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

| | | |
|---|---|---|
| **J.W., Appellant** | ) | |
| **and** | ) | **Docket No. 14-1372** |
| | ) | **Issued: November 13, 2014** |
| **U.S. POSTAL SERVICE, POST OFFICE, Jersey City, NJ, Employer** | ) | |

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

*Case Submitted on the Record*

## DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

### ***JURISDICTION***

On May 30, 2014 appellant, through her counsel, timely appealed the February 26, 2014 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.[2]

### ***ISSUE***

The issue is whether appellant has proven she sustained an injury in the performance of duty on April 30, 2013.

[1] 5 U.S.C. §§ 8101-8193 (2006).

[2] The record on appeal contains evidence received after OWCP issued its February 26, 2014 decision. The Board is precluded from considering evidence that was not in the case record at the time OWCP rendered its final decision. 20 C.F.R. § 501.2(c)(1) (2012).

## ***FACTUAL HISTORY***

Appellant, a 49-year-old mail handler, claimed to have injured her lower back and right arm/shoulder while lifting letter and flat trays on April 30, 2013. She finished the remainder of her shift, but stopped work the following day. On a May 2, 2013 claim (Form CA-1), the employing establishment indicated that appellant's injury was the result of improper lifting.

Appellant had several prior work-related lumbar injuries, most recently on August 2, 2010 (xxxxxx568). She claimed to have recovered from her August 2010 injury and was reportedly working full duty at the time of the April 30, 2013 employment incident.[3] Appellant first sought treatment for her latest injury on May 7, 2013.

Dr. Mark A.P. Filippone, a Board-certified physiatrist, noted that appellant reported having injured herself at work on April 30, 2013. Appellant had been a mail handler since 2004 and most recently worked as a scanner. Dr. Filippone noted that, around 11:00 p.m. on April 30, 2013, appellant was working on the high-speed tray sorter lifting heavy letter trays, some of which weighed over 70 pounds. In the process of lifting the trays, appellant began to feel pain in her lower back and right shoulder. She reportedly did not want to go to the emergency room, so she took a pain pill to ease her discomfort.

Dr. Filippone noted that a couple of years earlier appellant injured her low back at work, but had since returned to full-time, regular duty. He also noted that she was previously in a motor vehicle accident, from which she recovered. Lastly, Dr. Filippone noted that appellant injured her low back at work in 2004 and was still symptomatic from that injury. In the last year, appellant received three lumbar epidural steroid injections, most recently in March 2012. Dr. Filippone stated that the April 30, 2013 work event caused a flare up of her low back pain. However, the pain in appellant's right shoulder and the right side of her neck was new. Dr. Filippone also noted that since the April 30, 2013 incident, she had been waking up with numbness and tingling in her right hand. Appellant did not have similar right hand symptoms prior to the injury on April 30, 2013.

In his May 7, 2013 narrative report, Dr. Filippone diagnosed right shoulder internal derangement, cervical radiculitis and exacerbation of prior lumbosacral radiculitis, which he attributed to "[m]ultiple trauma as the direct result of ... working for the [employing establishment]...."[4] He indicated that appellant had been disabled since May 1, 2013 and she remained totally disabled. Dr. Filippone also submitted a May 7, 2013 attending physician's report (Form CA-20) with essentially the same diagnoses. He identified April 30, 2013 as the date of injury and referred to his narrative report for further details regarding the history of injury. With respect to causal relationship, Dr. Filippone checked the "yes" box in response to question number 8, which asked whether "the condition found was caused or aggravated by an

[3] Appellant provided a three-page handwritten statement dated May 14, 2013. She described her prior work-related injuries and treatment, two nonwork-related motor vehicle accidents, as well as the April 30, 2013 employment incident.

[4] Dr. Filippone also ruled out cervical and lumbar radiculopathy, brachial plexopathy, ulnar neuropathy and carpal tunnel syndrome. He recommended additional diagnostic studies.

employment activity." Although the form report asks him to "Please explain answer," he did not provide an explanation regarding causal relationship.

Dr. Filippone provided similar CA-20 forms dated May 14 and June 3, 2013. He again referenced his May 7, 2013 narrative report for specific details regarding appellant's history of injury. The June 3, 2013 attending physician's report of Dr. Filippone did not include a lumbar-related diagnosis, but instead noted internal derangement of the right shoulder, cervical radiculopathy and carpal tunnel. Information regarding the date and cause of injury were as previously reported, without further elaboration.

