United States Department of Labor
Employees' Compensation Appeals Board

M.M., Appellant	)	
and	)	**Docket No. 14-363**
	)	**Issued: November 7, 2014**
U.S. POSTAL SERVICE, AIRPORT STATION, Mobile, AL, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 6, 2013 appellant, through her attorney, filed a timely appeal from the June 12, 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 to review the merits of this case.

ISSUE

The issue is whether appellant established a bilateral elbow injury causally related to factors of her federal employment.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On September 11, 2012 appellant, then a 59-year-old rural mail carrier, filed an occupational disease claim (Form CA-2) alleging that she first became aware of medial epicondylitis of the right and left elbows caused by her repetitive work duties in June 2011.[2]

In an August 15, 2012 statement, appellant related that in June 2010 her left elbow became swollen and very tender to the touch in the bone at the bottom of her elbow. As time passed, she developed the same symptoms in her right elbow. Appellant stated that her rural route had increased by 400 or more mailboxes which overburdened her route and exceeded her work restrictions. Three sets of apartment buildings were added to her route. Appellant worked long hours every day trying to perform her job within her restrictions. She also claimed that she was harassed about her work performance. Appellant had a 96-hour-a-week route. She contended that her supervisor falsified the count on her route to keep the overburdened route "under the radar." Appellant contended that her right shoulder condition for which she underwent surgery in October 2010 was caused by her work. When she returned to work in January 2011 following surgery, appellant's route grew to 1,200 mailboxes. The stress and strain on her arms caused damage to her arms and elbows.

Appellant submitted a May 6, 2010 job offer from the employing establishment for a modified rural carrier position which she had accepted on that date. The position was based on the permanent restrictions recommended by Dr. William A. Crotwell, III, an attending Board-certified orthopedic surgeon, and Dr. Edward M. Schnitzer,[3] an internist and Board-certified physiatrist.[4] The position noted appellant's limitations which included lifting 10 to 15 pounds frequently (two-thirds of the day), lifting 25 pounds occasionally (one-third of the day), bending, stooping and squatting frequently (two-thirds of day), sitting, standing and walking frequently (two-thirds of the day) and performing overhead work frequently (two-thirds of the day) and kneeling frequently (two-thirds of the day). The position also noted that there was no engaging in excessive twisting, torqueing or repetitive motion of the elbows and working at unprotected heights. The physical requirements of the position involved standing, walking, heavy carrying, climbing, pushing, pulling, repeated bending, shoulder level reaching and overhead reaching, use of both arms, ability to distinguish colors and shades of colors, vision, hearing and operating a motor vehicle.

Appellant submitted narrative statements from Kelly Bechtal and Darlene McGrew, co-employees. She was involved in a motor vehicle accident while driving a long-life vehicle

[2] In a prior claim under OWCP File No. xxxxxx698, OWCP accepted that appellant sustained a contusion and left lateral epicondylitis on December 30, 2002. In another claim under OWCP File No. xxxxxx391, it accepted that she sustained right lateral epicondylitis on October 6, 2004.

[3] The Board notes that Dr. Schnitzer's report is not contained in the case record.

[4] In his March 12, 2009 report, Dr. Crotwell diagnosed postoperative right elbow pain and lateral epicondylitis of the bilateral elbows from a Boyd-McLeod procedure with residual pain. He also diagnosed medial epicondylitis of the left elbow. Dr. Crotwell advised that appellant could return to light-duty work with permanent restrictions which included no twisting or torqueing with the right arm, lifting more than 12 to 15 pounds frequently and lifting more 15 to 20 pounds occasionally.

(LLV) for which she underwent back surgery. At the time of the accident, appellant's route had 435 mail stops and it grew to 643 by May 2010. By the end of 2010, her route had over 1,000 mail stops and an abundance of mail volume. Three sets of apartments had been built on appellant's route. Her route was also a heavy business route that required over 100 dismounts a day from her LLV and opening heavy glass doors of at least 180 businesses. Due to the stress, strain and amount of repetitive motions, appellant's route should have been cut two years ago. In October 2010, her shoulder had to be rebuilt due to her route. Appellant's requests to have her route adjusted back to her modified route were continuously denied.

In clinic notes dated June 9 and September 12, 2011, Dr. Crotwell listed findings on physical and x-ray examination of the elbows. He reiterated the diagnoses of postoperative right elbow pain and lateral epicondylitis of both elbows from a Boyd-McLeod procedure with residual pain, and medial epicondylitis of the left elbow. On May 24, 2012 Dr. Crotwell clarified appellant's light-duty work restrictions. Appellant could not lift anything heavier than a pencil, fork or telephone, 3 to 5 pounds frequently or 5 to 10 pounds occasionally, five to seven times a day. Dr. Crotwell stated that these restrictions were based on appellant's chronic epicondylitis and medial epicondyle. He advised that any twisting or torqueing aggravated her conditions and caused swelling and severe pain.

