United States Department of Labor
Employees' Compensation Appeals Board

C.H., Appellant	)	
and	)	**Docket No. 14-2009**
	)	**Issued: February 19, 2015**
U.S. POSTAL SERVICE, POST OFFICE, Turner, ME, Employer	)	

Appearances:
Alan J. Shapiro, 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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 18, 2014 appellant, through counsel, filed a timely appeal from a July 9, 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 established a cervical spine condition in the performance of duty.

FACTUAL HISTORY

On June 20, 2013 appellant, then a 50-year-old rural mail carrier, filed an occupational disease claim (Form CA-2) alleging that on or before December 28, 2010, she sustained cervical

[1] 5 U.S.C. § 8101 *et seq.*

[2] Appellant has filed other claims with OWCP (xxxxxx441 and xxxxxx136) but the Board only has jurisdiction over the claim in xxxxxx852.

radiculopathy, a herniated C5-6 disc, severe headaches, and muscle spasms of the neck, shoulders, and upper back due to "repetitive motion overuse" at work. She had been off work since March 21, 2013 due to bilateral carpal tunnel syndrome, for which she filed a previous occupational disease claim assigned File No. xxxxxx136. Appellant asserted that medical evidence submitted under File No. xxxxxx136 was sufficient to establish causal relationship in the present claim. In an attached statement, she described a December 28, 2010 incident in which the hatchback of her delivery vehicle blew downward in a strong wind, striking the top of her head and causing a bump. Appellant was stunned for several minutes, realized that there was no one on duty at the employing establishment to assist her, so she finished delivering her route. While delivering the mail, she experienced increasing headaches, and neck pain radiating into both arms. Appellant telephoned her physician's office for advice, returned to her duty station to turn in empty equipment, then went home to await her doctor's call.

In a May 8, 2013 letter, Dr. Jerry Lin, an attending osteopathic physician Board-certified in physiatry, related appellant's symptoms of "aching, cramping, tiring, deep, and constant pain in her cervical spine, upper back, forearms, and hands," and "tingling and numbness of her fingers." On examination, he found severely restricted cervical spine motion in all planes, tenderness to palpation over the spinous processes, splenius capitus and trapezius muscles, numbness in the neck with abduction of the right thumb, and decreased sensation in the C7 dermatome. Dr. Lin noted that an April 29, 2013 magnetic resonance imaging (MRI) scan showed a broad-based central C5-6 herniation with overlying spurs. February 7, 2013 x-rays showed a three-millimeter retrolisthesis at C5-6. Dr. Lin diagnosed carpal tunnel syndrome, tendinitis of the forearms, and a possible underlying cervical radiculopathy. He opined that appellant's "carpal tunnel syndrome and tendinitis of the forearm could be exacerbated from her postal activity. Also, given the pathology in her cervical spine, appellant may have had an underlying cervical radiculopathy that further compounded her symptoms with the repetitive work and postal driving she was doing." Dr. Lin administered a C6-7 epidural injection. He held appellant off work as of May 1, 2013.

Dr. Lin also provided a July 11, 2013 report, relating additional history from appellant describing November 1996 and January 1997 occupational whiplash injuries, with paraspinal and bilateral shoulder spasms, and the December 28, 2010 head injury. He noted that appellant's current symptoms included bilateral arm weakness due to pain, and pain into the right chest wall. On examination, Dr. Lin found decreased pinprick sensation in the right C5 and bilateral C6, C7, and C8 dermatomes, and severely restricted cervical motion. He diagnosed a bulging cervical disc and cervical radiculopathy. Dr. Lin opined that appellant's C5-6 and C6-7 disc herniations caused neuritis into both hands. He stated that the diagnosed conditions were "likely due to [appellant's] two motor vehicle accidents and trauma she received when the hatchback rear door hit her head."

In June 13, 2013 reports, Dr. Joseph T. Alexander, an attending Board-certified neurosurgeon, related appellant's account of headaches, neck pain, and bilateral cervical radiculopathy since the December 28, 2010 incident. Facet block injections, acupuncture, and chiropractic manipulation all failed to alleviate her symptoms. Dr. Alexander noted that a recent MRI scan showed a herniated C5-6 disc with spurring, "loss of disc height, bone spurring, and foraminal stenosis." On examination, he observed "some give-way weakness in finger extension bilaterally, right greater than left." Dr. Alexander recommended a C5-6 discectomy and fusion.

In an August 28, 2013 letter, OWCP advised appellant of the type of additional evidence needed to establish her claim, including a report from her attending physician explaining how the identified work factors would cause the diagnosed cervical spine conditions. It afforded her 30 days to submit such evidence.

In response, appellant submitted a February 8, 2013 x-ray report showing straightening of the cervical lordosis, a three-millimeter retrolisthesis of C5 on C6, and mild-to-moderate disc narrowing at C5-6. An April 29, 2013 cervical MRI scan showed a broad-based central disc herniation at C5-6, with overlying spurs and almost complete obliteration of the thecal sac.

Appellant also provided a note from Dr. Dayton F. Haigney, an attending Board-certified physiatrist, holding her off work as of February 12, 2013 because of a nonwork-related cervical spine problem until further notice. In a March 27, 2013 note, Dr. Haigney stated that he advised her to stop work permanently due to her bilateral upper extremities work-related injury as well as her nonwork-related cervical condition. Dr. Lin submitted a September 11, 2013 report noting increased pain in appellant's left hand, and continued cervical radiculopathy. He recommended a trial of pain management.