In a May 14, 2013 narrative report, Dr. Filippone noted that he reexamined appellant and she remained totally disabled. He also reviewed the findings of a series of May 13, 2013 x-rays of her right shoulder and her cervical and lumbar spine. The right shoulder x-ray revealed osteoarthritis of the acromioclavicular joint. Appellant's cervical x-ray showed an anomaly at C5-7 with at least partial fusion of the disc spaces and straightening of the normal curvature. Dr. Filippone noted that the cervical anomaly could be iatrogenic, although no definite laminectomy was seen. He also surmised that it could be a congenital anomaly or the result of a prior trauma. Additionally, Dr. Filippone considered the possibility of a prior inflammatory process, such as juvenile rheumatoid arthritis. Lastly, the May 13, 2013 lumbar spine x-ray showed mild degenerative changes and minimal osteoarthritis of the sacroiliac joints. Dr. Filippone also noted that there was a question of mild lumbar dextroscoliosis. In addition to reviewing appellant's latest x-rays, he read her handwritten statement (May 14, 2013) to further clarify the mechanism of injury referable to the workers' compensation injury.

In a June 28, 2013 decision, OWCP denied appellant's claim for failing to establish fact of injury.

Appellant requested an oral hearing, which was held on December 12, 2013.

In follow-up narrative reports dated June 3 and 11, 2013, Dr. Filippone noted appellant's ongoing low back, neck and right shoulder complaints. He continued to find her totally disabled. In his June 11, 2013 report, Dr. Filippone reiterated the previous x-ray results from May 13, 2013. He also provided a June 11, 2013 CA-20 form wherein he diagnosed right shoulder internal derangement, cervical and lumbosacral radiculitis and carpal tunnel syndrome.

In a June 28, 2013 narrative report, Dr. Filippone reiterated the history set forth in his initial May 7, 2013 report. He also reiterated having reviewed appellant's three-page May 14, 2013 handwritten statement detailing the history of her work-related injuries. Dr. Filippone noted that she continued with neck and right shoulder pain despite undergoing physical therapy. He also discussed the results of appellant's May 13, 2013 cervical and lumbar x-rays, but did not mention her right shoulder results. Dr. Filippone noted that appellant remained totally disabled. He then reiterated his May 7, 2013 diagnosis, including several differential diagnoses. Dr. Filippone recommended cervical, lumbar and right shoulder magnetic resonance imaging (MRI) scans. He stated that appellant's aforementioned injuries are directly and solely the result of the injury she sustained while at work, as previously described ("lifting heavy letter trays" on April 30, 2013).

In a July 1, 2013 attending physician's report CA-20 form, Dr. Filippone diagnosed cervical and lumbar radiculitis and right shoulder impingement syndrome. He indicated that appellant was able to return to work in a limited-duty capacity effective July 7, 2013. Dr. Filippone also provided a July 1, 2013 narrative report wherein he noted, *inter alia*, she continued to have low back and right shoulder pain, as well as upper and lower extremity radicular complaints. However, there was a slight improvement over the last three to four weeks such that appellant could return to work with restrictions beginning July 7, 2013.

Appellant returned to work in a limited-duty capacity on August 19, 2013.

Dr. Filippone provided follow-up examination reports dated August 2, September 5, October 8 and November 18, 2013. Appellant remained symptomatic throughout this period. Based on his September 5, 2013 examination, Dr. Filippone adjusted appellant's work restrictions. Appellant reportedly could not tolerate standing eight hours, so he reduced standing and walking to four hours per day. Appellant was also limited to lifting 30 pounds. When he saw her again on October 8, 2013, Dr. Filippone noted that she needed to continue physical therapy, but OWCP declined to pay for therapy. Appellant's previous work restrictions remained in effect. Dr. Filippone reexamined her on November 18, 2013, at which time she rated her neck pain 9 on a scale of 1 to 10. Appellant's right shoulder pain was 4 and her back pain was 8 out of 10. Dr. Filippone noted that her employing establishment would not allow her to return to work.[5] At the time, he requested authorization for additional diagnostic studies.

Appellant returned for a follow-up examination on December 6, 2013. She continued to complain of neck, right shoulder and low back pain. Dr. Filippone administered an electromyography and nerve conduction study (EMG/NCS) for both the upper and lower extremities. The results revealed bilateral carpal tunnel syndrome. Dr. Filippone also noted that the upper extremity needle EMG showed evidence of partial denervation in muscles innervated by the right C5-6 cervical nerve roots. Additionally, the lower extremity EMG revealed evidence of left lumbosacral radiculopathy (L3-4, L4-5 and L5-S1). Dr. Filippone attributed the noted electrical abnormalities, including bilateral carpal tunnel syndrome, to injuries appellant sustained while at work.