By letter dated September 25, 2012, the employing establishment controverted appellant's claim. In a March 15, 2011 e-mail, Bill R. Johnston, a health and resource management specialist, noted that appellant's physician restricted her from repetitive motion of the right elbow. In May 2010, appellant accepted a route under the National Reassessment Program (NRP) which was 45 hours and 29 miles with 700 deliveries. Mr. Johnston stated that it was now apparently an overburdened route that was 48 hours and 29 miles with possibly 999 deliveries. He questioned whether a substitute would be used to deliver some of the mail. Mr. Johnston also noted the route was overburdened with 1,000 mailboxes. Appellant was advised that her route would be adjusted by May 31, 2011.

In a September 20, 2012 letter, Marjorie A. Hines, a manager, noted appellant's May 6, 2010 acceptance of a rehabilitation modified position based on her permanent restrictions. She described appellant's route as a business route which became overburdened when apartment buildings were constructed. On March 16, 2011 Ms. Hines and Mr. Johnston provided her with a substitute to carry some of her route so that she would not violate her restrictions. She denied appellant's allegations of harassment or that she worked 96 hours a week. Ms. Hines concluded that, when appellant made management aware of the growth of her route, a substitute was assigned to carry the load so that she could stay within her restrictions.

By letter dated October 15, 2012, OWCP advised appellant that the evidence submitted was insufficient to establish her claim. It requested additional factual and medical evidence. OWCP requested that the employing establishment submit any medical evidence regarding treatment she received at its medical facility.

In an October 19, 2012 statement, Ms. McGrew denied writing, signing or reading the letter dated August 15, 2012. She noted that she had no knowledge of appellant's medical conditions.

In a November 1, 2012 decision, OWCP denied appellant's occupational disease claim. It found that the evidence was insufficient to establish the factual component of her claim, *i.e.*, working outside of her assigned work limitations.

In a November 5, 2012 statement, appellant attributed her medial epicondylitis to performing repetitive work duties on an overburdened route and not working outside her limitations. She described her work activities, which included casing, lifting, unloading and pulling mail, opening and closing her vehicle and business doors and driving. Appellant contended that the employing establishment did not adhere to the modified job that she accepted on May 6, 2010. The assistance she received on her route consisted only of one and one-half hours of delivery to two sets of apartments.

In progress and clinic notes dated October 21, 2011 to January 24, 2013, Dr. Crotwell reiterated the diagnosis of postoperative right elbow pain and lateral epicondylitis of the bilateral elbows from a Boyd-McLeod procedure with residual pain and medial epicondylitis of the left elbow. He increased her ability to lift to 10 pounds. In a July 16, 2012 progress note, Dr. Crotwell reiterated that appellant's chronic lateral and medial epicondylitis were aggravated by twisting and torqueing. He advised that this was related to her lateral epicondylitis from her elbow contusion.

In a November 5, 2012 letter, Ms. Bechtal also denied any knowledge of the statement that contained her printed name. She noted that her name was misspelled on the letter. Ms. Bechtal commented that the route was overburdened, but she had no knowledge of the route's day-to-day functions.

On November 7, 2012 appellant requested a telephone hearing before an OWCP hearing representative regarding the November 1, 2012 decision.

At the March 14, 2013 hearing, appellant reiterated her contentions that her route became overburdened and it caused her conditions to worsen. By March 2011, her route consisted of over 1,200 mailboxes and it was evaluated at 98 hours a week. Appellant worked on this route until December 2011 when she stopped due to nonwork-related brain surgery performed on February 9, 2012. She reiterated that she only received assistance from one employee who delivered mail to two sets of apartments on her route. Appellant did not case or organize mail, and spent approximately one and one-half hours a day delivering mail. She stated that casing and organizing her mail took approximately four hours and delivery of the mail took four to six hours, depending on mail volume. Appellant related that when she returned to work in June 2012 following brain surgery the employing establishment would not allow her to work as it could not accommodate her new lifting restriction.

In an April 15, 2013 e-mail, Gregory A. Wegener, customer services supervisor, addressed appellant's work hours and route evaluation from March 2011 through August 2012. Appellant was limited to working no more than a 45-hour route which was from 53 hours and 24 minutes to 54 hours and 35 minutes, six days a week or 45.48 for five days a week. Contrary to her assertions, Mr. Wegener stated that she did not work over 46 hours in any week. Appellant was given 2.50 hours of auxiliary assistance every day that she worked. Another carrier delivered to the two sets of new apartments to keep the route under her limitation hours and close

to her previous number of deliveries. Mr. Wegener stated that appellant's claim that her route was evaluated at 98 hours a week was incorrect. The 2011 annual route count indicated that her route was 64 hours and 36 minutes a week and the 2012 count was 52 hours and 41 minutes per week.

In a May 29, 2013 letter,[5] appellant stated that Mr. Wegener's count should have started from March 2010 and not March 2011 to August 2012 as it would have shown the additional hours she worked due to the growth of her route.

