31, 1995 to March 28, 1996 did not reveal any areas of subluxation.

[2] Docket No. 12-1132 (issued November 29, 2012).

[3] OWCP found that the following arose in the performance of duty: at least two coworkers made remarks to appellant about her work and verbal work disputes ensued in October 1995; on October 16, 1995, a Mr. McGinnis indicated that she was getting away with stuff and she was a long time trouble maker; on October 17, 1995 he questioned appellant's placement of equipment and referred to her derogatorily; and a Mr. Jenkins yelled at her and called her a liar in front of coworkers. As noted, *infra*, OWCP found other alleged matters were not compensable factors of employment.

[4] OWCP requested that Dr. Won Chae, Board-certified in diagnostic radiology, review appellant's x-rays, but there is no decision on this issue in the record.

OWCP received April 20, 2002 emergency room notes from Dr. Gary Kempler, Board-certified in emergency medicine, who noted that appellant related doing heavy lifting and having worsening pain over the last day. Dr. Kempler diagnosed chronic left-side pain. A May 9, 2002 emergency room report from Dr. Donald L. Freeman, an emergency room physician, noted fibromyalgia. On May 27, 2002 Dr. Freeman saw appellant and diagnosed chronic neck and leg pain. OWCP also received nurse's notes.

In a July 25, 2008 report, Dr. Jon M. Wardner, a Board-certified physiatrist, noted that electrodiagnostic studies showed no active radiculopathy. A September 3, 2008 left shoulder magnetic resonance imaging (MRI) scan revealed mild left subdeltoid bursitis and acromioclavicular (AC) joint osteoarthritis, mild supraspinatus and infraspinatus tendinosis without tear. On September 10, 2008 Dr. Wardner noted that appellant was post left thoracic outlet decompression, cervical rib resection and brachial plexus neurolysis in 1995. MRI scan findings showed mild left median and ulnar mononeuropathies and chronic fibromyalgia syndrome. Dr. Wardner questioned fibromyalgia as there was no diagnostic test to confirm the diagnosis. He noted that fibromyalgia was a clinical diagnosis and appellant had left-sided symptoms while, typically, fibromyalgia had symmetrical symptoms involving the upper and lower body. In an April 13, 2009 report, Dr. Wardner noted that follow-up diagnostic testing revealed bilateral median mononeuropathy at the wrist, worse on the right. The left ulnar neuropathy had improved. Dr. Wardner diagnosed chronic left thoracic outlet syndrome. He opined that, based on her description of her previous mail handler duties, "this type of repetitive hand activity is a common risk factor for carpal tunnel syndrome." Regarding fibromyalgia, he explained that he did not have evidence that the diagnosis was established as "this condition is idiopathic and is not related to any activity or injury. Fibromyalgia syndrome is thought to be related to a sleep disorder or possibly an autoimmune disorder. There is no specific diagnostic test which can either confirm or exclude fibromyalgia syndrome." Dr. Wardner also stated that "her left shoulder arthritis/bursitis/tendinitis was aggravated by her work activity, particularly lifting heavy mail sacks. My opinion regarding the bilateral carpal tunnel syndrome and the left shoulder condition is of reasonable medical probability."

A June 3, 2009 MRI scan of the cervical spine, read by Dr. Michael J. Kasotakis, a Board-certified diagnostic radiologist, revealed mild cervical spondylosis.

On July 1, 2009 OWCP referred appellant for a second opinion to Dr. Joseph P. Femminineo, a Board-certified orthopedic surgeon. In a report dated July 23, 2009, Dr. Femminineo described appellant's history of injury and treatment and provided findings. He determined that she had no active diagnoses that would be attributable to her work as a letter carrier or mail sorter. Dr. Femminineo explained that the myofascial pain dated back to 1984 and was not related to work duties. He determined that appellant did not have evidence of any active thoracic outlet syndrome.

In a January 5, 2011 report, Dr. Anita Craig, a Board-certified internist, noted that appellant was seen for hip and left shoulder pain after falling while getting out of her Jacuzzi on December 30, 2011. Appellant related that she lost her balance and fell backwards hitting the shower door. Dr. Craig noted appellant's history of injury and reviewed left hip and shoulder x-rays. She found that appellant had an exacerbation of chronic back, left leg and left groin pain with severe left hip osteoarthritis. Dr. Craig continued to treat her and submit reports. In an

October 25, 2011 treatment note, Dr. Mazen Abusamaan, a Board-certified internist, advised that appellant had chronic neck pain and a likely diagnosis of fibromyalgia. In a November 16, 2011 report, Dr. David Saie, an internist, diagnosed fibromyalgia.[5]

By decision dated January 28, 2013, OWCP denied modification of the February 6, 1998 decision. It found that appellant had not met her burden of proof to establish an emotional condition in the performance of duty with disability beginning on or around April 7, 1996. Furthermore, appellant did not meet her burden of proof to establish that her fibromyalgia and bilateral carpal tunnel syndrome were related to factors of her employment.