By decision dated February 6, 2014, the Branch of Hearings & Review denied appellant's traumatic injury claim. The hearing representative found that appellant established that the April 30, 2013 employment incident occurred as alleged. Appellant was lifting mail when she felt a sharp pain in her back and right shoulder. Although she established the April 30, 2013 employment incident, the hearing representative found the medical evidence insufficient to establish a causal relationship between the accepted employment exposure and the diagnosed conditions. Specifically, Dr. Filippone failed to adequately explain how appellant's right shoulder and low back conditions were caused and/or aggravated by the April 30, 2013 employment incident.

[5] Appellant indicated that the employing establishment sent her home on October 15, 2013.

## ***LEGAL PRECEDENT***

A claimant seeking benefits under FECA has the burden of establishing the essential elements of her claim by the weight of the reliable, probative and substantial evidence, including that an injury was sustained in the performance of duty as alleged and that any specific condition or disability claimed is causally related to the employment injury.[6]

To determine if an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether "fact of injury" has been established. Generally, fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.[7] The second component is whether the employment incident caused a personal injury.[8] An employee may establish that an injury occurred in the performance of duty as alleged, but fail to establish that the disability or specific condition for which compensation is being claimed is causally related to the injury.[9]

## ***ANALYSIS***

Appellant claimed to have injured her right arm/shoulder and low back while lifting letter and flat trays on April 30, 2013. In her May 14, 2013 statement, she indicated that she was working the high-speed tray sorter lifting heavy letter trays above shoulder level and putting them into postal containers (post-cons/APCs). This activity resulted in severe pain in appellant's back and right shoulder. The hearing representative accepted that the April 30, 2013 employment incident occurred as alleged.

Dr. Filippone, who first examined appellant on May 7, 2013, diagnosed right shoulder internal derangement, cervical radiculitis and exacerbation of prior lumbosacral radiculitis. He later added carpal tunnel syndrome to the list of employment-related diagnoses. With respect to appellant's current lumbar condition, Dr. Filippone indicated that the April 30, 2013 employment incident exacerbated a prior work-related low back injury from 2004. The hearing representative correctly noted that the current record does not document a work-related lumbar injury in 2004. The earliest documented work-related lumbar injury occurred on January 2, 2007 (xxxxxx867). The most recent prior lumbar injury occurred on August 2, 2010 (xxxxxx568).

[6] 20 C.F.R. § 10.115(e), (f) (2012); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

[7] *Elaine Pendleton*, 40 ECAB 1143 (1989).

[8] *John J. Carlone*, 41 ECAB 354 (1989). Causal relationship is a medical question that generally requires rationalized medical opinion evidence to resolve the issue. *See Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s). *Id.*

[9] *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

According to Dr. Filippone, appellant was able to resume her full-time regular duties, following the low back injury she sustained a "couple of years ago," but she remained symptomatic from the 2004 low back employment injury. As there is no evidence of a 2004 work-related lumbar injury, it appears that Dr. Filippone relied on inaccurate information. A physician's opinion on causal relationship must be based on a complete factual and medical background.[10]

Dr. Filippone's narrative reports, including the May 7 and June 28, 2013 reports, each failed to explain how the April 30, 2013 employment incident caused or contributed to appellant's current right shoulder and low back conditions. He also failed to offer any plausible explanation of how her bilateral carpal tunnel syndrome was purportedly related to the April 30, 2013 employment incident. A physician's opinion must be supported by medical rationale, explaining the nature of the relationship between the diagnosed conditions and appellant's specific employment factors.[11]

Dr. Filippone's various attending physician's report CA-20 forms are similarly deficient for purposes of establishing causal relationship. Although these reports identified April 30, 2013 as the date of injury and he indicated that the diagnosed conditions were "caused or aggravated by an employment activity," he failed to explain the basis for his opinion on causal relationship. Merely, placing a checkmark in the "yes" box on question 8 of the Form CA-20 will not suffice.[12]

The medical evidence of record fails to establish a causal relationship between appellant's diagnosed right shoulder and low back conditions and her employment activities on April 30, 2013. Dr. Filippone's various reports are not supported by medical rationale, explaining the nature of the relationship between the diagnosed conditions and the accepted employment exposure. Under the circumstances, OWCP properly denied appellant's traumatic injury claim.

## ***CONCLUSION***

Appellant failed to establish that she sustained an injury in the performance of duty on April 30, 2013.

[10] *See Victor J. Woodhams*, *supra* note 8.

[11] *Id.*

[12] *See D.D.*, 57 ECAB 734, 739 (2006); *Deborah L. Beatty*, 54 ECAB 340, 341 (2003).

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the February 26, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 13, 2014
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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