In a June 12, 2013 decision, an OWCP hearing representative affirmed the November 1, 2012 decision. He found that the medical evidence was insufficient to establish that appellant sustained a bilateral elbow condition causally related to her work duties.

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, that an injury was sustained in the performance of duty as alleged and that any disabilities and/or specific conditions for which compensation is claimed are causally related to the employment injury.[6] 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.[7]

Whether an employee actually sustained an injury in the performance of duty begins with an analysis of whether fact of injury has been established.[8] To establish fact of injury in an occupational disease claim, an employee must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.[9]

An employee's statement that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.[10] Moreover, an injury does not have to be confirmed by eyewitnesses. The employee's statement, however, must be consistent with the surrounding facts and circumstances and his or her subsequent course of action. An employee has not met his or her burden in establishing the

[5] The Board notes that it appears appellant inadvertently dated her letter as May 29, 2012 rather than May 29, 2013 as the letter directly responds to route count information contained in Mr. Wegener's April 15, 2013 e-mail.

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

[7] *Victor J. Woodhams*, 41 ECAB 345 (1989).

[8] *S.P.*, 59 ECAB 184, 188 (2007).

[9] *R.R.*, Docket No. 08-2010 (issued April 3, 2009); *Roy L. Humphrey*, 57 ECAB 238, 241 (2005).

[10] *R.T.*, Docket No. 08-408 (issued December 16, 2008); *Gregory J. Reser*, 57 ECAB 277 (2005).

occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim. Circumstances such as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury and failure to obtain medical treatment may, if otherwise unexplained, cast doubt on an employee's statement in determining whether a *prima facie* case has been established.[11]

Rationalized medical opinion evidence is generally required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[12]

ANALYSIS

Appellant claimed that she sustained a bilateral elbow condition due to performing repetitive work duties. OWCP found that she failed to establish the factual component of her claim. The Board finds, however, that the evidence establishes that appellant was a rural mail carrier and that no evidence disputes that she was engaged in duties related to a letter carrier. Appellant's employer acknowledged that her route included business stops and became an overburdened route with the addition of new apartment buildings. The Board notes that the physical requirements of the modified rural carrier position included, standing, walking, heavy carrying, climbing, pushing, pulling, repeated bending, shoulder level reaching, use of both arms, and operating a motor vehicle. The employing establishment has acknowledged appellant's exposure to these work factors. For the stated reasons, the Board finds that she has established the claimed employment factors in the present case.

The Board further finds, however, that appellant has not submitted sufficient medical opinion evidence to establish a causal relationship between the accepted work activities and her diagnosed condition. The mere manifestation of a condition during a period of employment does not raise an inference that there is a causal relationship between the condition and the employment. Neither the fact that the condition became apparent during a period of employment nor the belief that the employment caused or aggravated a condition is sufficient to establish causal relationship.[13]

Dr. Crotwell's May 24 and July 16, 2012 progress notes found that appellant's chronic lateral and medial epicondylitis were aggravated by twisting and torqueing. He stated that this was related to the lateral epicondylitis from her elbow contusion. Dr. Crotwell also addressed appellant's restrictions. While he provided an opinion on causal relationship, he did not adequately address how the diagnosed conditions were aggravated by the established employment factors or the accepted employment-related contusion under OWCP File No. xxxxxx698. Medical reports without adequate rationale on causal relationship are of diminished

[11] *Betty J. Smith*, 54 ECAB 174 (2002).

[12] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, *supra* note 7.

[13] *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

probative value and are insufficient to meet an employee's burden of proof.[14] The opinion of a physician supporting causal relationship must be based on a complete factual and medical background with affirmative evidence. The opinion must address the specific factual and medical evidence of record and explain the relationship between the diagnosed condition and the established incident or factor of employment.[15] The remaining clinic and progress notes from Dr. Crotwell do not address how appellant's diagnosed bilateral elbow conditions were caused or aggravated by her federal employment. Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value.[16] The Board finds that Dr. Crotwell's reports are insufficient to establish appellant's claim.

Dr. Crotwell's clinic and progress notes found that appellant had postoperative right elbow pain and lateral epicondylitis of the bilateral elbows from a Boyd-McLeod procedure with residual pain and medial epicondylitis of the left elbow. He addressed her light-duty work restrictions. The Board finds that there is insufficient rationalized medical evidence of record to establish that appellant sustained a bilateral elbow condition causally related to the accepted employment factors. Appellant did not meet her burden of proof.

CONCLUSION

The Board finds that appellant has failed to establish that she sustained a bilateral elbow injury causally related to factors of her federal employment.

[14] *Ceferino L. Gonzales*, 32 ECAB 1591 (1981).

[15] *See Lee R. Haywood*, 48 ECAB 145 (1996).

[16] *See K.W.*, 59 ECAB 271 (2007); *A.D.*, 58 ECAB 149 (2006); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Michael E. Smith*, 50 ECAB 313 (1999).

ORDER

IT IS HEREBY ORDERED THAT the June 12, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 7, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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