LEGAL PRECEDENT -- ISSUES 1 & 2

FECA provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.[6] An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim. When an employee claims that he or she sustained an injury in the performance of duty, he or she must submit sufficient evidence to establish that he or she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. He or she must also establish that such event, incident or exposure caused an injury.[7]

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his or her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of FECA. On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or his or her frustration from not being permitted to work in a particular environment or to hold a particular position.[8]

In emotional condition claims, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, OWCP, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician, when providing an opinion on causal relationship, and which working conditions are not deemed factors of employment and may not be considered. If a claimant does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor. When the matter asserted is a

[5] On January 24, 2011 appellant appealed to the Board. On June 27, 2011 the Board issued an order dismissing appeal, as appellant did not file a timely appeal. Docket No. 11-741 (issued June 27, 2011).

[6] 5 U.S.C. § 8102(a).

[7] *John J. Carlone*, 41 ECAB 354 (1989).

[8] *Peter D. Butt, Jr.*, 56 ECAB 117 (2004).

compensable factor of employment and the evidence of record establishes the truth of the matter asserted, OWCP must base its decision on an analysis of the medical evidence.[9]

Causal relationship is a medical issue[10] and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion of the physician must be based on a complete factual and medical background of the claimant,[11] must be one of reasonable medical certainty[12] and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.[13]

ANALYSIS -- ISSUES 1 & 2

Appellant alleged that she sustained an emotional condition as a result of several incidents at work. On February 6, 1998 OWCP denied her claim for an emotional condition. It found that, while appellant had established certain compensable employment factors, the medical evidence did not establish that the accepted factors caused or contributed to her emotional condition and associated disability. OWCP also found that her fibromyalgia and bilateral carpal tunnel syndrome were not caused by factors of her employment. On appeal, appellant asserts that the medical evidence is sufficient to establish her claim.

Regarding appellant's emotional condition claim, the Board notes that her burden of proof is not discharged by the fact that she has established compensable employment factors. To establish her claim for an emotional condition, appellant must also submit rationalized medical evidence establishing that her diagnosed emotional or psychiatric disorder is causally related to the accepted compensable employment factor.[14]

The medical evidence of record does not contain any reasoned medical evidence explaining how any of the accepted work factors caused or contributed to a diagnosed emotional condition. Although the medical record contains evidence supporting that appellant has depression or other emotional conditions, no physician has addressed how any of the specific accepted work factors contributed to her emotional conditions. For example, in 1995 and 1996 treatment notes, Dr. Stelson reported diagnoses, noted disability and related that appellant reported having difficulties with coworkers. He did not address any particular compensable work factor and specifically explain how this contributed to her depression. Thus, appellant has

[9] *Lori A. Facey*, 55 ECAB 217 (2004).

[10] *Mary J. Briggs*, 37 ECAB 578 (1986).

[11] *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

[12] *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

[13] *See William E. Enright*, 31 ECAB 426, 430 (1980).

[14] *See William P. George*, 43 ECAB 1159, 1168 (1992).

submitted insufficient medical evidence to establish that her emotional condition, and any associated disability, was causally related to compensable employment factors.

Regarding appellant's physical conditions, the Board notes that, in addition to the accepted thoracic outlet syndrome, she claimed that her fibromyalgia and bilateral carpal tunnel syndrome were work related. The most relevant medical reports include a September 10, 2008 report in which Dr. Wardner diagnosed post left thoracic outlet decompression, cervical rib resection and brachial plexus neurolysis in 1995; and mild left median and ulnar mononeuropathies. Regarding fibromyalgia, Dr. Wardner questioned this diagnosis noting that there was no diagnostic test which could confirm the diagnosis. He explained that fibromyalgia typically involved symmetrical symptoms involving both the upper and lower body. However, appellant had only left-sided symptoms. Thus, Dr. Wardner does not support that she has fibromyalgia and he did not otherwise relate how any unaccepted diagnosis was causally related to her work factors occurring on or before April 7, 1996. 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.[15]