Appellant also submitted her undated statement, attributing her cervical spine condition to repetitive bending, reaching, pulling, pushing, lifting, twisting, and prolonged driving at work. She asserted that the December 28, 2010 incident caused a traumatic cervical spine injury, worsening preexisting cervical spine conditions that had developed due to repetitive motion. Appellant described nonoccupational activities of housework, cooking, laundry, and walking. She contended that her worsening neck condition prevented her from pursuing former recreational interests including motorcycle riding.

By decision dated October 4, 2013, OWCP denied appellant's claim as causal relationship had not been established. It accepted that she engaged in repetitive employment duties, but the medical evidence failed to find the claimed cervical spine conditions were causally related to the repetitive motion at work.

In an October 9, 2013 letter, appellant requested an oral hearing, held telephonically on April 16, 2014. At the hearing, she recounted that she worked full duty until she underwent carpal tunnel release in March 2012. Following the surgery, appellant returned to full duty on May 9 or 10, 2012, but stopped work after a few hours due to hand pain. She claimed a recurrence of disability. In June 2012, appellant worked light duty for approximately two weeks. She returned to light duty from August 2012 through March 2013, when she stopped work and did not return. Appellant described continuing headaches and bilateral cervical radiculopathy.

Appellant submitted additional medical evidence.[3] In a September 11, 2013 report, Dr. Lin diagnosed cervical radiculopathy, cervical spondylolisthesis, and a bulging cervical disc. He opined that "the two motor vehicle accidents she incurred while at the job, and the rear

[3] Appellant also submitted copies of her statements, imaging studies and Dr. Lin's July 11, 2013 report previously of record.

hatchback door hitting her head are causative factors that caused her to acquire the cervical abnormalities." Dr. Lin recommended cervical decompression and pain management.[4]

Dr. James Smith, an attending osteopath Board-certified in family practice, submitted reports dated from September 23, 2013 to January 22, 2014 finding appellant totally disabled for work due to a herniated cervical disc. He related appellant's assertions that she "hurt herself at work" in the December 2010 incident and by performing repetitive motion. Dr. Smith noted that appellant underwent rhizotomy of unspecified spinal nerves, which did not alleviate her pain symptoms. He diagnosed right-sided neck and shoulder pain, cervical radiculopathy, bilateral carpal tunnel syndrome, and tendinitis of the elbow or forearm. Dr. Smith prescribed medication.

By decision dated and finalized on July 9, 2014, an OWCP hearing representative affirmed OWCP's October 4, 2013 decision denying appellant's occupational disease claim. She found that the medical evidence did not contain sufficient rationale supporting a causal relationship between repetitive motion at work and the claimed cervical spine conditions.

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 filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged; and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.[5] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[6]

An occupational disease is defined as a condition produced by the work environment over a period longer than a single workday or shift.[7] To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.[8]

[4] On October 8, 2013 appellant was seen for medication management by a nurse practitioner working under the supervision of Dr. Karyn Woelflein, an associate of Dr. Lin.

[5] *Joe D. Cameron*, 41 ECAB 153 (1989).

[6] *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

[7] 20 C.F.R. § 10.5(q).

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

The medical evidence required to establish causal relationship is generally rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medial 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.[9]

ANALYSIS

Appellant claimed that she sustained cervical radiculopathy, a herniated C5-6 disc, severe headaches, and muscle spasms of the neck, shoulders, and upper back due to repetitive motion and overuse at work, 1996 and 1997 occupational motor vehicle accidents, and being struck on the head by a vehicle hatch on December 28, 2010. OWCP accepted repetitive motion as a work factor, but found that appellant had not established the accidents or the December 28, 2010 incident as factual. It denied the claim within October 4, 2013 and July 9, 2014 decisions, finding the medical evidence insufficient to support a causal relationship between the claimed neck conditions and repetitive motion.

In support of her claim, appellant submitted reports from several attending physicians. Dr. Haigney, a Board-certified physiatrist, stated on February 12 and March 27, 2013 that appellant had a nonwork-related cervical spine problem or nonwork-related cervical condition. His opinion directly contradicts appellant's assertion that work factors caused or contributed to her neck problems.

Dr. Lin, an attending Board-certified physiatrist, attributed the claimed cervical spine conditions to the 1996, 1997 and 2010 incidents, or a preexisting "underlying cervical radiculopathy." The equivocal nature of this opinion diminishes its probative quality.[10] Also, Dr. Lin did not address the accepted factor of repetitive motion.

Dr. Smith, an attending Board-certified family practitioner, repeated appellant's assertions that she "hurt herself at work" on December 28, 2010 and by performing repetitive motion. However, he did not provide a reasoned explanation as to how the repetitive motion of appellant's position would cause a cervical spine condition. Therefore, Dr. Smith's opinion is insufficient to meet appellant's burden of proof.[11]

OWCP advised appellant in an August 28, 2013 letter of the necessity of submitting a statement from her attending physician explaining the medical reasoning for supporting a causal relationship between the accepted work factors and the claimed cervical spine conditions. However, appellant did not submit such evidence. Therefore, OWCP's July 9, 2014 decision was proper under the law and circumstances of this case.

[9] *Solomon Polen*, 51 ECAB 341 (2000).

[10] *Ricky S. Storms*, 52 ECAB 349 (2001).

[11] *Deborah L. Beatty*, 54 ECAB 340 (2003).

On appeal, counsel contends that OWCP's July 9, 2014 decision is "contrary to law and fact." As stated above, the medical evidence of record is insufficient to establish that the accepted work factors caused the claimed cervical spine conditions.

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 did not establish that she sustained a cervical spine condition in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 9, 2014 is affirmed.

Issued: February 19, 2015
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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