In an April 13, 2009 report, Dr. Wardner diagnosed chronic left thoracic outlet syndrome and explained that appellant wanted her fibromyalgia syndrome and bilateral carpal tunnel syndrome accepted by her employer. He opined that, based upon the description of her previous work as a mail handler, her work would contribute to the development of bilateral carpal tunnel syndrome. Dr. Wardner opined that "this type of repetitive hand activity is a common risk factor for carpal tunnel syndrome." Regarding the fibromyalgia, he again explained that he did not have evidence to establish the diagnosis. Dr. Wardner indicated that "her left shoulder arthritis/bursitis/tendinitis was aggravated by her work activity, particularly lifting heavy mail sacks. My opinion regarding the bilateral carpal tunnel syndrome and the left shoulder condition is of reasonable medical probability." The Board finds that his opinion regarding bilateral carpal tunnel syndrome and a left shoulder condition is insufficient because it is unclear upon which work activities he is basing his opinion and whether he is aware that she last worked in 1996. Without any description of how Dr. Wardner arrived at this opinion, it is unclear how he formed this conclusion. While the medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute certainty, it must be explained by medical rationale and be based upon a complete and accurate medical and factual background of the claimant.[16] Other reports from Dr. Wardner do not provide medical rationale explaining how work factors in 1996 and before caused or aggravated any nonaccepted conditions.

Other medical reports submitted by appellant, are insufficient to establish appellant's claim as these reports to not specifically address how factors of appellant's employment, which ended in 1996, caused or contributed to her diagnosed medical condition. OWCP also received

[15] *Michael E. Smith*, 50 ECAB 313 (1999).

[16] *Samuel Senkow*, 50 ECAB 370 (1999); *Thomas A. Faber*, 50 ECAB 566 (1999).

notes from a nurse. Health care providers such as nurses are not physicians under FECA. Thus, their opinions do not constitute medical evidence and have no weight or probative value.[17]

Furthermore, the Board notes that in a report dated July 23, 2009, the second opinion physician, Dr. Femminineo determined that appellant had no active diagnoses that would be attributable to her employment as a letter carrier or mail sorter. He explained that her myofascial pain dated back to 1984 and was not related to her work duties. Dr. Femminineo determined that appellant did not have evidence of any current active thoracic outlet syndrome.

The Board finds that appellant has not submitted rationalized medical evidence establishing that her claimed conditions are causally related to the accepted compensable employment factors.

Appellant has argued that her duties were repetitive and required that she "throw mailbags" weighing up to 70 pounds and lift them over her head. The Board notes that the employing establishment, in particular, Ms. McNally, denied that the bags weighed 70 pounds, that she had to lift bags over her head, or that she had to do these activities by herself. The Board notes that the issue in this case is medical in nature and, as noted, none of the medical evidence offered an opinion on causal relationship. As explained, the medical evidence does not establish that this work stoppage on April 7, 1996 was due to work factors.

The Board notes that OWCP, in its February 6, 1998, decision indicated that appellant had established her claim for disability from work for surgery in December 1995 until her return to limited duties sometime in January 1996. The record does not verify that she was paid for this period of time. The Board also notes that in 1998 OWCP sent appellant's x-rays to a physician to have them reviewed for subluxation and in its February 6, 1998 decision, indicated that a separate decision would be issued with regard to whether subluxations of the back were related to employment factors upon further review of the x-rays. Once OWCP undertakes development of the medical evidence, it has the responsibility to do so in a proper manner.[18] As it began to develop this aspect of the claim, it should have issued a decision. On return of the case record, OWCP should review whether or not she received payment for the referenced time frame and issue any appropriate payment. Additionally, it should issue a decision with regard to whether subluxations of the back were related to employment factors upon further review of the x-rays.

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.

[17] *See Jane A. White*, 34 ECAB 515, 518 (1983). *See* 5 U.S.C. § 8101(2). This subsection defines the term "physician." *See also Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (where the Board held that medical opinion, in general, can only be given by a qualified physician).

[18] *Melvin James*, 55 ECAB 406 (2004).

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish an emotional condition in the performance of duty with disability from work beginning on or around April 7, 1996. Appellant also did not meet her burden of proof to establish that her fibromyalgia or bilateral carpal tunnel syndrome conditions were employment related. OWCP shall further address as appropriate whether she received appropriate wage-loss compensation in January and December 1996 and whether she has any spinal subluxations that are due to employment factors.

ORDER

IT IS HEREBY ORDERED THAT the January 28, 2013 decision of the Office of Workers' Compensation Programs is affirmed, as modified.[19]

Issued: July 17, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

[19] Richard J. Daschbach participated in the preparation of the decision but was no longer a member of the Board after May 16, 2014.